INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING TRIAL OF PAKISTANI PRISONERS OF WAR

(PAKISTAN *v.* INDIA)

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AFFAIRE RELATIVE AU PROCÈS DE PRISONNIERS DE GUERRE PAKISTANAIS

(PAKISTAN c. INDE)

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The present volume contains the record filed in the case concerning *Trial of Pakistani Prisoners of War.*

This case, entered on the Court's General List on 11 May 1973 under number 60, was discontinued by an Order of the Court of 15 December 1973 (*Trial of Pakistani Prisoners of War, I.C.J. Reports 1973*, p. 347).

The Hague, 1976.

Le présent volume reproduit le dossier de l'affaire relative au *Procès de prisonniers de guerre pakistanais.*

Cette affaire, inscrite au rôle le 11 mai 1973 sous le n° 60, en a été rayée par ordonnance de la Cour du 15 décembre 1973 (*Procès de prisonniers de guerre pakistanais, C.I.J. Recueil 1973*, p. 347).

La Haye, 1976.

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THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

The Hague, 11 May 1973.

In accordance with Article 40, paragraph 1, of the Statute and Article 35, paragraph 2, of the Rules of Court, as amended on 10 May 1972, I have the honour to address to you this written Application of the Government of Pakistan against the Government of India.

2. The subject of the dispute relates to charges of genocide against 195 of the over 92,000 Pakistani prisoners of war and civilian internees being held in India. The central issue is whether or not Pakistan has an exclusive claim to exercise jurisdiction in respect of such persons by virtue of Article VI of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly on 9 December 1947, to which both India and Pakistan are parties.

3. The succinct statement of the facts and grounds on which the claim of the Government of Pakistan is based is as follows:

(a) On 21 November 1971, taking advantage of the internal situation in East Pakistan, and acting in breach of her obligations under the United Nations Charter, the Government of India launched direct armed attacks against Pakistan's Eastern Province. These armed attacks continued to mount until Pakistan was forced to take measures in self-defence. The fighting spread to West Pakistan and resulted in a state of war between India and Pakistan on 3 December 1971. India notified the existence of a state of war to Pakistan through the Government of Switzerland on 4 December 1971. (*See* Annex A.)

(b) On 11 December 1971, the Chief of Staff of the Indian Armed Forces, General S. H. F. J. Manekshaw, called upon the Pakistan Forces in East Pakistan to surrender to the Indian army. In a radio broadcast he gave his "solemn assurance" that the personnel who surrendered would be treated with the dignity and respect all soldiers are entitled to, and that India would abide by the provisions of the Geneva Conventions. Consequent upon this call by General Manekshaw and wishing to avoid any further bloodshed and destruction, the vastly outnumbered Pakistani forces under the Eastern Command surrendered to the Indian army on 16 December 1971.

(c) The External Affairs Minister of the Government of India confirmed this assurance of General Manekshaw in the United Nations Security Council on 12 December 1971 in these words:

"India stands committed to dealing with the enemy forces according to Geneva Conventions."

He also recalled that India's Chief of Army Staff had assured West Pakistani troops in East Pakistan of their safe evacuation to West Pakistan, if they surrendered.

(d) Consequent upon his call, on 16 December 1971 the Eastern Command of the Pakistan army surrendered, and a large number of armed personnel became prisoners of war of India which was the sole belligerent

power in the international conflict with Pakistan. Consistent with Article 12 of the Third Geneva Convention of 12 August 1949, relative to the Treatment of Prisoners of War, the prisoners passed into the hands of the belligerent power, India. The responsibility for the treatment of prisoners of war, thus, in accordance with the abovementioned Article, rested exclusively with the "Enemy Power" India and not with the individuals or military units that had captured them.

(e) The prisoners of war, including civilians paid out of the resources of the armed forces, according to the information received through the International Committee of the Red Cross, number 81,888. In addition, India continues to detain over 10,000 civilians, among them 6,500 women and children.

