

CASE CONCERNING TRIAL OF PAKISTANI
PRISONERS OF WAR
(PAKISTAN v. INDIA)

AFFAIRE RELATIVE AU PROCÈS
DE PRISONNIERS DE GUERRE PAKISTANAIS
(PAKISTAN c. INDE)

**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.
