

Forum: The International Court of Justice (ICJ)

Issue: Measures to prevent the violation of rights in Article 36 under the Vienna Convention on Consular Relations. (Jadhav: Pakistan vs India)

Student Officers: Abel Resende and Aline Yaafar Khalife

Position: Co-Presidents of the International Court of Justice

Introduction

Kulbhushan Sudhir Jadhav born on April 16, 1970, is an Indian nationalist. Jadhav was kidnapped by Mullah Omar Irani of Jaish ul-Adl from Sarbaz City. Mullah Omar Irani worked for the Pakistan army and was handed over to the Pakistan army after kidnapping Jadhav from the Chabahar area of Iran. He handed Jadhav to the Pakistani Army because they suspected his involvement in insurgent pursuits. That includes the apparent claim that Jadhav had entered Chabahar, a city in Iran, with a fake passport. This passport showed his identity as Hussain Mubarak Patel. The Pakistani officials asserted that his job was to weaken Pakistan by reinforcing a separatist motion in Balochistan and Karachi. He was taken to Islamabad, the capital of Pakistan, for questioning. The Pakistani government claimed his arrest in Balochistan, a province in Pakistan, for

accusations of terrorism and supposed spying for India's intelligence agency, also known as the Research and Analysis Wing. On April 10, 2017, the Indian foreign ministry declared he had been abducted last year from Iran and his consecutive attendance in Pakistan was never sustainably explained. He was sentenced to death by a military court in Pakistan. Ultimately, India filed an Application against the proceedings of Pakistan in respect of alleged violations of the Vienna Convention on Consular Relations of 24 April 1964 . It's a matter of a detention trial of an Indian national, Mr. Kulbhushan Sudhir Jadhav. India states that Pakistan never informed the arrest and detention of its national citizen. It also contended that Mr. Jadhav was not informed of his rights under Article 36 of the Vienna Convention on Consular Relations. Not only this, but India's consular officers were denied access to Mr. Jadhav, while in custody, detention, and prison. However, Pakistan claims that Mr. Jadhav was introduced and his rights under the Vienna Convention on Consular Relations were disclosed. India filed a request for provisional measures that requested Pakistan to take all measures to ensure that Mr. Jadhav is not executed. They also requested that there be no action taken to prejudice the rights of India or Mr. Jadhav with respect to any decision the Court will render to take with this case.



Indian delegation, UN Photo/ICJ-CIJ/Frank van Beek. Courtesy of the ICJ. All rights reserved.

The Case in Context

Moreover, this case focuses on the legal battle at the International Court of Justice for the annulment of Kulbhushan Jadhav's death sentence trial. On May 8th 2017, India resorted to the International Court of Justice (ICJ) and filed an application instituting proceedings against Pakistan over the dispute regarding alleged violations of the Vienna Convention Act. Kulbhushan Jadhav is an Indian national who found himself on death row in Pakistan after being accused of carrying out espionage and sabotage activities against Pakistan working for India's intelligence agency (RAW). Pakistani officers claim they arrested him on

March 3rd 2016 in Balochistan. The Indian government questioned this as the Pakistani military had first announced he was detained in Saravan, which is near the Pakistan- Iran border. Either way, he was then sent to Pakistan where he was arrested.

As mentioned before, the Pakistani government claims Kulbhushan Jadhav was a spy working for RAW. RAW stands for **Research and Analysis Wing** and its India's external intelligence agency. RAW has faced long-lasting allegations of meddling in its neighbors affairs. That being said, **both Kulbhushan Jadhav and the Indian government denied the accusations and claim Kulbhushan Jadhav has no relationship with the Indian government** and hasn't worked with any government agency since he was in the navy in 2002. On March 22, 2016, Pakistan authorities informed the High Commission of India of the arrest of their alleged spy. On that same day, the spokesperson for India's external affairs assured Kulbhushan Jadhav has no involvement with the government and is not a spy. Still, **the Pakistani government held a closed military trial** accusing him of spying on Pakistani affairs and more. Sartaj Aziz, Pakistan PM's advisor, on March 3rd 2017, publicly said that **"Kulbhushan Jadhav would not be extradited to India under any circumstances."** To sum everything up, **the Indian government has denied redundantly** that Kulbhushan Jadhav is not an agent of RAW nor has any involvement with the government, and that he

