

## War Crimes Law and the Constitution

### Abstract

Jamaat-e-Islami Bangladesh is a moderate Islamic political party that believes in democracy and human rights. From the early 1960s Jamaat was active against all the autocratic governments. The Awami League was in power for two terms: from 1972-1975 and 1996-2001. During these two terms they took no step whatsoever for the trial of the leaders of Jamaat-e-Islami on the allegation of the so-called war crime. During the mass movement for restoration of democracy in the 1980s and during the movement for Caretaker Government in the 1990s, the Awami League had no difficulty in working side by side with Jamaat leaders. A person is presumed innocent until he is proven guilty. It is really surprising that when the leadership of Jamaat was not listed among the 195 who were to be tried for war crimes, they have now been termed as war criminals. This is a violation the fundamental rights and human rights of the Jamaat leaders.

### Jamaat-e-Islami and Constitutionalism

Jamaat-e-Islami (“Jamaat”) is one of the oldest parties in the sub-continent. It was organised in British India in 1941. Jamaat started its work in what is now Bangladesh in the 1950s. Jamaat-e-Islami is a moderate Islamic political party that believes in democracy, human rights and is committed to upholding the rule of law. Jamaat wants to establish a just society through democratic process and democratic process only. Because in Islam no one has the right to lead unless he or she is an elected representative of the people. This is precisely the reason why in more than half a century of its existence Jamaat has followed the democratic path only. It has participated in almost all the national and local elections. To attain its objectives, Jamaat has never resorted to violence or unconstitutional means. It has always abided by the laws of the country and in the face of extreme provocation and political repression pursued its right through legal means. For example, in January 1964 Jamaat was outlawed by the then government of Pakistan. The decision of the government was challenged and finally, the Supreme Court of Pakistan presided over by the then Chief Justice A.R. Cornelius declared the government’s action of outlawing Jamaat unlawful [See: Sayiid Abul A’la Mawdudi and Others Vs The Govt. of West Pakistan and Others, 17 Dhaka Law Report, Supreme Court, Page 209]. Similarly in 1973, the Government, by a notification disqualified Professor Golam Azam, former Ameer of Jamaat, from being a citizen of Bangladesh. 22 years later Professor Golam Azam challenged the order of the government before the High Court, and both the High Court Division and the Appellate Division of the Supreme Court of Bangladesh declared the government’s decision as unlawful.

Thus Professor Golam Azam obtained his birth right of citizenship through court of law. [See Professor Golam Azam Vs. Bangladesh (45 Dhaka Law Report, High Court Division, page 433 and Bangladesh Vs. Professor Golam Azam, 46 Dhaka Law Report, Appellate Division, page 192].

#### Jamaat's participation in the democratic movements

From the early 1960s Jamaat, together with other political parties, was active against the autocratic government of Ayub Khan. Jamaat was at the fore front of forming Pakistan Democratic Movement (PDM), Combined Opposition Parties (COP) and later on Democratic Action Committee (DAC), three platforms of all the political parties which fought against the autocratic regime of Ayub Khan. The Awami League was also an active component of COP and DAC. In the 80s, Jamaat took part in the mass movement for restoration of democracy side by side with the two major political parties, namely the BNP and the Awami League. In this long struggle for restoration of democracy there were liaison committees of the BNP, Jamaat and the Awami League and the liaison committees of the three parties used to sit regularly to formulate common programmes. It is a historical fact that Jamaat was the first political party to raise the demand of holding Parliamentary elections under a neutral Caretaker Government. In the movement for incorporating the concept of Caretaker Government in the Constitution Jamaat, Awami League and Jatiya Party fought side by side. They addressed press conferences from the same platform.

