

SEPARATE OPINION OF JUDGE NAGENDRA SINGH

While voting with the majority for what in legal effect now constitutes a clear withdrawal by the Applicant of its request for interim measures sought under Article 41 of the Statute of the Court, I have all along felt that in this case, irrespective of the competence of the Court in relation to the Applicant (Pakistan) and the absent non-applicant (India), which aspect will be examined in the second phase, it is patently obvious that the Court has no jurisdiction in relation to Bangla-Desh.

It is well known that Bangla-Desh is a sovereign State recognized by over 90 countries and now a regular member of the several specialized agencies of the United Nations and a distinct member of the international community. The fact remains, however, that without its consent there can be no exercise by the Court of jurisdiction in relation to its rights.

Moreover, from the viewpoint of the Court's adjudication, whether *ad interim* or final, what is vital is the positive pleading of Pakistan that Bangla-Desh and not India is contesting Pakistan's claim to exclusive jurisdiction for the holding of trials of 195 prisoners of war. This is manifest from paragraph 4 of Pakistan's Application, wherein it is stated that "The Government of Pakistan cannot agree to the trial of its prisoners of war by 'Bangla Desh' since Pakistan has exclusive jurisdiction over its nationals in respect of any acts of genocide allegedly committed in Pakistani territory".

It is indeed an elementary and basic principle of judicial propriety which governs the exercise of the judicial function, particularly in inter-State disputes, that no court of law can adjudicate on the rights and responsibilities of a third State (*a*) without giving that State a hearing, and (*b*) without obtaining its clear consent.

Furthermore, it appears to me that the Court has not been in proper seisin of the case from the very beginning and lacks all *prima facie* competence. If that be so, it is regrettable to have instituted a further phase by fixing time-limits for the Parties to plead on the question of jurisdiction.

However, it is true that the Applicant, by its letter of 11 July 1973, requested the Court to agree to postpone the entire case as the Parties were about to enter into negotiations for an amicable settlement of the dispute. As already stated, a request for postponement in relation to interim measures can only have the legal effect of withdrawal, which must take priority over all other considerations, particularly when India had

declined to be present and has, therefore, no say in regard to the request of Pakistan. It is in these circumstances that I voted with the majority for the decision of the Court. While doing so, however, I do hold that the Court, when agreeing to postponement of further consideration of the request for interim measures and finding that it is not therefore called upon to pronounce thereon, should have declined to deal any further with the case, as judicial propriety does not permit the Court to advance any further therein.

(Signed) NAGENDRA SINGH.