is therefore being arrested unfairly. Meanwhile, the Pakistani government maintains their allegations that Kulbhushan Jadhav worked for the Indian government as a spy and must therefore be arrested and in Pakistan with no chance of being extradited into India. It is important to understand the diplomatic tensions between India and Pakistan that have been going on for decades. Ever since their independence, India and Pakistan have fought in numerous armed conflicts. There are many cultural and political disputes between the nations which make this particular case more complicated to solve. Very little dialog exists between the two nations which complicates this situation. Perhaps the bigger picture is the rising tensions between Pakistan and India over the years.

On April 4th 2017, Pakistan's Inter-Services Public Relations issued **the official statement on Kulbhushan Jadhav death sentence**. The Indian government was having none of this and approached the United Nations International Court of Justice **accusing the Pakistani government of violating the Vienna Convention Act on Consular Relations** of 24 April 1963. The International Court of Justice on May 10th 2017 approved this case and both sides would get a chance to debate this out in the international court. Remember that Kulbhushan Jadhav was sentenced to death in a closed military court. It is important to note that the trial was not over Kulbhushan Jadhav's innocence or guilt, but over the fairness of

the trial, and if Pakistan are found guilty, they must suspend the previous verdict.(His death sentence).



The International Court of Justice, The Hague, <https://www.icj-cij.org/en>

The Vienna Convention Accords on consular relations is an international treaty that defines the framework for consular relations between sovereign states. The Indian government representatives claimed the following: **“Pakistan had failed to inform it, without delay, of the arrest and detention of its nationals.** Mr. Jadhav had not been **informed of his rights under Article 36 of the Vienna Convention** on Consular Relations, and that India's consular officers **had been denied access** to Mr. Jadhav while he was in **custody, detention and prison**, and had been unable

to converse and correspond with him, or arrange for his legal representation. As a basis for the Court's jurisdiction, **India referred in its Application to Article 36, paragraph 1**, of the Statute of the Court and Article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes." India also filed a request which was approved by ICJ requesting that "**take all measures necessary to ensure that Mr. Kulbhushan Sudhir Jadhav is not executed.** On May 18th 2017 the International Court of Justice requested the Pakistani government to delay the execution until the case is settled.

Authority of the Court

The International Court of Justice can only entertain two types of cases:

1. Legal disputes between sovereign states submitted to them
2. Advisory opinions on legal questions.

The Indian government submitted this legal dispute to the court, making it valid to entertain. In order to entertain a dispute, both parties (nations) must have accepted its jurisdiction in one of the following ways:

1. As stated by the ICJ, "by virtue of a jurisdictional clause, i.e., typically, **when they are parties to a treaty containing a provision whereby, in the**