#### Jamaat's participation in the national elections

Jamaat has been represented in Parliament since 1962. It has participated in all the Parliamentary and local elections with a view to institutionalising democracy. In the Parliamentary elections of 1962 Jamaat won 4 seats in the National Assembly and 2 seats in the Provincial Assembly from what was then East Pakistan. In the general elections of 1970 although Jamaat did not win any seat in the National Assembly of East Pakistan, it emerged as the second largest political party next to Awami League which had a landslide victory. However, in the Provincial Assembly election of 1970 Jamaat won 1 seat in the district of Bogra. After the independence of Bangladesh Jamaat could not take part in the elections of 1973 because all the Islamic political parties including Jamaat were outlawed. However, Jamaat took part in 1979 Parliamentary elections under the name Islamic Democratic League (IDL) and secured 6 seats in Parliament with its leader Mawlana Abdur Rahim elected from Barisal. In 1986 Jamaat won 10 seats; in 1991, 18 seats; in 1996, 3 seats; and in 2001, 17 seats in Parliament. Jamaat has the support of about 15 % of the total electorate. Jamaat also participated in the coalition

government of 2001. Jamaat's Ameer (Chief) Mawlana Matiur Rahman Nizami held the portfolios of Ministry of Agriculture and Ministry of Industries while its Secretary General Mr. Ali Ahsan Muhammad Mujahid held the portfolio of Ministry of Social Welfare. It is accepted even by the opponents of Jamaat that those Ministries were run efficiently and honestly. It may be mentioned that Bangladesh Nationalist Party (BNP) could not have formed the government in 1991 without the support of the Jamaat in Parliament.

#### Allegations of Terrorism against Jamaat

As mentioned earlier, Jamaat believes in democracy, human rights and rule of law. In the later part of 2005, a series of bomb blasts took place in Bangladesh. The terrorists in the name of Islam also killed two judges of the Subordinate court. The Opponents of Jamaat made frantic efforts to implicate Jamaat in the terrorist attacks. Jamaat took a firm stand against those terrorists, issued press statements, organised meetings and rallies across the country. It is largely due to Jamaat's sincere efforts that the religious leaders of the country throughout Bangladesh - from the villages to the capital city- in one voice condemned those acts of terrorism. With public support the then coalition government was able to arrest the terrorists and try them in open court and finally they have been sentenced to death.

Allegations of war crimes against Jamaat leaders On 16th December 1971, the Pakistani Army surrendered in Dhaka and ninety three thousand of them were taken as prisoners of war (POWs). Out of them, there were allegations of war crimes against 195, and they were identified as such by the Government of Bangladesh. On 19th July 1973, Parliament passed the International Crimes (Tribunal) Act 1973 to try the alleged war criminals. Earlier on 15th July 1973, the Constitution was amended denying the protection of fundamental rights to the alleged war criminals.

Following the Simla Agreement signed on 2nd July 1972 between Indira Gandhi, Prime Minister of India and Zulfikar Ali Bhutto, President of Pakistan a number of agreements were signed between India and Pakistan regarding repatriation of the POWs. On 9th April 1974, an Agreement was signed between Bangladesh, India and Pakistan in New Delhi in which, among other issues, the question of trial of the 195 POWs was raised and finally it was decided that they would be repatriated to Pakistan along with the other prisoners without trial. For better understanding, paragraph 15 of the 1974 Agreement is quoted below:

'In the light of the foregoing and, in particular, having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past, the Foreign Minister of Bangladesh stated that the Government of Bangladesh had decided not to proceed with the trials as an act of clemency. It was agreed that the 195 prisoners of war may be repatriated to Pakistan along with the other prisoners of war now in process of repatriation under the Delhi Agreement'.

Thus 195 POWs were repatriated to Pakistan, and the question of their trial as war criminals was finally abandoned.

It should be mentioned that under the International Crimes (Tribunal) Act, 1973 the Tribunal has jurisdiction to try and punish the persons who were members of any armed, defense or auxiliary forces and has committed war crimes or crimes against humanity. No one from Jamaat has ever been a member of armed, defense or auxiliary forces, therefore, the question of trying them by the Tribunal does not arise. As a matter of fact a Tribunal formed under the War Crimes Act will have no jurisdiction to try any member of Jamaat. Allegations are frequently made against Jamaat that it organised paramilitary forces like Al-Badr, Al-Shamas and Razakar and committed atrocities in the war of independence in 1971. Jamaat strongly denies any link with such atrocities. In those days the paramilitary forces were organised locally by the then Government under a provincial legislation, namely the Razakar Act 1971 and it had no central command. Jamaat also denies any involvement whatsoever with the abduction and murder of journalists and academics. One member of Jamaat, Abdul Khaliq Mojumder, was prosecuted and convicted by a subordinate court in the seventies for his alleged involvement in the killing of an intellectual namely Shahidullah Kaiser, but his conviction had been set aside by the High Court. The government did not file any appeal in the Appellate Division of the Supreme Court against the judgment of the High Court Division.

