

Bangladesh/India/Pakistan, 1974 Agreement

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

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**BANGLADESH – INDIA – PAKISTAN:
AGREEMENT ON THE REPATRIATION OF
PRISONERS OF WAR AND CIVILIAN INTERNEES
[Done at New Delhi, April 9, 1974]
BANGLADESH, INDIA, PAKISTAN,
AGREEMENT SIGNED IN NEW DELHI ON APRIL 9, 1974**

[...]

3. The humanitarian problems arising in the wake of the tragic events of 1971

constituted a major obstacle in the way of reconciliation and normalisation among the countries of the sub-continent. In the absence of recognition, it was not possible to have tripartite talks to settle the humanitarian problems as Bangladesh could not participate in such a meeting except on the basis of sovereign equality. [...]

4. On April 17, 1973, India and Bangladesh [...] jointly proposed that the problem of the detained and stranded persons should be resolved on humanitarian considerations through simultaneous repatriation of all such persons except those Pakistani prisoners of war who might be required by the Government of Bangladesh for trial on certain charges.
5. Following the Declaration there were a series of talks between India and Bangladesh and India and Pakistan. These talks resulted in an agreement at Delhi on August 28, 1973 between India and Pakistan with the concurrence of Bangladesh which provided for a solution of the outstanding humanitarian problems.
6. In pursuance of this Agreement, the process of three-way repatriation commenced on September 19, 1973. So far nearly 300'000 persons have been repatriated which has generated an atmosphere of reconciliation and paved the way for normalisation of relations in the sub-continent.
7. In February 1974, recognition took place thus facilitating the participation of Bangladesh in the tripartite meeting envisaged in the Delhi Agreement, on the basis of sovereign equality. Accordingly, His Excellency Dr. Kamal Hossain, Foreign Minister of the Government of Bangladesh, His Excellency Sardar Swaran Singh, Minister of External Affairs, Government of India and His Excellency Mr. Aziz Ahmed, Minister of State for Defence and Foreign Affairs of the Government of Pakistan, met in New Delhi from April 5 to April 9, 1974 and discussed the various issues mentioned in the Delhi Agreement, in particular the question of the 195 prisoners of war and the completion of the three-way process of repatriation involving Bangalees in Pakistan, Pakistanis in Bangladesh and Pakistani prisoners of war in India. [...]
9. The Ministers also considered steps that needed to be taken in order expeditiously to bring the process of the three-way repatriation to a satisfactory conclusion.
10. The Indian side stated that the remaining Pakistani prisoners of war and civilian internees in India to be repatriated under the Delhi Agreement, numbering

approximately 6,500, would be repatriated at the usual pace of a train on alternate days. [...] It was thus hoped that the repatriation of prisoners of war would be completed by the end of April, 1974.

11. The Pakistan side stated that the repatriation of Bangladesh nationals from Pakistan was approaching completion. The remaining Bangladesh nationals in Pakistan would also be repatriated without let or hindrance.
12. In respect of non-Bangalees in Bangladesh, the Pakistan side stated that the Government of Pakistan had already issued clearances for movement to Pakistan in favour of those non-Bangalees who were either domiciled in former West Pakistan, were employees of the Central Government and their families or were members of the divided families, irrespective of their original domicile. The issuance of clearances to 25,000 persons who constitute hardship cases was also in progress. The Pakistan side reiterated that all those who fall under the first three categories would be received by Pakistan without any limit as to numbers. In respect of persons whose application had been rejected, the Government of Pakistan would, upon request, provide reasons why any particular case was rejected. Any aggrieved applicant could, at any time, seek a review of his application provided he was able to supply new facts or further information to the Government of Pakistan in support of his contention that he qualified in one or other of the three categories. The claims of such persons would not be time-barred. In the event of the decision of review of a case being adverse the Governments of Pakistan and Bangladesh might seek to resolve it by mutual consultation.
13. The question of 195 Pakistani prisoners of war was discussed by the three Ministers, in the context of the earnest desire of the Governments for reconciliation, peace and friendship in the sub-continent. The Foreign Minister of Bangladesh stated that the excesses and manifold crimes committed by these prisoners of war constituted, according to the relevant provisions of the U.N. General Assembly Resolutions and International Law, war crimes, crimes against humanity and genocide, and that there was universal consensus that persons charged with such crimes as the 195 Pakistani prisoners of war should be held to account and subjected to the due process of law. The Minister of State for Defence and Foreign Affairs of the Government of Pakistan said that his Government condemned and deeply regretted any crimes that may have

been committed.

14. In this connection the three Ministers noted that the matter should be viewed in the context of the determination of the three countries to continue resolutely to work for reconciliation. The Ministers further noted that following recognition, the Prime Minister of Pakistan had declared that he would visit Bangladesh in response to the invitation of the Prime Minister of Bangladesh and appealed to the people of Bangladesh to forgive and forget the mistakes of the past, in order to promote reconciliation. Similarly, the Prime Minister of Bangladesh had declared with regard to the atrocities and destruction committed in Bangladesh in 1971 that he wanted the people to forget the past and to make a fresh start, stating that the people of Bangladesh knew how to forgive.
15. In the light of the foregoing and, in particular, having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past, the Foreign Minister of Bangladesh stated that the Government of Bangladesh had decided not to proceed with the trials as an act of clemency. It was agreed that the 195 prisoners of war may be repatriated to Pakistan along with the other prisoners of war now in the process of repatriation under the Delhi Agreement.
[...]

Discussion

1.
 - a. When should the prisoners of war have been repatriated under IHL? Was there a need for an agreement between the parties to implement this repatriation? Was the absence of recognition of Bangladesh by Pakistan an obstacle under IHL to the repatriation of the prisoners of war? (GC III, Art. 118 ^[2]; CIHL, Rule 128(A) ^[3])
 - b. Did Bangladesh have the right not to repatriate prisoners of war who were charged with grave breaches of IHL? Is its decision “not to proceed with the trials as an act of clemency” compatible with its IHL obligation to prosecute or extradite persons alleged to have committed grave breaches? (GC I-IV, Arts 49 ^[4] /50 ^[5]/129 ^[6]/146 ^[7] and 51 ^[8]/52 ^[9]/131 ^[10]/148 ^[11] respectively; GC III, Art. 119(5) ^[12]; CIHL, Rule 128 ^[3])
2. When should the civilian internees have been repatriated under IHL? Was there a

need for an agreement between the parties to implement this repatriation? Was the absence of recognition of Bangladesh by Pakistan an obstacle under IHL to the repatriation of the civilian internees? (GC IV, Arts 133 ^[13] and 134 ^[14]; P I, Art. 85(4)(b) ^[15]; CIHL, Rule 128(B) ^[16])

3. a. Did non-Bangalees in Bangladesh have the right to leave Bangladesh? Those domiciled in former West Pakistan? Those employed by the Central Government of Pakistan? Those who were members of divided families? (GC IV, Arts 26 ^[17], 35 ^[18] and 134 ^[19])
- b. Did Pakistan have an obligation to accept the repatriation of non-Bangalees from Bangladesh who were domiciled in former West Pakistan? Those who were employees of the Central Government of Pakistan? Those who were members of divided families? Was an agreement concerning those repatriations necessary? (GC IV, Arts 26 ^[17], 35 ^[18] and 134 ^[19])

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