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LETTER DATED 14 JANUARY 1972 FROM THE PERMANENT REPRESENTATIVE OF INDIA
TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

With reference to your notes of 26 December 1971 and 1 January 1972, I would wish to inform you of the position, in so far as it relates to my Government, on the various allegations made in the letters dated 21, 25 and 30 December 1971 sent to you by the Permanent Representative of Pakistan.

The allegations regarding large-scale atrocities and mass murders, as well as lawless elements being on the loose in Dacca, are false and untenable. The recent international press reports from Bangla Desh testify to the wildness and exaggeration of these allegations. The Government of India, whose forces are at present in the area on the request of the Bangla Desh Government, are doing their utmost, in co-operation with that Government, to prevent the natural resentment of the people against their former oppressors from erupting into violence. Their efforts in this respect have met with much success, and full facilities have also been given to the International Red Cross to bring help and relief to those who are in need.

The people of Bangla Desh were subjected by the former Pakistan military régime and its collaborators to massive violence and all kinds of brutalities for many months. This continued unabated right up to the surrender of the Pakistan military occupation forces in Bangla Desh. Even in the week preceding the surrender, Pakistani troops, para-military forces and armed organizations like the Badar Bahini and Razakars, committed mass murders, rape and looting all over the country. They systematically liquidated professionals and intellectuals in the cities of Dacca, Khulna and Jessore as late as 15 December 1971. Mass graves of these unfortunate people were discovered by the Bangla Desh and Indian forces soon after they reached these cities. It is a measure of the success with which law and order is being restored in Bangla Desh that natural local anger and resentment over these recent horrible incidents has not led to widespread violence. Instead, the consolidation of normalcy has received a powerful impetus with the return of Prime Minister Sheikh Mujibur Rahman to his people, and we are gratified that the Government of Pakistan have at last released him. While there had earlier been some unfortunate incidents, which received much international publicity, it is noteworthy that they were both few and isolated. Even these few incidents need be seen in the perspective of widespread public resentment following months of massive repression. Prime Minister Sheikh Mujibur Rahman has moreover

called on the people immediately on his return to Bangla Desh, to exercise utmost restraint in spite of their understandable grievance against those who collaborated with the Pakistan army in its campaign of genocide.

Various officials of the former Pakistani military régime in Bangla Desh had resigned and sought refuge in the neutral zones organized under the aegis of the United Nations during the course of the hostilities. After the termination of the hostilities, they were taken into custody by the Joint Command of the Bangla Desh and Indian forces, to safeguard them from possible mob violence and reprisals. According to declarations of the Bangla Desh Government they and others responsible for repression, brutality and genocide would be tried according to the due process of law and provided with facilities for their defence as required by law. Pending their trial they will continue to be safeguarded from mob violence and reprisals.

In this connexion, the view of the Government of India is that such persons against whom there may be sufficient evidence of their having committed grave crimes such as genocide, war crimes and crimes against humanity could not be given the immunity of the ICRC's Neutral Zones organized under the aegis of the United Nations especially after the termination of hostilities. They are not entitled to any such immunity under any of the Geneva Conventions. The Joint Command of the Bangla Desh and Indian forces has the right to demand their evacuation on behalf of the Government of Bangla Desh, so that they could be taken into custody pending appropriate legal action under the law of the land and under international law.

As regards the responsibility of the Government of India under the Geneva Convention relating to Civilians, 1949, in the view of my Government, after the general termination of military operations since 17 December 1971, the Convention relating to civilians ceases to apply in view of the provisions of article 6 thereof.

The territory of Bangla Desh is now within the effective control and administration of the Government of Bangla Desh which India has recognized. Bangla Desh is not an occupying Power in its own territory, nor is India an occupying Power in Bangla Desh. Indian forces are in Bangla Desh at the request of the Bangla Desh Government.

Subject to this general legal position the Government of India will continue to respect all humanitarian norms and protect life and property about which it has already given unilateral assurances to all concerned. However, this responsibility has to be discharged within the practical limitations arising from the effective control of the Government of Bangla Desh over its entire territory.

Under the Geneva Conventions whether relating to prisoners of war or relating to civilians, immunity is guaranteed to the prisoners of war or to protected persons from trial by competent courts for the offences committed by them prior to capture or protection. It is well-known that offences, including war crimes and

crimes against humanity, were committed by the occupying armed forces of Pakistan and its officials and other agents in Bangla Desh during the period of hostilities between 3 December and 16 December 1971, and in the preceding months. Pakistan, being a party to the Geneva Conventions as well as the Convention on Genocide, 1948, should be aware of its responsibility as well as of the responsibility of its armed forces, public officials or private individuals for these offences, whether they are committed in time of peace or in time of war. Even if it is assumed that the status of hostilities between the occupying forces of Pakistan in Bangla Desh and the Mukti Bahini, between 25 March 1971 and 3 December 1971, was that of a conflict not of an international character, Pakistan was still bound by the provisions of article 3 of the Geneva Convention relating to prisoners of war as well as the convention relating to civilians. It is clear that the obligations arising under article 3 were violated in relation to the people of Bangla Desh, and it would, thus, be within the sovereign right of the People's Republic of Bangla Desh to bring the guilty persons to account by trials in competent courts following fair procedures and ensuring the accused full opportunity for defending themselves.

It has been alleged that the Indian and Bangla Desh forces have surrounded the towns of Mohammadpur and Mirpur on the outskirts of Dacca to harass and commit violence against ethnic minorities inhabiting these towns. This allegation is baseless. The fact is that a large number of collaborators of the former Pakistani military régime, including members of Razakars and Badar Bahini organizations, fortified themselves in these towns which are also inhabited by ethnic minorities. There was an imminent danger of violence from the local population against these persons, who had been responsible for carrying out genocide and repression over the last nine months.

The Bangla Desh and the Indian forces cordoned these towns in order to protect the population from mob violence and also to disarm the Razakars and Badar Bahini members. Food and medicines were and are being allowed to enter these towns, through the International Red Cross as well as through other channels. The search operations undertaken in these towns resulted in the unearthing of huge quantities of ammunition, grenades, 2" and 3" mortars, machine-guns, recoilless rifles and other arms. It should be noted that the refusal of the Razakars and the Badar Bahini members to surrender to the Bangla Desh and Indian armed forces was in contravention of the Instruments of Surrender which the Commander of the Pakistani forces signed while surrendering his troops and para-military organizations to the Indian and Bangla Desh forces on 18 December 1971.

While giving the above comments, my Government is of the view that the comments of the Government of Bangla Desh must also be obtained. We note in this connexion that the Special Representative of the Secretary-General has recently visited Bangla Desh. We are convinced that for any fruitful discussion of such subjects, the participation of the Government of Bangla Desh is essential.

It is requested that this letter may kindly be circulated as a Security Council document.

(Signed) S. SEN