CORRESPONDENCE

1. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

11 May 1973.

I have the honour to transmit to you, for communication to the President and Judges of the International Court of Justice, an Application [1] to the Court submitted by the Government of the Islamic Republic of Pakistan, against the Government of India.

The Pakistan Government has appointed the undersigned as their Agent. The address for service on the Agent of the Government of Pakistan is the Embassy of Pakistan, No. 3A, Plein 1813, The Hague.

(Signed) J. G. KHARAS.

2. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

11 May 1973.

I have the honour to transmit to you, for communication to the President and Judges of the International Court, a request for the indication of interim measures of protection [2] in relation to the Application filed by the Government of Pakistan against the Government of India.

3. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

11 May 1973.

In accordance with Article 41 of the Statute, read with Article 66, paragraph 3, of the Rules of Court [3], I have the honour to address to you this written Request of the Government of Pakistan which, in view of the urgency of the situation, may kindly be brought to the notice of the President of the Court for appropriate action, as early as possible.

2. Pakistan has filed an Application instituting proceedings, against the Government of India. 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 fundamental issue in these proceedings 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 the 9th of December, 1948, to which both India and Pakistan are Parties.

3. In relation to these proceedings the Government of Pakistan have also

[1] See pp. 3-7, *supra*.
[2] See pp. 17-18, *supra*.
[3] Rules of Court as amended on 10 May 1972, *I.C.J. Acts and Documents No. 2*.

made a Request that the Court 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.

4. Therefore, pending the meeting of the Court to consider Pakistan's Request for the indication of interim measures of protection, the Government of Pakistan prays that the President take such measures as may be necessary in order to enable the Court to give an effective decision.

5. The President may be pleased to direct India not to transfer the 195 or any other number of Pakistani Prisoners of War to "Bangla Desh" pending the meeting of the Court and a decision by it with regard to Pakistan's request for interim measures preserving the respective rights of the parties.

4. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

11 May 1973.

I have the honour to inform that the Government of Pakistan has appointed Mr. Yahya Bakhtiar, Attorney General of Pakistan as the Chief Counsel for Pakistan and Mr. Zahid Said, Deputy Legal Adviser, Ministry of Foreign Affairs as Counsel in the application filed by the Government of Pakistan against the Government of India with regard to the 92,000 Pakistani prisoners of war detained in India and the threatened transfer of 195 of these prisoners to "Bangla Desh" for trial.

5. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

11 May 1973.

In accordance with Article 40, paragraph 2, Statute of International Court of Justice have honour inform you Pakistan today filed in Registry Application instituting proceedings against India and request for indication interim measures of protection under Articles 41 Statute and 66 Rules. Proceedings relate to charges of genocide against 195 Pakistani nationals, prisoners of war or civilian internees, being held in India and claim by Pakistan by virtue of Genocide Convention to exclusive right to exercise jurisdiction over said Pakistani nationals. Interim measures requested are:

[See pp. 17-18, supra.*]*

Copies of Application and request for interim measures airmailed today.

6. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

11 May 1973.
Airmail

Confirming my cable of today's date, a copy of which is enclosed, I have the honour to inform Your Excellency that the Government of Pakistan has this day filed in the Registry of the International Court of Justice an application instituting proceedings against India concerning charges of genocide against Pakistani nationals, prisoners of war or civilian internees, held in India, and a claim by Pakistan under the convention on the Prevention and Punishment of the Crime of Genocide to an exclusive right to exercise jurisdiction over the said Pakistani nationals. The Government of Pakistan has also today filed a request for the indication of interim measures of protection under Article 41 of the Statute of the Court and Article 66 of the 1972 Rules of Court.

I have the honour to send Your Excellency herewith a certified copy of the Application and of the request for the indication of interim measures of protection; I shall in due course transmit to you certified printed copies of the Application in the bilingual (English and French) edition which will be prepared by the Registry. I also enclose copies of the letters of transmittal of the Application and of the request from the Ambassador of Pakistan, and of a further letter from the Ambassador concerning the appointment of Chief Counsel and Counsel for Pakistan.

I take this opportunity of drawing Your Excellency's attention to Article 38 of the 1972 Rules of Court which provides, in paragraph 3, that the party against whom the application is made and to whom it is notified shall, when acknowledging receipt of the notification, or failing this, as soon as possible, inform the Court of the name of its agent, and, in paragraph 5, that the appointment of an agent must be accompanied by a statement of an address for service at the seat of the Court to which all communications relating to the case should be sent.

(Signed) S. AQUARONE.

7. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(telegram)

11 May 1973.

With reference Article 40, paragraph 3, of Statute have honour inform you that on 11 May Pakistan filed *(a)* Application instituting proceedings against India relating to charges of genocide against Pakistani nationals, prisoners of war or civilian internees, being held in India and claim by Pakistan by virtue of Genocide Convention to exclusive right to exercise jurisdiction over said Pakistani nationals *(b)* request for indication interim measures of protection under Articles 41 Statute and 66 Rules. Measures requested are:

[See pp. 17-18, supra.*]*

8. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE PRESIDENT OF THE COURT

12 May 1973.

With reference to the written Request from the Pakistan Government under Rule 66, paragraph 3, of the Rules of Court, handed over to the Registrar of the Court on Friday, 11 May 1973, I have the honour to respectfully request you in your capacity as President of the Court kindly to send a telegram to the Foreign Minister of the Government of India, suggesting to him the desirability of not taking any action prejudicial to the rights of the parties and directing him in accordance with Pakistan's prayer at paragraph 5 of the above-mentioned "Request".

2. Such a measure is indispensable in order to enable the Court to take an effective decision with regard to indication of interim measures of protection, since the trials are threatened to be held in "Bangla Desh" by the end of May 1973, and India is likely to transfer the Pakistani prisoners of war any time now. (Attention is drawn to Annexure C-(VIII) of Pakistan's Application in this respect.) It is apprehended that now that India has knowledge of the institution of these proceedings, she may transfer the prisoners of war in question to Bangla Desh with a view to defeating the very purpose of the proceedings and consequently the exercise of jurisdiction by the Court.

3. I am advised to respectfully draw your attention to the fact that the President of the Permanent Court of International Justice sent a telegram of this nature to the Polish Minister for Foreign Affairs in the case concerning the *Administration of the Prince of Pless* (*Series E, No. 9*, p. 165, note 1) which measures greatly helped in the solution of the dispute. In the *Anglo-Iranian Oil Co.* case, the President of the International Court took a similar step (*I.C.J. Pleadings*, pp. 704 and 709) in order to preserve the respective rights of the parties.

4. It is further requested, that in view of the gravity of the matter, Pakistan's Chief Counsel Mr. Yahya Bakhtiar, Attorney of Pakistan, assisted by Mr. Zahid Said as Counsel, may be given a hearing if deemed necessary.

9. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

12 May 1973.

I have the honour to state that in exercise of its right under Article 31 of the Statute of the Court, the Government of Pakistan have chosen Sir Mohammad Zafrulla Khan as *ad hoc* Judge in the application Pakistan *vs.* India relating to the *Trial of Pakistani Prisoners of War* on charges of genocide filed before the Registry of the International Court of Justice.

The address of Sir Muhammad Zafrulla Khan is:

93, Khurshid Alam Road,
Lahore (Cantonment)
(Pakistan)

At present Sir Muhammad Zafrulla Khan is residing at:

16, Gressenhall Road,
London, S.W.18
Telephone No. 874-6298.

10. THE REGISTRAR TO THE MINISTER OF EXTERNAL AFFAIRS OF INDIA

(telegram)

13 May 1973.

Reference my cable and letter of 11 May concerning proceedings instituted by Pakistan against India have honour inform Your Excellency that Pakistan has notified choice of Sir Muhammad Zafrulla Khan as Judge *ad hoc* pursuant Statute Article 31. Reference Rules of Court Article 3 please cable soonest any views Indian Government may wish to submit in any event not later than 17 May.

11. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

14 May 1973.

Further reference my cable and letter of 11 May concerning proceedings instituted by Pakistan against India and in particular request for indication interim measures of protection have honour inform Your Excellency that President of Court expresses the hope that the Governments concerned will take into account the fact that the matter is now *sub judice* before the Court. Similar communication addressed today to Government of Pakistan. Court will in due course hold public hearings to afford parties the opportunity of presenting their observations on request for interim measures. Date of opening of such hearings will be announced as soon as possible.

12. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

14 May 1973.

I have the honour to refer to your letter to the President of the Court dated 12 May and to the written request of 11 May referred to therein, relating to the case concerning the *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*. I have the honour to state that the President has directed me to inform the Government of India and Your Excellency's Government that he expresses the hope that the Governments concerned in these proceedings will take into account the fact that the matter is now *sub judice* before the Court. I enclose a copy of the telegram to that effect which I have today despatched to the Government of India.

I have the further honour to inform you that the Court will in due course hold public hearings to afford the Parties the opportunity of presenting their observations on the request by Your Excellency's Government for the indication of interim measures of protection; the date of opening of such hearings will be announced as soon as possible.

13. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

18 May 1973.
Airmail

With reference to my cable of 14 May, a further confirmatory copy of which is enclosed, I have the honour to send Your Excellency herewith a copy of a written request addressed to the President of the Court by the Agent of Pakistan on 11 May 1973, expressed to be made under Article 66, paragraph 3, of the 1972 Rules of Court, and a copy of a letter to the President from the Agent of Pakistan dated 12 May 1973.

14. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

22 May 1973.

Reference my telegram of 11 May concerning proceedings instituted by Pakistan against India in case concerning *Trial of Pakistani Prisoners of War* and in particular request by Pakistan for indication interim measures of protection have honour inform Your Excellency that President proposes to convene Court for public sitting on Tuesday 29 May 1973 at 10 a.m. at Peace Palace, The Hague, to hear observations of Parties on request for interim measures [1]. May I respectfully draw Your Excellency's attention to final paragraph of my letter 54249 of 11 May concerning requirement of Article 38 of Rules as to appointment of Agent.

15. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [2]

23 mai 1973.

Le 11 mai 1973 a été déposée au Greffe de la Cour internationale de Justice, au nom du Pakistan, une requête par laquelle le Gouvernement pakistanais introduit contre l'Inde une instance en l'affaire intitulée *Procès de prisonniers de guerre pakistanais*.

J'ai l'honneur, à toutes fins utiles, de transmettre ci-joint à Votre Excellence un exemplaire de cette requête.

16. LE GREFFIER AU CHEF DU GOUVERNEMENT DU LIECHTENSTEIN [3]

23 mai 1973.

Le 11 mai 1973 a été déposée au Greffe de la Cour internationale de Justice, au nom du Pakistan, une requête par laquelle le Gouvernement pakistanais

[1] A similar communication was sent to the Agent for the Government of Pakistan.
[2] La même communication a été adressée aux autres Etats Membres des Nations Unies.
[3] La même communication a été adressée aux autres Etats non membres des Nations Unies admis à ester devant la Cour.

introduit contre l'Inde une instance en l'affaire intitulée *Procès de prisonniers de guerre pakistanais.*

J'ai l'honneur, à toutes fins utiles, de transmettre ci-joint à Votre Excellence un exemplaire de cette requête.

17. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

23 May 1973.

I have the honour to inform that the Government of Pakistan has appointed Mr. S. T. Joshua, Second Secretary, as Deputy-Agent in the application filed by the Government of Pakistan against the Government of India with regard to the 92,000 Pakistani prisoners of war detained in India and the threatened transfer of 195 of these prisoners to "Bangla Desh" for trial.

18. THE AMBASSADOR OF INDIA TO THE NETHERLANDS TO THE REGISTRAR

23 May 1973.

Upon instructions received from the Government of India, I have the honour to communicate to you as follows:

The Government of India have received your telegrams of 11, 13 and 14 May 1973 respectively. They have also received on 16 May 1973, your airmail letter No. 54249 of 11 May 1973, along with its enclosures, which include a certified copy each of the Application filed by Pakistan instituting proceeding against India, entitled "*Trial of Pakistani Prisoners of War* (Jurisdiction under the Genocide Convention) (Pakistan versus India)" and of the Request for the indication of interim measure of protection.

The Government of India have perused the Application and the Request. Pakistan has attempted to seize the Court by invoking Article IX of the Genocide Convention, "in accordance with which", it is stated in the Application, "dispute 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". It is further stated in the Application that "the Court has jurisdiction under Article 36 (1) of its Statute".

The Court would, no doubt, be aware that while filing its Instrument of Ratification on 27 August 1959, to the Convention on the Prevention and Punishment of Crimes of Genocide, 1948, the Government of India entered a reservation on Article IX of the Convention, which reads as follows:

> "With reference to Article IX of the Convention, the Government of India declare that, for the submission of any dispute in terms of this Article to the jurisdiction of International Court of Justice, the consent of all the parties to the dispute is required in each case." (Please see Multilateral Treaties "in respect of which the Secretary-General performed depositary functions—list of signatures, ratifications, accession, etc., as at 31 December 1971 (ST/LEG/SER.D/5, pp. 66, 68).)

The Government of India accordingly presume that the Application and the Request were communicated to them for their consideration whether consent should be given by them in terms of Article IX of the Genocide Convention.

The Government of India regrets that they cannot give consent, in terms of their aforementioned reservation to Article IX of the Genocide Convention, to Pakistan for raising the alleged subject-matter before the International Court of Justice under that Article.

Without such consent, the Court cannot be in proper seisin of the case and cannot proceed with it.

It may be further stated that there is no legal basis whatsoever for the jurisdiction of the Court. Accordingly, with the highest respect for the President of the Honourable Court, it is submitted that Pakistan's Application and Request are without legal effect.

(Signed) YADAVINDRA SINGH.

19. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

24 May 1973.

I have the honour to send Your Excellency herewith a certified copy of a letter from the Ambassador of India to the Netherlands, received in the Registry today, relating to the case concerning the *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*.

20. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

25 May 1973.

I refer to my cable 25 of 11 May 1973 by which I informed you of the filing by the Government of Pakistan of an Application instituting proceedings against India in respect of a dispute concerning the right to exercise jurisdiction over certain Pakistani nationals held in India (case concerning the *Trial of Pakistani Prisoners of War*), and a request for the indication of interim measures of protection in that case; I now have the honour to inform you that I am forwarding to you under separate cover (by airmail parcel post, marked "Attention Director, General Legal Division") 150 copies of the Application referred to.

I would be grateful if, in accordance with Article 40, paragraph 3, of the Statute of the Court, you would be good enough to inform the Members of the United Nations of the filing of this Application.

21. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

25 May 1973.

I have the honour to acknowledge receipt of the certified copy of the letter dated 23 May 1973 from the Ambassador of India to the Netherlands, relating

to Pakistan's Application instituting proceedings in the aforementioned case, and to state that the Government of India have incorrectly presumed that their consent to the jurisdiction of the Court is necessary and should be given by them in terms of Article IX of the Genocide Convention.

2. The Government of Pakistan notes that Article 40 of the Court's Statute does not make it obligatory to indicate the grounds on which the Court's jurisdiction is based. However, Article 35, paragraph 2, of the Rules of Court states that the party instituting proceedings shall also "as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court".

3. Keeping in view the Statute and Rules of Court the Government of Pakistan referred merely to the main provision on which the jurisdiction of the Court could be founded, that is, Article IX of the Genocide Convention. It is clear that the Court's jurisdiction can be founded under this article at the request of *any of the parties to a dispute*. The consent of the Government of India is, therefore, not necessary.

4. It is, however, regrettable in the extreme, that the Government of India seeks to exclude the jurisdiction of the Court in respect of a multilateral convention of such major humanitarian importance, when the International Court has been made the main guarantor, and supervisory body, regarding its interpretation, application and fulfilment. The Government of India purports to rely on its declaration of 27 August 1959, which reads as follows:

> "With reference to Article IX of the Convention the Government of India declare that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case."

The Government of Pakistan wish to place on record that the Indian declaration, referred to above, is inadmissible under the Genocide Convention and is of no legal effect whatsoever. The Government of Pakistan reserves its right to present detailed arguments in support of this proposition at the appropriate time, when the preliminary objection raised by India against the jurisdiction of the Court shall be heard in accordance with the Statute and Rules of Court. For this purpose it is obligatory upon India, as a party to the Statute, to appoint an Agent and make an appearance before the Court. It is a duty imposed upon India by the Statute and Rules of Court to follow the procedure prescribed for raising preliminary objections.

5. That such a "reservation" can be challenged as being without legal effect is clear from the International Court's judgment in the Advisory Opinion concerning *Reservations to the Genocide Convention of (1951)*. Thus on page 22 of its Opinion the Court states:

> "The character of a multilateral convention, its purpose, provisions, mode of preparation and adoption, are factors which must be considered in determining, in the absence of any express provision on the subject, the possibility of making reservations, as well as their validity and effect."