(f) On 16 December 1971, India made a cease-fire call which was accepted by Pakistan and hostilities ceased at 14.30 hours GMT on 17 December 1971. The Security Council of the United Nations took cognizance of the matter on 21 December 1971. Mr. Swaran Singh, the Indian Foreign Minister, stated before the Council:

"With the independence of 'Bangla Desh' and the surrender of Pakistan troops there, their earliest possible repatriation from the Eastern theatre has to be arranged. They are under our protection and we have undertaken to treat them in accordance with the Geneva Conventions."

The Security Council adopted resolution No. 307, in respect of the conflict on 21 December 1971, in which it noted the cessation of hostilities and called upon India and Pakistan to withdraw from territories occupied by them. The Security Council also called for the observance of the Geneva Conventions. (*See* Annex B.)

(g) In January 1972, the over 92,000 Pakistani prisoners of war and civilian internees, who were under Indian custody, were transferred to Prisoner of War Camps in India. India, as the sole Enemy Power, had the right to detain the Pakistani prisoners of war until such time as hostilities ceased. However, in spite of the cessation of hostilities, which the Security Council acknowledged on 21 December 1971, India continues to hold the Pakistani prisoners of war in contravention of the Geneva Convention. Pakistani civilians, who voluntarily placed themselves under Indian protection on the basis of the assurance of earliest possible repatriation to West Pakistan, were wrongfully interned and continue to be illegally and improperly detained.

4. Meanwhile, during the occupation, with Indian encouragement and help, the leaders of East Pakistan set up that territory as the "independent State of Bangla Desh" and declared their intention of holding trials for genocide and "crimes against humanity" of a number of Pakistani prisoners of war now in Indian custody. The Government of Pakistan cannot agree to the trial of its prisoners of war by "Bangla Desh" since Pakistan has exclusive jurisdiction over its nationals in respect of any acts of genocide allegedly committed in Pakistani territory. Moreover, the concept of crimes against humanity is not even remotely applicable.

5. The "Bangla Desh" authorities have nevertheless continued to make declarations of their intention to proceed with such trials, principally in relation to alleged acts of genocide. This is apparent from Presidential Order No. 8 of 1972, issued by the President of "Bangla Desh" and entitled the

"Bangla Desh" Collaborators (Special Tribunals) Order, 1972. In the Preamble of the Order it is stated as follows:

> "Whereas certain persons, individuals or as members of Organizations, directly or indirectly have been collaborators of the Pakistan armed forces, which had illegally occupied 'Bangla Desh' by brute force, and have aided and abetted the *Pakistan armed forces in occupation in committing genocide and crimes against humanity* . . ."

The intention, therefore, to try the personnel of the Pakistan army for the alleged acts of genocide is clear. This intention is also borne out by the numerous statements made by leaders of "Bangla Desh", some of which are noted here:

(i) On 22 February 1972, a Government spokesman of "Bangla Desh" stated that Pakistani officials would be tried for acts of genocide. Sheikh Mujibur Rehman also reiterated his intentions in this regard (*see* Annex C-I).

(ii) On 8 June 1972 "Bangla Desh" Prime Minister, Sheikh Mujibur Rehman, reiterated that the trial of some Pakistani prisoners of war on charges of genocide would be held in "Bangla Desh" (*see* Annex C-II).

(iii) On 14 June 1972 a "Bangla Desh" Foreign Ministry official stated that India had agreed to hand over some Pakistani prisoners of war to "Bangla Desh" for interrogation and trial on charges of genocide (*see* Annex C-III).

(iv) On 26 April 1972 the "Bangla Desh" Prime Minister stated that he could not understand how people who had committed genocide could escape the consequences and that they must be punished (*see* Annex C-IV).

(v) On 17 January 1973 India told the United Nations that persons who had committed grave crimes such as genocide and crimes against humanity were, in its view, not entitled to any immunity under the Geneva Convention and that the Joint Command of "Bangla Desh" and Indian forces had the right to demand their evacuation on behalf of the Government of "Bangla Desh" so that they could be taken into custody pending appropriate legal action under the law of the land and under international law (*see* Annex C-V).