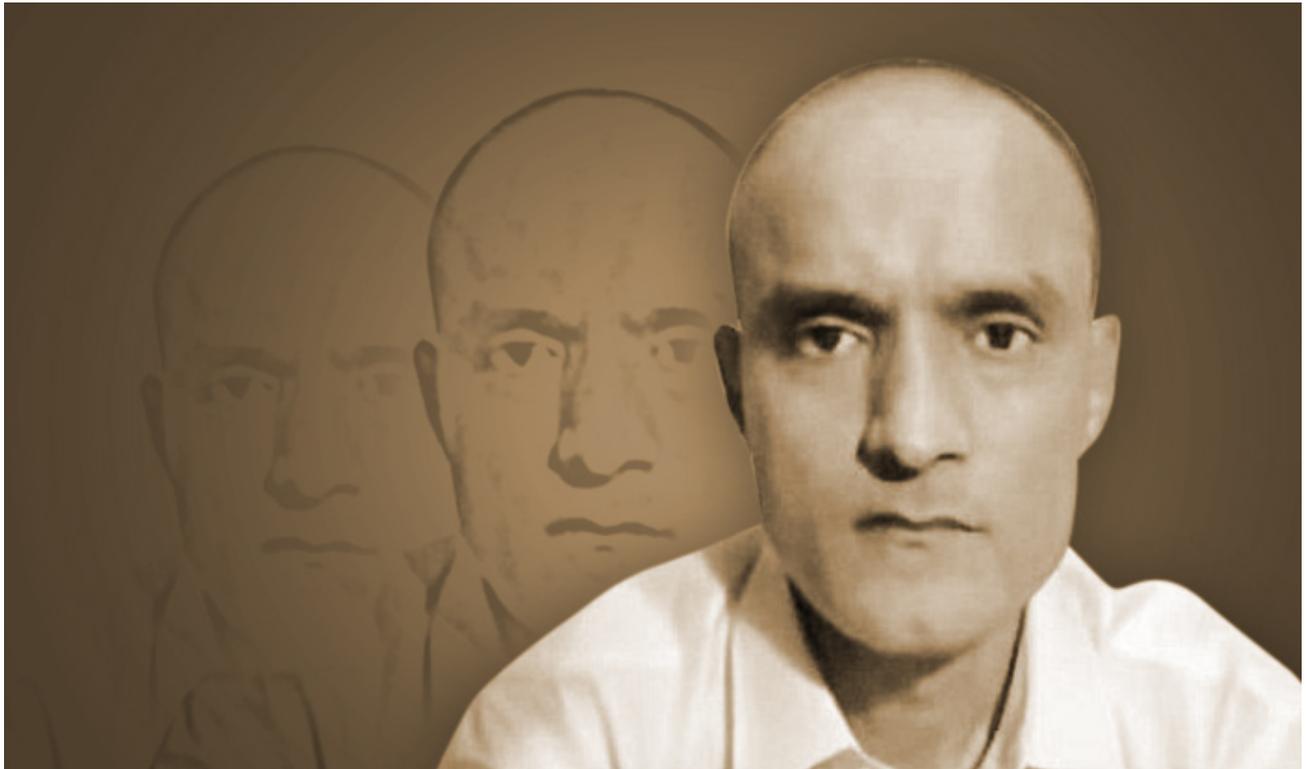
event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court”

2. By Entering a special agreement to submit the dispute to the court.

In this case, by the signing of the Vienna convention accord in 1963, it allowed the court to proceed with this trial as both nations committed to following such an agreement, and that any dispute is eligible to be debated in an international court. In other words, India is only able to take this legal dispute to the ICJ because both nations have accepted its jurisdiction to be diluted if it regards a matter involving a treaty. Therefore, the case is admissible in court as Pakistan signed and agreed to follow the Vienna Convention accords, and is being accused of breaking such a treaty.

Moreover, depending on the resolution of this trial, the consequences vary. **If the prosecution wins the dispute**, then the Pakistani Government **must suspend the execution of Mr. Jadhav and carry out a new open trial** where the Vienna Convention consular relation accords must be followed. Meaning Mr. Jadhav must have fair representation and essentially a fair trial must be carried out. In the case the defendant wins the dispute, **the Indian government must respect Pakistan's ruling of Mr. Jadhav's death sentence**, and he will be executed. **The court may not declare Mr. Jadhav innocent or guilty in this case. But the court may declare Pakistan guilty of violating the Vienna agreement or India guilty of**

not having enough proof of such a claim.



Mr. Jadhav ,Image source -<https://rb.gv/g6oafn>

Side A (Prosecution)

Mr. Jadhav was fallaciously and illegally detained and accused of certain illegal acts by the Pakistani army. Not only detained but was ordered to a death sentence. He was further accused of initiating infiltration and sabotage opposed to Pakistan ordered by India's intelligence agency. However, with all full rights, India has denied all theories proposed. India portrays its full support towards freeing Mr. Jadhav after being falsely convicted for spying by the Indian intelligence agency. Jadhav's legal team were determined on their arguments

against Pakistan after not allowing rightful access to Jadhav to a legal counsel and consular access. Furthermore, they refused to reveal information regarding charges and evidence against him.



