

**INTERNATIONAL COURT OF JUSTICE**

**Case Concerning the Vienna Convention on Consular  
Relations**

(India vs. Pakistan)

**REQUEST FOR THE INDICATION OF  
PROVISIONAL MEASURES OF  
PROTECTION**

The Hague, 8 May 2017

**REQUEST FOR THE INDICATION OF  
PROVISIONAL MEASURES OF PROTECTION  
SUBMITTED BY THE GOVERNMENT OF  
THE REPUBLIC OF INDIA**

1. I have the honor to refer to the Application submitted to the Court this day instituting proceedings in the name of the Republic of India against the Government of the Islamic Republic of Pakistan. In accordance with Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court, I respectfully submit an urgent request that the Court indicate provisional measures to preserve the rights of the Republic of India.
  
2. The Court has jurisdiction pursuant to Article 36 of the Vienna Convention on Consular Relations 1963 and Article 1 of the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes.

## I. FACTS

3. As more fully set forth in the Application, the authorities of Pakistan arrested, detained, tried and sentenced to death on 10 April 2017 an Indian national, Mr. Kulbhushan Sudhir Jadhav, in egregious violation of the rights of consular access guaranteed by Article 36, paragraph 1, of the Vienna Convention.
  
4. India was informed on 25 March 2016 that an Indian national (Kulbhushan Sudhir Jadhav) was allegedly arrested on March 3, 2016. On that very day, India sought consular access to the said individual at the earliest. The request did not evoke any response. Thus, on 30 March 2016 India sent a reminder reiterating its request for consular access to the individual at the earliest. Thirteen more reminders were sent by India on 6 May 2016, 10 June 2016, 11 July 2016, 26 July 2016, 22 August 2016, 3 November 2016, 19 December 2016, 3 February 2017, 3 March 2017, 31 March 2017, 10 April 2017, 14 April 2017 and 19 April 2017. All these requests fell on deaf ears.

5. Almost a year after India's first request for consular access, on 23 January 2017, India received from Pakistan a request for assistance in investigation of what was described as "FIR No. 6 of 2016." Subsequently, on 21 March 2017, Pakistan formally communicated to India that consular access by a State to Mr. Jadhav "*shall be considered in the light of Indian side's response to Pakistan's request for assistance in investigation process and early dispensation of justice.*" This was totally against Pakistan's obligation under the Vienna Convention that does not lay down any limitation on right of consular access by a State to its national and also the right of the Indian national to freely communicate with Indian authorities under Article 36 of the Convention.
6. India learnt from Press reports on 10 April 2017 that Pakistan proceeded to have a military trial against Mr. Jadhav and he was sentenced to death purportedly on the basis of a confessional statement.
7. India received on 10 April, 2017 another note verbale from the Pakistan Ministry of Foreign Affairs, Islamabad conveying that consular access

shall be considered in the light of India's response to Pakistan's request for assistance in the investigation process.

8. India responded to this on 10 April, 2017 itself pointing out that this offer was being iterated after the death sentence had been confirmed – the information of which was given in a press release by Pakistan. India stated that this offer “*underlines the farcical nature of the proceedings and the so-called trial by a Pakistan military court martial*”. India pointed out that despite its repeated requests consular access had not been allowed.
9. Pakistan was under an international legal obligation to India, a party to the Vienna Convention, to comply with the rights of consular access under sub-paragraphs (a) and (c) of paragraph 1 of Article 36. Pakistan was also under an obligation under international law and the Vienna Convention to allow Indian national to seek consular access.
10. It was only after the trial had been concluded that Pakistan, on 21 March 2017, proposed to consider the request for consular access, and that

too, on the condition that India first accede to its request for assistance in investigation. The death sentence was awarded to the Indian national on 10 April 2017. On the same day, Pakistan merely reiterated its proposal of 21 March 2017.

11. Pakistan continues to deny consular access and to provide any information regarding the proceedings against the Indian national including whether an appeal has been filed in the matter. India submits that, in any event, an appeal is an illusory remedy for the reasons set forth in detail in the accompanying Application. Notwithstanding the above, the mother of Mr. Kulbhusan Sudhir Jadhav filed an appeal under Section 133 (B) and a petition to the Federal Government of Pakistan under Section 131 of the Pakistan Army Act 1952. The appeal and the petition were handed over to the Pakistan Government by the Indian High Commissioner in Islamabad on April 26, 2017.

12. The request for provisional measures assumes great urgency as Mr. Jadhav has already been sentenced to death and he has only forty days to file an appeal. India has no access to Mr. Jadhav and no access to any information of

what is in play in the matter. His conviction, as per the Press Statement of 17<sup>th</sup> April 2017, appears to be based on his “confession” made when he was in captivity and without consular access. India has no confidence that he will be in a position to file an appeal that would seriously challenge his conviction and sentence. It therefore becomes vital to immediately suspend the execution of the death sentence awarded to him.