It is true that the then Jamaat-e-Islami Bangladesh supported the cause of united Pakistan. It was Jamaat's political decision. No member of Jamaat was ever involved with any crime of murder, arson, loot let alone any crime against humanity. The Bangladesh Collaborators (Special Tribunals) Order, 1972 was promulgated to set up tribunals for trial of the individuals or members of organisations who directly or indirectly acted as collaborators or abettors of the Pakistan Armed forces. This Presidential Order was later repealed by the Bangladesh Collaborators (Special Tribunal) (Repeal) Ordinance, 1975. On 19th July 1973 Parliament passed the International Crimes (Tribunal) Act 1973 by which a legal framework was created to try the war criminals. No member or leader of Jamaat was tried or convicted under this Act. Previously Professor Golam Azam, the ex Ameer (Chief) of Jamaat was accused of committing atrocities during the war. The matter was raised by the then Attorney General in the High Court Division

during the hearing of his citizenship case. Even Mr. Justice Mohammad Ismail Uddin Sarker, the dissenting Judge who held that Professor Golam Azam was not a citizen of Bangladesh, made the following observations:

'that there is nothing to directly implicate the petitioner in any of the atrocities alleged to have been perpetrated by the Pakistani Army or their associates – the Rajakars, Al Badrs or the Al Shams.....we do not find anything that the petitioner was in any way directly involved in perpetuating the alleged atrocities during the war of independence.'

[See Professor Golam Azam Vs. Bangladesh (45 Dhaka Law Report, High Court Division, page 433]

The double standard of a political party

The Awami League was in power for two terms: from 1972-1975 and 1996-2001. During these two terms they took no step whatsoever for the trial of the leaders of Jamaat-e-Islami on the allegation of the so-called war crime. During the mass movement for restoration of democracy in the 1980s and during the movement for Caretaker Government in the 1990s, the Awami League had no difficulty in working side by side with Jamaat leaders who are now accused of war crimes. In the 7 years of struggle for restoration of democracy, numerous meetings were held between the leaders of Jamaat, BNP and Awami League in which Jamaat leaders namely Matiur Rahman Nizami, Ali Ahsan Mohammad Mujahid, Mohammad Qamaruzzaman, Abdul Qader Molla, ATM Azharul Islam and others participated. On behalf of Awami League Messers late Abdus Samad Azad, Abdul Jalil, Tofail Ahmed, Suranjit Sen Gupta, Amir Hossain Amu Mohammad Nasim and others also participated. The evidence of those meetings can be found in the press reports of the years from the 1984-1990. After the general elections of 1991, on behalf of Awami League, Mr. Amir Hossain Amu made an offer to Jamaat through Mr Ali Ahsan Mohammad Mujahid, the present Secretary General of Jamaat to form government with the help of 18 MPs of Jamaat and in return Jamaat was offered 2-3 ministries with a number of seats reserved for women MPs. Jamaat straightway refused the offer of Awami League. During the movement for caretaker government the leaders of Jamaat and Awami League addressed press conferences jointly. In one press conference, addressed from the precinct of Parliament House in 1996, the then leader of the Opposition Sheikh Hasina, the leader of the Jamaat Parliamentary party Matiur Rahman Nizami and that of Jatiya Party Moudud Ahmed, attended. This Press conference was also attended, among others, by Mrs. Sajeda Chaudhury, Mr. Suranjit Sen Gupta. The national dailies published photographs of that event.