(vi) On 17 March 1972, the Deputy Minister for External Affairs of India told the Rajya Sabha that India had informed "Bangla Desh" that in case it wanted to try any prisoner for committing genocide and other war crimes, the Indian Government would give all assistance (*see* Annex C-VI).

(vii) On 17 April 1973, the Dacca Radio announced that 195 Pakistani prisoners of war would be tried in "Bangla Desh" for committing genocide and crimes against humanity (*see* Annex C-VII). This was confirmed by the Foreign Minister of "Bangla Desh" Dr. Kamal Hossain (*see* Annex C-VIII).

6. Under Article 118 of the Third Geneva Convention and Article 134 of the Fourth Geneva Convention, India is under obligation to repatriate prisoners of war and civilian internees immediately upon the cessation of hostilities. In so far as the prisoners of war captured on the Western Front are concerned, India and Pakistan have implemented Article 118 of the Third Geneva Convention. Thus on 1 December 1972, Pakistan unilaterally returned 617 Indian prisoners of war so as to initiate the process of repatriation

under the Convention, without having any assurance from India that it would also start a similar process. India, however, did respond by repatriating only 550 Pakistani prisoners of war. But the process of implementation of these obligations was never completed and India refused to take further steps in implementation of its obligations under the above noted provision of the Geneva Conventions. Instead, Indian leaders have made it clear that trials will take place in "Bangla Desh" and 195 prisoners captured on the Eastern Front shall be transferred to "Bangla Desh" by India for the purpose of trials principally for acts of genocide.

7. In a Joint Statement on 17 April 1973 India and "Bangla Desh" have decided as follows:

> "Without prejudice to the respective positions of the Government of India and the Government of the People's Republic of Bangla Desh the two Governments *are ready to seek a solution* to all humanitarian problems *through simultaneous repatriation* of the *Pakistani prisoners of war* and civilian internees, *except those required by the Government of the People's Republic of Bangladesh for trial on criminal charges*, the repatriation of *Bengalis* forcibly detained in Pakistan and the repatriation of *Pakistanis in Bangladesh*, i.e., *all non-Bengalis who owe allegiance and have opted for* repatriation to Pakistan."

India as the Detaining Power has, therefore, sought to place conditions on the repatriation of Pakistani prisoners of war after the cessation of active hostilities and has acted in breach of its international obligations under Article 118 of the Third, and Articles 133 and 134 of the Fourth Geneva Convention. India is also in breach of the aforementioned Conventions since it has not complied with the provisions regarding humane treatment under the said Conventions. It is to be noted in this context that 129 Pakistani prisoners of war have been shot by Indian Guards of whom 45 succumbed to their injuries. In addition, 120 soldiers and civilians have, according to reports received through the International Committee of the Red Cross, died of illness. Over-crowding, unhygienic conditions, malnutrition and inadequate medical facilities which characterize the captivity of Pakistani soldiers and especially of the civilians are no doubt the cause for this loss of life.

8. The Government of India has further held out threats reiterated in the statement of 17 April 1973, that those of the Pakistani prisoners of war and civilian internees who are required by the Government of Bangladesh for trial would be transferred from India to Bangladesh. According to Indian Press reports, the number of such persons is 195.

9. Pakistan does not accept that India has a right to transfer its prisoners of war for trial to "Bangla Desh" and claims that by virtue of Article VI of the Genocide Convention, persons charged with genocide shall be tried by a Competent Tribunal of the State in the territory of which the act was committed. This means that Pakistan has exclusive jurisdiction to the custody of persons accused of the crimes of genocide, since at the time the acts are alleged to have been committed, the territory of East Pakistan was universally recognized as part of Pakistan. Further, the Genocide Convention does not warrant the holding of over 92,000 persons in custody in breach of their right under international law to be repatriated, merely because of allegations against a few regarding acts of genocide.