Again on page 24 of its Opinion the Court states as follows:

> "The object and purpose of the Convention thus limits both the freedom of making reservations and that of objecting to them. . . It has nevertheless been argued that any State entitled to become a party to the Genocide Convention may do so while making any reservation it chooses by virtue of its sovereignty. The Court cannot share this view. It is obvious that so extreme an application of the idea of State sovereignty could lead to a complete disregard of the object and purpose of the Convention."

6. That such "reservations" can be questioned before the International Court, is clear from the Court's own views expressed on page 27 of the Opinion which are as follows:

> "It may be that the divergence of views between parties as to the admissibility of a reservation will not in fact have any consequences. On the other hand, it may be that certain parties who consider that the assent given by other parties to a reservation is incompatible with the purpose of the Convention, will decide to adopt a position on the jurisdictional plane in respect of this divergence and to settle the dispute which thus arises either by special agreement or by the procedure laid down in Article IX of the Convention."

Accordingly, Pakistan invokes Article IX of the Genocide Convention to challenge the admissibility of the Indian "reservation", and asserts that it has no legal effect whatsoever.

7. In view of India's regrettable opposition to the jurisdiction of the Court, Pakistan also relies on all other provisions establishing the Court's jurisdiction. In particular Pakistan relies on the Indian declaration accepting as compulsory the jurisdiction of the International Court under Article 36, paragraph 2, of its Statute. The Government of Pakistan does not regard the reservation in respect of Commonwealth members made by India to be applicable to Pakistan now that Pakistan has left the Commonwealth.

8. The Government of Pakistan also relies on Article 17 of the General Act for the Pacific Settlement of International Disputes of 26 September 1928 (notwithstanding any reservations made by India under that Convention) as read with Article 36 (1) and Article 37 of the Statute of the Court. Pakistan would also rely on Article 41 of the General Act in accordance with which disputes relating to the interpretation or application of the General Act, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court, and now by virtue of Article 37 of the Statute, to the International Court of Justice. Pakistan is a party to the General Act under international law, by virtue of succession to the multilateral conventions entered into by British India before Partition.

9. In accordance with Article 35, paragraph 2, of the Rules of Court, these grounds will be more fully developed by the Government of Pakistan in its memorial. The Government of Pakistan request the Court to indicate to the Government of India that the subject-matter is still sub-judice and that their preliminary objections as to the Court's jurisdiction shall be heard in accordance with the Statute and Rules of Court.

22. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

25 May 1973.

Reference my telegram of 22 May concerning proposed date for public sitting to hear observations of Parties on request for indication interim measures of protection in case concerning *Trial of Pakistani Prisoners of War* have honour inform Your Excellency date now confirmed namely Tuesday 29 May at 10 a.m.[1] Copy of communication received from your Ambassador Hague

[1] A similar communication was sent to the Agent for the Government of Pakistan.

24 May was transmitted to Pakistani Agent from whom letter received today. Copy of Pakistani Agent's letter airmailed to you today and further copy passed to your Ambassador for information.

23. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

28 May 1973.

Article 65 of the 1972 Rules of Court provides, in paragraph 1, that a verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used, and (paragraph 4) that copies of the transcript thereof shall be circulated to the parties. The rule further provides that the parties "may, under the supervision of the Court, correct the transcripts of the speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing of the statement".

The transcript of the oral proceedings to be held to hear the observations of the Parties on Pakistan's request for the indication of interim measures of protection in the case concerning the *Trial of Pakistani Prisoners of War (Pakistan* v. *India)* will be made available on the same day.

In order to facilitate any supervision which the Court may feel it proper to exercise, and in order not to delay the Court's consideration of the request for the indication of interim measures of protection, any correction or revision which Agents, counsel or advocates may wish to make to the transcript should be handed to the Registrar's secretary as early as possible on the day following the sitting. In any event, corrections should be handed in not later than 6 p.m. on the day following the hearing.

24. THE AMBASSADOR OF INDIA TO THE NETHERLANDS TO THE REGISTRAR

28 May 1973.

I have the honour to enclose with this letter a Statement of the Government of India in support of its letter dated 23 May 1973 addressed to the Registrar of the International Court of Justice. I shall be grateful if you will be so good as to place the enclosed Statement before the President of the Court.

STATEMENT OF THE GOVERNMENT OF INDIA IN SUPPORT OF ITS LETTER DATED 23 MAY 1973 ADDRESSED TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

On 23 May 1973, the Ambassador of India at The Hague, upon instructions received from the Government of India, addressed a communication to the Registrar of the International Court of Justice stating that Pakistan's Application and Request for interim measures, both filed on 11 May 1973, were without

legal effect, since there was no legal basis whatsoever for the Court being seized of the matter without the consent of the Government of India. The Government of India regretted that they could not give consent in terms of their reservation to Article IX of the Genocide Convention to Pakistan for raising the alleged subject-matter before the International Court of Justice.

2. In this statement, the Government of India wish to elaborate and emphasize their views that there cannot be any valid seisin of the Court of the case, that the Court cannot proceed with it, and that the lack of Court's jurisdiction to deal with the merits of the case is manifestly absent at the threshold of the unilateral proceedings sought to be instituted by Pakistan.

Pakistan's Application and Request

3. Pakistan has under Article 40, paragraph 1, of the Statute and Article 35, paragraph 2, of the Rules of Court, as amended on 10 May 1972, sought to institute proceedings by bringing a case by a written application addressed to the Registrar. "The subject of the dispute", according to Pakistan's Application, "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 1948, to which both India and Pakistan are parties."

4. The party making the application is Pakistan; the party against whom the claim is brought is India.

5. The precise nature of the claim is set out in the submissions which request the Court to adjudge and declare 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 "Bangladesh" 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 "Bangladesh" 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 "Bangladesh" for trial, which is not admitted, it would be divested of

that freedom since in the atmosphere of hatred that prevails in "Bangladesh", such a "Competent Tribunal" cannot be created in practice nor can it be expected to perform in accordance with accepted international standards of justice.

6. In conformity with Article 35, paragraph 2, of the Rules of Court, Pakistan in paragraph 11 of the Application has sought to invoke the jurisdiction of the International Court of Justice under Article IX of the Genocide Convention, in accordance with which, it is stated in the Application "disputes between the 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". And it is categorically stated in paragraph 11 of the Application: "Thus the Court has jurisdiction under Article 36 (1) of its Statute."

7. In the Request for interim measures of protection, made under Article 41 of the Statute, read with Article 66 of the Rules of Court, after stating the submissions made in the Application, Pakistan has prayed 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 'Bangladesh' 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."

8. Pakistan's Application and the accompanying Request have thus been unilaterally made by them by invoking Article IX of the Genocide Convention 1948.

Preliminary Observations

9. The Government of India would like to submit the following preliminary observations regarding the Genocide Convention:

India regards the Genocide Convention as among the most important humanitarian Conventions adopted by the United Nations. The Convention confirms that genocide whether committed in time of peace or in time of war is a crime under international law, which the Contracting Parties undertake to prevent and to punish. It provides for protection against destruction, in whole or in part, of national, ethnical, racial or religious groups, and for the punishment of persons committing genocide, whether they are constitutionally responsible rulers, public officials or private individuals.

The object and purpose of the Convention is thus the prevention and punishment of the crime of genocide and the promotion of international co-operation "in liberating mankind from such an odious scourge".

India has contributed to the progressive development of international humanitarian law in this field, since the initiative taken by them in this matter in 1946. It has throughout supported the universal application of this Convention and has always denounced its breaches wherever they have taken place.

In the normal course, any controversy, difference or dispute relating to the interpretation, application or fulfilment of the Genocide Convention, including

those relating to the responsibility of a State for genocide, should be invoked by a victim of genocide to enforce the object and purpose of the Convention. The applicant should be a sufferer, the respondent must explain and defend his action which constitutes a breach of the object and purpose of the Convention.

Lest the Convention be invoked for political purposes in utter disregard of the object and purpose of the Convention, the Government of India, both while the Convention was being adopted, and at the time of its filing the Instrument of Ratification, opposed the compulsory reference of disputes as embodied in Article IX of the Convention. To this, we will revert a little later.

The present case vindicates our stand and proves our fears. India is sought to be made a defendant or a respondent in an application to enforce the Genocide Convention. The acts on which the charges of genocide, among others, may be based, the exclusive right to try which is in question, were not committed by any Indian responsible ruler, public official or private individuals. Nor were the acts committed on Indian territory. Nor is India harbouring or shielding any alleged offenders against their being tried for the offences of genocide. Nor is India itself holding any trials. It is well known throughout the world that the alleged acts of genocide and other crimes were committed by persons, to shield and protect whom, among others, Pakistan has filed this Application and the Request for interim measures. The territory where these acts were committed, the State whose nationals were victims of genocide and who wish to fulfil their commitment to bring the offenders to justice, are neither the applicant in the present case nor even the defendant or respondent.

And Pakistan submits (please see their fourth submission) that the Court should adjudge and declare that Bangladesh, in the atmosphere of hatred that prevails there, will not be able to establish in practice a competent tribunal within the meaning of Article VI of the Genocide Convention, nor will such tribunal be expected to perform in accordance with the accepted international standards of justice.

Thus the Court has been approached by Pakistan to adjudge and declare upon the rights, obligations and competences of a third State, viz. Bangladesh, which is a party in interest, even in the absence of its consent to the Court's jurisdiction.

Attention is invited in this connection to what the Court stated in respect of Albania in the *Monetary Gold* case:

> "Albania has not submitted a request to the Court to be permitted to intervene. In the present case, Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision. In such a case, the Statute cannot be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania." (*I.C.J. Reports 1954*, p. 32.)

India's Reservation to Article IX and the Law

10. We may turn now to India's reservation to Article IX of the Genocide Convention.

11. The Genocide Convention adopted on 9 December 1948 was subject to ratification (Article XI). While expressing its consent to be bound by this Convention, the Government of India in its Instrument of Ratification filed with the Secretary-General of the United Nations as depositary of the Convention on 27 August 1959 entered the following declaration:

"With reference to Article IX of the Convention the Government of India declare that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case."

12. The Government of India confirmed and ratified the Convention subject to the above declaration. A certified copy of the Instrument of Ratification containing the above declaration is annexed hereto. This instrument was deposited with the Secretary-General on 27 August 1959. (Please see *Multilateral Treaties in respect of which the Secretary-General performed depositary functions—list of signatures, ratifications, accession, etc., as at 31st December 1971* (ST/LEG/SER.D/5, pp. 66, 68).)

13. This declaration on reservation thus excluded the legal effect of Article IX of the Genocide Convention in its application to India.

14. Pakistan has never raised any objection to this reservation for the past 14 years since 1959.

15. Reference may now be made to the effect of making a reservation to a Convention vis-à-vis a country which makes no objection.

16. In so far as the Genocide Convention is concerned, it will be recalled that until October 1950, 19 States had deposited instruments of ratification or accession, one of the ratifications (Philippines) and one of the accessions (Bulgaria) being subject to reservation. The Genocide Convention was to enter into force on the 90th day following the date of deposit of the twentieth instrument of ratification or accession (Article XIII). In determining when 20 instruments adequate to bring the Convention into force had been deposited, the Secretary-General of the United Nations, as depositary, was faced with questions concerning the acceptability of instruments containing reservations. Although the question was resolved when on 14 October 1950, five States deposited instruments of accession without reservations, the subject of reservations to multilateral conventions was included in the Agenda of the Fifth Session of the General Assembly at the initiative of the Secretary-General. The General Assembly by resolution 478 (V) dated 16 November 1950 requested the International Court of Justice to give its advisory opinion on the relevant questions.

The questions asked for the Court's advisory opinion and the answers given, relevant to Pakistan's Application, are as follow:

Question I. Can the reserving State be regarded as a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others?

Question II. If the answer to Question I is in the affirmative, what is the effect of the reservation as between the reserving State and

(a) The parties which object to the reservation?

(b) Those which accept it?

17. The Court's opinion was as follows:

"In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification,

On Question I:

by seven votes to five,

that a State which has made and maintained a reservation which has

been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention.

On Question II:

by seven votes to five,

(a) that if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention;

(b) that if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the Convention." (*I.C.J. Reports 1951*, p. 29.)

18. The Advisory Opinion supported the concept of flexibility in the operation of multilateral conventions in the following words:

"More general resort to reservations, very great allowance made for tacit assent to reservations, the existence of practices which go so far as to admit that the author of reservations which have been rejected by certain contracting parties is nevertheless to be regarded as a party to the convention in relation to those contracting parties that have accepted the reservations—all these factors are manifestations of a new need for flexibility in the operation of multilateral conventions." (*Ibid.*, pp. 21, 22.)

19. The Court also referred to the fact that, although finally approved unanimously, the Genocide Convention was the result of a series of majority votes, which make it necessary for certain States to make reservations. It then concluded that:

"In this state of international practice, it could certainly not be inferred from the absence of an article providing for reservations in a multilateral convention that the contracting States are prohibited from making certain reservations." (*Ibid.*, p. 22.)

20. Thus, while becoming a party to the Genocide Convention a State can enter a reservation. It shall continue to be a party to the Convention even if this is objected to by some parties, but not by others, if the reservation is compatible with the object and purpose of the Convention. If the reservation is not compatible, that State cannot be regarded as being a party to the Convention.

21. The question of compatibility was left to be determined by each State while deciding whether to make a reservation, or to object to a reservation, or to accept a reservation. The Opinion stated as follows:

"The object and purpose of the Convention thus limit both the freedom of making reservations and that of objecting to them. It follows that it is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation. Such is the rule of conduct which must guide every State in the appraisal which it must make, individually and from its own standpoint, of the admissibility of any reservation." (*Ibid.*, p. 24.)

22. Thus, if a reservation is incompatible, the reserving State is not a party to the Convention. If another State objects to the reservation as incompatible, the Convention does not enter into force as between the reserving State and the objecting State. On the other hand, the Convention continues to be in force as between the reserving State and the accepting State, subject to the reservation. If a country has not objected to a reservation within a reasonable or specified time, it shall be considered to have accepted it.

23. On 12 January 1952, the General Assembly adopted resolution 598 (VI) and, after noting the Advisory Opinion provided, *inter alia*, as follows:

> "2. Recommends to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;
>
> 3. Requests the Secretary-General:
>
> *(a)* in relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;
>
> *(b)* in respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:
>
> (i) to continue to act as depositary in connection with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and
>
> (ii) to communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications."

24. The Advisory Opinion, having been commended by the General Assembly to all States and to the Secretary-General for conforming his practice as depositary of the Genocide Convention as well as in relation to future Conventions, may be treated as international law on the point of reservations to the Genocide Convention, at the time India entered its reservation to Article IX in 1959.

Vienna Convention on the Law of Treaties

25. The law embodied in the Advisory Opinion and commended by the General Assembly was eventually accepted by the International Law Commission and on their recommendation by the Vienna Conference of the Law of Treaties. Thus, under Article 19 of the Vienna Convention on the Law of Treaties, 1969, it is provided as follows:

> "A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
>
> *(a)* the reservation is prohibited by the treaty;
>
> *(b)* the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
>
> *(c)* in cases not falling under subparagraphs *(a)* and *(b)*, the reservation is incompatible with the object and purpose of the treaty."

26. The mode of acceptance and objection to reservations, to the extent it is relevant to Pakistan's Application, is indicated in Article 20, paragraphs 4 and 5, which read as follows:

"4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later."

27. The procedure regarding reservations is set out in Article 23, which reads as follows:

"1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing."

28. In Article 21 it is further provided that a reservation established in accordance with Articles 19, 20 and 23:

"*(a)* modifies for the reserving State in its relations with that other party the provisions of the Treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State."

Paragraph 3 is also significant and provides as follows:

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."

29. These articles are declaratory of international law relating to reservations to multilateral conventions.

Legal Effect and Consequences of India's Reservation to Article IX

30. Bearing in mind the Advisory Opinion of the International Court of Justice on the question of reservations to the Genocide Convention, its commendation by the General Assembly to all States, and the law embodied in the Vienna Convention on the Law of Treaties, the legal effect and consequences of India's reservation to Article IX of the Genocide Convention in relation to the proceedings unilaterally sought to be instituted by Pakistan may now be summed up as follows:

(1) While becoming a party to the Genocide Convention, India could enter a reservation, despite the silence of the Convention on the question of reservations. Thus it is manifest that India's reservation to Article IX is legally effective. (See paras. 17 to 20 and 25 above.)

(2) While making the reservation to Article IX, India had satisfied itself that the reservation was admissible and was compatible with the object and purpose of the Convention. (See para. 21 above.)