Jamaat was not alone to support Pakistan

Jamaat is not the only political party which supported the cause of united Pakistan. There were other parties namely, the Muslim League, Nezam-e-Islam Party, Jamiyat Ulema Islam, the Pro China Communist Party all of which supported the cause of united Pakistan. Besides, there was a sizeable member of prominent personalities which include university professors, doctors, engineers, journalists and religious leaders who supported the cause of united Pakistan. Although Jamaat accepted Bangladesh since 16th December 1971 and it has been working for the welfare of Bangladesh and is committed to preserve its sovereignty, it has been singled out and a smear campaign has been going on against it only for the narrow political gains of certain political parties. When the sub-continent was divided into two states; India and Pakistan in 1947, the Muslim League was in favour of the division of India and the Congress was for the unity of India. After partition the Muslim League has been functioning in India and the National Congress worked as a political party until 1970 without any stigma. However, it is unfortunate that after 36 years of independence Jamaat is dubbed as an anti liberation force although it has been sufficiently represented in Parliament and had two ministers in the past coalition government.

Violation of human rights of Jamaat's leaders

It is very unfortunate that leaders of a few political parties and a section of the press in a smear campaign dubbed the top leaders of Jamaat as war criminals. This is contrary to all civilized norms and the provisions of local and international legislations. A person is presumed innocent until he is proven guilty by a competent court of law and in cases like this, the burden is on the prosecution and the standard of proof is guilty beyond reasonable doubt. It is really surprising that when the leadership of Jamaat was not listed among the 195 who were to be tried for war crimes, they have now been termed as war criminals. This is violation of principles of natural justice and also violation of the fundamental rights and human rights of the Jamaat leaders which are guaranteed under the Constitution of Bangladesh and a number of International conventions including the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

APPENDIX

Simla Agreement

2 July 1972

This agreement on Bilateral Relations between India and Pakistan was signed after the 1971 India-Pakistan War, in which Pakistan was defeated conclusively and which resulted in the creation of Bangladesh. India refrained from attacking or finishing off Pakistan and signed this agreement with the hope that henceforth the countries in the region would be able to live in peace with each other. The then Pakistani Prime Minister, Zulfikar Ali Bhutto, also promised the then Indian Prime Minister, Mrs Indira Gandhi, that his country would accept the Line of Control (LOC) in the state of J&K as the de facto border and would not try to destabilise it. This was not formally entered in the agreement because Bhutto said it would cause domestic problems for him at this juncture. Mrs Gandhi magnanimously accepted his promise and did not formalise that part of the agreement. But Pakistan, as later events were to prove, never kept its part of the deal.

The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the sub-continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

In order to achieve this objective, the Government of India and the Government of Pakistan have agreed as follows:

(i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the countries;

(ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.

(iii) That the pre-requisite for reconciliation, good-neighbourliness and durable peace between them is a commitment by both countries to peaceful co-existence, respect for each other's

territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;

(iv) That the basic issues and causes of conflict which have bedevilled the relations between the two countries of the last twenty-five years shall be resolved by peaceful means;

(v) That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;

(vi) That in accordance with the Charter of the United Nations, they shall refrain from the threat or use of force against the territorial integrity or political independence of each other;

(II) Both Governments will take all steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them;

(III) In order progressively to restore and normalize relations between the two countries step by step, it was agreed that;

(i) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including overflights;

(ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country;

(iii) Trade and co-operation in economic and other agreed fields will be resumed as far as possible;

(iv) Exchange in the fields of science and culture will be promoted. In this connection delegations from the two countries will meet from time to time to work out the necessary details.

(IV) In order to initiate the process of the establishment of durable peace, both Governments agree that: (i) Indian and Pakistani forces shall be withdrawn to their side of the international border;

(ii) In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat of the use of force in violation of this line;

(iii) The withdrawals shall commence upon entry into force of this Agreement and shall be completed within a period of thirty days thereof.



(V) This Agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the Instruments of Ratification are exchanged.