10. Without prejudice to what has been stated above it is not possible to have a "Competent Tribunal" within the meaning of Article VI of the Genocide Convention in "Bangla Desh", in view of the extreme emotionally

charged situation that prevails there. This was demonstrated in the recent trials of the "Collaborators" when Sir Dingle Foot, the Chief Counsel for Dr. A. M. Malik, the former Governor of East Pakistan, and others, was not allowed to enter Dacca on 13 November 1972, and the former Governor and other eminent persons were convicted and sentenced to brutal punishments after summary proceedings for so-called complicity with the Pakistani forces in the alleged acts of genocide. Moreover, the requirements of a "Competent Tribunal" are that it must apply international law, have impartial judges and allow the accused to be defended by counsel of their choice. Further, no retrospective application of a law is permissible.

11. Since the above facts disclose a question of interpretation and application of the Genocide Convention, the jurisdiction of the International Court of Justice is invoked under Article IX of the Genocide Convention, in accordance with which disputes between contracting parties relating to the interpretation, application or fulfilment of the Convention, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. Thus, the Court has jurisdiction under Article 36 (I) of its Statute.

12. MAY IT PLEASE THE COURT:

To adjudge and declare, whether the Government of India appears or not, and after such time-limits as the Court may fix in the absence of an agreement between the parties:

(1) That Pakistan has an exclusive right to exercise jurisdiction over the one hundred and ninety-five Pakistani nationals or any other number, now in Indian custody, and accused of committing acts of genocide in Pakistani territory, by virtue of the application of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and that no other Government or authority is competent to exercise such jurisdiction.

(2) That the allegations against the aforesaid prisoners of war are related to acts of genocide, and the concept of "crimes against humanity" or "war crimes" is not applicable.

(3) That there can be no ground whatever in international law, justifying the transfer of custody of these one hundred and ninety-five or any other number of prisoners of war to "Bangla Desh" for trial in the face of Pakistan's exclusive right to exercise jurisdiction over its nationals accused of committing offences in Pakistan territory, and that India would act illegally in transferring such persons to "Bangla Desh" for trials.

(4) That a "Competent Tribunal" within the meaning of Article VI of the Genocide Convention means a Tribunal of impartial judges, applying international law, and permitting the accused to be defended by counsel of their choice. The Tribunal cannot base itself on *ex-post facto* laws nor violate any provisions of the Declaration of Human Rights. In view of these and other requirements of a "Competent Tribunal", even if India could legally transfer Pakistani Prisoners of War to "Bangla Desh" for trial, which is not admitted, it would be divested of that freedom since in the atmosphere of hatred that prevails in "Bangla Desh", such a "Competent Tribunal" cannot be created in practice nor can it be expected to perform in accordance with accepted international standards of justice.

(Signed) J. G. KHARAS.

ANNEXES TO THE APPLICATION

Annex A

Registered No. D. 221

The Gazette of India
Extraordinary

PART II—SECTION 3—SUB-SECTION (i)
PUBLISHED BY AUTHORITY
MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION

New Delhi, 4 December 1971

G.S.R. 1848.—In pursuance of clause *(a)* of section 19 of the Passports Act, 1967 (15 of 1967), the Central Government hereby declares that a foreign country, namely Pakistan is committing external aggression against India.
[No. VI/49/34/71.]

Annex B

United Nations
Security Council

Resolution No.:
S/RES/307/(1971)
21 December 1971.

THE SECURITY COUNCIL

Having discussed the grave situation in the sub-continent which remains a threat to international peace and security,

Noting General Assembly resolution 2793 (XXVI) of 7 December 1971,

Noting the reply of the Government of Pakistan on 9 December 1971 (Document S/10440),

Noting the reply of the Government of India on 12 December 1971 (Document S/10445),

Having heard the statements of the Deputy Prime Minister of Pakistan and the Foreign Minister of India,

Noting further the statement made at the 1617th meeting of the Security Council by the Foreign Minister of India containing a unilateral declaration of cease-fire in the western theatre,

Noting Pakistan's agreement to the cease-fire in the western theatre with effect from 17 December 1971,

