

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING TRIAL OF PAKISTANI  
PRISONERS OF WAR

(PAKISTAN v. INDIA)

REQUEST FOR THE INDICATION OF INTERIM MEASURES  
OF PROTECTION

ORDER OF 13 JULY 1973

**1973**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE AU PROCÈS DE  
PRISONNIERS DE GUERRE PAKISTANAIS

(PAKISTAN c. INDE)

DEMANDE EN INDICATION DE MESURES  
CONSERVATOIRES

ORDONNANCE DU 13 JUILLET 1973

Official citation:

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ORDER

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ORDONNANCE

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YEAR 1973

1973  
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No. 60

13 July 1973

CASE CONCERNING TRIAL OF PAKISTANI  
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REQUEST FOR THE INDICATION OF INTERIM  
MEASURES OF PROTECTION

ORDER

*Present: President* LACHS; *Judges* FORSTER, GROS, BENGZON, PETRÉN, ONYEAMA, IGNACIO-PINTO, MOROZOV, JIMÉNEZ DE ARÉCHAGA, Sir Humphrey WALDOCK, NAGENDRA SINGH, RUDA; *Registrar* AQUARONE.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court,

Having regard to Article 66 of the Rules of Court,

Having regard to the Application by Pakistan filed in the Registry of the Court on 11 May 1973, instituting proceedings against India in respect of a dispute concerning charges of genocide against 195 Pakistani nationals, prisoners of war or civilian internees, in Indian custody,

*Makes the following Order:*

1. Having regard to the request dated 11 May 1973 and filed in the Registry the same day, whereby the Government of Pakistan, relying on

Article 41 of the Statute and Article 66 of the Rules of Court, asks the Court to indicate, pending the final decision in the case brought before it by the Application of the same date, 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;”

2. Whereas the Government of India was notified by telegram the same day of the filing of the Application and request for indication of interim measures of protection, and of the precise measures requested, and copies of the Application and the request were at the same time transmitted to it by air mail;

3. Whereas, pursuant to Article 40, paragraph 3, of the Statute and Article 37, paragraph 2, of the Rules of Court, copies of the Application were transmitted to Members of the United Nations through the Secretary-General and to other States entitled to appear before the Court;

4. Whereas, pursuant to Article 31, paragraph 2, of the Statute, the Government of Pakistan chose Sir Muhammad Zafrulla Khan to sit as judge *ad hoc*, and he sat in the case until 2 July 1973;

5. Whereas the Governments of Pakistan and India were informed by communications of 14 May 1973 that the Court would in due course hold public hearings to afford the parties the opportunity of presenting their observations on the request by Pakistan for the indication of interim measures of protection, and the opening of such hearings was subsequently fixed for 29 May 1973;

6. Whereas on 28 May 1973, as a result of communications received from the Governments of Pakistan and India, the Court decided to postpone the opening of the public hearings, and subsequently fixed 4 June 1973 as the date for such opening;

7. Whereas by a letter dated 23 May 1973 from the Ambassador of India to the Netherlands, received in the Registry on 24 May 1973, the Government of India declined to consent to the jurisdiction of the Court in the case, and claimed that without such consent the Court could not properly be seised of the case and could not proceed with it, and that there was no legal basis whatever for the jurisdiction of the Court in the case; and whereas in two statements transmitted to the Court with letters

from the Ambassador of India to the Netherlands dated 28 May and 4 June 1973 the Government of India presented a further reasoned statement that the Court had no jurisdiction in the case;

8. Whereas at the opening of the public hearings, which were held on 4, 5 and 26 June 1973, there were present in Court the Agent, Deputy-Agent and counsel of the Government of Pakistan;

9. Having heard the observations on the request for interim measures on behalf of the Government of Pakistan, and the replies on behalf of that Government to questions put by Members of the Court, submitted by His Excellency Mr. J. G. Kharas and Mr. Yahya Bakhtiar, Attorney-General of Pakistan;

10. Whereas in a letter of 11 July 1973 the Agent for Pakistan informed the Court of its expectation that negotiations will take place between Pakistan and India in the near future in which the issues which are the subject of its Application will be under discussion; and whereas in that letter the Government of Pakistan asks the Court to postpone further consideration of its request for interim measures in order to facilitate those negotiations;

11. Whereas in the same letter the Government of Pakistan further asks the Court to fix time-limits for the filing of written pleadings in the case;

12. Considering that it is Pakistan which requested the Court to indicate interim measures of protection on the basis that the circumstances of the case so required;

13. Whereas it is of the essence of a request for interim measures of protection that it asks for a decision by the Court as a matter of urgency, as it is expressly recognized by the Court in Article 66, paragraph 2, of the Rules of Court;

14. Whereas the fact that the Government of Pakistan now asks the Court to postpone further consideration of its request for the indication of interim measures signifies that the Court no longer has before it a request for interim measures which is to be treated as a matter of urgency; and whereas the Court is not therefore called upon to pronounce upon the said request;

15. Having regard to Article 66, paragraph 1, of the Rules of Court which provides that a request for the indication of interim measures of protection may be made at any time during the proceedings in the case in connection with which it is made;

16. Whereas in the circumstances of the present case the Court must first of all satisfy itself that it has jurisdiction to entertain the dispute;

Accordingly,

THE COURT,

by 8 votes to 4,

Decides that the written proceedings shall first be addressed to the question of the jurisdiction of the Court to entertain the dispute;

Fixes as follows the time-limits for the written proceedings:

1 October 1973 for the Memorial of the Government of Pakistan.

15 December 1973 for the Counter-Memorial of the Government of India;

And reserves the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of July one thousand nine hundred and seventy-three, in four copies, one of which will be placed in the archives of the Court, and the others transmitted respectively to the Government of Pakistan, to the Government of India, and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) Manfred LACHS,  
President.

(Signed) S. AQUARONE,  
Registrar.

Judge NAGENDRA SINGH appends a separate opinion to the Order of the Court.

Judge PETRÉN appends a dissenting opinion to the Order of the Court.

(Initialed) M.L.

(Initialed) S.A.

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