



## Jadhav (India v. Pakistan)

**ARGUED: 20 November 2022**

**DECIDED: 21 November 2022**

1 The Majority opinion was signed by and agreed to by Justice Christopherson of the United Arab Emirates,  
2 Justice Tuck of Greece, Justice Pando of China, Justice Gillson of Djibouti, Justice Preston of Ethiopia, Justice  
3 Nigro of Italy, Justice Kilkelly of Ukraine, Justice French of Uzbekistan, Justice Fetter of Ecuador, Justice Pineda  
4 Gomez of Australia, Justice Hardesty of Jamaica, and Justice Krouss of the Netherlands.

5 *Summary of the History of Proceedings:*

6 On May 8th 2017, the Republic of India (hereinafter referred to as “India”) filed an application to the Court  
7 to begin proceedings against the Islamic Republic of Pakistan (hereinafter referred to as “Pakistan”) regarding alleged  
8 violations of the Vienna Convention on Consular Relations of 1963. Mr. Kulbhushan Sudhir Jadhav was arrested  
9 and detained on March 3rd, 2016 by Pakistani officials. On May 18th, 2017 this Court granted Mr. Jadhav a stay  
10 of execution until the case could be heard and decided. On November 20th, 2022, the Court heard oral arguments  
11 from India and Pakistan on this matter. India contends that Pakistan breached the Vienna Convention on Consular  
12 Relations by detaining Mr. Jadhav, an Indian national, and failing to allow contact between Mr. Jadhav and Indian  
13 consular officers to arrange for his legal representation. During Mr. Jadhav’s detainment, Pakistani officials released  
14 a video of Mr. Jadhav’s confession to espionage and terrorism. A Pakistani military tribunal subsequently sentenced  
15 Mr. Jadhav to death. India has asked the Court to “take all measures at its disposal to prevent the execution of  
16 Jadhav,[...] deem the unilateral sentencing of an Indian national in a Military Court unlawful,[...]and annul Jadhav’s  
17 sentence.” Pakistan requests that this Court acknowledges “that every sovereign state has the right to prosecute and  
18 take action against any individual from other states that comes into another state with the intention of deliberately  
19 causing harm through direct or indirect means on the behalf of another state.”

20 *Summary of Relevant Facts:*

21 On March 3rd, 2016, Mr. Kulbhushan Sudhir Jadhav (Jadhav) was taken into Pakistani custody on the basis  
22 of espionage and terrorism. On March 25th, Pakistan’s Foreign Secretary informed the Indian High Commissioner  
23 that Mr. Jadhav was in the custody of the Pakistani government. On the same day, India sought consular access to  
24 Mr. Jadhav. This and 14 subsequent requests made by India were ignored. While in Pakistani custody, Mr. Jadhav  
25 confessed to the charges of espionage and terrorism. After almost ten months after the initial consular request,  
26 Pakistan responded by requesting India’s help with their investigation into Mr. Jadhav.

27 Pakistan tried Mr. Jadhav in their Military court, Field General Court Martial, and found him guilty of  
28 espionage and terrorism. He was sentenced to death. Before an appeal could be filed, General Qamar Javed Bajwa,  
29 a high-ranking Pakistani government official, endorsed the conviction and sentence.

30 *Summary of Jurisdiction:*

31 The Court bases its jurisdiction on Article 36, Section 1 of the Statute of the Court, and Article 1 of the  
32 Optional Protocol to the Vienna Convention on Consular Access concerning the Compulsory Settlement of Disputes.  
33 Since the Court has been asked to interpret and analyze the Vienna Convention on Consular Relations of 1963  
34 (hereafter referred to as “the Vienna Convention”), the Court has jurisdiction to form an opinion on this case.

35 The Agreement on Consular Access between the Government of the Islamic Republic of Pakistan and the  
36 Government of the Republic of India of 2008 (hereafter referred to as “the 2008 agreement”) does not fall within  
37 the Court’s jurisdiction based on Article 36, Section 1, as the Court’s jurisdiction is not specially provided for in the  
38 2008 agreement. However, the lack of explicit recognition of the Court’s jurisdiction is not of issue here due to the  
39 complementary nature of the 2008 agreement to the Vienna Convention. The Court has ruled the Vienna Convention,

40 which deals with issues of consular access between two states, admissible in this case. The 2008 agreement solely  
41 concerns consular relations between India and Pakistan, and therefore this Court has deemed it complementary to  
42 the Vienna Convention and decides, under Article 36, Section 6 of the Statute of the Court, that we have jurisdiction  
43 to hear challenges arising from the agreement.

44 Pakistan contended that the Court did not have jurisdiction to hear challenges arising from the Vienna  
45 Convention, as it was their belief that the 2008 agreement nullified the Vienna Convention. However, the Court  
46 believes that the 2008 agreement was made in accordance with Article 73 of the Vienna Convention and that the  
47 two treaties are not in conflict. Therefore, we find that the 2008 agreement does not nullify Pakistan's international  
48 obligation under the Vienna Convention.