Noting that consequently a cease-fire and a cessation of hostilities prevail,

1. *Demands*, that a durable cease-fire and cessation of all hostilities in all areas of conflict be strictly observed and remain in effect until withdrawals take place as soon as practicable of all armed forces to their respective territories and to positions which fully respect the cease-fire line in Jammu and Kashmir supervised by the United Nations Military Observer Group in India and Pakistan;

Calls upon all member States to refrain from any action which may aggravate the situation in the sub-continent or endanger international peace;

Calls upon all those concerned to take all measures necessary to preserve human life and for the observance of the Geneva Conventions of 1949 and to apply in full their provisions as regards the protection of wounded and sick, prisoners of war and civilian population;

Calls for international assistance in the relief of suffering and the rehabilitation of refugees and their return in safety and dignity to their homes and for full co-operation with the Secretary-General to that effect;

Authorizes the Secretary-General to appoint if necessary a special Representative to lend his good offices for the solution of humanitarian problems;

Requests the Secretary-General to keep the Council informed without delay in developments relating to the implementation of this resolution;

Decides to remain seized of the matter and to keep it under active consideration.

(Adopted by the Security Council at its 1621st Meeting, on 21 December 1971.)

Following is the Text of Interpretative Statement Made by Somalia on Behalf of Co-Sponsors after Adoption of Security Council Resolution 357 (71)

STATEMENT MADE BY MR. FARAH, PERMANENT REPRESENTATIVE OF SOMALIA

Now that the draft resolution contained in document S/10465 has been adopted by 13 votes in favour, two abstentions and none against, I wish to make a brief statement on behalf of the co-sponsors, in explanation of certain aspects of the resolution.

I should like to make clear that this resolution was formed after very intensive consultations with both parties, and both parties have subscribed in general to all that is included in the text of the resolution.

In operative paragraph 1 of the resolution the Council demands of India and Pakistan that not only should there be strict observance of a cease-fire and a cessation of all hostilities in the areas of conflict, but that withdrawals should take place of all their armed forces to their respective sides.

In the eastern theatre since fighting has stopped foreign armed forces should be completely withdrawn as soon as practicable from that theatre.

In the western theatre, the resolution just adopted would call for withdrawal of the armed forces of both parties.

To summarize, where the draft resolution speaks of withdrawals of all armed forces, it is in the foregoing context that the co-sponsors wish the terms to be interpreted.

The co-sponsors of the resolution have noted the declaration by the Government of India that it has no territorial ambitions. In the implementation of this resolution, it is the view of the co-sponsors that the parties may make any mutually acceptable arrangement or adjustment that they may deem necessary.

Annex C-I

The Hindustan Times, Wednesday 23 February 1973

DACCA WILL TRY YAHYA OTHERS FOR WAR CRIMES

Dacca, 22 February (PTI). Former Pakistani President Yahya Khan and some top army personnel will be tried as war criminals by the Bangla Desh Government for the genocide they had committed during the nine months of their occupation.

A Government spokesman told BSS today that the Government had already prepared a list of more than 500 war criminals and against each of them specific charges had been framed.

The spokesman said that two categories of tribunals would be set up shortly to try the war criminals—one exclusively for the trials of those top army officials who were responsible for planning the genocide and the other for the lower ranks who executed the order of the high officials . . .

SHEIKH'S COMMENT

Meanwhile, Prime Minister Sheikh Mujibur Rehman today made an offer that those Pakistani personnel who were not involved in the massacre and killings in Bangla Desh could be allowed to go to their homelands in West Pakistan and join their families.

But, he asserted, that those guilty of committing genocide would be tried on the soil of this land, report BSS . . .

Annex C-II

Dawn, 6 June 1972 (Pakistan)

POW TRIAL TO BE HELD INSISTS MUJIB

Dacca, 8 June. Bangladesh Prime Minister Sheikh Mujibur Rahman reiterated yesterday that the trial of some Pakistani Prisoners of War on charges of genocide would be held in Bangla Desh.