(3) The reservation made by India, which is more or less similar to reservations made by some 15 other States (Albania, Algeria, Argentina, Bulgaria, Byelorussian SSR, Czechoslovakia, ,Hungary, Mongolia, Morocco, Poland, Rumania, Spain, Ukranian SSR, USSR and Venezuela) in relation to the same Article IX, was deposited with the depositary and was notified by him to all parties to the Convention. Pakistan has made no objection to India's reservation during the past 14 years since 1959. (Please see *Multilateral Treaties, op. cit.*, pp. 66-70.)

Thus, on the face of it, Pakistan has accepted India's reservation as valid and compatible. (See para. 26 above.)

(4) As Pakistan is an accepting State, the application of Article IX of the Genocide Convention to India stipulates the requirement of the consent of India *before* any proceedings can be instituted by Pakistan in the International Court of Justice.

(5) If Pakistan institutes proceedings in the Court unilaterally, without obtaining India's prior consent thereto, as it has attempted to do in the present case, the Court cannot be properly seized of the matter and cannot proceed with the case, unless the Government of India consents thereto.

The Government of India has in their communication of 23 May 1973 regretted that they cannot give their consent to these attempted proceedings.

(6) By suppressing the material fact about India's reservation in their unilateral Application, Pakistan has attempted to mislead the Court to become improperly seized of the matter.

(7) Assuming, without admitting, that India's reservation was not valid, the result will be that India will not be deemed to be a party to the Convention either in relation to all other States or in any case in relation to Pakistan.

The Court cannot proceed with the case if the other State is not a party to the Convention.

(8) In any view of the matter, therefore, the unilateral Application by Pakistan, in the face of the absence of consent by India, cannot make the Court seized of the alleged subject-matter thereof.

Attention is invited to the following excerpts from some eminent commentators on this point:

Manley O. Hudson in his book *The Permanent Court of International Justice, 1920-1942 (1943 edition), on page 419, states as follows:*

"Under Article 32 of the 1936 Rules an application must 'as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court'. If this requirement should not be met, it would seem that the Court should at once raise the question of its jurisdiction; even if the requirement be met, it ought to be possible for the Court acting *proprio motu* to examine the sufficiency of the basis of jurisdiction set out before the application is transmitted to the intended respondent. However, Article 33 of the 1936 Rules requires the Registrar to 'transmit forthwith to the party against whom the claim is brought a copy of the application'; the fact that the State against which the application is brought might be willing to accept the Court's jurisdiction may be a justification of this provision. The Registrar's transmission of a copy of the application to the intended respondent does not necessarily commit the Court, but in a doubtful case the transmission ought to be delayed until the Court has had opportunity to instruct the Registrar. The intended respondent may proceed to defend on the merits, in which case it may be held to have consented to the jurisdiction; or it may file a preliminary objection and thus require the Court to consider the question of jurisdiction; or it may do nothing, in which case it risks a decision in favour of the applicant under Article 53 of the Statute provided that the Court can satisfy itself that it has jurisdiction under Articles 36 and 37 of the Statute and that the claim is well founded in fact and law. When the application by Liechtenstein in the Gerliczy case was filed in 1939, it was forthwith transmitted to Hungary though the application disclosed the possibility of a question as to the Court's jurisdiction."

Ibrahim F. I. Shihata in his book *The Power of the International Court to Determine Its Own Jurisdiction*, 1965, on page 56 states as follows:

"Second, if the application submitted to the Court does not rely on any jurisdictional title, that is, if it is obvious that the Court lacks all jurisdiction it cannot reach the conclusion that it has jurisdiction as long as this is not clearly acquiesced to by the defendant. In such a case the Court will not have even the incidental power to determine its jurisdiction. It will merely make an 'administrative' order to remove the case from the list. Jurisdiction, even the most incidental jurisdiction, assumes, as will be shown, a proper seisin of the Court. If the Court is not properly seized, it has no jurisdictional powers."

On pages 86, 87, Shihata states as follows:

"As to the argument that seizing the Court by means of an application is 'only possible where compulsory jurisdiction exists', the present Court found that this was 'a mere assertion' not justified by either Article 40 (1) of the Statute or Article 32 (2) of the Rules.

This does not, however, mean that a unilateral application of this kind is in itself sufficient for seizing the Court. It all depends on the later developments and in particular on the reaction of the other party. In this respect four hypotheses could be conceived:

(i) The other party may refuse the offer to submit to the Court's jurisdiction. By such a refusal it prevents the seisin of the Court, and the latter will have to dismiss the application by an administrative order. This procedure was applied in eight cases before the present Court.

(ii) The other party may explicitly accept the offer implied in the unilateral application allowing, therefore, the proper seisin of the Court, and perfecting its jurisdiction through the new agreement made *post hoc*. This

was the Court's conclusion as to the attitude of Albania in the Corfu Channel Case (1948).

(iii) The other party may directly submit its defence on the merits of the claim without raising at that stage any objection against jurisdiction. This will more likely be taken as an implicit acceptance of the Court's jurisdiction and will thus lead to the same result reached in hypothesis (ii). The Permanent Court's attitude in the *Minority Schools* case (1928) supports this conclusion.

(iv) The other party may give no answer. This is merely a theoretical hypothesis with no precedent in the practice of the International Court. No consent could of course be derived from the mere failure to comment on receiving a copy of an application not based on any pre-established title of jurisdiction. Because such an application is not in itself capable of seizing the Court and therefore of allowing the application of Article 53 of the Statute which assumes a valid seisin, this hypothesis should be dealt with as hypothesis (i) and the case should normally be dismissed by an order."

Shabtai Rosenne in his book *The Law and Practice of the International Court*, Volume II (1965 edition), on page 540 states as follows:

"The procedures of settlement and discontinuance envisaged in Articles 68 and 69 of the Rules are only available where the seisin is *prima facie* effective, at least to the extent of requiring the case to proceed to the stage of preliminary objection. In the instances of unilateral arraignment under the doctrine of *forum prorogatum*, this condition does not exist, and neither of the Articles is available (in the absence of some positive act on the part of the applicant) to initiate the removal of the case from the list if the potential respondent does not accept the invitation contained in the application, to confer jurisdiction on the Court. In such circumstances the Court, in general exercise of its powers under Articles 36 and 48 of the Statute, has ordered the cases to be removed from the list. Here it is the action of the Court, rather than the initiative of either of the parties, that provokes the removal from the list."

(9) Finally, the question of interim measures of protection does not arise in the face of the patent and manifest lack of jurisdiction, and more so where the Court is not properly seized of the matter.

In the *Fisheries Jurisdiction* case, the Court observed as follows:

"16. Whereas on a request for provisional measures the Court need not, before indicating them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to act under Article 41 of the Statute if the absence of jurisdiction on the merits is manifest . . .' (*I.C.J. Reports 1972*, p. 33.)

31. In view of the above, when the absolute absence of jurisdiction is so patent and manifest at the threshold of the institution of proceedings, the question of summoning the parties for a hearing to determine its jurisdiction does not arise. The only proper action for the Court to take, after by itself examining the Application and the Request in the light of India's observations, is to remove the Application from the list by an administrative order.

32. This view of the Government of India is consistent with the deep respect it has for the International Court of Justice, which is hereby reiterated.

33. Finally, reference may be made to the communication dated 25 May 1973 addressed by the Ambassador of Pakistan at The Hague to the Registrar

in response to the Government of India's letter of 23 May 1973. A response thereto can be made only after the Government of India is enabled to examine the communication within a reasonable time.

Enclosure 1

CERTIFIED COPY OF THE INSTRUMENT OF RATIFICATION BY THE GOVERNMENT OF INDIA OF THE GENOCIDE CONVENTION

To all to whom these presents shall come, greeting:

Whereas, a Convention on the Prevention and Punishment of the Crime of Genocide was signed at Lake Success on the twenty-ninth day of November in the year one thousand nine hundred and forty-nine by the Plenipotentiary and Representative of the Government of India, duly authorized for that purpose, which Convention is reproduced, word for word, in the Annexure to this document;

And whereas, it is fit and expedient to confirm and ratify the aforesaid Convention subject to the following declaration:

"With reference to Article IX of the Convention, the Government of India declare that, for the submission of any dispute in terms of this Article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case."

Now, therefore, be it known that the Government of India, having seen and considered the said Convention, do hereby confirm and ratify the same subject to the declaration referred to above.

In testimony whereof, I, Rajendra Prasad, President of India, have signed these Presents and affixed hereunto my Seal at New Delhi this fifth day of Sravana of the Saka year one thousand eight hundred and eighty-one corresponding to the twenty-seventh day of July of the year one thousand nine hundred and fifty-nine A.D., in the tenth year of the Republic of India.

Certified as true and complete copy of the Instrument of Ratification.

(Signed) YADAVINDRA SINGH.

Annexure

CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which

the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article XI of the following:

(a) Signatures, ratifications and accessions received in accordance with Article XI;
(b) Notifications received in accordance with Article XII;
(c) The date upon which the present Convention comes into force in accordance with Article XIII;
(d) Denunciations received in accordance with Article XIV;
(e) The abrogation of the Convention in accordance with Article XV;
(f) Notifications received in accordance with Article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Enclosure 2

PHOTOSTAT COPY OF LETTER DATED 2 SEPTEMBER 1959 FROM THE UN LEGAL COUNSEL TO THE PERMANENT REPRESENTATIVE OF INDIA CONFIRMING THE DEPOSIT ON 27 AUGUST 1959 OF THE INSTRUMENT OF RATIFICATION BY THE GOVERNMENT OF INDIA OF THE GENOCIDE CONVENTION

I have the honour to confirm the deposit on 27 August 1959 of the instrument of ratification by the Government of India of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948.

(Signed) Constantin A. STAVROPOULOS.

Enclosure 3

PHOTOSTAT COPY OF LETTER DATED 14 SEPTEMBER 1959 FROM THE UN LEGAL COUNSEL TO FOREIGN MINISTERS OF THE STATES CONCERNED INFORMING THEM ABOUT INDIA'S RATIFICATION WITH A RESERVATION TO ARTICLE IX

I am directed by the Secretary-General to inform you that, on 27 August 1959, the instrument of ratification by the Government of India of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, was deposited with the Secretary-General in accordance with Article XI of the Convention.

This instrument contains the following stipulation:

> "With reference to Article IX of the Convention, the Government of India declare that, for the submission of any dispute in terms of this Article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case."

This notification is made in accordance with Article XVII *(a)* of the said Convention.

By resolution 598 (VI) on Reservations to Multilateral Conventions, adopted

on 12 January 1952, the General Assembly recommended to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951, and requested the Secretary-General, in relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to this advisory opinion.

(Signed) Constantin A. STAVROPOULOS.

25. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

29 May 1973.

I have the honour to send Your Excellency herewith a copy of a letter from the Ambassador of India, and a statement enclosed with that letter, received in the Registry yesterday evening.

26. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA
(telegram)

29 May 1973.

Have honour inform Your Excellency that as a result of communications received from Governments of Pakistan and India Court has decided to postpone opening of public hearings in respect of Pakistan request for interim measures of protection in case concerning *Trial of Pakistani Prisoners of War*. Further announcement concerning hearings will be made soon. Letter received 28 May from your Hague Ambassador enclosing "Statement of the Government of India in support of its letter dated 23 May".

27. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

29 May 1973.
Airmail

I refer to my cable of 13 May, by which I informed Your Excellency that Pakistan had notified me of its choice of Sir Muhammad Zafrulla Khan to sit as judge *ad hoc* in the case concerning the *Trial of Pakistani Prisoners of War* pursuant to Article 31 of the Statute. I now have the honour to inform Your Excellency that the time-limit mentioned in my cable for the views of India in this connection having expired without any observations being received from Your Excellency's Government, the papers in the case have been sent to Sir Muhammad Zafrulla Khan.

[1] A similar communication was sent to the Agent for the Government of Pakistan.

28. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

30 May 1973.

Kindly refer to your letter No. 54423, dated 29 May 1973, forwarding a copy of a letter from the Ambassador of India along with its enclosures, dated 28 May 1973.

2. I would be grateful if you would kindly let me know what is the character of this Document in the opinion of the President of the Court and whether the President or the Court desire that Pakistan should submit its comments on this document. If that should be the desire of the President or the Court, we would be ready to submit our comments in the course of the hearing on interim measures.

3. I would also be grateful if you would kindly draw the attention of the President and the Court to paragraph 33 of the statement of the Government of India in which it is stated that:

> "Finally, reference may be made to the communication dated 25 May 1973 addressed by the Ambassador of Pakistan at The Hague to the Registrar in response to the Government of India's letter of 23 May 1973. A response thereto can be made only after the Government is enabled to examine the communication within a reasonable time."

4. We would be grateful if you would kindly inform us of the procedure the President and the Court intend to follow in dealing with Pakistan's Request for indication of interim measures of protection which is a matter of urgency and has priority under Article 66, paragraph 2, of the Rules of Court.

29. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

30 May 1973.

Airmail

I have the honour to send Your Excellency herewith a copy of a letter received today from the Agent of Pakistan in the case concerning the *Trial of Pakistani Prisoners of War*.

30. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

(telegram)

1 June 1973.

Further to my cable of 29 May have honour inform Your Excellency that public hearings in respect of Pakistan request for interim measures of protection in case concerning *Trial of Pakistani Prisoners of War* will now open on Monday 4 June 1973 at 3 p.m.

[1] A similar communication was sent to the Agent for the Government of Pakistan.

31. THE AMBASSADOR OF INDIA TO THE NETHERLANDS TO THE REGISTRAR

4 June 1973.

I have the honour to enclose with this letter a Statement of the Government of India in continuation of their Statement of 28 May 1973 and in answer to the points made in the letter of 25 May 1973 from the Ambassador of Pakistan which you were kind enough to send me by your letter No. 54370 of the same date. I shall be grateful if you will be so good as to place the enclosed Statement before the President of the Court, inviting his kind attention to paragraphs 19 and 20 thereof.

STATEMENT OF THE GOVERNMENT OF INDIA IN CONTINUATION OF ITS STATEMENT OF 28 MAY 1973 AND IN ANSWER TO PAKISTAN'S LETTER OF 25 MAY 1973

The Government of India have received Pakistan's letter of 25 May 1973. They had mentioned in paragraph 33 of their statement of 28 May 1973 that they would examine the communication within a reasonable time if so enabled, and would respond to the specific points made therein. The Government of India have the following observations to make:

A. Re India's Reservation to Article IX of the Genocide Convention

1. In the statement of 28 May 1973, the Government of India have set out at some length legal implications of their reservation to Article IX of the Genocide Convention, viz. that without the consent of the Government of India, the Court cannot be seized of the subject-matter of Pakistan's Application and, therefore, cannot proceed with the case. Attention is invited to paragraph 30 of that statement.

2. In view of the position explained in that statement, no controversy about the validity or admissibility of India's reservation to Article IX of the Genocide Convention 1948 can be raised by Pakistan, particularly as Pakistan has not raised any objection whatsoever to India's reservation for the past 14 years since 27 August 1959. In any case, that reservation itself requires the consent of all the parties to the dispute in each case for the submission of any dispute to the International Court of Justice. The Government of India regret that they cannot now enter into any controversy regarding the validity of their reservation and the Government of India do not give their consent to the Court being seized of the subject-matter of Pakistan's Application and to proceed with the case. It need hardly be emphasized that even if the Indian reservation be held incompatible or void, the consequences will be, as indicated in our statement of 28 May 1973, that India will not be regarded as a party to the Convention either vis-à-vis all the other parties thereto or in any case vis-à-vis Pakistan. If India is not a party to the Convention, the Court can have no jurisdiction to entertain Pakistan's Application in any case. The question of inadmissibility of India's reservation therefore does not arise.

B. Re Pakistan's Attempt to Urge New Titles of Jurisdiction by Pakistan's Letter of 25 May 1973

3. In paragraph 11 of its Application Pakistan specifically invokes the jurisdiction of the Court under Article IX of the Genocide Convention. But, nevertheless, in its communication of 25 May 1973 to the Registrar of the Court, Pakistan seeks to found the jurisdiction of the Court, so far as its Application is concerned, by seeking to rely on the General Act of 1928 and Article 36, paragraph 2, of the Statute. This Pakistan is, on no account, entitled to do. The reasons are, *inter alia*, as follows:

(a) First, Article 35, paragraph 2, of the Rules provides, *inter alia*, that an application must specify the provision on which the applicant founds the jurisdiction of the Court and in view of this provision Pakistan asserts in paragraph 11 of its Application thus:

> "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 (1) of its Statute."

Pakistan cannot resile from its categorical assertion so made in its Application in the manner it seeks to do by its said communication of 25 May 1973 to the Registrar of the Court.