(VI) Both Governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of a durable peace and normalization of relations, including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

Sd/-

Indira Gandhi

Prime Minister

Republic of India

Sd/-

Zulfiqar Ali Bhutto

President

Islamic Republic of Pakistan

#### Indo-Pak Joint Agreement (28th August 1973)

The Special Representative of the Prime Minister of India, Shri P. N. Haksar, and the Pakistan Minister of State for Defence and Foreign Affairs, His Excellency Mr. Aziz Ahmed, held talks in Rawalpindi from July 24 to July 31, 1973 and in New Delhi from August 18 to August 28, 1973, Shri P. N. Haksar was assisted by Foreign Secretary, Shri Kewal Shingh, Secretary to the Prime Minister, Shri P. N. Dhar, Joint Secretaries in the Ministry of External Affairs, Shri K. P. S. Menon, Shri A. S. Chib and Dr. S. P. Jagota, and Deputy Secretaries, Shri K. N. Bakshi and Shri Naresh Dayal. The leader of the Pakistani delegation was assisted by the Foreign Secretary, Mr. Agha Shahi, Director General in the Ministry of Foreign Affairs, Mr. Abdul Sattar and Directors, Mr. Abdul Waheed and Mr. Khalid Saleem. These talks were held in the context of solving the humanitarian problems set out in the Joint Indo-Bangladesh Declaration of April 17, 1973.

2. During the course of the talks both at Rawalpindi and at New Delhi, which were marked by mutual understanding, the delegations of India and Pakistan reviewed the progress so far made in the implementation of the Simla Agreement since they met last in New Delhi in August 1972.

The Special Representatives reaffirmed the resolve of their respective Governments expressed in the Simla Agreement that “The two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the sub-continent.” In this connection the Special Representatives were confident that the repatriation of prisoners of war and nationals of Bangladesh and Pakistan will generate an atmosphere of reconciliation and thus contribute to the building of a structure of durable peace in the sub-continent.

3. Desirous of solving the humanitarian problems resulting from the conflict of 1971 and thus enabling the vast majority of human beings referred to in the Joint Indo-Bangladesh Declaration to go to their respective countries, India and Pakistan have reached the following agreement:

i) The immediate implementation of the solution of these humanitarian problems is without prejudice to the respective positions of the parties concerned relating to the case of 195 prisoners of war referred to in Clauses (vi) and (vii) of this paragraph;

(ii) Subject to Clause (i), repatriation of all Pakistani prisoners of war and civilian internees will commence with the utmost despatch as soon as logistic arrangements are completed and from a date to be settled by mutual agreement:

(iii) Simultaneously, the repatriation of all Bangalees in Pakistan, and all Pakistanis in Bangladesh referred to in Clause (v) below, to their respective countries will commence;

(iv) In the matter of repatriation of all categories of persons the principle of simultaneity will be observed throughout as far as possible;

(v) Without prejudice to the respective positions of Bangladesh and Pakistan on the question of non-Bangalees who are stated to have “opted for repatriation to Pakistan”, the Government of Pakistan, guided by considerations of humanity, agrees, initially, to receive a substantial number of such non-Bangalees from Bangladesh. It is further agreed that the Prime Ministers of Bangladesh and Pakistan or their designated representatives will thereafter meet to decide what additional number of persons who may wish to migrate to Pakistan may be permitted to do so. Bangladesh has made it clear that it will participate in such a meeting only on the basis of sovereign equality;

(vi) Bangladesh agrees that no trials of the 195 prisoners of war shall take place during the entire period of repatriation and that pending the settlement envisaged in clause (vii) below these prisoners of war shall remain in India;

(vii) On completion of repatriation of Pakistani prisoners of war and civilian internees in India, Bangalees in Pakistan and Pakistanis in Bangladesh referred to in Clause (v) above, or earlier if they so agree, Bangladesh, India and Pakistan will discuss and settle the question of 195

prisoners of war. Bangladesh has made it clear that it can participate in such a meeting only on the basis of sovereign equality.

The Special Representatives are confident that the completion of repatriation provided for in this agreement would make a signal contribution to the promotion of reconciliation in the subcontinent and create an atmosphere favorable to a constructive outcome of the meeting of the three countries;

(viii) The time schedule for the completion of repatriation of the Pakistani prisoners of war and civilian internees from India, the Bangalees from Pakistan, and the Pakistanis referred to in Clause (v) above from Bangladesh, will be worked out by India in consultation with Bangladesh and Pakistan, as the case may be. The Government of India will make the logistic arrangements for the Pakistani prisoners of war and civilian internees who are to be repatriated to Pakistan. The Government of Pakistan will make logistic arrangements within its territory up to agreed points of exit for the repatriation of Bangladesh nationals to Bangladesh. The Government of Bangladesh will make necessary arrangements for the transport of these persons from such agreed points of exit to Bangladesh. The Government of Bangladesh will make logistic arrangements within its territory up to agreed points of exit for the movement of the Pakistanis referred to in Clause (v) above who will go to Pakistan. The Government of Pakistan will make necessary arrangements for the transport of these persons from such agreed points of exit to Pakistan. In making logistic arrangements the Governments concerned may seek the assistance of international humanitarian organizations and others;