49 India also asked the Court to consider the rights provided in Article 14 of the International Covenant of  
50 Civil and Political Rights (ICCPR). The Dissenting Opinion argues that this Court lacks jurisdiction in this case to  
51 issue opinions on the ICCPR and the rights it guarantees to Mr. Jadhav due to the lack of explicit recognition of  
52 the Court's jurisdiction in the text of the ICCPR. We reject this textual interpretation of the fundamental human  
53 rights outlined in the Covenant, and instead believe that Article 36 Section 1(b) of the Vienna Convention on  
54 Consular Relations should be read through the lens of the International Human Rights regime, to which the ICCPR  
55 is a foundational document. This idea was first developed by Advisory Opinion No. 16 of the Inter-American  
56 Court of Human Rights (IACtHR) which held that "Article 36 of the 1963 VCCR recognizes to the foreigner under  
57 detention individual rights, among which the right to information on consular assistance, as true human rights to  
58 which correspond duties incumbent upon the receiving State." The IACtHR Advisory Opinion put forth the idea  
59 that the right to information on consular assistance, including the right to due process outlined in Article 14 in the  
60 ICCPR, was part and parcel of the international human rights legal regime. This Court agrees with the analysis of  
61 the IACtHR, and holds under Article 36, Section 6 of the Statute of the Court that the Court has jurisdiction to  
62 hear arguments arising from the ICCPR.

63 *The Opinion of the Court is as follows:*

64 Having ratified the Vienna Convention on Consular Relations, both India and Pakistan are bound by the  
65 obligations set forth in the Convention. Under Article 35, Section 1 of the Convention, "the receiving State shall  
66 permit and protect freedom of communication on the part of the consular post for all official purposes..." As was  
67 elaborated through arguments, the Indian Counsel was denied the ability to speak to Mr. Jadhav fifteen different  
68 times before communication was established. Under Article 36, Section 1(b) of the Convention, contracting Parties  
69 are obligated to "inform the consular post of the sending State if, within its consular district, a national of that State  
70 is arrested or committed to prison or to custody pending trial or is detained in any other manner." This article in  
71 the case of Mr. Jadhav goes in hand with Article 42 of the Convention which states that, "in the event of the arrest  
72 or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against  
73 him, the receiving State shall promptly notify the head of the consular post." As previously discussed, Pakistan only  
74 informed India of their detainment and subsequent trial of Mr. Jadhav more than a year after his initial detainment,  
75 which the Court considers an undue delay in the application of these articles.

76 In addition to the Vienna Convention on Consular Relations, India and Pakistan entered into a 2008 bilateral  
77 agreement that governs consular relations between the two countries. Article II of this agreement requires "immediate  
78 notification of any arrest, detention or imprisonment of the other country shall be provided to the respective High  
79 Commission"; Article III requires "each government undertakes to expeditiously inform the other of the sentences  
80 awarded to the convicted nationals of the other country"; Article IV requires "each government [to] provide consular  
81 access within three months to nationals of one country under arrest, detention, or imprisonment in the other other  
82 country"; and Article VII requires each government "in case of arrest, detention or sentence made on political or  
83 security grounds, each side may examine the case on its merits." India alleges that Pakistan has failed to uphold its  
84 obligation under the aforementioned articles by failing to provide notice of the arrest and detention of Mr. Jadhav  
85 for longer than the stipulated three months. India sent its initial communication to Pakistan on March 25, 2016  
86 requesting consular access to Mr. Jadhav under the Vienna Convention and the bilateral agreement. This request  
87 and 14 other subsequent requests went unanswered. On April 10, 2017, over a year after India's initial request,  
88 Pakistan sent notice to India of Jadhav's detention, trial, and sentence to death. This Court condemns Pakistan's  
89 failure to fulfill its obligations under international law, and finds that the Islamic Republic is in blatant violation of  
90 the 2008 Bilateral Agreement and that India is entitled to remedies.

91 The Court now turns to India's argument that Pakistan violated Mr. Jadhav's rights to due process, access  
92 to legal assistance, and the right not to be compelled to testify against oneself, as provided by Article 14 of the  
93 ICCPR. As noted above, the Court believes that Article 36(b) of the Vienna Convention on Consular Relations

94 implicates the larger international human rights legal regime and the ICCPR. Because of this, the Court believes  
95 it is appropriate to analyze the actions of Pakistan under their obligations of the ICCPR. It is the opinion of this  
96 Court that trying Mr. Jadhav in a military court and sentencing him to death is a grave violation of the due process  
97 guaranteed by the ICCPR. Additionally, this Court believes that the nature of Mr. Jadhav's trial deprived him of  
98 his right to access legal counsel. Finally, this Court also finds that the physical and mental state of Mr. Jadhav, as  
99 observed by his wife and mother, is indicative of his treatment while being detained by Pakistani military authorities.  
100 The deteriorated state of Mr. Jadhav is evidence enough for this Court that his confession was possibly made under  
101 duress, and therefore in violation of his right to not self-incriminate under the ICCPR.