(b) Secondly, the scope of a request under Article 66, paragraph 1, of the Rules cannot exceed the scope either of a special agreement or of an application by means of which a case is brought before the Court under Article 35, paragraph 1, or paragraph 2, as the case may be, of the Rules. This is clear from the express language of Article 66, paragraph 1, of the Rules which provides, *inter alia*, that:

> "A request for the indication of interim measures may be filed at any time during the proceedings *in the case in connection with which it is made. The request shall specify the case to which it relates.*" (Italics supplied for emphasis.)

There is thus an inextricable link between an application and a request for interim measures which can only follow the application. The request cannot go beyond the scope of the application. The request must be founded on the application and the application alone and the State making an application is not entitled to urge any point, particularly regarding jurisdiction, beyond what is contained in its application.

(c) Thirdly, the inextricable link between an application and a request is apparent from the Orders of the Permanent Court of International Justice and of the present Court on requests for interim measures. In such Orders specific reference is invariably made to the Application following which the request is made. The latest Order of the Court on a request for interim measures in the *Fisheries Jurisdiction* case contained, *inter alia*, the following:

> "4. Whereas the Application founds the jurisdiction of the Court on Article 36, paragraph 1, of the Statute and on the Exchange of Notes between the Governments of Iceland and of the Federal Republic of Germany dated 19 July 1961."

"12. Whereas in its message of 28 July 1972 the Government of Iceland stated that the Application of 5 June 1972 was relevant only to the legal position of the two States and not to the economic position of certain private enterprises or other interests in one of those States, an observation which seems to question *the connection which must exist under Article 61, paragraph 1, of the Rules between a request for interim measures of protection and the original Application filed with the Court.*" (Italics supplied for emphasis.) (*I.C.J. Reports 1972*, pp. 32, 33.)

(d) Lastly, the expression "must also, as far as possible," in Article 35, paragraph 2, of the Rules governs each of the expressions which follow, namely, "specify the provision on which the Applicant founds the jurisdiction of the Court", "state the precise nature of the claim", "and give a succinct statement of the facts and grounds on which the claim is based". The first expression as well as the nature of the contents of an Application covered by the said three expressions which follow the said first expression indicate clearly the mandatory character of Article 35, paragraph 2, of the Rules incorporating the said expressions. And "the provision on which the applicant founds the jurisdiction of the Court" must, in all cases be the very foundation of an application under Article 35, paragraph 2, of the Rules, before the Court can have seisin of the same. No addition to or deviation from this foundation can be made as Pakistan seeks to do by its said communication of 25 May 1973 to the Registrar of the Court.

4. In view of what has been stated above, Pakistan cannot now enlarge the provisions on which it founds the jurisdiction of the Court by adding a new "dispute" under Article IX of the Genocide Convention or by adding new titles of jurisdiction, such as the General Act of 1928 and Article 36, paragraph 2, of the Statute.

It will be recalled that, when a similar attempt was made in the *Norwegian Loans* case even at a later stage of the case, the Court stated as follows:

"These engagements were referred to in the Observations and Submissions of the French Government on the Preliminary Objections and subsequently and more explicitly in the oral presentations of the French Agent. Neither of these references, however, can be regarded as sufficient to justify the view that the Application of the French Government was, so far as the question of jurisdiction is concerned, based upon the Convention or the General Act. If the French Government had intended to proceed upon that basis it would expressly have so stated.

As already shown, the Application of the French Government is based clearly and precisely on the Norwegian and French Declarations under Article 36, paragraph 2, of the Statute. In these circumstances the Court would not be justified in seeking a basis for its jurisdiction different from that which the French Government itself set out in its Application and by reference to which the case has been presented by both Parties to the Court." (*I.C.J. Reports 1957*, p. 25.)

C. Re India's Declaration under Article 36, Paragraph 2, of the Statute

5. Without prejudice to what is stated in paragraphs 3 and 4 hereof, the Government of India further states as follows:

6. The Declaration of India was deposited with the Secretary-General of the United Nations on 14 September 1959, the text of which reads as follows:

"I have the honour, by direction of the President of India, to declare on behalf of the Government of the Republic of India that they accept, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate such acceptance, as compulsory *ipso facto* and without special agreement, and on the basis and condition of reciprocity, the jurisdiction of the International Court of Justice over all disputes arising after 26 January 1950 with regard to situations or facts subsequent to that date, other than:

(1) *disputes, in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method* or methods of settlement;
(2) disputes with the government of any State which, *on the date of this declaration*, is a Member of the Commonwealth of Nations;
(3) disputes in regard to matters which are essentially within the jurisdiction of the Republic of India;
(4) disputes concerning any question relating to or arising out of belligerent or military occupation or the discharge of any functions pursuant to any recommendation or decision of an organ of the United Nations, in accordance with which the Government of India have accepted obligations;
(5) disputes in respect of which any other party to a dispute has accepted the compulsory jurisdiction of the International Court of Justice exclusively for or in relation to the purposes of such dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of a party to the dispute was deposited or ratified less than 12 months prior to the filing of the application bringing the dispute before the Court;
(6) *disputes with the Government of any State with which, on the date of an application to bring a dispute before the Court, the Government of India has no diplomatic relations.*

New York, 14 September 1959.

(Signed) C. S. JHA,
Permanent Representative of India
to the United Nations."

(*I.C.J. Yearbook 1971-1972*, pp. 65-66.) (Italics supplied for emphasis.)

7. Attention is invited particularly to three of the said reservations which manifestly oust the jurisdiction of the Court so far as Pakistan's Application is concerned, namely, reservations (1), (2) and (6) set out above.

8. Re reservation (1) set out above, the reservation refers the matter back to the Genocide Convention and the method of settlement provided therein, namely Article IX, to which India has entered its reservation. The consequences of that reservation have already been set out in the Government of India's statement of 28 May 1973.

9. Re reservation (2) set out above, Pakistan was a member of the Commonwealth of Nations on the date of India's Declaration.

10. Re reservation (6) set out above, the Government of India had no diplomatic relations with the Government of Pakistan on the date of Pakistan's Application. The diplomatic relations were broken off by Pakistan on 6 December 1971. They have not yet been re-established.

11. Attention is also invited to Pakistan's Declaration of 12/13 September 1960 (for text, please see *I.C.J. Yearbook 1971-1972* at p. 77), which provides that the Declaration shall not apply to:

"... *disputes arising under a multilateral treaty unless*

(i) all parties to the treaty affected by the decision are also parties to the case before the Court, or

(ii) the Government of Pakistan specially agree to jurisdiction."

Since Pakistan by its letter of 25 May 1973 seeks to invoke Article IX of the Genocide Convention to challenge the admissibility of the Indian reservation under that Convention and to assert that it is of no legal effect whatsoever, a decision on which would affect several parties to the treaty (15 of them, whose names were given in paragraph 30 (3) of Government of India's Statement of 28 May 1973), they must all be parties to the case before the Court, or otherwise the Government of Pakistan must specially agree to the Court's jurisdiction. The Court must take notice of this reservation by Pakistan to establish reciprocity which is the condition of Article 36, paragraph 3, of the Statute of the Court as well as of India's Declaration referred to above, and hold it against Pakistan and in favour of India. In the *Norwegian Loans* case, the Court applied the restrictive reservation of France in favour of Norway and held as follows:

> "The Court considers that the Norwegian Government is entitled, by virtue of the condition of reciprocity, to invoke the reservation contained in the French Declaration of March 1st, 1949; that this reservation excludes from the jurisdiction of the Court the dispute which has been referred to it by the Application of the French Government that consequently the Court is without jurisdiction to entertain the Application." (*I.C.J. Reports 1957*, p. 27.)

D. Re: The 1928 General Act for the Pacific Settlement of International Disputes

12. By the said letter of 25 May 1973 the Government of Pakistan seeks to rely on Articles 17 and 41 of the General Act for the Pacific Settlement of International Disputes of 26 September 1928, as read with Article 36 (1) and Article 37 of the Statute of the Court. They have alleged that Pakistan is a party to the General Act under international law, by virtue of succession to the multilateral conventions entered into by British India before Partition. They do not, however, seek to rely on Article 33 of this Act concerning interim measures.

13. Without prejudice to what is stated in paragraphs 3 and 4 hereof the Government of India further states as follows:

(1) *The General Act of 1928 is either not in force or, in any case, its efficacy is impaired by the fact that the organs of the League of Nations and the Permanent Court of International Justice to which it refers have now disappeared.* It will be recalled that by resolution 268 (III), entitled "Study of Methods for the Promotion of International Co-operation in the Political Field: Restoration to the General Act of 26 September 1928 of its Original Efficacy" adopted by the General Assembly on 28 April 1949, certain amendments were suggested "to restore to the General Act its original efficacy". Pursuant to this resolution, the Revised General Act for the Pacific Settlement of International Disputes was adopted by the General Assembly on 28 April 1949, which embodied the amendments suggested in the resolution. Neither India nor Pakistan is a party to the Revised General Act.

A reference to the Report of the Interim Committee of the General Assembly, which suggested the adoption of the Revised Act, would indicate the reasons why the 1928 General Act was regarded as ineffective. The following excerpt is relevant:

"Thanks to a few alterations, the new General Act would, for the benefit of those States acceding thereto, restore the original effectiveness of the machinery provided in the Act of 1928, an Act which, though still theoretically in existence, has become largely inapplicable.

It was noted, for example, that the provisions of the Act relating to the Permanent Court of International Justice had lost much of their effectiveness in respect of parties which are not Members of the United Nations or parties to the Statute of the International Court of Justice." (Reports of the Interim Committee of the General Assembly (5 January-5 August 1948); *GA, OR*, Third Session, Supplement No. 10, UN doc. A/605, 13 August 1948, para. 46, pp. 28-29.)

The Revised General Act can only apply prospectively to States acceding thereto, and, while recognizing the impairment of the efficacy of the 1928 General Act and attempting to restore its original efficacy, the Revised Act has also stated that it will not affect the rights of States parties thereto "as should claim to invoke it in so far as it might still be operative". Bearing in mind the inefficacy recognized in the General Assembly resolution cited above, the 1928 General Act can, in view of the Government of India, be invoked only by the parties thereto only by mutual agreement rather than unilaterally. It is only in this manner that the 1928 Act which is otherwise inefficacious and deadwood, could perhaps be utilized to some purpose. If it is unilaterally invoked, it would render nugatory the purpose for which the General Assembly thought it appropriate to enact the Revised General Act of 1949.

(2) *Even assuming that the 1928 General Act is still in force (which is denied), Pakistan is not a party thereto, as Pakistan cannot become a party thereto under international law by virtue of succession to multilateral conventions which were entered into before the birth of Pakistan.* In this regard, the following points may be noted:

(a) Pakistan, having been born in 1947 was not an original party to the 1928 Act. Nor was it a Member of the League of Nations. Being a closed treaty and after the demise of the League of Nations, Pakistan cannot now become a party thereto.

(b) A treaty regarding the settlement of disputes, which is essentially a political treaty, is not transmissible under international law. Professor O'Connell, a leading authority on State Succession, puts it thus: "Clearly not all these treaties are transmissible; no State has yet acknowledged its succession to the General Act for the Pacific Settlement of International Disputes" (1928). (*State Succession in Municipal Law and International Law*, Vol. II, 1967, p. 213.)

The general rule in international law about State succession is summed up by Sir Humphrey Waldock, (then) special rapporteur on succession in respect of treaties, in Article 3 (second report submitted to the International Law Commission in 1969) and Articles 6 and 7 (third report submitted to the International Law Commission 1970), which provide as follows:

"*Article 3. Agreements for the Devolution of Treaty Obligations or Rights upon a Succession*

1. A predecessor State's obligations and rights under treaties in force in respect of a territory which is the subject of a succession do not become applicable as between the successor State and third States, parties to those treaties, in consequence of the fact that the predecessor and the

successor States have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. When a predecessor and a successor State conclude such a devolution agreement, the obligations and rights of the successor State in relation to third States under any treaty in force in respect of its territory prior to the succession are governed by the provisions of the present articles.

Article 6. General Rule regarding a New State's Obligations in Respect of Its Predecessor's Treaties

Subject to the provisions of the present articles, a new State is not bound by any treaty by reason only of the fact that the treaty was concluded by its predecessor and was in force in respect of its territory at the date of the succession. Nor is it under any obligation to become a party to such treaty.

Article 7. Right of a New State to Notify Its Succession in Respect of Multilateral Treaties

A new State, in relation to any multilateral treaty in force in respect of its territory at the date of its succession, is entitled to notify the parties that it considers itself a party to the treaty in its own right unless:

(a) the new State's becoming a party would be incompatible with the object and purpose of the particular treaty;

(b) the treaty is a constituent instrument of an international organization to which a State may become party only by the procedure prescribed for the acquisition of membership of the organization;

(c) by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any additional State in the treaty must be considered as requiring the consent of all the parties."

Thus the rule is that a new State starts with a clean slate and that there is no automatic succession of treaties. A mere devolution agreement between the successor State and the predecessor State does not automatically make the successor State a party in relation to the other parties to a multilateral treaty.

(c) The above rule conforms to the practice followed by the Secretary-General as a depositary of the treaties concluded under the auspices of the United Nations, as well as in some cases in relation to those concluded under the auspices of the League of Nations. In some cases, the new States voluntarily notified to the United Nations their acceptance of the application of prior treaties. In other cases, the Secretary-General issued a note listing treaties concluded under the League of Nations as well as under the United Nations, and enquired from the new States as to whether they accepted the obligations arising therefrom. *In no such voluntary notification, or response to the note issued by the Secretary-General, has the 1928 General Act ever been listed.* (See Succession of States and Governments, UN docs. A/CN.4/149-Add. 1, and A/CN-4/150. Memorandums prepared by the Secretariat on 3 December 1962 and 10 December 1962 respectively.) The second Memorandum, however, shows that the Secretary-General has not yet of his own accord consulted new States about succession to League Treaties which have not been amended by the United Nations. The Memorandum says:

"There would be some legal problems in connection with such action. In the first place, it would be necessary to establish a list of the League Treaties that are still in force, and this would require a study not only of

whether each treaty has been denounced by the parties but also whether the treaty can still be executed after the disappearance of the organs of the League, whether the treaty has been superseded among the parties by a new treaty, whether the treaty has fallen into desuetude, etc." (*Year Book of the International Law Commission*, 1962, Vol. II at p. 125.)

(3) *As to the principle of succession between India and Pakistan* inter se, *the Indian Independence (International Arrangements) Order 1947 was promulgated on 4 August 1947, which sets out in the schedule thereto an agreement between the Dominion of India and the Dominion of Pakistan.* The agreement reads as follows:

"*Schedule*

Agreement as to the Devolution of International Rights and Obligations upon the Dominions of India and Pakistan

1. The international rights and obligations to which India is entitled and subject immediately before 15 August 1947 will devolve in accordance with the provisions of this agreement.
2. *(a)* Membership of all international organizations together with the rights and obligations attaching to such membership will devolve upon the Dominion of India.

   For the purpose of this paragraph any rights or obligations arising under the Final Act of the United Nations Monetary and Financial Conference will be deemed to be rights or obligations attached to membership of the International Monetary Fund and to membership of the International Bank for Reconstruction and Development.

   (b) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organization as it chooses to join.
3. *(a)* Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion.

   (b) rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of Pakistan will devolve upon that Dominion.
4. Subject to Articles 2 and 3 of this agreement, rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of Pakistan, and will, if necessary, be apportioned between the two Dominions."

Such a devolution agreement cannot by itself, as Sir Humphrey Waldock has indicated in the draft articles cited above, make a successor State a party to a multilateral treaty. The substantive content of this agreement has also been commented upon by an eminent authority, Oscar Schachter as follows:

"The intended effect of this provision appears to be to extend to Pakistan treaty rights and duties which would not devolve upon it under the generally accepted rule of law. For it has been recognized that when a territory breaks off and becomes a State, succession takes place only 'with regard to such international rights and duties of the predecessor as are logically connected with the part of the territory ceded or broken off, and with regard to the fiscal property found on that part of the territory'. *Conversely, it has been clear that no succession occurs in regard to rights and duties of the*

old State which arise from its political treaties such as treaties of alliance or of pacific settlement. It has also been the view of the majority of writers that the new State does not succeed to other non-local agreements, such as treaties of commerce and extradition.

In view of these principles, what effect must be given to the bilateral agreement between the two dominions purporting to transfer to the new State all treaty rights and obligations? It may be doubted that it will be given effect (even if intended) with respect to agreements which are essentially political, since both precedent and principle are contrary to recognizing succession in these matters. On the other hand, it does not appear improbable that succession will be recognized with respect to multipartite treaties concerned with social, economic, and technical matters." (Schachter, "The Development of International Law Through Legal Opinions of the United Nations Secretariat", XXV *BYIL* (1948), pp. 91, 106-107; emphasis added, footnotes omitted.)