Sheikh Mujib was addressing a public meeting here to commemorate a speech which he made in 1966 demanding maximum autonomy for his country which then formed the Eastern Wing of Pakistan. The Sheikh told the rally that his 1966 speech was the beginning of a movement which culminated in the eventual independence of Bangladesh.

Annex C-III

Pakistan Times—15 June 1972

WAR TRIALS

INDIA AGREES TO TRANSFER 150 POWs TO "B.D."

Dacca, 14 June. India has agreed to hand over 150 Pakistani POWs to "Bangla Desh" for interrogation and trial on charges of genocide. "B.D." Foreign Ministry official said here today.

Lt. Gen. A. A. K. Niazi, former Military Commander in East Pakistan would be among the 150.

The official said the prisoners would be brought from camps in India by the end of this month. The Indian Government has confirmed that the prisoners sought by "Bangla Desh" will be available.

Preparations are being made to lodge Gen. Niazi and the other POWs in his former operational headquarters in the Kurmitola Cantonment here . . . (Reuter).

Annex C-IV

Indian Express, 4 April 1972

MUJIB: NO SETTLEMENT ON POWs WITHOUT OUR CONCURRENCE

THE TRIAL

On the trial of war criminals the Sheikh was emphatic and unequivocal. He could not understand how people who had committed genocide could escape the consequences. "What would posterity say? The international community would never forgive us if we were to let killings, rape and loot go unpunished . . ."

Annex C-V

The Hindustan Times, dated 19 January 1973

NO IMMUNITY TO WAR CRIMINALS INDIA TELLS U.N.

New Delhi, 17 Jan. (PTI). India has told the United Nations that persons who had committed grave crimes such as genocide war crimes and crimes against humanity are, in its view, not entitled to any immunity under any of the Geneva Conventions.

The Joint Command of the Bangla Desh and Indian forces has the right to demand their evacuation on behalf of the Government of Bangla Desh so that they could be taken into custody pending appropriate legal action under the law of the land and under international law.

India's permanent representative at the United Nations, Mr. Samar Sen, has conveyed this to the Secretary-General, Mr. Kurt Waldheim, in his letter dated 14 January . . .

Annex C-VI

The Times of India, Saturday, 18 March 1972

INDIA'S STAND ON RETURN OF PAK. POWS

New Delhi, 17 March. The Deputy Minister for External Affairs, Mr. Surendra Pal Singh told Mr. Sunder Singh Bhandari in the Rajya Sabha today that there was no question of sending the Pakistani prisoners of war taken in Bangladesh back to Pakistan without the permission of the Bangladesh Government.

("In the Lok Sabha, the Defence Minister, Mr. Jagjivan Ram, said in a written answer that general repatriation of prisoners of war from India and Pakistan is dependent on Pakistan's response to suggestions for bilateral talks.")

Mr. Surendra Pal Singh further told Mr. Sitaram Kesari that if there were charges of war crimes against POWs in India's custody then we would hand them back to Bangladesh if the Government of Bangladesh wanted them.

Replying to Mrs. Pratibha Singh, the Minister said the Government of India fully respected the view of the Bangladesh Government on the need for trial of those responsible for genocide, crimes against humanity and war crimes in Bangladesh. The Government of India would co-operate with the Government of Bangladesh in this regard as and when required to do.

Replying to further supplementaries, the Minister said no demand had been received so far from the Bangladesh Government for handing over any POW to face trial. These were matters of detail which were being discussed and sorted out by the Bangladesh Government itself.

India, he said, had told Bangladesh that in case it wanted to try any prisoner for committing genocide and other war crimes, the Indian Government would give all assistance . . .

Annex C-VII

Radio Bangla Desh, Dacca, 17 April 1973

One hundred and ninety-five Pakistani POWs will be tried in BD for committing genocide, war crimes against humanity and breaches of the Geneva Convention.

Announcing this official decision a Press release issued in Dacca this afternoon said that the accused were expected to be produced before a special tribunal in Dacca by the end of the next month. Investigations into the crimes committed by Pakistani occupation forces were almost complete.

