



Jadhav (India v Pakistan)



ICJ

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Forum: International Court of Justice

Issue: Jadhav (India v Pakistan)

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Introduction

The Jadhav case shows the complexities of international law and diplomacy. The case began in March 2016 when Kulbhushan Jadhav, a former Indian Navy officer, was arrested by Pakistani officials and has since escalated into a heated court battle between India and Pakistan. The Jadhav case delves into the core of international law, particularly the Vienna Convention on Consular Relations (VCCR), and raises questions about the jurisdiction of the International Court of Justice (ICJ) when concerned with matters involving national security.

The goal of this report is to go over the events which led up to the proceedings in the ICJ, and to hopefully provide a comprehensive understanding of the roots of the Jadhav case. A list of definitions of key terms, a general overview of the events prior to the case and a timeline of events will be provided.

Definition of Key Terms

Consular access

The right of a national to have access to their own government when detained in a foreign country. This is to protect the rights of the detained individual, check up on their wellbeing, and provide assistance. This is a part of the Vienna Convention on Consular Relations.

Field General Court Martial (FGCM)

The highest trial court in the military is referred to as a general court-martial. The manual for courts-martial's highest punishment for each crime limits the general court-martial's authority to enforce punishment.

Kulbhushan Sudhir Jadhav

Mr. Kulbhushan Sudhir Jadhav, an Indian national, was sentenced to the death penalty in April 2017 by a military court within the borders of Pakistan.

Note Verbale

A third-person informal note is referred to as a "note verbale". It tends to be more formal than an aide-memoire (informal diplomatic note about a summary of a diplomatic conversation) but less formal than a first-person note.

Vienna Convention on Consular Relations (VCCR), 1963 (the "Vienna Convention")

The Vienna Convention on Consular Relations, the Optional Protocol concerning Acquisition of Nationality, and the Optional Protocol about the Compulsory Settlement of Disputes were all ratified by the United Nations Conference on Consular Relations on April 24, 1963. Furthermore, as of March 19, 1967, the Convention and its two associated optional protocols were entered into action. Main objectives of the The Vienna Convention are the obligations of diplomatic agents, how consulates operate, and maintaining the rights and benefits that are provided to consular officers when they are positioned abroad. For more information, see further reading: Chapter I of the Convention

Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties (1969) is a framework of regulations that establishes the status of a legal document as a treaty and governs its creation, entry into action, amendment, termination, and general maintenance. It is not preoccupied with the "treaty law," or the rights along with responsibilities that are established by a treaty. It mainly serves for the negotiating states or parties.

Prior to the Case

Please keep in mind that the case of India v. Pakistan is not one of a Criminal Appellate Court (also known as Appeal Court), but rather only a court to determine whether or not Pakistan has violated the Vienna Convention on Consular Relations (VCCR). This means that the court will not discuss the innocence or guilt of Jadhav and thus cannot order the release of Jadhav through the current court.

Jadhav's Trial

On September 21, 2016, Jadhav's trial began before a Field General Court Martial. Pakistan sought the Indian High Commissioner for assistance in gathering evidence for the trial, prompting India to request consular access once again. Pakistan stated that they would only do so if their previous demands were met and India would help in the trial. Following India's efforts to persuade Pakistan that consular access was required for the trial to proceed in the first place, Pakistan announced Jadhav's death sentence, which was a turning point in the dispute and led to India taking more drastic measures.

2008 Bilateral Agreement on Consular Access

In 2008 both India and Pakistan entered a bilateral agreement on consular access. This was done in hopes of ensuring a humane treatment of nationals from both countries. Following the creation of the agreement, both countries shared lists of incarcerated nationals and frequently allowed consular access to said nationals. One of the clauses in the agreement, however, grants both parties the right to deny consular access if national security is at risk, which in this case would favour Pakistan. However, officially, the 2008 agreement has not been registered in the UN, which would render it null and void in court; nonetheless, late registrations are permitted by the ICJ, and the VCCR authorises international treaties provided they affirm, supplement, expand, or amplify the contents of the VCCR. It is therefore up to the court to determine whether the 2008 agreement complies with the aforementioned requirements, and it is also up to Pakistan to prove that Jadhav's consular access was denied due to realistic national security concerns, if the 2008 agreement will be taken into account during the court session.

Timeline of Key Events

Date

Event

22nd of May 1969

The adoption of the VCCR by the United Nations.

21st of May 2008

The establishment of the Agreement on Consular access between the Government of India and Pakistan.

3rd of March 2016

Kulbhushan Sudhir Jadhav, an Indian national,

was reportedly arrested.

25th of March 2016

The Indian High Commissioner in Islamabad **was** notified by the Foreign Secretary of Pakistan over this reported arrest. Additionally, India requested consular access to the aforementioned person on the same day.

30th of March 2016

India reaffirmed in a reminder dated March 30, 2016, that it was seeking consular access to the individual in question as soon as possible. India issued out thirteen more reminders.

21st of September 2016

The start of Jadhav's trial by the Pakistani military court.

23rd of January 2017

Pakistan requested India's assistance with an inquiry into what was referred to as "FIR No. 6 of 2016". The initial information report that is filed with the police upon finding about a crime's commission is referred to as a "FIR" under the Pakistan Code of Criminal Procedure. This was the criminal allegation that was reportedly filed on April 8, 2016, regarding the Indian individual.

3rd of February 2017

Pakistan submitted India a separate Note Verbale.

10th of April 2017

The death sentence of Jadhav ruled as a result of the trial held by the Pakistani military court.

8th of May 2017

India sent an application to the ICJ and filed a case against Pakistan.

14th of April 2017

The Pakistani Prime Minister's Advisor on Foreign Affairs issued a press release.

Further Reading

[Vienna Convention on Consular Relations, 1963](#)

[Vienna Convention on the Law of Treaties \(1969\)](#)

[2008 Bilateral Agreement on Consular Access](#)

Note for the Judges

This report should be your only information source other than documents which will be presented by the advocate teams to the court. During the trial, it is strictly forbidden to do any kind of external research regarding the case. You should gather information from what is presented to you and remember to always remain objective when evaluating pieces of evidence, speeches, memorials, etc. If you have concerns regarding the procedures, terms or confirming any information, you should get in touch with the presidency. Lastly, the information given in this report may not include every detail discussed during the court since we don't know the arguments prior to the trial.

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