



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel.(31-70-302 23 23). Cables: Intercourt, The Hague.  
Telefax (31-70-364 99 28). Telex 32323. Internet address : <http://www.icj-cij.org>

**Communiqué**  
unofficial  
for immediate release

No. 2000/19  
21 June 2000

## Aerial Incident of 10 August 1999 (Pakistan v. India)

### The Court declares that it has no jurisdiction to adjudicate upon the dispute

THE HAGUE, 21 June 2000. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today declared that it had no jurisdiction to adjudicate upon the dispute brought before it by Pakistan against India in the case concerning the Aerial Incident of 10 August 1999 (Pakistan v. India).

The decision was taken by a vote of fourteen to two. Since the Court included on the Bench no judge of the nationality of Pakistan or India, the two States had each appointed a judge ad hoc.

### Background information

On 21 September 1999, the Islamic Republic of Pakistan instituted proceedings before the Court against the Republic of India in respect of a dispute concerning the destruction on 10 August 1999 of a Pakistani aircraft. As a basis for the Court's jurisdiction, Pakistan invoked in its Application Article 36, paragraphs 1 and 2, of the Statute of the Court and the declarations whereby both States have accepted the compulsory jurisdiction of the Court.

In a letter dated 2 November 1999, India stated that it had "preliminary objections to the assumption of jurisdiction by the . . . Court . . . on the basis of Pakistan's Application".

After a meeting held on 10 November 1999 by the then President of the Court, Judge Schwebel, with the Parties, the latter agreed to request the Court to determine separately the question of the Court's jurisdiction before any proceedings on the merits of the case. The Court fixed time-limits for the filing of written pleadings by the Parties and hearings on the issue of the Court's jurisdiction were held from 3 to 6 April 2000.

### Reasoning of the Court

The Court notes that to found the jurisdiction of the Court in this case, Pakistan relied in its Memorial on Article 17 of the General Act for Pacific Settlement of International Disputes, signed in Geneva on 26 September 1928, on the declarations of acceptance of the compulsory jurisdiction of the Court made by the Parties and on paragraph 1 of Article 36 of the Statute of the Court. The Court examines these bases of jurisdiction in turn.

The Court first points out that British India acceded on 21 May 1931 to the General Act of 1928. It observes that India and Pakistan have made lengthy submissions on the question whether the General Act of 1928 had survived the demise of the League of Nations and, if that was the case, if the two States had become parties to the Act on their accession to independence. Referring to a communication addressed by the Indian Government to the United Nations Secretary-General on 18 September 1974 in which it stated that it "never regarded [itself] as bound by the General Act of 1928 since [its] Independence in 1947, whether by succession or otherwise", the Court concludes that

India cannot be regarded as having been party to the said Act at the date when the Application was filed by Pakistan and that this convention does not form a basis of jurisdiction.

The Court then turns to the declarations of acceptance of the compulsory jurisdiction of the Court made by the two States. It observes that India's declaration contains inter alia a reservation according to which "disputes with the government of any State which is or has been a Member of the Commonwealth of Nations" are excluded from the Court's jurisdiction. The Court recalls that its jurisdiction only exists within the limits within which it has been accepted and that the right of a State to attach reservations to its declaration constitutes a recognized practice. It adds that, whatever may have been the reasons which led India to limit the scope of its acceptance of the compulsory jurisdiction of the Court in the way it did, the Court is bound to apply this limitation. Accordingly, the Court cannot accept Pakistan's arguments that India's reservation would be "extra-statutory" or obsolete. Pakistan being a member of the Commonwealth, it follows that the Court has no jurisdiction to entertain the Application on the basis of the declarations made by the two States.

The Court examines, thirdly, the last basis of jurisdiction invoked by Pakistan, that is to say, paragraph 1 of Article 36 of the Statute, according to which "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations". The Court states in this respect that the United Nations Charter contains no specific provision of itself conferring compulsory jurisdiction on the Court and that this basis of jurisdiction cannot be accepted. It adds that Article 1 of the Simla Accord concluded between the Parties on 2 July 1972 does not as such entail any obligation on India and Pakistan to submit their disputes to the Court.

The Court finally explains that there "is a fundamental distinction between the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law" and that "the Court's lack of jurisdiction does not relieve States of their obligation to settle their disputes by peaceful means". It stresses that as regards India and Pakistan, that obligation was restated more particularly in the Simla Accord and that the Lahore Declaration of 21 February 1999 reiterated "the determination of both countries to implementing the Simla Agreement". The Court reminds the Parties of their "obligation to settle their disputes by peaceful means, and in particular the dispute arising out of the aerial incident of 10 August 1999, in conformity with the obligations which they have undertaken".

#### Composition of the Court

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal; Judges ad hoc Pirzada, Reddy; Registrar Couvreur.

Judges Oda and Koroma and Judge ad hoc Reddy appended separate opinions to the Judgment of the Court. Judge Al-Khasawneh and Judge ad hoc Pirzada appended dissenting opinions to it.

---

A summary of the Judgment is given in Press Communiqué No. 2000/19bis, to which a brief summary of the opinions is annexed. The full text of the Judgment, the opinions and the Press Communiqués are available on the Court's website (<http://www.icj-cij.org>).

---

#### Information Department:

Mr. Arthur Witteveen, First Secretary (+ 31 70 302 23 36)

Mrs. Laurence Blairon, Information Officer (+ 31 70 302 23 37)

E-mail address: [information@icj-cij.org](mailto:information@icj-cij.org)