102 The Court also acknowledged that the decisions made in cases such as *Avena (Mexico v. United States)*,  
103 and *LaGrand (Germany v. United States)* are relevant to the decisions being made. Both of these cases regard the  
104 Vienna Convention on Consular Relations and their decisions led to the affirmation of actions that are to be upheld  
105 by states such as: the need to inform without undue delay the rights of foreign nationals to their consul, access to a  
106 consul of their home state, and reiterates that there is no exception for espionage under the Vienna Convention on  
107 Consular Relations.

108 In the case of *LaGrand*, the Court takes into consideration the ruling which advises a sovereign state to  
109 review their due processes to allow for review and reconsideration of cases where it applies. This ruling was made  
110 with the intention of preventing further international complications upon the detainment of a foreign national and  
111 its application is relevant to the consideration of the decision made by the Court in this opinion.

112 Pakistan argued that because Jadhav was arrested for espionage and terrorism charges, that Pakistan is not  
113 beholden to the provisions of the Vienna Convention. However, the Court recalls the opinions of the *Avena* case,  
114 that alleged espionage charges do not free a State from its international obligations. The Court further rules that,  
115 the offense and the grounds on which a foreign national is arrested do not affect States' international obligations  
116 under relevant treaties of consular law.

117 This Court has determined that Pakistan has violated its obligations under the Vienna Convention on  
118 Consular Relations and the 2008 India-Pakistan bilateral agreement, and now turns to the question of appropriate  
119 remedies for India. In its memorial India asked the Court to provide three remedies:

- 120 1. To take all measures at its disposal to prevent the execution of Jadhav,
- 121 2. Deem the unilateral sentencing of an Indian national in a Military Court unlawful and,
- 122 3. Annul Jadhav's sentence.

123 To determine if it is appropriate for this Court to grant India its desired remedies, we must examine the  
124 founding documents of this Court and look into the founding principles of the United Nations. Under the UN  
125 Charter the International Court of Justice was established as the highest judicial body within the United Nations,  
126 responsible for hearing contentious cases between Member States and issuing Advisory Opinions on general questions  
127 of international law. The judicial authority of the Court, however, must be balanced against the founding principle  
128 of national sovereignty enshrined in Article 2 of the UN Charter. Respecting the "sovereign equality" of all member  
129 states is the bedrock principle of the United Nations and all of its respective bodies, including this Court, and must  
130 be upheld in all actions taken by UN bodies. India's second and third requests are incongruent with the notion of  
131 sovereign equality; this Court has never had, and will never have, authority to overrule or nullify decisions made by  
132 domestic courts of Member States. Due to the Court's status as a UN body we are unable to grant two of the three  
133 remedies requested by India; we can only advise and recommend appropriate future actions of the Government of  
134 Pakistan with respect to Mr. Jadhav.

135 *Therefore, the Court advises the following:*

- 136 First, that Pakistan finds an appropriate remedy for breaching its international obligations.
- 137 Second, that Pakistan allows the review and reconsideration of the conviction and sentence by a higher  
138 Pakistani Court, taking into account the violation of the rights set forth in the Conventions.
- 139 Third, that Pakistan continues Mr. Jadhav's stay of execution until his case can be reviewed by the higher  
140 Pakistani Court. This way Mr. Jadhav will have the opportunity to have his case heard while being granted the  
141 rights guaranteed under the Vienna Convention and India and Pakistan's 2008 bilateral agreement.

142 Fourth, that Pakistan should provide an assurance to India that it will not repeat its unlawful acts and that,  
143 in any future cases of detention of or criminal proceedings against Indian nationals, Pakistan will ensure in law and

144 practice the effective exercise of the rights provided by the Vienna Convention on Consular Relations.

Signed By



---

Justice Abby Fetter



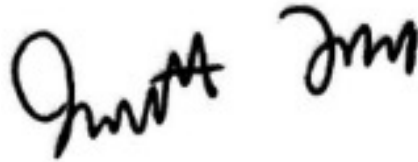
---

Justice Christopher French



---

Justice Connor Kilkelly



---

Justice Jarrett Krouss



---

Justice Jess Gillson



---

Justice Juan Pineda Gomez



---

Justice Julian Pando



---

Justice Matthew Nigro



---

Justice Michaelyn Preston



---

Justice Owen Hardesty



---

Justice RyLeigh Christopherson



---

Justice Madison Tuck