



INTERNATIONAL COURT OF JUSTICE

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Press Release

Unofficial

No. 2017/16

9 May 2017

The Republic of India institutes proceedings against the Islamic Republic of Pakistan and requests the Court to indicate provisional measures

THE HAGUE, 9 May 2017. On 8 May 2017, the Republic of India instituted proceedings against the Islamic Republic of Pakistan, accusing the latter of “egregious violations of the Vienna Convention on Consular Relations” (hereinafter the “Vienna Convention”) in the matter of the detention and trial of an Indian national, Mr. Kulbhushan Sudhir Jadhav, sentenced to death by a military court in Pakistan.

The Applicant contends that it was not informed of Mr. Jadhav’s detention until long after his arrest and that Pakistan failed to inform the accused of his rights. It further alleges that, in violation of the Vienna Convention, the authorities of Pakistan are denying India its right of consular access to Mr. Jadhav, despite its repeated requests. The Applicant also points out that it learned about the death sentence against Mr. Jadhav from a press release.

India submits that it has information that Mr. Jadhav was “kidnapped from Iran, where he was carrying on business after retiring from the Indian Navy, and was then shown to have been arrested in Baluchistan” on 3 March 2016, and that the Indian authorities were notified of that arrest on 25 March 2016. It claims to have sought consular access to Mr. Jadhav on 25 March 2016 and repeatedly thereafter.

According to the Applicant, on 23 January 2017, Pakistan requested assistance in the investigation of Mr. Jadhav’s alleged “involvement in espionage and terrorist activities in Pakistan” and, by a Note Verbale of 21 March 2017, informed India that “consular access [to Mr. Jadhav would] be considered in the light of the Indian side’s response to Pakistan’s request for assistance in [the] investigation process”. India claims that “linking assistance to the investigation process to the grant[ing] of consular access was by itself a serious violation of the Vienna Convention”.

India accordingly “seeks the following reliefs:

- (1) [a] relief by way of immediate suspension of the sentence of death awarded to the accused[;]
- (2) [a] relief by way of restitution in interregnum by declaring that the sentence of the military court arrived at, in brazen defiance of the Vienna Convention rights under Article 36, particularly Article 36[,] paragraph 1 (b), and in defiance of elementary human rights of an accused which are also to be given effect as mandated under Article 14 of the 1966 International Covenant on Civil and Political Rights, is violative of international law and the provisions of the Vienna Convention[;] and

- (3) [r]estraining Pakistan from giving effect to the sentence awarded by the military court, and directing it to take steps to annul the decision of the military court as may be available to it under the law in Pakistan[;]
- (4) [i]f Pakistan is unable to annul the decision, then this Court to declare the decision illegal being violative of international law and treaty rights and restrain Pakistan from acting in violation of the Vienna Convention and international law by giving effect to the sentence or the conviction in any manner, and directing it to release the convicted Indian National forthwith.”

As the basis for the Court’s jurisdiction, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court, by virtue of the operation of Article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes of 24 April 1963.

On 8 May 2017, India also filed a Request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court. It is explained in that Request that the alleged violation of the Vienna Convention by Pakistan “has prevented India from exercising its rights under the Convention and has deprived the Indian national from the protection accorded under the Convention”.

The Applicant states that Mr. Jadhav “will be subjected to execution unless the Court indicates provisional measures directing the Government of Pakistan to take all measures necessary to ensure that he is not executed until th[e] Court’s decision on the merits” of the case. India points out that Mr. Jadhav’s execution “would cause irreparable prejudice to the rights claimed by India”.

India further indicates that the protection of its rights is a matter of urgency as “[w]ithout the provisional measures requested, Pakistan will execute Mr. Kulbhushan Sudhir Jadhav before th[e] Court can consider the merits of India’s claims and India will forever be deprived of the opportunity to vindicate its rights”. The Applicant adds that it is possible that the appeal filed by the mother of the accused on his behalf may soon be disposed of.

India therefore requests that, “pending final judgment in this case, the Court indicate:

- (a) [t]hat the Government of the Islamic Republic of Pakistan take all measures necessary to ensure that Mr. Kulbhushan Sudhir Jadhav is not executed;
- (b) [t]hat the Government of the Islamic Republic of Pakistan report to the Court the action it has taken in pursuance of sub-paragraph (a); and
- (c) [t]hat the Government of the Islamic Republic of Pakistan ensure that no action is taken that might prejudice the rights of the Republic of India or Mr. Kulbhushan Sudhir Jadhav with respect of any decision th[e] Court may render on the merits of the case”.

Referring to “the extreme gravity and immediacy of the threat that authorities in Pakistan will execute an Indian citizen in violation of obligations Pakistan owes to India”, India urges the Court to deliver an Order indicating provisional measures immediately, “without waiting for an oral hearing”. The Applicant further requests that the President of the Court, “exercising his power under Article 74, paragraph 4[,] of the rules of the Court, pending the meeting of the Court . . . direct the Parties to act in such a way as will enable any Order the Court may make on the Request for provisional measures to have its appropriate effects”.

Note: The Court's press releases are prepared by its Registry for information purposes only and do not constitute official documents.

The full text of the Application and Request will be available shortly on the Court's website (www.icj-cij.org).

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The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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