

IN THE INTERNATIONAL COURT OF JUSTICE

**THE REPUBLIC OF INDIA,
APPLICANT**

V.

**THE ISLAMIC REPUBLIC OF PAKISTAN,
RESPONDENT**

MEMORIAL OF THE ISLAMIC REPUBLIC OF PAKISTAN

COMES NOW the Islamic Republic of Pakistan and for their Memorial to the Court states the following:

STATEMENT OF LAW:

1. “The Anti-Terrorism Act (ATA), Pakistan’s primary anti-terrorism legislation, was promulgated in 1997. The legislative intent underpinning the ATA was to increase the power of law enforcement agencies to prevent and investigate terrorism and create special courts to expedite trials of terrorist suspects.” This act supports the ability to remove individuals believed to be a terrorist.

STATEMENT OF FACT:

On 3 March 2016 Mr. Kulbhushan Sudhir Jadhav was arrested on suspicion of espionage and terrorism. He was arrested while attempting to cross the border from Balochistan to Pakistan. On 25 March 2016, India was informed of the arrest, but was unable to go through with consular access to Jadhav. India attempted to meet Jadhav who was in Pakistan custody. Due to the nature of the crime an investigation took place. On 23 January 2017, Pakistan requested India’s assistance in the FIR No. 6 of 2016 investigation. The request pertained to a criminal complaint registered against a supposed Indian National on 8 April 2016. The charges of terrorism were included in the investigations against National Security Adviser Ajit Doval and then chiefs of Intelligence Bureau and the Research and Analysis Wing.

On 3 February 2017 India protested against the continued denial of consular access. In the same manner that the applicant insisted this was a matter of great urgency, Pakistan could not help but do what was immediately necessary to ensure the national safety of its inhabitants. Pakistan is under threat by the presence of Jadhav. In the letter that India received was also an admission of guilt. India raised the concern of Jadhav’s safety, and stated that Jadhav was pressured to confess. Jadhav was allowed counsel when India was going to cooperate on the investigation. On 10 April 2017, the spy was tried through Field General Court Martial (FGCM)

under Pakistan Army Act and awarded the death sentence. General Qamar Javed Bajwa has confirmed his death sentence awarded by FGCM.

Whether the verdict declares Pakistan guilty or not, it holds great implications on whether each state has the right to condemn under their respective law on national security.

STATEMENT OF JURISDICTION

1. Under article 1 of the Compulsory Settlement of Disputes Vienna 1963, “*dispute arising out of the interpretation or application of the convention shall lie within the compulsory jurisdiction of the International Court of Justice.*” The exchanges between India and Pakistan regarding the present situation have caused nothing but grief on either side. With the intent to follow the law it would be wise to consult a third party that is reputable and fair. No entity demonstrates this more than the international community, the international court of justice specifically.
2. Pakistan acknowledges and respects the applicant’s decision to apply for International Court of Justice counsel on the events that took place between our respective states beginning in March 2016 with the arrest of Kulbhushan Jadhav. It would be in the best interest of sovereign states that this matter is resolved peacefully.

ARGUMENTS

1. Referring to the 2004 Avena judgment, Pakistan claimed that the court had made an observation on the need for Mexico to prove the nationality of 52 persons. Commander Jadhav entered Pakistan in possession of an authentic Indian passport clothed with a false Muslim identity.
2. Jadhav was in custody in obligation to prevent genocide (Article I) which has an extraterritorial scope.
3. India is more developed than Pakistan. Economically speaking India has more loss if this appeal were to be in favor of Pakistan.
4. Pakistani people were forcibly removed from their home lands in India and forced to move to what is now Pakistan
5. Samjhauta attacks in 2001 killing 43 pakistani citizens

SUMMARY AND REQUESTS

Acknowledging that India believed that this situation involving Jadhav was a matter of great urgency. Pakistan requests that there is acknowledgement that every sovereign state has the right to prosecute and take action against any individual from other states that comes into another state with the intention of deliberately causing harm through direct or indirect means on the behalf of another state.