(4) *The above position set out by Sir Humphrey Waldock and in Professor Schachter's comment has also been followed by Pakistan in its State practice since 1947, and this is manifest from the following:*

(a) In 1947 a list of treaties to which the abovementioned devolution agreement would apply was prepared by "Expert Committee No. 9 on Foreign Relations". Their report is contained in *Partition Proceedings*, Vol. III, pp. 217-276. The list comprises some 626 treaties in force in 1947.

The 1928 General Act is not included therein. The report was signed by the representatives of both countries, viz. A. V. Pai, V. M. Ikramullah, C. S. Jha, Iskander Mirza, P. A. Menon, V. A. Swaminathan and A. A. Shah.

(b) In several differences between India and Pakistan since 1947, such as those relating to the uses of river waters or the settlement of the boundary in the Rann of Kutch area, where resort was made to arbitration proceedings, the 1928 General Act was not relied upon or ever cited by the parties.

(c) The Supreme Court of Pakistan, on an appeal from the High Court below, affirmed the latter's decision and with regard to the application of the devolution agreement stated as follows:

> "With this, however, we are unable to agree for more than one reason. First, because the Indian Independence (International Arrangements) Order 1947 did not and, indeed, could not provide for the devolution of treaty rights and obligations which were not capable of being succeeded to by a part of a country, which is severed from the parent State and established as an independent sovereign power, according to the practice of States. We advisedly use the expression 'practice of States' in this regard for there appear to be no settled rules of International Law governing the succession of States. But as far as it can be gathered the consensus of opinion amongst international jurists seems to be in favour of the view that as a general rule a new State so formed will succeed to rights and obligations arising only under treaties specifically relating to its territories, e.g., treaties relating to its boundaries or regulating the navigation of rivers or providing for guarantees or concessions but not to rights and obligations under treaties, affecting the State, as such, or its subjects, e.g., treaties of alliance, arbitration or commerce. An examination of the provisions of the said Order of 1947 also reveals no intention to depart from this principle."

The Court further stated:

> "Under these provisions it is significant that Pakistan does not succeed

to the membership of international organisations or the rights and obligations attaching to such membership but has to apply to become a member of any organisation she chooses to join. Thus she did not automatically become a member of the United Nations nor did she succeed to the rights and obligations which attached to India by reason of her membership of the League of Nations at Geneva or the United Nations. *It is difficult, therefore, to appreciate how clause 4 of the said Order can be said to be applicable to all kinds of international agreements or that it intended to provide for the succession to rights and obligations of the parent State which did not normally devolve upon a State established by succession from the parent State under the rules of International Law or which attached to the parent State as a consequence of her membership of an international organisation . . . The ratification could thus be made by only a member State and had to be deposited with the Secretary-General of the League of Nations.* In the circumstances if Pakistan could not under the Indian Independence (International Arrangements) Order succeed to the rights and obligations acquired by British India by virtue of her membership of the League of Nations or its successor organization . . . the United Nations . . . it follows that Pakistan could not be deemed to have succeeded to the right of ratification that British India possessed as a member of the League of Nations and the ratification of the Protocol by British India could not ennure to the benefit of Pakistan." (*Yangtze (London) Limited* v. *Barlas Brothers (Karachi) and Co.*: Judgment of 6 June 1961 (Civil Appeal No. 139 of 1960).) (See "Materials on State Succession", *United Nations Legislative Series*, doc. ST/LEG/SER B/14, pp. 137, 138 and 139.)

(d) In the initial stages Pakistan did assert that by virtue of clause 4 of the Devolution Agreement, it was a co-successor with India to multilateral treaties, including membership of international organizations, and also informed the Secretary-General in 1953 that Pakistan considered itself a party to—

(i) Convention on Certain Questions Relating to Conflict of Nationality Laws, signed at The Hague, 12 April 1930;
(ii) Protocol relating to a Certain Case of Statelessness, signed at The Hague, 12 April 1930;
(iii) Special Protocol concerning Statelessness, signed at The Hague, 12 April 1930.

(See *Year Book of the International Law Commission*, 1962, Vol. II, at p. 109.)

However, *Pakistan has never informed the Secretary-General of the United Nations, nor parties to the 1928 General Act that it considered itself to be party to that Act.* In view of the points (2) to (4) in this paragraph, Pakistan cannot be regarded as a party to the 1928 General Act by succession under international law.

(5) *Assuming that the 1928 Act is in force and that Pakistan is a party thereto, even then Pakistan cannot unilaterally invoke this Act to make the Court seized of the subject-matter of its Application, as will be patent from the following:*

(a) Article 29 (1) of the General Act provides as follows:

"Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions."

This paragraph is quite clear. Since the statement of the claim by Pakistan in its Application and the submissions made relate only to the alleged interpretation and application of Article VI of the Genocide Convention 1948, which is a

Convention in force between India and Pakistan, any "dispute" in relation to the 1928 General Act has to be settled in conformity with the provisions of that Convention. Thus invoking the 1928 General Act brings back a reference to Article IX of the Genocide Convention 1948 and bearing in mind the express and objective reservation entered by India to that Article, the consent of the Government of India is required in each particular case before the Court can be seized of the subject-matter of any Application.

The Solicitor-General of Australia, while presenting Australia's views in the *Nuclear Tests* case, stated the following on 22 May 1973:

> "Recognition of the validity of the General Act does not mean, of course, that the Court thereby acknowledges a means of recourse in every case which may arise between the parties to the General Act. *Where, in a treaty bearing upon a particular subject, provision is made for the settlement of disputes by this Court, settlement can take place only under that provision.* At the same time, it must be seen that, as I have already submitted, declarations made under the Optional Clause cannot be equated with treaties containing special settlement provisions. Furthermore, Optional Clause declarations cannot in law exhaust the jurisdiction-creating will of the parties which make them. Such declarations only affect matters of customary international law, or conventional matters for which no other specific settlement procedure has been prescribed." (Emphasis added.) [sitting of 22 May 1973, p. 62.]

Attention, in this respect, is also invited to Article 1, clause (ii), of the Simla Agreement 1972, which was signed by the President of Pakistan and the Prime Minister of India on 2 July 1972 and, after having been considered by representative Assemblies of the two countries, was ratified and is in force. This clause provides "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*" (emphasis added). In so far as the repatriation of prisoners of war and civilian internees is concerned, Article 6 of the Simla Agreement does provide for negotiations between the countries concerned to settle the related questions. The subject-matter of Pakistan's Application must, therefore, be considered and resolved in conformity with the provisions of the Simla Agreement and in consultation with the parties concerned. No bilateral or trilateral negotiations have yet taken place on the subject-matter of Pakistan's Application.

(b) While becoming a party to the 1928 General Act on 21 May 1931, India made the following reservations excluding the following disputes from the procedure described in the General Act, including the Procedure of Conciliation:

> "Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement,"
>
> "Disputes between the Government of India and the Government of any other Member of the League which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree,"
>
> "Disputes with any party to the General Act who is not a member of the League of Nations."

The application of these objective conditions or reservations to Pakistan's Application is manifest. If Pakistan were deemed to be a Member of the League of Nations, it must also be deemed to be a Member of the British Commonwealth of Nations, like India was at that time. No "dispute" will then

lie to the Court between India and Pakistan. Similarly, with reference to the first reservation, "dispute" under the General Act shall be settled in such a manner as the parties have agreed or shall agree. This condition as also the one set out in 5 *(a)* above in relation to Article 29 of the General Act requires an express consent by the Government of India by reason of India's reservation to Article IX of the Genocide Convention and the provision of the Simla Agreement referred to above, before the subject-matter contained in Pakistan's Application could be considered by the International Court of Justice.

14. *To sum up:* The 1928 General Act is either not a treaty in force or is an ineffective treaty. Pakistan was not a party to the General Act. It cannot be a party thereto by succession under international law. Even assuming it is a party thereto, by the fiction of succession (which is denied), its own conduct contradicts its being a party thereto. It has never informed the Secretary-General or the parties to the 1928 General Act that it regards itself bound by the General Act. In any case, the General Act cannot apply to the subject-matter of Pakistan's Application in view of Article 29 thereof and the reservations made by India at the time of becoming a party to the General Act on 21 May 1931. As such, the consent of India is required before the Court could be seized of the subject-matter of Pakistan's Application.

E. Conclusions

15. The views of the Government of India with regard to Pakistan's Application seeking to make the Court seized of its subject-matter may now be summed up as follows:

(1) In view of India's reservation to Article IX of the Genocide Convention 1948, requiring the consent of the Government of India as a precondition to the proceedings being instituted in the International Court of Justice under the Convention, the Court cannot be properly seized of the subject-matter of Pakistan's Application which attempts to found the jurisdiction of the Court under Article IX thereof. No such consent has been obtained by Pakistan before submitting its Application. When Pakistan's Application and Request were communicated to the Government of India, it regretted that it could not give its consent in its letter of 23 May 1973 to the Registrar of the International Court of Justice. In the absence of this consent, the Court is not properly seized of the subject-matter and cannot proceed with the case.

(2) The title of jurisdiction on which the entire Application is based cannot be unilaterally added to or deviated from in the manner Pakistan seeks to do.

(3) Pakistan cannot challenge the admissibility of India's reservation to Article IX of the Genocide Convention and assert that it is of no legal effect whatsoever by invoking Article IX itself, without obtaining the consent of the Government of India.

(4) In any event, the titles of jurisdiction which Pakistan seeks to invoke either under Article 36, paragraph 2, of the Statute or under Article 17 or 41 of the 1928 General Act refer the matter back to the Genocide Convention, any "dispute" relating to which cannot be entertained by the Court without the consent of the Government of India. In addition, the reservations made by India in its Declaration under the Optional Clause, as well as those under the General Act, manifestly take away the jurisdiction of the Court with regard to any "dispute" to which Pakistan is a party in the absence of consent of the Government of India.

(5) The subject-matter of Pakistan's Application, as indicated in paragraph 9 of Government of India's statement of 28 May 1973, does not concern India. Pakistan's Application affects Bangla Desh who has suffered terribly at the hands of the persons suspected of having committed genocide, war crimes, crimes against humanity and breaches of the Geneva Convention (see Annex C-VII and C-VIII to Pakistan's Application). Pakistan has arbitrarily picked up the charges of genocide for the purpose of the present Application by severing the same from the charges of war crimes, crimes against humanity, etc., although it cites the document listing all these allegations and relies on it for its Application. This Pakistan is not entitled to do. Bangla Desh has not been made a party to these attempted proceedings. The Court, therefore, cannot be seized of the subject-matter of such an Application in the absence of Bangla Desh in these proceedings. (See para. 9 of the Government of India's Statement of 28 May 1973.)

16. In paragraph 30 (9) of Government of India's statement of 28 May 1973, Government of India had referred to the test of manifest absence of jurisdiction as set out by the Court in the *Fisheries Jurisdiction* case. The Court must fully satisfy itself that it is properly seized of the subject-matter and that there exist no serious doubts or that there are no weighty arguments against its jurisdiction to hear the case on its merits, before it considers Pakistan's request for interim measures.

F. Additional Points

17. Without prejudice to what is stated hereinabove, Government of India wish to state that the Court must satisfy itself that the Applicant for the request for interim measures genuinely seeks to exercise its alleged right and discharge its alleged objections arising out of Article VI of the Genocide Convention. It is clear that Pakistan does not genuinely seek to do so as will appear from, *inter alia*, the following:

(1) Pakistan has not conducted any investigations, nor can investigations now be conducted regarding charges of genocide since the material evidence is in Bangla Desh. Nor has Pakistan made any preparations for exercising its alleged jurisdiction. Nor does Pakistan appear to have any intention of doing so. In fact, the Court would have observed President Bhutto's statement of 29 May 1973 reported in the *Herald Tribune* dated 30 May 1973. On 31 May, Radio Pakistan reported President Bhutto's remarks to the *New York Times* correspondent as follows:

> "President Z. A. Bhutto has said that if the so-called war trials of Pakistan war prisoners are held in Bangla Desh it will only anger the people of his country who will react by demanding counter-trials. In an interview with the *New York Times* he made it clear that Pakistan could not stomach the trial of its prisoners as it would cause revulsion among its people to react accordingly. In fact the trials would unleash chaotic forces. There would be demonstrations by labour, students and general masses and public opinion would demand similar trials against Bengalis who had aided the Indian and Bangla Desh Forces during the War. He posed a question as to how he could put a lid on this kind of demand. Referring to the move against the Bengalis in Pakistan he said this was a most painful and unpleasant decision for him. He said Sheikh Mujibur Rehman had left him with no option and had taken them to the point of no return. The President said if Sheik Mujibur Rehman proceeded with his mad

adventure it would be the single biggest cause of instability in the subcontinent. It would seriously affect relations between their countries and cause irreparable harm at a time when they should forget the grievous wounds of the past. President Bhutto pointed out that another bar to peace on the subcontinent was the fate of the non-Bengalis in Bangla Desh. Sheikh Mujibur Rehman wanted to evict them but Pakistan would decline any overwhelming number of them. He said after all Pakistan was a thousand miles away and was under no legal obligation to accept them. About the Indo-Bangla Desh statement the President said that on the surface the proposal appeared quite reasonable but at heart it did not come to grips with the problems of the trials and the non-Bengalis."

(2) Thus, the object of instituting these proceedings is not to exercise any alleged right or discharge any alleged obligation but to ensure that either no trials are held at all or that if any trials are held in Bangla Desh, Pakistan would hold counter-trials of Bengalis in Pakistan.

(3) In all this exercise, India which has nothing to do with the crimes or trials, cannot be made a party to Pakistan's Application and request for interim measures just in order to enable Pakistan to seek extraneous political advantages.

(4) Nor should it be forgotten that on 6 December 1971 India recognized Bangla Desh as a sovereign independent State and that on 16 December 1971 the armed forces of Pakistan surrendered to the joint command of the armed forces of two independent States, namely India and Bangla Desh. The prisoners of war, referred to in Pakistan's Application, are in joint custody of the two countries. As such, the Court cannot proceed with Pakistan's Application and request for interim measures in the absence of Bangla Desh.

18. It is emphasized that the views of Government of India set out in this statement do not constitute preliminary objections within the meaning of Article 67 of the Rules, as misunderstood by Pakistan in its letter of 25 May 1973 to the Registrar of the Court. The views of Government of India set out in these statements are the views of a sovereign State which refuses to give its consent to frivolous and vexatious proceedings instituted by Pakistan by its Application and request for interim measures for an ulterior purpose and to seek extraneous political advantages against the object and purpose of the Genocide Convention, and the Statute and Rules of Court.

19. Finally, Government of India owe to the Court the reason why the Government of India are unable to participate in the oral hearings in this case. The Government of India have given this question the utmost consideration which it deserves. The Government of India have on earlier occasions had the honour of appearing before this Court. The Government of India have also settled some controversies with Pakistan by arbitration. In these cases one party has sometimes lost and the other has sometimes won. However, in the present case, for the reasons set out in Government of India's letter of 23 May 1973 and their written statement of 28 May 1973 and the present statement, the Government of India regret their inability to appear before the Court pursuant to their stand that the Court is not properly seized of the subject-matter of Pakistan's Application and its request for interim measures and has no jurisdiction whatsoever to proceed with the case. Government of India's appearance in these circumstances would be logically inconsistent with their stand. Nor can Government of India give their consent to these proceedings in the absence of the necessary party thereto, namely Bangla Desh.

20. It is, therefore, respectfully requested that their non-appearance should not be mistaken as lack of respect for the Court or for the processes of adjudication.

32. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

4 June 1973.

I have the honour to transmit to Your Excellency herewith a copy of a letter, with enclosure, from the Ambassador of India at The Hague, received in the Registry just before 1 p.m. today.

33. THE AMBASSADOR OF INDIA TO THE NETHERLANDS TO THE REGISTRAR

5 June 1973.

Could you please send us 10 copies of the verbatim records of the pleadings of Pakistan, as we need them here and in Delhi.

34. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

(telegram)

8 June 1973.

Have honour inform Your Excellency adjourned public hearings in case concerning *Trial of Pakistani Prisoners of War* will reopen 10 a.m. Thursday 14 June.

35. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

8 June 1973.

Airmail

I have the honour to attach a confirmatory copy of my cable of today by which I informed Your Excellency of the date fixed for the re-opening of the adjourned public hearings on the request of Pakistan for the indication of interim measures of protection in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*, namely Thursday 14 June 1973 at 10 a.m.

I have the honour to send Your Excellency herewith a copy of the verbatim record of the hearings of 4 and 5 June[2] incorporating the corrections made in accordance with Article 65 of the 1972 Rules of Court.

(Signed) W. TAIT.