Annex C-VIII

WAR CRIMES TRIAL OF 195 BY MAY-END
BY KIRIT BHAUMIK

"The Times of India" News Service

Dacca, 17 April. The Foreign Minister, Dr. Kamal Hossain, today announced the Bangladesh Government's decision to try 195 POWs for war crimes. The proceedings will begin by the end of May.

Dr. Hossain made the announcement soon after his return from New Delhi where he had gone on a four day visit to draw up a joint strategy with India for solving outstanding problems in the sub-continent.

He said the trial will be held in Dacca by a special tribunal comprising persons of the status of Supreme Court Judge.

Details of the trial decision were given in the form of a Press release at a news conference. It said the trial will be held in accordance with universally recognized juridical norms. Eminent international jurists will be invited as observers.

Investigation of the crimes allegedly committed by the Pakistan occupation forces and members of the auxiliary forces has been completed. The 195 prisoners to be tried have been charged with serious crimes, including genocide, crimes against humanity, breach of Article 3 of the Geneva Convention, murder, rape and arson.

The accused will be given facilities to arrange for their defence and engage counsel of their choice, including foreigners.

The Foreign Minister, however, did not have an immediate reply to the question whether Pakistani lawyers would be allowed to appear at the trial.

REQUEST FOR THE INDICATION OF INTERIM MEASURES OF PROTECTION

The Hague, 11 May 1973

In accordance with Article 41 of the Statute, as read with Article 66 of the Rules of Court, I have the honour to address to you a request to the Court for indication of interim measures of protection in the case instituted by the Government of Pakistan against the Government of India relating to the continued detention of over 92,000 Pakistani Prisoners of War and civilian internees and the threatened transfer of one hundred and ninety-five or any other number of such persons to "Bangla Desh" for the purpose of trial for alleged acts of genocide.

2. In that Application the Government of Pakistan have prayed as follows:

(1) That Pakistan has an exclusive right to exercise jurisdiction over the one hundred and ninety-five Pakistani nationals or any other number, now in Indian custody, and accused of committing acts of genocide in Pakistani territory, by virtue of the application of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and that no other Government or authority is competent to exercise such jurisdiction.

(2) That the allegations against the aforesaid prisoners of war are related to acts of genocide, and the concept of "crimes against humanity" or "war crimes" is not applicable.

(3) That there can be no ground whatever in international law, justifying the transfer of custody of these one hundred and ninety-five or any other number of prisoners of war to "Bangla Desh" for trial in the face of Pakistan's exclusive right to exercise jurisdiction over its nationals accused of committing offences in Pakistan territory, and that India would act illegally in transferring such persons to "Bangla Desh" for trial.

(4) That a "Competent Tribunal" within the meaning of Article VI of the Genocide Convention means a Tribunal of impartial judges, applying international law, and permitting the accused to be defended by counsel of their choice. The Tribunal cannot base itself on *ex post facto* laws nor violate any provisions of the Declaration of Human Rights. In view of these and other requirements of a "Competent Tribunal" even if India could legally transfer Pakistani Prisoners of War to "Bangla Desh" for trial, which is not admitted, it would be divested of that freedom since in the atmosphere of hatred that prevails in "Bangla Desh", such a "Competent Tribunal" cannot be created in practice nor can it be expected to perform in accordance with accepted international standards of justice.

3. In order, therefore, to preserve the respective rights of the parties pending the decision of that case, the Government of Pakistan prays for the Court to indicate the following interim measures of protection:

(1) That the process of repatriation of prisoners of war and civilian internees in accordance with international law, which has already begun, should not be interrupted by virtue of charges of genocide against a certain number of individuals detained in India.

(2) That such individuals, as are in the custody of India and are charged with alleged acts of genocide, should not be transferred to "Bangla Desh" for trial till such time as Pakistan's claim to exclusive jurisdiction and the lack of jurisdiction of any other Government or authority in this respect has been adjudged by the Court.

(Signed) J. G. KHARAS.