(ix) For the purpose of facilitating the repatriation provided for in this agreement, the representatives of the Swiss Federal Government and any international humanitarian organization entrusted with this task shall have unrestricted access at all times to Bangalees in Pakistan and to Pakistanis in Bangladesh referred to in Clause (v) above. The Government of Bangladesh and the Government of Pakistan will provide all assistance and facilities to such representatives in this regard including facilities for adequate publicity for the benefit of the persons entitled to repatriation under this agreement;

(x) All persons to be repatriated in accordance with this agreement will be treated with humanity and consideration. 4. The Government of India and the Government of Pakistan have concurred in this agreement. The Special Representative of the Prime Minister of India, having consulted the Government of Bangladesh, has also conveyed the concurrence of Bangladesh Government in this agreement. Done in New Delhi on August 28, 1973 in three originals, all of which are equally authentic.

Aziz Ahmed

Minister of State for Defence

& Foreign Affairs, Government of Pakistan

P. N. Haksar

Special Representative of the Prime Minister of India

Text of the Bangladesh-India-Pakistan Agreement Signed in New Delhi on April 9, 1974

On July 2, 1972, the President of Pakistan and the Prime Minister of India signed an historic agreement at Simla under which they resolved that “the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the sub-continent.” The Agreement also provided for the settlement of “their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon.”

2. Bangladesh welcomed the Simla Agreement. The Prime Minister of Bangladesh strongly supported its objective of reconciliation, good neighborliness and establishment of durable peace in the sub-continent.

3. The humanitarian problems arising in the wake of the tragic events of 1971 constituted a major obstacle in the way of reconciliation and normalization among the countries of the sub-continent. In the absence of recognition, it was not possible to have tripartite talks to settle the humanitarian problems as Bangladesh could not participate in such a meeting except on the basis of sovereign equality.

4. On April 17, 1973, India and Bangladesh took a major step forward to break the deadlock on the humanitarian issues by setting aside the political problem of recognition. In a Declaration issued on that date they said that they “are resolved to continue their efforts to reduce tension, promote friendly and harmonious relationship in the sub-continent and work together towards the establishment of a durable peace.” Inspired by this vision and “in the larger interests of reconciliation, peace and stability in the sub-continent” they jointly proposed that the problem of the detained and stranded persons should be resolved on humanitarian considerations through simultaneous repatriation of all such persons except those Pakistani prisoners of war who might be required by the Government of Bangladesh for trial on certain charges.

5. Following the Declaration there were a series of talks between India and Bangladesh and India and Pakistan. These talks resulted in an agreement at Delhi on August 28, 1973 between India and Pakistan with the concurrence of Bangladesh which provided for a solution of the outstanding humanitarian problems.

6. In pursuance of this Agreement, the process of three-way repatriation commenced on September 19, 1973. So far nearly 300,000 persons have been repatriated which has generated an atmosphere of reconciliation and paved the way for normalization of relations in the sub-continent.

7. In February 1974, recognition took place thus facilitating the participation of Bangladesh in the tripartite meeting envisaged in the Delhi Agreement, on the basis of sovereign equality. Accordingly, His Excellency Dr. Kamal Hossain, Foreign Minister of the Government of Bangladesh, His Excellency Sardar Swaran Singh, Minister of External Affairs, Government of India and His Excellency Mr. Aziz Ahmed, Minister of State for Defence and Foreign Affairs of the Government of Pakistan, met in New Delhi from April 5 to April 9, 1974 and discussed the various issues mentioned in the Delhi Agreement, in particular the question of the 195 prisoners of war and the completion of the three-way process of repatriation involving Bangalees in Pakistan, Pakistanis in Bangladesh and Pakistani prisoners of war in India.