13. An appeal has been filed on his behalf by his mother, and from the press reports it appears that a court of appeal has already been constituted. There is thus great urgency in the matter as it is possible that the appeal may be disposed of even prior to the expiry of the period of 40 days available for filing.

## **II. THE AUTHORITY OF THE COURT**

14. Article 41 (1) of the Statute of the Court vests the Court with “*power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party*” pending a final

judgment in the case. Orders of provisional measures pursuant to Article 41 establish binding obligations. *La Grand (Germany v. United States of America)*, Judgment, ICJ Reports 2001, p.466 para. 109.

15. The Court has, in three reported cases, indicated provisional measures to prevent executions in applications based on the violation of Article 36 of the Vienna Convention on Consular Relations and which reflects the concern of the Court in matters of human rights violations such as those that result from violation of consular access and assistance in legal proceedings.

16. In the *Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America)*, Provisional Measures, Order of 9 April 1998, ICJ Reports 1998, p.248, the Court indicated provisional measures to prevent the execution of the Paraguayan national Angel Francisco Breard pending final judgment. The Court afforded similar relief in *La Grand (Germany v. United States of America)*, Provisional Measures, Order of 3 March 1999, ICJ Reports 1999, p.9 to prevent the execution of the German national Walter La Grand.



In *Avena and Other Mexican Nationals (Mexico v. United States of America)*, *Provisional Measures, Order of 5 February 2003*, *ICJ Reports 2003*, p.77, the Court directed the United States of America to take all measures necessary to ensure that three Mexican nationals were not executed pending final judgment.

17. International law recognizes the sanctity of human life. The International Covenant on Civil and Political Rights [ICCPR], to which Pakistan is a party, establishes that every human being has the inherent right to life and which shall be protected by law. Article 14 of the ICCPR entitles every person to a fair and public trial by an impartial tribunal. The fairness of the trial depends substantially upon the means available to an accused to defend himself effectively. Where a person is arrested in a foreign country, the right to consular access, and to seek the assistance of his home country in his defence is what fulfills the aspiration of a fair trial in a foreign state.

18. The violation of the Vienna Convention by Pakistan has resulted in the imposition of the death penalty on the Indian national. It has

prevented India from exercising its rights under the Convention and has also deprived the Indian national from the protection accorded under the Convention.

19. India respectfully submits that Mr. Kulbhushan Sudhir 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 this Court's decision on the merits of India's claims. The execution of Mr. Kulbhushan Sudhir Jadhav would cause irreparable prejudice to the rights claimed by India. *Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America)*, *Provisional Measures, Order of 9 April 1998*, *ICJ Reports 1998*, p.248, para 37; *La Grand (Germany v. United States of America)*, *Provisional Measures, Order of 3 March 1999*, *ICJ Reports 1999*, p.9, para 24; *Avena and Other Mexican Nationals (Mexico v. United States of America)*, *Provisional Measures, Order of 5 February 2003*, *ICJ Reports 2003*, p.77, para 55;

20. India, therefore, submits this urgent Request for Provisional Measures to protect the life and liberty of India's national, Mr. Kulbhushan Sudhir Jadhav and to ensure the Court's ability to order the relief that India seeks. Without the provisional measures requested, Pakistan will execute Mr. Kulbhushan Sudhir Jadhav before this Court can consider the merits of India's claims and India will forever be deprived of the opportunity to vindicate its rights. The Court's indication of provisional measures in three prior cases supports India's right to the relief sought.

21. As stated above, there is immense urgency in the matter as the 40 day period expires in any event on 19<sup>th</sup> May, and besides the appeal by the mother already having been filed, and the court of appeal already having been constituted, the disposal of the appeal may take place any day.

### **III. THE ORDER REQUESTED**

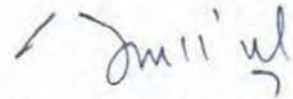
22. On behalf of the Government of the Republic of India, I therefore respectfully request that, pending final judgment in this case, the Court indicate:

- (a) That the Government of the Islamic Republic of Pakistan take all measures necessary to ensure that Mr. Kulbhushan Sudhir Jadhav is not executed;
- (b) That 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) That 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 to any decision this Court may render on the merits of the case.

23. In view of 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 respectfully urges the Court to treat this Request as a matter of the greatest urgency and pass an order immediately on provisional measures suo-motu without waiting for an oral hearing. The President is requested that exercising his power under Article 74, paragraph 4

of the Rules of Court, pending the meeting of the Court, to 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.

08 May 2017



(Dr. Deepak Mittal)  
Joint Secretary  
Ministry of External Affairs  
Government of India