

INTERNATIONAL COURT OF JUSTICE

THE REPUBLIC OF INDIA

APPLICANT

V.

THE ISLAMIC REPUBLIC OF PAKISTAN

RESPONDENT

MEMORIAL OF THE REPUBLIC OF INDIA

COMES NOW the Republic of India stating the following for their Memorial to the Court:

STATEMENT OF LAW

1. The Vienna Convention on Consular Relations, ratified by both India and Pakistan, ensures in Article 36 free communication with nationals of the sending State, the provision of information on arrests and imprisonment of nationals upon request, the right to visit imprisoned nationals of the sending State, and the fulfilment of these rights even when considering the laws and regulations of the receiving state.
2. The Statute of the International Court of Justice empowers the Court in Article 41 to indicate provisional measures that should be taken to preserve the respective rights of either party.
3. The Rules of the International Court of Justice allows any party to request provisional measures at any time during the course of the court proceedings and prioritizes provisional measures over all other cases in Articles 73 and 74.
4. The Court has indicated provisional measures on the basis of a violation of Article 36 of the Vienna Convention on Consular Relations in three previous cases: *Paraguay v. United States of America*, *Germany v. United States of America*, and *Mexico v. United States of America*.
5. The International Covenant on Civil and Political Rights (ICCPR) ensures the right to life in Article 6 and the right for people charged with a criminal offense to be informed of the nature and cause of the charge against them in a language they understand, adequate time and facilities for communication with counsel of their choosing, to be tried in the presence of the legal assistance of their choosing, and to not be compelled to testify against themselves or confess guilt in Article 14, paragraph 3.
6. The 2008 Bilateral Agreement on Consular Access between India and Pakistan guarantees immediate notification of arrest, detention, or imprisonment of any person of the other country to the respective High Commissioner, the provision of consular access within three months of nationals under arrest, detention, or imprisonment in the other country, and compassionate and humanitarian considerations.

7. The Pakistan Army Act (1952) contains a provision that gives the federal government the power to annul the proceedings of any court martial on the ground that they are illegal or unjust.

STATEMENT OF JURISDICTION

1. The Statute of the International Court of Justice states in Article 36, paragraph 1 that “the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for the Charter of the United Nations or in treaties and conventions in force.”
2. The Statute of the International Court of Justice awards in Article 36, paragraph 2 jurisdiction to the Court in all legal disputes concerning treaty interpretations, questions of international law, the existence of “any fact” that breaches international obligation, and reparations made for the breach.
3. The Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes states in Article 1 that “disputes arising out of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

STATEMENT OF FACTS

1. An Indian national, Mr. Kulbhushan Sudhir Jadhav (Jadhav) was “arrested” on 3 March 2016. On 25 March 2016, India received information regarding the “arrest” when Pakistan’s Foreign Secretary raised the matter with the Indian High Commissioner in Islamabad. Jadhav was kidnapped from Iran where he resided and worked after retiring from the Indian Navy. The reason for his presence in Pakistan is unclear; Pakistani authorities refuse to speak on this matter. Our first step in the process of seeking clarity would have been to obtain consular access to interview Jadhav. On 31 March 2017, India clarified this position to Pakistan, saying “consular access to Jadhav would be an essential pre-requisite in order to verify the facts and understand the circumstances of his presence in Pakistan.”
2. India immediately sought consular access to Jadhav on that very day, 25 March 2016. Although 2008 Bilateral Agreement on Consular Access required the granting of consular access, India’s request evoked no response. India sent fourteen subsequent reminders on 30 March 2016, 6 May 2016, 10 June 2016, 11 July 2016, 26 July 2016, 22 August 2016, 3 November 2016, 19 December 2016, 3 February 2017, 3 March 2017, 31 March 2017, 10 April 2017, 14 April 2017, and 19 April 2017. Pakistan has acted in brazen violation of the rights of the accused and of the rights of India under the Vienna Convention by repeatedly declining of consular access.
3. After nearly ten months after India’s first request for consular access, on 23 January 2017, India received a request from Pakistan claiming to seek assistance in an

investigation described as “FIR No. 6 of 2016.” According to the Pakistan Code of Criminal Procedure, the expression “FIR” refers to “First Information Report,” which is a report registered when the police are first information of the commission of a crime. Pakistan registered this “FIR” against “an Indian national,” therefore verifying the identity of Jadhav. The report from Pakistan portrayed a purported “confession” by Jadhav, which serves as the singular basis of “evidence” against him.

4. India received word that Jadhav was tried by Military Court and sentenced to death on 10 April 2017. It is clear the trial is farce and mockery of due process; before Jadhav could file an appeal, a high-ranking official of the government endorsed the correctness of his sentence and conviction. The European Parliament has censured Military Courts in Pakistan and “deplores the use in Pakistan of military courts that hold hearings in secret and have civilian jurisdiction...underscores that third country nationals brought to trial must be allowed access to consular services and protections.”
5. The elderly parents of Jadhav applied for visas on 25 April 2017 through the offices of the Ministry of External Affairs of the Union of India. Pakistan allowed for the meeting with his mother and wife to take place on 25 December 2017; however, Pakistan’s conduct surrounding the meeting was deceptive. India asked Pakistan multiple times to ensure that Jadhav’s family members experienced safety in Pakistan. Pakistan guaranteed their safety and the allowance of the presence of an Indian diplomat. However, Pakistan separated Jadhav’s family from the diplomat during the meeting, forced the women to change clothes into Pakistani attire, and hindered communication by forbidding the speaking of their mother tongue. Upon return, his mother reported depletion of Jadhav’s health and well-being.

ARGUMENTS

1. Pakistan has blatantly violated its obligations to the Vienna Convention on Consular Access and other documents of international agreement. Pakistan will continue to disregard the obligations they are legally bound to, denying an Indian national the rights they agreed to ensure them.
2. The International Court of Justice has supreme jurisdiction over *India v. Pakistan* as stated in the Statute of the Courts and the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes.

REQUESTS

India urges the Court to:

1. Take all measures at its disposal to prevent the execution of Jadhav.
2. Deem the unilateral sentencing of an Indian national in a Military Court unlawful. Pakistan’s criminal justice system by way of trial in the Military Courts does not satisfy

the minimum standards of due process in its application to civilians. The trial held by Military Courts has failed to satisfy the standards recognized by the international community.

3. Annul Jadhav's sentence. The egregious violations of international law set out in the Vienna Convention and the ICCPR, among other agreements, and the conviction and sentence of Jadhav in a Military Court based on a "confession" is illegal and unjust. This request has basis in the Pakistan Army Act (1952).