[1] A similar communication was sent to the Agent for the Government of Pakistan.

[2] See pp. 21-69, *supra*.

36. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

11 June 1973.

I have the honour to refer to your letter No. 54898, dated 8 June 1973.

On behalf of the Government of the Islamic Republic of Pakistan, I have the honour to state that in view of the fact that certain documents, which were due to arrive from Pakistan this week and which pertain to the case, have not been received and may take a few days more to get here, it is requested that the President of the Court may be pleased to adjourn the hearing of the case from 14 June 1973, to 19 June 1973, or on any date soon thereafter.

37. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

12 June 1973.

I have the honour to acknowledge receipt of Your Excellency's letter of 11 June, by which you request the postponement of the public hearing fixed for 14 June 1973 in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*. I have the honour to inform you that the Acting President, having considered your request and the reason given therefor, has decided, in accordance with Article 51, paragraph 2, of the Rules of Court, to postpone the public hearing to Tuesday, 19 June 1973, at 10 a.m.

38. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

12 June 1973.

Further to my cable and letter of 8 June have honour inform you adjourned public hearings in case concerning *Trial of Pakistani Prisoners of War* postponed to 19 June 10 a.m. at request of Pakistan.

39. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

18 June 1973.

Further to my cables of 8 and 12 June have honour inform Your Excellency that on account of Court's programme of work Court has decided to postpone adjourned hearing in case concerning *Trial of Pakistani Prisoners of War* from 19 June to 26 June at 10 a.m.

40. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

22 June 1973.

I have the honour to refer to your cable ICJ 25 of 11 May 1973 to the Secretary-General informing him that on 11 May 1973 an Application was filed by Pakistan instituting proceedings against India in respect of a dispute concerning the right to exercise jurisdiction over certain Pakistani nationals held in India (case concerning the *Trial of Pakistani Prisoners of War*), and a request for the indication of interim measures of protection in that case, and to your letter of 25 May 1973 informing him of the transmission of 150 copies of the Application with the request that he inform Member States of its filing.

In accordance with Article 40, paragraph 3, of the Statute of the International Court of Justice, the Secretary-General has notified the Members of the United Nations of this Application. A copy of the circular note[1] in English and French is enclosed. It is my understanding that you will have notified directly the other States entitled to appear before the Court.

41. THE DEPUTY-AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE DEPUTY-REGISTRAR

26 June 1973.

Under Article 56 of the Rules of Court, I have the honour to forward herewith two signed copies of the final submissions[2] of the Government of Pakistan made before the Court by Mr. J. G. Kharas, Agent of the Government of the Islamic Republic of Pakistan, in the request for the indication of interim measures in the case concerning the *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*.

(Signed) S. T. JOSHUA.

42. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

27 June 1973.

Airmail

I have the honour to send Your Excellency herewith a copy, signed by the Agent of Pakistan, of the final submissions of the Government of Pakistan, received in the Registry on 26 June 1973, in respect of that Government's request for the indication of interim measures of protection in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*.

[1] Not reproduced.

[2] See p. 107, *supra*.

43. THE REGISTRAR TO THE AGENT OF THE GOVERNMENT OF PAKISTAN

27 June 1973.

I have the honour to acknowledge receipt of Volume III of the *Partition Proceedings (Expert Committees Nos. 3-9)* [1] deposited in the Registry yesterday for the convenience of the Court in its consideration of the request by Your Excellency's Government for the indication of interim measures of protection in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*. The volume will be returned to you as soon as possible.

44. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

2 July 1973.
Airmail

I have the honour to send Your Excellency herewith a copy of the verbatim record of the hearing of 26 June 1973 [2] incorporating the corrections made in accordance with Article 65 of the 1972 Rules of Court.

45. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

9 July 1973.

I have the honour to refer to the meeting which the Attorney-General and I had with the President of the International Court of Justice on Tuesday, 3 July 1973, with regard to the withdrawal of Sir Muhammad Zafrulla Khan from the Court as Judge *ad hoc* for the reasons communicated by him to the President of the Court.

The President was pleased to inform us in response to the claim made by us the same morning, that the Court had agreed that the Government of Pakistan could choose another judge *ad hoc* to replace Sir Zafrulla Khan, but added that the Court had insisted that the new judge *ad hoc* must be ready and available in The Hague on the morning of 10 July to participate in the deliberations of the Court.

The Attorney-General informed the President that the period allowed by the Court for the nomination of a new judge *ad hoc* and for his study of the case was so short that it might not be possible for any jurist or judge to accept such a serious responsibility. Nevertheless, in order to conform to the time-limit laid down by the Court, the Attorney-General left for Pakistan for this purpose and to obtain further instructions from the Government of Pakistan. The Attorney-General returned to The Hague late last night.

I regret to have to inform you that in spite of the best efforts of the Government of Pakistan they have not been able to persuade any Pakistani or foreign judge or jurist to accept the assignment of judge *ad hoc* in place of Sir Muham-

[1] See pp. 77 ff., *supra*.
[2] See pp. 70-107, *supra*.

mad Zafrulla Khan and to participate in deliberations of the Court on the morning of 10 July 1973 at such short notice. Each of the judges or jurists who was approached felt that it was not possible to study and acquaint himself with the points of law and fact involved, to enable him to make a worthwhile contribution to the deliberations of the Court commencing on 10 July. One leading European jurist who was approached on 4 July expressed his willingness to accept the assignment provided a reasonable period of time would be available to him for the study of the case.

In these circumstances, Pakistan is unable to choose a judge *ad hoc* to participate in the present stage of the proceedings.

The Government of Pakistan reaffirms that the presence of a judge *ad hoc* chosen by it is a mandatory requirement under the Statute of the Court and his presence is essential for the further deliberations of the Court with respect to Pakistan's request on interim measures of protection.

46. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

9 July 1973.

I have the honour to attach hereto the text of a question which is addressed to you by Judges Forster, Onyeama and Ignacio-Pinto. The Court has decided that it would wish the answer to this question to be given in writing.

Question by Judges Forster, Onyeama and Ignacio-Pinto

In the course of your address to the Court on 26 June, you stated as follows:

> "In the same paragraph, India also invites attention to Article I, paragraph 2, of the Simla Agreement of 1972, which was signed by the President of Pakistan and the Prime Minister of India on 3 July 1972, and ratified thereafter by the two countries.
>
> It is claimed that in accordance with this clause, which has only been quoted in part by India, the subject-matter of Pakistan's application must be considered and resolved in conformity with the provision of the Simla Agreement, and only through consultations.
>
> It is also claimed that no bilateral negotiations have yet taken place on the subject-matter of Pakistan's application."

In the course of that same address, you quoted Article I, paragraph 2, of the Simla Agreement, and stated:

> "I first draw the attention of the Court to the words 'pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation'. There is thus a clear obligation on India not to hand over the 195 or any other number of persons to Bangla Desh for trial pending the final settlement of this dispute with Pakistan."

Taking into account the terms of the Simla Agreement by which India agreed not to take any unilateral step before negotiations on the question had taken place and the dispute had been finally settled in accordance with the Agreement, and taking into account also the fact that India has stated clearly that no negotiations had taken place on the question which is the subject of Pakistan's Application now before the Court,

Can you inform us whether you consider that the Simla Agreement constitutes an undertaking by the two States not to modify unilaterally the status quo in respect of any problem relating to the prisoners of war?

47. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

9 July 1973.

I have the honour to attach hereto the text of a question today addressed by Judges Forster, Onyeama and Ignacio-Pinto to the Agent for Pakistan in the case concerning *Trial of Pakistani Prisoners of War*. The Court has decided that it would wish the answer to this question to be given in writing by the Agent for Pakistan.

48. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE PRESIDENT OF THE COURT

11 July 1973.

I have the honour to state that on 11 May 1973, when the Government of Pakistan made a request for interim measures of protection in respect of the trial of 195 or any other number of Pakistani Prisoners of War in question, a deadlock had occurred in the negotiations between India and Pakistan on this question and the Transfer of the 195 or any other number of persons to "Bangla Desh" by India was imminent.

2. On 17 April 1973, a joint communiqué was issued at Delhi by the Foreign Minister of Bangla Desh, Dr. Kamal Hossain, and the Foreign Minister of India, Sardar Swaran Singh. The relevant part of that communiqué is paragraph 5, which is 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 Bangla Desh for trial on criminal charges, the repatriation of Bengalis forcibly detained in Pakistan and the repatriation of Pakistanis in Bangla Desh, i.e., all non-Bengalis who owe allegiance and have opted for repatriation to Pakistan."

It was clear from this communiqué that India was proposing to surrender to Bangla Desh those Prisoners of War who were wanted for trial on alleged acts of genocide and other offences by Bangla Desh. On the same date the Foreign Minister of Bangla Desh, Dr. Kamal Hossain, was reported as having an-

nounced the decision of the Bangla Desh Government to try 195 Pakistani Prisoners of War. He stated that the trials would begin by the end of May 1973.

3. In response to the India-Bangla Desh joint communiqué the Government of Pakistan issued a statement on 20 April 1973. While challenging the right of the Government of Bangla Desh to try Pakistani Prisoners of War, and claiming exclusive jurisdiction, the Government of Pakistan invited negotiations between India and Pakistan on this and other issues.

4. On 23 April 1973 the Minister of State for Foreign Affairs, Government of Pakistan, had written to Sardar Swaran Singh, the Indian External Affairs Minister, calling upon India to continue negotiations on matters in issue between the two countries.

5. The response from the Minister of External Affairs, Government of India, was received in a message dated 8 May in which the Government of India rejected Pakistan's stand with respect to the trial of Prisoners of War and other issues and asked Pakistan to agree in advance to all the suggestions made by India and Bangla Desh in their joint communiqué of 17 April 1973. The relevant part of the communication of 8 May is as follows:

> "Likewise the contention of Pakistan Government in paragraph 3 of its statement questioning the competence *of the Government of Bangla Desh to bring to trial certain prisoners of war on crime charges is unacceptable.* The same is the case with the untenable observation contained in paragraph 7 of Pakistan's statement about the Pakistani nationals in Bangla Desh, who have declared their allegiance to Pakistan and are desirous of repatriation.
>
> In our view, talks can be purposeful and lead to quick results if Pakistan Government was to indicate their agreement in principle to the solution set out in paragraph 5 of the joint declaration of 17 April 1973. The representatives of India and Pakistan can work out the modalities for implementing the solution."

It was this total rejection of Pakistan's position, and the threatened transfer to Bangla Desh of 195 Pakistani Prisoners of War, in question, which led Pakistan to make a request for interim measures of protection.

6. Thereafter, under the directions of the President of the International Court of Justice, the Registrar sent the following telegram to India:

> "Further reference my cable and letter of 11 May concerning proceedings instituted by Pakistan against India and in particular request for indication *interim measures of protection* have honour inform Your Excellency that President of Court expresses the hope that the Governments concerned will take into account the fact that the matter is now subjudice before the Court. Similar communication addressed today to Government of Pakistan. Court will in due course hold public hearings to afford parties the opportunity of presenting their observations on request for interim measures. Date of opening of such hearing will be announced as soon as possible."

The Government of Pakistan believes that this measure was to a large extent instrumental in preventing any arbitrary action immediately contemplated at that time.

7. After the deadlock created by the statement of the Indian Foreign Minister dated 8 May referred to above, the Government of Pakistan was pleased to note that the Government of India in its letter dated 4 June 1973, addressed to the Court, took an altogether different position indicating willingness to negotiate on the subject-matter of the application filed by Pakistan.

On page 21[1] of the said letter India stated as follows:

> "Attention in this respect, is also invited to Article 1, clause (ii), of the Simla Agreement 1972, which was signed by the President of Pakistan and the Prime Minister of India on 2 July 1972 and, after having been considered by representative Assemblies of the two countries, was ratified and is in force. This clause provides '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'. In so far as the repatriation of prisoners of war and civilian internees is concerned, Article 6 of the Simla Agreement does provide for negotiations between the countries concerned to settle the related questions. *The subject-matter of Pakistan's Application must, therefore, be considered and resolved in conformity with the provisions of the Simla Agreement and in consultation with the parties concerned. No bilateral or trilateral negotiations have yet taken place on the subject-matter of Pakistan's Application.*" (Emphasis added.)

8. Since then communications between the Governments of India and Pakistan indicate an understanding that negotiations will shortly be held on this and other issues between the two countries and the problems viewed from a humanitarian point of view and solved accordingly. It is expected that these negotiations will take place in the near future at a mutually convenient time and place. The Government of Pakistan had suggested 9 July for these talks, but the Government of India suggested 16 July. The latter date was, however, not suitable for Pakistan since President Bhutto, accompanied by Pakistan's Minister of State for Foreign Affairs, would at that time be on a state visit to the USA. Consequently, Pakistan has proposed that the talks may commence on 28 July 1973.

9. In view of the fact that further negotiations are now to be held between India and Pakistan in accordance with the obligations of the parties under the Charter of the United Nations, and in the context of the Simla Accord; and that Article 1, clause (ii), of the Simla Accord further provides as follows:

> "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 peace and harmonious relations";

the Government of Pakistan trusts that the Government of India would not now take any unilateral action with respect to the 195 Pakistani Prisoners of War in question pending a final settlement of the matter through bilateral negotiations, or by any other peaceful means mutually agreed upon.

10. In order, therefore, to facilitate the negotiations and in view of the developments referred to above, the Government of Pakistan consider it appropriate to request the Court to postpone further consideration of Pakistan's request for the indication of interim measures so as to facilitate the proposed negotiations and thus help towards achieving peace and harmonious relations in the subcontinent.

11. The Government of Pakistan further prays that the Court may be pleased to fix time-limits for the filing of written pleadings in the case in accordance with the Statute and Rules of Court.

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[1] See p. 149, *infra*.

49. THE DEPUTY-AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

12 July 1973.

I have the honour to refer to your letter No. 54647, dated 9 July 1973, forwarding therewith a question put by Judges Forster, Onyeama and Ignacio-Pinto, relating to the case *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*.

The reply of the Government of Pakistan is forwarded herewith.

Answer to the Question Posed by Judges Forster, Onyeama and Ignacio-Pinto

The short answer to the question posed by Judges Forster, Onyeama and Ignacio-Pinto is that Pakistan affirms that the Simla Agreement constitutes an undertaking by India and Pakistan that pending the settlement of any of the problems of the two countries, including the question of transfer and trial of prisoners of war, neither side shall unilaterally alter the situation. In order, however, to give the Court a clear picture of the obligations under the Simla Agreement, in this context, it is relevant to quote Article 1, paragraphs (i) and (ii), of the Simla Accord in full, which are as follows:

> "1. The Government of Pakistan and the Government of India 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 subcontinent, 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 Pakistan and the Government of India have agreed as follows:
>
> (i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the two 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 of 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."

2. The Government of Pakistan draws attention to the fact that the parties have reaffirmed that the principles and purposes of the Charter of the United Nations should govern the relations between the two countries, and hence bilateral negotiations as a means of settlement of disputes are not intended to substitute or replace pacific settlement under the Charter and Statute of the Court. Indeed, the words "or by any other peaceful means mutually agreed upon between them" plainly include peaceful means of settlement agreed upon by India and Pakistan in the past, including reference to the International Court of Justice and the United Nations. While bilateral negotiations as a means of settlement are desirable, it is precisely because bilateral negotiations on this and other issues had been denied to Pakistan by India, that Pakistan resorted to the

means available under the Genocide Convention, the General Act of 1928 and Article 36, paragraph 2, of the Statute of the Court.

3. However, whatever the means to be adopted by the parties in arriving at a peaceful settlement of this and other disputes, i.e., whether through bilateral negotiations or through any other peaceful means, the following part of paragraph (ii) of Article 1 of the Simla Accord is equally applicable:

> ". . . pending the final settlement of any of the problems between the two countries neither side shall unilaterally alter the situation".

4. Having answered the question posed by the judges, I find it incumbent to refer to certain developments in the case which are connected with India's obligations under Article 1, paragraph (ii), of the Simla Accord. On 11 May 1973, when the Government of Pakistan made a request for interim measures of protection in respect of the trial of 195 or any other number of Pakistani Prisoners of War, in question, a deadlock had occurred in the negotiations between India and Pakistan on this question, and the transfer of the 195 or any other number of persons to "Bangla Desh" by India was imminent. Such a deadlock, however, no longer exists and recent developments have given rise to the hope that this matter could possibly be settled through bilateral negotiations. For the benefit of the Court I will give here the facts leading to the earlier deadlock as also the recent developments which are likely to lead to a resumption of negotiations. And I shall also indicate the steps that the Government of Pakistan have taken in view of these developments.