ICJ courtroom, UN Photo/ICJ-CIJ/Frank van Beek. Courtesy of the ICJ. All rights reserved.

Side B (Defense)

The Pakistani government must now defend itself from the accusations of violating the Vienna treaty. The Pakistani council has denied all types of accusations stating they did all the proceedings correctly and did provide fair treatment to Mr. Jadhav. They argue that it was a matter of national security and therefore explain the delay in advising the Indian government. The defense

argues that Mr. Jadhav was a spy and that the information he might have acquired puts Pakistan and its people in danger. In other words, their defense is based on the fact that it is a matter of national security and that's why he received a military trial and a delayed message to Indian authorities.



Members of the Delegation of Pakistan on the first day of the hearings, UN Photo/ICJ-CIJ/Frank van Beek. Courtesy of the ICJ. All rights reserved.

Questions a judgment should ask

Within the bulletin the judgment has been provided with multiple points it must communicate. In order to support the process, a set of essential questions have been put forward. The questions are placed as an aid to facilitate the court's process towards the judgment. However, we highly advocate the judgment to

extend this list of questions on their own to enhance the court:

- What specific occurrences highlight a fundamental violation of human rights?
- Where can a particular infringement of the Vienna Convention on Consular Relations be seen?
- Could the International Court of Justice potentially disregard the infraction committed due to certain past uncivilized behavior by Pakistan and India? If yes, to what extent, and how so?
- If Jadhav was proven guilty, what other approach could Pakistan have taken while not transgressing any article under the Vienna Convention on Consular Relations?
- What bilateral accord can Pakistan and India come to after many aggressive accusations towards each other?

To continue, as outlined above, delegates must keep in mind the different approaches towards criteria they should make in arguments, while contributing to morals, rights, and laws. With the judgment, the ability to make questions that debilitate and reinforce the vanguards of new proposing arguments is essential. They also have the responsibility of improving the context within ideas to delegates. The judgment should communicate their questions with no bias towards the delegates, meaning not regarding the delegate's position as a defendant or prosecutor. Judges must remain unbiased through arguments

since their purpose is only to enhance the court during the debate. They are not allowed to select sides or intentionally choose questions that will harm a delegate's claim. A Judge has the duty to work through clever, precise, intricate questions that will challenge the delegates and make them defend their ideas to seek the truth. With these questions judges will eventually have the ability to establish themselves with the more legal and rational side.



UN Photo/ICJ-CIJ/Frank van Beek. Courtesy of the ICJ. All rights reserved.

Works Cited

(www.dw.com), Deutsche Welle. "Kulbhushan Jadhav: Un Court Orders Pakistan to Review Indian 'Spy' Death Sentence: DW: 17.07.2019." DW.COM, <https://www.dw.com/en/kulbhushan-jadhav-un-court-orders-pakistan-to-review-indian-spy-death-sentence/a-49621944#:~:text=Controversial%20sentencing,charges%20or%20evidence%20against%20him.>

Vienna Convention on Consular Relations, 1963 - United Nations Office ...
https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

"Latest Developments: Jadhav (India v. Pakistan): International Court of Justice." Latest Developments | Jadhav (India v. Pakistan) | International Court of Justice, <https://www.icj-cij.org/en/case/168>

Shantanu, Shashank. "Iran's Top Terrorist, Who Kidnapped Kulbhushan Jadhav, Killed in Balochistan: Report." English, 18 Nov. 2020, <https://www.indiatvnews.com/news/india/iran-terrorist-mullah-omar-irani-who-kidnapped-kulbhushan-jadhav-killed-in-balochistan-pakistan-665761>.

“Latest Developments: Jadhav (India v. Pakistan): International Court of Justice.” *Latest Developments | Jadhav (India v. Pakistan) | International Court of Justice*, <https://www.icj-cij.org/en/case/168>.

Vienna Convention on Consular Relations, 1963 - United Nations Office ...
https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

“The Covert Clashes between India's and Pakistan's Spy Agencies.” *Council on Foreign Relations*, Council on Foreign Relations,
<https://www.cfr.org/backgrounder/raw-indias-external-intelligence-agency>.