8. The Ministers reviewed the progress of the three-way repatriation under the Delhi Agreement of August 28, 1973. They were gratified that such a large number of persons detained or stranded in the three countries had since reached their destinations.

9. The Minister also considered steps that needed to be taken in order expeditiously to bring the process of the three-way repatriation to a satisfactory conclusion.

10. The Indian side stated that the remaining Pakistani prisoners of war and civilian internees in India to be repatriated under the Delhi Agreement, numbering approximately 6,500 would be repatriated at the usual pace of a train on alternate days and the likely short-fall due to the suspension of trains from April 10 to April 19, 1974 on account of Kumbh Mela, would be made up by running additional trains after April 19. It was thus hoped that the repatriation of prisoners of war would be completed by the end of April, 1974.

11. The Pakistan side stated that the repatriation of Bangladesh nationals from Pakistan was approaching completion. The remaining Bangladesh nationals in Pakistan would also be repatriated without let or hindrance.

12. In respect of non-Bangalees in Bangladesh, the Pakistan side stated that the Government of Pakistan had already issued clearances for movement to Pakistan in favour of those non-Bangalees who were either domiciled in former West Pakistan, were employees of the Central

Government and their families or were members of the divided families, irrespective of their original domicile. The issuance of clearances to 25,000 persons who constitute hardship cases was also in progress. The Pakistan side reiterated that all those who fall under the first three categories would be received by Pakistan without any limit as to numbers. In respect of persons whose applications had been rejected, the Government of Pakistan would, upon request, provide reasons why any particular case was rejected. Any aggrieved applicant could, at any time, seek a review of his application provided he was able to supply new facts or further information to the Government of Pakistan in support of his contention that he qualified in one or other of the three categories. The claims of such persons would not be time-barred. In the event of the decision of review of a case being adverse the Governments of Pakistan and Bangladesh might seek to resolve it by mutual consultation.

13. The question of 195 Pakistani prisoners of war was discussed by the three Ministers, in the context of the earnest desire of the Governments for reconciliation, peace and friendship in the sub-continent. The Foreign Minister of Bangladesh stated that the excesses and manifold crimes committed by these prisoners of war constituted, according to the relevant provisions of the U.

N. General Assembly Resolutions and International law, war crimes, crimes against humanity and genocide and that there was universal consensus that persons charged with such crimes as the 195 Pakistani prisoners of war should be held to account and subjected to the due process of law. The Minister of State for Defence and Foreign Affairs of the Government of Pakistan said that his Government condemned and deeply regretted any crimes that may have been committed.

14. In this connection the three Ministers noted that the matter should be viewed in the context of the determination of the three countries to continue resolutely to work for reconciliation. The Ministers further noted that following recognition, the Prime Minister of Pakistan had declared that he would visit Bangladesh in response to the invitation of the Prime Minister of Bangladesh and appealed to the people of Bangladesh to forgive and forget the mistakes of the past in order to promote reconciliation. Similarly, the Prime Minister of Bangladesh had declared with regard to the atrocities and destruction committed in Bangladesh in 1971 that he wanted the people to forget the past and to make a fresh start, stating that the people of Bangladesh knew how to forgive.

15. In the light of the foregoing and, in particular, having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past, the Foreign Minister of Bangladesh stated that the Government of Bangladesh had decided not to proceed with the trials as an act of clemency. It was agreed that the 195 prisoners of war may be repatriated to Pakistan along with the other prisoners of war now in the process of repatriation under the Delhi Agreement.

16. The Ministers expressed their conviction that the above agreements provide a firm basis for the resolution of the humanitarian problems arising out of the conflict of 1971. They reaffirmed the vital stake the seven hundred million people of the three countries have in peace and progress

and reiterated the resolve of their Governments to work for the promotion of normalization of relations and the establishment of durable peace in the sub-continent.

Signed in New Delhi on April 9, 1974 in three originals, each of which is equally authentic.

SD/- (KAMAL HOSSAIN)

Minister of Foreign Affairs

Government of Bangladesh

SD/- (AZIZ AHMED)

Minister of State for Defence & Foreign Affairs Government of Pakistan

SD/- (SWARAN SINGH)

Minister of External Affairs Government of India