5. On 17 April 1973, a joint communiqué was issued at Delhi by the Foreign Minister of Bangla Desh, Dr. Kamal Hossain, and the Foreign Minister of India, Sardar Swaran Singh. The relevant part of that communiqué is paragraph 5, which is 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 Bangla Desh for trial on criminal charges, the repatriation of Bengalis forcibly detained in Pakistan and the repatriation of Pakistanis in Bangla Desh, i.e., all non-Bengalis who owe allegiance and have opted for repatriation to Pakistan."

It was clear from this communiqué that India was proposing to surrender to Bangla Desh those Prisoners of War who were wanted for trial on alleged acts of Genocide and other offences by Bangla Desh. On the same date the Foreign Minister of Bangla Desh, Dr. Kamal Hossain, was reported as having announced the decision of the Bangla Desh Government to try 195 Prisoners of War. He stated that the proceedings would begin by the end of May 1973.

6. In response to India-Bangla Desh joint communiqué the Government of Pakistan issued a statement on 20 April 1973. While challenging the right of the Government of Bangla Desh to try the Pakistani Prisoners of War, and claiming exclusive jurisdiction, the Government of Pakistan invited negotiations between India and Pakistan on this and other issues.

7. On 23 April 1973, the Minister of State for Foreign Affairs, Government of Pakistan, had written to Sardar Swaran Singh, the Indian External Affairs Minister, calling upon India to continue negotiations on all matters concerning the two countries.

8. The response from the Minister of External Affairs, Government of India,

was received in a message dated 8 May on 9 May 1973, in which the Government of India rejected Pakistan's stand with respect to the trial of Prisoners of War and other issues and asked Pakistan to agree in advance to all the suggestions made by India and Bangla Desh in their joint communiqué of 17 April 1973. The relevant part of the communication of 9 May was as follows:

> "*Likewise the contention of Pakistan Government in paragraph 3 of its statement questioning the competence of the Government of Bangla Desh to bring to trial certain prisoners of war on crime charges is unacceptable.* The same is the case with the untenable observation contained in paragraph 7 of Pakistan's statement about the Pakistani nationals in Bangla Desh, who have declared their allegiance to Pakistan and are desirous of repatriation.
>
> In our view, talks can be purposeful and lead to quick results if Pakistan Government was to indicate their agreement in principle to the solution set out in paragraph 5 of the joint declaration of 17 April 1973. The representatives of India and Pakistan can work out the modalities for implementing the solution."

It was this total rejection of Pakistan's position, and the threatened transfer to Bangla Desh of 195 Pakistani Prisoners of War which led Pakistan to make a request for interim measures of protection.

9. Thereafter under the directions of the President of the International Court of Justice the Registrar sent the following telegram to India:

> "Further reference my cable and letter of 11 May concerning proceedings instituted by Pakistan against India and in particular request for indication interim measures of protection have honour inform Your Excellency that President of Court expresses the hope that the Governments concerned will take into account the fact that the matter is now subjudice before the Court. Similar communication addressed today to Government of Pakistan. Court will in due course hold public hearings to afford parties the opportunity of presenting their observations on request for interim measures. Date of opening of such hearing will be announced as soon as possible."

The Government of Pakistan believes that this measure was to a large extent instrumental in preventing any arbitrary action immediately contemplated at that time.

10. After the deadlock created by the statement of the Indian Foreign Minister dated 8 May referred to above, the Government of Pakistan was pleased to note that the Government of India in her letter dated 4 June 1973, addressed to the Court, took an altogether different position indicating willingness to negotiate on the subject-matter of the application filed by Pakistan. On page 21 [1] of the said letter India stated as follows:

> "Attention in this respect, is also invited to Article 1, clause (ii), of the Simla Agreement 1972, which was signed by the President of Pakistan and the Prime Minister of India on 2 July 1972 and, after having been considered by representative Assemblies of the two countries, was ratified and is in force. This clause provides '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'. In so far as the repatriation of prisoners of war and civilian internees is concerned, Article 6 of the Simla Agreement does provide for negotiations between the

[1] See p. 149, *infra*.

countries concerned to settle the related questions. *The subject-matter of Pakistan's Application must, therefore, be considered and resolved in conformity with the provisions of the Simla Agreement in consultation with the parties concerned. No bilateral or trilateral negotiations have yet taken place on the subject-matter of Pakistan's Application.*" (Emphasis added.)

11. Since then the communications between the Governments of India and Pakistan have given rise to an understanding that negotiations will shortly be held on this and other issues between the two countries and the problems viewed and solved accordingly. It is hoped that these negotiations will be held in the near future at a mutually convenient time and place. The Government of Pakistan had suggested 9 July for these talks, but the Government of India had instead suggested 16 July. The latter date was however not suitable for Pakistan since President Bhutto, accompanied by Pakistan's Minister of State for Foreign Affairs, would at that time be on a state visit to the USA. Consequently, Pakistan has proposed that the talks may commence on 28 July 1973.

12. Keeping in view the fact that further negotiations are now to be held between India and Pakistan in accordance with the obligations of the parties under the Charter of the United Nations, and in the context of the Simla Accord and that Article 1, clause (ii), of the Simla Accord further provides as follows:

> "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 peace and harmonious relations."

The Government of Pakistan trusts that the Government of India shall not now take any unilateral action with respect to the transfer of the 195 or more Pakistani Prisoners of War in question to Bangla Desh, pending a final settlement of the question of jurisdiction by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon.

13. In order, therefore, to facilitate the negotiations, and in view of the developments referred to above, the Government of Pakistan have found it appropriate to request the Court to postpone consideration of Pakistan's request for interim measures in order to facilitate the proposed negotiations.

14. Pakistan has requested the Court for postponement of the consideration of her request for interim measures, and that the matter be kept pending so as to give the parties a fair chance to settle this matter through bilateral negotiations. It has further been requested that in the meantime the Court may call upon the parties to file their memorial and counter-memorial in accordance with the Statute and Rules of Court.

50. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

13 July 1973.

Airmail

I have the honour to enclose herewith an official copy of an Order[2] made by the Court today in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*.

[1] A similar communication was sent to the Agent for the Government of Pakistan.
[2] *I.C.J. Reports 1973*, p. 328.

51. THE DEPUTY-REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

16 July 1973.
Airmail

I have the honour, with reference to the request submitted by the Government of Pakistan on 11 May 1973 for the indication of interim measures of protection in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)* and to Article 41, paragraph 2, of the Statute of the Court, to send you herewith, for transmission to the Security Council, an official copy of an Order which the Court made in the case on 13 July 1973.

52. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

16 July 1973.
Airmail

I have the honour, with reference to the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*, to enclose herewith a copy of a letter of 12 July 1973 from the Government of Pakistan and of the document therewith transmitted, which, as Your Excellency will observe, consists of a reply to the question of Judges Forster, Onyeama and Ignacio-Pinto the text of which I enclosed with the letter I addressed to you on 9 July 1973.

53. LE GREFFIER ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[1]

20 juillet 1973.

Le Greffier adjoint de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'ordonnance rendue par la Cour le 13 juillet 1973 dans l'affaire relative au *Procès de prisonniers de guerre pakistanais (Pakistan c. Inde)* au sujet de la demande en indication de mesures conservatoires présentée par le Gouvernement pakistanais.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

54. THE DIRECTOR OF THE GENERAL LEGAL DIVISION OF THE UNITED NATIONS SECRETARIAT TO THE DEPUTY-REGISTRAR

6 August 1973.

I have the honour to acknowledge the receipt of your letter 54724 of 16 July 1973, addressed to the Secretary-General, under cover of which you sent him a copy of the Order dated 13 July 1973, responding to the request submitted

[1] La même communication a été adressée aux autres Etats admis à ester devant la Cour.

by the Government of Pakistan for the indication of interim measures of protection in the case concerning *Trial of Pakistani Prisoners of War (Pakistan v. India)*.

Pursuant to Article 41, paragraph 2, of the Statute of the Court and to the terms of the Order, a copy of that Order was transmitted to the Security Council under cover of a document (S/10980)[1], a copy of which, in English and French, I am attaching herewith for your information.

(Signed) Blaine SLOAN.

55. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [2]

16 août 1973.

Dans la requête par laquelle le Pakistan a introduit une instance contre l'Inde dans l'affaire du *Procès de prisonniers de guerre pakistanais*, requête dont j'ai eu l'honneur d'adresser copie à Votre Excellence avec ma lettre du 23 mai 1973, le demandeur a invoqué la convention pour la prévention et la répression du crime de génocide, adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1948, pour fonder la compétence de la Cour ainsi que le droit exclusif de juridiction qu'il revendique sur les personnes visées dans la requête.

L'article 63 du Statut de la Cour dispose que, lorsqu'il s'agit de l'interprétation d'une convention à laquelle ont participé d'autres Etats que les parties en litige, le Greffier les avertit sans délai.

En conséquence, et compte tenu des renseignements fournis par le Secrétaire général des Nations Unies, qui exerce les fonctions de dépositaire de la convention susvisée, je prie Votre Excellence de bien vouloir considérer que la présente communication constitue la notification prévue à l'article 63 du Statut de la Cour.

56. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA [3]

17 August 1973.

I have the honour to inform Your Excellency that, as the Application filed on 11 May 1973 by the Government of Pakistan in the case concerning *Trial of Pakistani Prisoners of War* invokes the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948, I have, pursuant to Article 63, paragraph 1, of the Statute of the Court, addressed the notification provided for in that Article to States, other than those concerned in the case, which are parties to that Convention. I enclose for Your Excellency's information a copy of the notification in question.

[1] Not reproduced.

[2] Une communication analogue a été adressée aux autres Etats parties à la convention pour la prévention et la répression du crime de génocide.

[3] A communication in the same terms was addressed to the Agent for the Government of Pakistan.

57. THE MINISTER FOR FOREIGN AFFAIRS OF AFGHANISTAN TO THE PRESIDENT OF THE COURT

12 August 1973.

The Ministry for Foreign Affairs of the Republic of Afghanistan presents its compliments to the President of the International Court of Justice and has the honour to communicate the following:

1. Even though Afghanistan is not specifically or directly involved in the actual case *(Trial of Pakistani War Prisoners)*, nevertheless, in view of the statement made by the representative of Pakistan in the course of presenting Pakistan's case against India in the meeting of 26 June 1973 of the International Court of Justice, claiming Pakistan to be the successor of Great Britain and the so-called colonial Durand line, the State of Afghanistan cannot refrain from presenting this note for the purpose of correcting the minutes of that meeting.

2. Pakistan's claim of succession to the rights and obligations of Great Britain is an illegal claim, both within an historical context and according to customary principles of international law. This claim of succession was nullified by the Secretary-General in the Legal Opinion of 8 August 1947 (see enclosure 1), when Pakistan submitted its application for membership to the United Nations Organization. In applying for membership as a "new State", Pakistan accepted the position taken by the Secretary-General. At the time Britain as the predecessor State, India as the successor State, and Afghanistan (with reservations) as a third country and a party to frontier disputes with Britain, voted for Pakistan's membership as a "new State".

3. At present the new legal régime recognized by the International Law Commission, the United Nations and other international legal institutions, as well as the Secretary-General, in his capacity as the depositor of treaties and international agreements, is that: a new State always comes into existence with a clean slate, i.e., with new legal rights and obligations. This principle has been put into practice with regard to most new members of the United Nations. The majority of the judges of the International Court of Justice, who served as former members of the International Law Commission, have defended this principle.

4. In accordance with its unvarying position, Afghanistan rejected Pakistan's right of succession both before and after the creation of the State of Pakistan and declared the illegality of unequal and colonial treaties imposed on it by Britain. In this respect, Afghanistan's position was reiterated in a note dated 11 September 1963 by the Permanent Mission of Afghanistan to the United Nations in reply to the Secretary-General's note of 5 July 1963. This reply has been published in document ST/LEG/SER.B/14, and is presently under discussion by the International Law Commission and the United Nations General Assembly (see enclosure 2).

5. Furthermore, Afghanistan has, both during the British era in India, and after the creation of Pakistan, continuously proclaimed its position with regard to Britain's colonial and unequal treaties which were imposed on it under special conditions and circumstances and for the benefit of the colonial rule. It also exercised its right regarding article 14 of the Colonial Treaty of 1921 for the denunciation of that Treaty, the second article of which covers, the so-called Durand line, and informed Great Britain in 1953 accordingly. There does not, therefore, exist any line at present on the basis of which Pakistan can claim a right of succession.

6. If the International Court of Justice should take any position in the course

of considering the case of Pakistan versus India, or whatever case that would involve unequal treaties imposed by Britain on Afghanistan, and be in variance with our national interests, then Afghanistan, in accordance with the Statute of the International Court of Justice and the principles of International Law, will resort to peaceful actions in order to defend its legitimate interests.

7. For the afore-mentioned reasons, the Republic of Afghanistan would request the President of the International Court of Justice to instruct that this note be incorporated in the Official Documents for the purpose of correcting the statement of 26 June 1973, made by the representative of Pakistan.

The Ministry for Foreign Affairs of the Republic of Afghanistan avails itself of this opportunity to convey to the President of the International Court of Justice the assurances of its highest consideration.

Enclosure 1

"1. From the viewpoint of international law, the situation is one in which part of an existing State breaks off and becomes a new State. On this analysis there is no change in the international status of India; it continues as a State with all treaty rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new State, it will not have the treaty rights and obligations of the old State, and it will not of course have membership in the United Nations.

In international law the situation is analogous to the separation of the Irish Free State from Britain, and of Belgium from the Netherlands. In these cases the portion which separated was considered a new State; the remaining portion continued as an existing State with all rights and duties which it had before." (Legal opinion of 8 August 1947 by the Asisstant Secretary-General for Legal Affairs, approved and made public by the Secretary-General in United Nations Press Release PM/473, 12 August 1947 (*Yearbook of the International Law Commission*, 1962, Vol. II, p. 101).)

Enclosure 2

NOTE VERBALE OF THE PERMANENT MISSION OF AFGHANISTAN TO THE UNITED NATIONS, DATED 11 SEPTEMBER 1963, ADDRESSED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

A. Observations

(The question of succession by Pakistan to British treaty rights and to the Anglo-Afghan Treaty for the establishment of neighbourly relations, signed at Kabul on 22 November 1921—1947 Referendum in Pakhtunistan—Colonial treaties—Scope of the study on the law of State succession to be undertaken by the International Law Commission.)

1. At the conclusion of the Third Anglo-Afghan War of 1919, in Kabul, by Mahmud Tarzi, Chief of the Afghan Mission, and Henry R. C. Dobbs, Chief

of the British Mission, a copy of which is enclosed along with a supplementary letter attached to it. (See section B, below.) This treaty, as is noted in the Preamble, was a treaty of friendship between Afghanistan on the one hand and the British Government (not the Indian Government) on the other.

2. Article II of this treaty deals with the so-called Durand Line which was imposed on Afghanistan in 1893, for dividing the spheres of influence of Afghanistan and the United Kingdom in the Tribal Area mentioned in the colonial Durand Treaty[1] imposed by political and military force on Afghanistan. History has a witness to the purpose of the British in establishing certain spheres of influence, that is to say, the military purpose for the preservation of her Indian colony.

Article XIV of this treaty states:

> "The provisions of this treaty shall come into force from the date of its signature, and shall remain in force for three years from that date. In case neither of the High Contracting Parties should have notified, twelve months before the expiration of the said three years, the intention to terminate it, it shall remain binding until the expiration of one year from the day on which either of the High Contracting Parties shall have denounced it. This treaty shall come into force after the signatures of the Missions of the two Parties, and the two ratified copies of this shall be exchanged in Kabul within $2^1/_2$ months after the signatures."

It was in accordance with this provision that Afghanistan, on 21 November 1953, notified the British Government of the termination of the Anglo-Afghan Treaty of 22 November 1921.

3. When Pakistan came into being in August 1947, as a consequence of the division of India and Pakistan, she claimed to be successor to the treaty rights of the United Kingdom, and therefore to the Anglo-Afghan Treaty of 22 November 1921. Afghanistan maintains that this claim is legally unfounded on the following grounds:

(a) Pakistan is not a successor to British treaty rights because Pakistan is a new State. In accordance with international law, when a part of a State breaks off and becomes a new State, it does not have the treaty rights and obligations of the old State. It was on this basis that the Secretary-General of the United Nations, on the request of Pakistan for admission to membership in the United Nations, denied the right of succession, and the General Assembly and the Security Council acted on the question of the request of Pakistan as a new State, undertaking completely new obligations.

(b) Even if Pakistan were a successor to British treaty rights, which she is not, and Afghanistan having implemented its right as a party to the Treaty under Article XIV of the Treaty of 22 November 1921, no treaty remains to which Pakistan can succeed.

