



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

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### Jadhav Case (India v. Pakistan)

#### Provisional Measures

**The Court indicates to the Islamic Republic of Pakistan that it must take “all measures at its disposal” to prevent the execution of an Indian national, Mr. Kulbhushan Sudhir Jadhav, pending final judgment of the Court**

THE HAGUE, 18 May 2017. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today indicated to the Islamic Republic of Pakistan that it must “take all measures at its disposal” to ensure that Mr. Kulbhushan Sudhir Jadhav, of Indian nationality, is not executed pending a final judgment of the Court in the Jadhav Case (India v. Pakistan).

In its Order indicating provisional measures, which was adopted unanimously, the Court also stated that the Government of Pakistan shall inform it of all measures taken in implementation of that Order. It further decided to remain seized of the matters which form the subject of the Order until it has rendered its final judgment.

#### History of the proceedings

India filed its Request for the indication of provisional measures on 8 May 2017, the same day that it initiated proceedings against Pakistan in a dispute concerning alleged violations of Article 36 of the Vienna Convention on Consular Relations of 24 April 1963 with respect to an Indian national, Mr. Jadhav, sentenced to death in Pakistan.

#### Reasoning of the Court

The Court begins by considering whether it has jurisdiction *prima facie* to hear the case. It recalls that India seeks to ground its jurisdiction in Article I of the Optional Protocol to the Vienna Convention, which provides that the Court has jurisdiction over “[d]isputes arising out of the interpretation or application of the [Vienna] Convention”. In this regard, the Court notes that the Parties do indeed appear to have differed, and still differ today, on the question of India’s consular assistance to Mr. Jadhav under the Vienna Convention. It further notes that the acts alleged by India, i.e., the alleged failure by Pakistan to provide the requisite consular notifications with regard to the arrest and detention of Mr. Jadhav, as well as the alleged failure to allow communication and provide access to him, appear to be capable of falling within the scope of the Convention. In the view of the Court, this is sufficient to establish that it has *prima facie* jurisdiction under Article I of

the Optional Protocol. The Court further observes that the existence of a 2008 bilateral Agreement between the Parties on consular relations does not change its conclusion on jurisdiction.

The Court then turns to the question whether the rights alleged by India are at least plausible. It observes that the rights to consular notification and access between a State and its nationals, as well as the obligations of the detaining State to inform the person concerned without delay of his rights with regard to consular assistance and to allow their exercise, are recognized in Article 36, paragraph 1, of the Vienna Convention, and that India has alleged violations of this provision. In the view of the Court, therefore, it appears that the rights alleged by India are plausible.

The Court then focuses on the issue of the link between the rights claimed and the provisional measures requested. It considers that the measures requested are aimed at ensuring that the rights contained in Article 36, paragraph 1, of the Vienna Convention, are preserved. Therefore, a link exists between the rights claimed by India and the provisional measures being sought.

The Court then examines whether there is a risk of irreparable prejudice and urgency. It considers that the mere fact that Mr. Jadhav is under a death sentence and might therefore be executed is sufficient to demonstrate the existence of a risk of irreparable prejudice to the rights claimed by India. The Court further observes that Pakistan has indicated that any execution of Mr. Jadhav would probably not take place before the month of August 2017. This means that there is a risk that an execution could take place at any moment thereafter, before the Court has given its final decision in the case. The Court also notes that Pakistan has given no assurance that Mr. Jadhav will not be executed before the Court has rendered its final decision. In those circumstances, the Court is satisfied that there is urgency in the present case.

The Court concludes by indicating the following measures:

Pakistan shall take all measures at its disposal to ensure that Mr. Jadhav is not executed pending the final decision in these proceedings and shall inform the Court of all the measures taken in implementation of the present Order.

The Court also decides that, until it has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order.

#### Composition of the Court

The Court was composed as follows: President Abraham; Judges Owada, Cançado Trindade, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian; Registrar Couvreur.

Judge Cançado Trindade appends a separate opinion to the Order of the Court; Judge Bhandari appends a declaration to the Order of the Court.

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Note: The Court's press releases do not constitute official documents.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a

twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

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 international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), 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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