4. No bilateral treaty will be transferable to a third party by the unilateral action of one party to a treaty without the consent of the other original party to the treaty, and there is no provision in the 1921 treaty under which Afghanistan has given prior acceptance to the transfer of the treaty to a third party, in this case, Pakistan.

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[1] De Martens, *Nouveau recueil général de traités*, deuxième série, tome XXXIV, p. 646. Signed at Kabul on 12 November 1893.

5. The Indian Independence Act of 15 August 1947 also states in regard to the Pakhtun areas of the so-called North-West Frontier Province of India, which were separated from Afghanistan by British military and colonial intervention, that a referendum will take place, and thus all treaties between Afghanistan and Britain concerning this region were terminated. It should be mentioned that the referendum of 1947, contrary to the Indian Independence Act, did not leave any alternative open to the Pakhtun people to vote for their national independence, as demanded by their political leaders, and they were forced to choose, against their natural aspirations, annexation to India or Pakistan. This arrangement was opposed to the last moment, and more than fifty per cent. of the population in the so-called administrative part did not participate in the referendum. Such forcible imposition makes the so-called referendum completely void of any legal or human value. It should also be noted here that this "referendum" was thus imposed in occupied Pakhtunistan alone, with no consideration of the views of Free Pakhtunistan. The majority of the people of occupied Pakhtunistan, and the predominant party which was then in office, boycotted the referendum because of its strictly conditioned nature. Any results claimed by such a referendum are therefore null and void, and can by no means be recognized as the decision of the Pakhtunistan nation. It was a colonial decision enforced under the colonial election act of 1925.

6. Afghanistan believes that colonial treaties which have been imposed by military force are invalid on the basis of the new waves of emancipation of colonial peoples in recent years and, particularly after the adoption of resolutions 1514 (XV) (declaration on the granting of independence to colonial countries and peoples), and 1654 (XVI), the situation with regard to the implementation of resolution 1514 (XV) by the General Assembly of the United Nations.

7. Afghanistan believes that the colonial treaties of Lahore, 1838[1], Gandamak, 1879[2], and finally of Kabul (establishing the Durand Line between India and Afghanistan), 1893[3], because of the circumstances under which they were imposed on Afghanistan, are illegal according to various principles of international law, particularly those adopted by the International Law Commission during its fifteenth session, contained in article 33 on fraud, articles 35 and 36 on coercion of States or their representatives, article 37 on jus cogens, article 38 on termination of treaties through the operation of their own provisions, article 43 on impossibility of performance and article 44 on fundamental change of circumstances *(rebus sic stantibus)*[4].

8. Afghanistan generally believes that the International Law Commission should take into account the fact that in the law of treaties a new field has emerged, the law of State succession. World War II brought a number of

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[1] De Martens, *Nouveau recueil de traités*, tome XV, p. 620. Signed on 26 June 1838.

[2] De Martens, *Nouveau recueil général de traités*, deuxième série, tome IV, p. 536. Signed on 26 May 1879.

[3] *Ibid.*, tome XXXIV, p. 646. Signed on 12 November 1893.

[4] See *Yearbook of the International Law Commission*, 1963, Vol. II, pp. 194-211. In final text of draft articles on the Law of Treaties adopted by the International Law Commission, at its eighteenth session (1966), these articles were revised and renumbered as follows: Article 33 (Fraud) became article 46; article 35 (Coercion of a representative of the State) became article 48; article 36 (Coercion of a State by the threat or use of force) became article 49; article 37 (Treaties conflicting with a peremptory norm of general international law *(jus cogens)*) became article 50; article 38 (Termination of treaties through the operation of their own provisions) became article 51 (Termination of or withdrawal from a treaty by consent of the parties) and

frontier changes, and many nations in Asia and Africa and other parts of the world achieved independence and assumed new obligations in the expanding community of nations. A number of frontier and territorial changes took place by force or by agreement. New circumstances were created and it became necessary to find the effects of treaties after cession, annexation, fusion with another State, entry into federal union, dismemberment, partition, and finally separation or succession. The question of codification of the law of State succession therefore needs very careful study. The solution of such problems cannot be left to the mercy of the strong nations, or the bargaining of military powers. As in private law such problems have found solution, it is much more important to find means and devices for the solution of this important question. The International Law Commission should search practical devices. The term "State succession" should not be used vaguely or loosely, but should be used in question of territorial reorganization accompanied by a change of sovereignty. The scope of the study on State Succession should be limited and precise, and must cover the essential elements which are necessary for the creation of practical devices to solve the present difficulties arising out of the results of colonialism and the imposition of territorial and boundary changes which were contrary to the will of the inhabitants and in contradiction of the right to self-determination. It is important also that these devices be studied on the basis of those treaties of "personal" nature, because the treaty falls to the ground at the same time as the State. This question is particularly important because the fate of many treaties concluded by colonial powers depends on it. The aftermath of independence has created many problems which should be solved. It is also necessary for any special rapporteur to search on the main road, which is the "personality of the State", and changed conditions and the will of the contracting parties, about the right of succession.

58. THE REGISTRAR TO THE AGENT FOR THE GOVERNMENT OF PAKISTAN

22 August 1973.

I have the honour to return to Your Excellency herewith, as requested by you on the telephone, Volume III of the *Partition Proceedings* (*Expert Committees Nos. 3-9*) deposited by Your Excellency's Government in the Registry for the convenience of the Court on 26 June last.

59. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

27 August 1973.

I have the honour to state that in exercise of its right under Article 31 of the Statute of the Court, the Government of Pakistan have chosen Mr. Justice Muhammad Yaqub Ali as Judge *ad hoc* in the application *Pakistan* v. *India*

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article 52 (Reduction of the parties to multilateral treaty below the number necessary for its entry into force); article 43 (Supervising impossibility of performance) became article 58; and article 44 (Fundamental change of circumstances) became article 59. (See *Official Records of the General Assembly*, Twenty-first Session, Supplement No. 9 (A/6309/Rev.1), pp. 73-78 and 84-88.)

relating to the *Trial of Pakistani Prisoners of War* on charges of genocide filed before the Registry of the International Court of Justice on 11 May 1973.

The address of Mr. Justice Muhammad Yaqub Ali is:

Mr. Justice Muhammad Yaqub Ali,
Supreme Court of Pakistan,
Lahore (Pakistan)

60. THE REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

29 August 1973.
Airmail

I have the honour to draw Your Excellency's attention to paragraph 4 of the Order made by the Court on 13 July 1973, in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*, referring to the withdrawal of Sir Muhammad Zafrulla Khan, the judge *ad hoc* chosen by Pakistan under Article 31, paragraph 2, of the Statute of the Court. By a letter dated 27 August 1973, a copy of which is enclosed, the Agent of Pakistan has informed me of the choice by his Government of Mr. Justice Muhammad Yaqub Ali to sit as judge *ad hoc* in the case.

I have the honour to inform Your Excellency that the President of the Court has fixed 30 September 1973 as the time-limit, pursuant to Article 3, paragraph 1, of the Rules of Court, within which the views of the Government of India in this connection may be submitted to the Court.

61. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

24 September 1973.

The International Court of Justice, vide its Order of 13 July 1973, decided that the written proceedings in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)* shall first be addressed to the question of jurisdiction of the Court to entertain the dispute. In the same Order the Court fixed the time-limits for written pleadings as follows:

1 October 1973 for the Memorial of Pakistan;
15 December 1973 for the Counter-Memorial of the Government of India.

The subsequent procedure was reserved for further decision.

2. The Government of Pakistan, however, regrets that it is not able to file the Memorial by 1 October for the following reasons:

(i) The Memorial involves presenting arguments on no less than three quite separate, and complicated bases of jurisdiction. The time given to the Government of Pakistan has not been sufficient to exhaustively deal with these questions; and
(ii) During this period, the law officers concerned with the work of the Memorial had to attend the UN Sea-Bed Committee Session at Geneva, and also to

prepare briefs for the Pakistan Delegation to the forthcoming United Nations Assembly, which opened on 18 September 1973. This has involved a heavy burden on Pakistan's limited legal staff.

3. In order to do full justice to the work, and to exhaustively deal with the several different bases of jurisdiction, the Government of Pakistan have the honour to request the Court to extend the time-limit for Pakistan's Memorial to 15 December 1973.

62. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

24 September 1973.

Have honour inform you that request received from Pakistan for extension of time-limit for Memorial in case concerning *Trial of Pakistani Prisoners of War* from 1 October to 15 December 1973 for following reasons 1° argument required on three separate and complicated bases of jurisdiction and time given not sufficient to deal with these exhaustively 2° UN Seabed Committee and General Assembly has involved heavy burden on Pakistan's limited legal staff. Copy request airmailed to you today. Grateful your views soonest pursuant Rules Article 40, paragraph 4.

63. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

24 September 1973.

Airmail Express

I refer to my telegram of today's date, a confirmation copy of which is enclosed, and have the honour to send Your Excellency herewith a copy of a letter dated 24 September 1973, received in the Registry today, from the Agent of Pakistan in the case concerning *Trial of Pakistani Prisoners of War*. I would be grateful if the views of the Government of India on the request contained in this letter could be conveyed to me, preferably by cable, as soon as possible.

64. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA

(telegram)

26 September 1973.

Reference my telegram and letter of 24 September concerning Pakistan's request for extension of time-limit in case concerning *Trial of Pakistani Prisoners of War* have honour inform Your Excellency on President's instructions that essential any views you wish to state be received not later than Friday 28 September.

65. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

29 September 1973.
Airmail

Further to my cable and letter of 24 September, and my subsequent cable of 26 September, I have the honour to inform Your Excellency that the President of the Court, upon consideration of the request by the Government of Pakistan for extension of the time-limit fixed for its Memorial in the case concerning *Trial of Pakistani Prisoners of War*, and taking into account the fact that no observations had been received from Your Excellency's Government by the date referred to in my cable of 26 September, has today made an Order[2] extending the time-limits fixed by the Court's Order of 13 July 1973 to the following dates:

Memorial of Pakistan: 15 December 1973
Counter-Memorial of India: 17 May 1974.

The sealed copy of the Order will be sent to you in due course.

66. THE DEPUTY-REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF INDIA[3]

1 October 1973.
Airmail

I refer to my letter of 29 August 1973, by which I informed Your Excellency that the President of the Court had fixed 30 September 1973 as the time-limit, pursuant to Article 3, paragraph 1, of the Rules of Court, within which the Government of India might submit its views to the Court on the choice by the Government of Pakistan of Mr. Justice Muhammad Yaqub Ali to sit as judge *ad hoc* in the case concerning *Trial of Pakistani Prisoners of War*.

I now have the honour to inform Your Excellency that the time-limit fixed by the President having expired without any doubt or objection having been expressed on behalf of the Government of India, I am transmitting the documents to Mr. Justice Muhammad Yaqub Ali forthwith.

67. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF AFGHANISTAN

22 November 1973.

The Registrar of the International Court of Justice presents his compliments to the Ministry of Foreign Affairs of the Republic of Afghanistan and has the honour to refer to the Ministry's communication dated 21 August 1973 and addressed to the President of the Court which related to the proceedings instituted before the Court by Pakistan against India in the case concerning *Trial of Pakistani Prisoners of War*.

The Ministry's communication has been passed by the President to the

[1] A similar communication was sent to the Agent for the Government of Pakistan.
[2] *I.C.J. Reports 1973*, p. 344.
[3] A similar communication was sent to the Agent for the Government of Pakistan.

Registrar who, under Article 21 of the Rules of Court, is the regular channel for communications to and from the Court.

In acknowledging receipt of the Ministry's communication, the contents of which have been carefully studied, the Registrar has the honour to inform the Ministry that the contentions therein advanced and the action requested in relation to the statement made by the representative of Pakistan, in the course of oral proceedings in the above-mentioned case, on 26 June 1973, do not appear to him to fall within the ambit of the procedure prescribed by the Statute of the Court and the Rules made thereunder for the adjudication of contentious cases submitted to it, or to comply with the requirements of those instruments regarding the right of intervention by third States in cases before it.

The Registrar of the International Court of Justice avails himself of this opportunity to convey to the Ministry of Foreign Affairs of the Republic of Afghanistan the assurances of his highest consideration.

68. THE AGENT FOR THE GOVERNMENT OF PAKISTAN TO THE REGISTRAR

14 December 1973.

I have the honour to bring to your notice the developments in the dispute between Pakistan and India relating to the *Trial of Pakistani Prisoners of War* since the Order of the Court of 13 July 1973. After the said Order of the Court negotiations were held between the representatives of the two Governments at New Delhi from 20 to 27 August 1973, which resulted in an agreement, signed at New Delhi on 28 August 1973. Paragraph 3, clauses (vi) and (vii), of the Agreement deal with the question of trial of the 195 accused, and are as follows:

> "(vi) Bangla Desh 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, Bengalis in Pakistan and Pakistanis in Bangla Desh referred to in clause (v) above, or earlier if they so agree, Bangla Desh, India and Pakistan will discuss and settle the question of 195 prisoners of war. Bangla Desh has made it clear that it can participate in such a meeting only on the basis of sovereign equality . . ."

2. The Agreement removes the threat of trials and leaves the door open to a political settlement through future negotiations. In the meantime, pending a final settlement, India has agreed that the 195 Prisoners of War shall remain in India and shall not be transferred to Bangla Desh for trial.

3. That this arrangement is without prejudice to Pakistan's position with respect to the question of jurisdiction is clear from Article 3 (i) of the Delhi Agreement which provides as follows:

> "(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."

Pakistan's position continues to be that she has exclusive jurisdiction with

respect to the trial of the prisoners of war in question, and that the International Court of Justice has jurisdiction to determine this question. In view, however, of the fact that India has, after the Delhi Agreement, started discharging her obligations under the Geneva Conventions by commencing repatriation of Pakistani Prisoners of War, and with a view to facilitating further negotiations, the Government of Pakistan considers it appropriate to request the Court for discontinuance of proceedings.

4. As the Government of India has not taken any step in the proceedings under the Rules of the Court, the consent of the Government of India is not necessary to such discontinuance. The Court is therefore requested to make an Order officially recording discontinuance of the proceedings in the case concerning the *Trial of Pakistani Prisoners of War* (Jurisdiction under the Genocide Convention), instituted by the Application of Pakistan dated 11 May 1973.

69. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

(telegram)

15 December 1973.

Have honour inform Your Excellency that by letter dated 14 December Pakistani Agent in case concerning *Trial of Pakistani Prisoners of War* referred to negotiations with Your Excellency's Government and requested the Court to make an Order officially recording discontinuance of proceedings. President has today made Order[2] under Rules Article 14 reciting *inter alia* that Indian Government has not yet taken any step in the proceedings, placing on record discontinuance by Pakistan of proceedings instituted by Application filed 11 May 1973 and ordering that case be removed from list. Copy letter and Order airmailed to you today.

70. THE DEPUTY-REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(telegram)

17 December 1973.

Reference case concerning *Trial of Pakistani Prisoners of War* have honour inform you Pakistani Agent informed Court by letter 14 December that Pakistan not going on with proceedings. President has made Order dated 15 December recording discontinuance and removed case from list.

71. THE DEPUTY-REGISTRAR TO THE MINISTER FOR EXTERNAL AFFAIRS OF INDIA[1]

21 December 1973.

Airmail

Further to my letter and cable of 15 December, I have the honour to send Your Excellency herewith the official sealed copy for the Government of India

[1] A similar communication was sent to the Agent for the Government of Pakistan.
[2] *I.C.J. Reports 1973*, p. 347.

of the Order made by the President on 15 December removing the case concerning *Trial of Pakistani Prisoners of War* from the Court's list. I also enclose five printed copies of that Order for your use.

72. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN [1]

9 janvier 1974.

Le Greffe de la Cour internationale de Justice, se référant à sa lettre du 23 mai 1973 concernant l'affaire relative au *Procès de prisonniers de guerre pakistanais (Pakistan c. Inde)* et à la notification faite dans cette affaire le 16 août 1973 en application de l'article 63 du Statut, a l'honneur de transmettre ci-joint un exemplaire de l'ordonnance rayant l'affaire du rôle qui a été rendue e 15 décembre 1973 par le Président.

73. THE REGISTRAR TO THE MINISTER OF STATE FOR LEGAL AFFAIRS OF BAHRAIN [2]

9 January 1974.

The Registry of the International Court of Justice has the honour to refer to its letter of 23 May 1973 in the case concerning *Trial of Pakistani Prisoners of War (Pakistan* v. *India)*, and to transmit herewith a copy of an Order made by the President on 15 December 1973, removing the case from the Court's list.

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[1] Une communication analogue a été adressée aux autres Etats parties à la convention pour la prévention et la répression du crime de génocide.

[2] A communication in the same terms was sent to the other States entitled to appear before the Court which are not parties to the Convention on the Prevention and Punishment of the Crime of Genocide.