



The International Court of Justice

*The Interpretation and Application of UNCLOS in the
South China Sea (Republic of the Philippines v. People's Republic of China)
Jadhav (India v. Pakistan)*



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Introductory Letters:

Samuel Barta

*Hello advocates and judges,
My name is Samuel (Sam) Barta and I will be the president of the court for this conference. I am currently a Year 12 at Bangkok Patana School and the secretary general of our MUNECA. I have been to 7 conferences over the 5 and half years that I have participated in MUN. This will be my 3rd time chairing, having chaired the ICJ before. I was also fortunate enough to participate in the ICJ at THAIMUN VIII where I had the privilege of winning the best judge award. In my free time I enjoy participating in contact sports as well as working on my academics.*



If you have any questions please feel free to contact me at sabt25@patana.ac.th or samuelbarta25@gmail.com



Sathin Gupta

*Hey advocates and judges!
My name is Sathin, and I will be your co-president for this year's ICJ THAIMUN conference. I am currently in grade 11 in KIS International School. I have had the pleasure of being a chair once, and an advocate two times before, I'm excited to pass on my knowledge and expertise to you all. When I'm not attending conferences you can see me drumming, indulging in TV shows, or socializing. I have had the privilege of meeting many new people in MUN conferences before. I'm excited to meet many more in this conference by working closely with you*

all in this committee. I hope you all can feel comfortable asking me for help, guidance, or assistance in anything. If you want to ask anything ICJ-related, or just want to socialize please feel free to contact me on my mail at @stsathin.gu@kis.ac.th, or on my Instagram [@cool_sathin](https://www.instagram.com/cool_sathin). Excited to talk with you all soon!

Committee Overview

The International Court of Justice is the institution that will resolve these issues. The ICJ is the main judicial organ of the United Nations, established by its Charter at the UN's inception in 1945. The court has universal international jurisdiction to settle disputes between nations in accordance with international law and provide advisory opinions on legal issues submitted by UN organs and specialized agencies. Note that the court's engagement in each case is dependent on both conflicting nations' voluntary participation. States are legally obligated to abide by the court's decision once they agree to participate in its proceedings or are obligated to participate in the court's proceedings due to existing international agreements declaring its authority in specific disputes.

Advocates:

Each case in the ICJ consists of two teams of advocates. Each team is composed of two advocates each - a total of 4 advocates for a case. One of these two groups will play the role of the Applicant. This is the team who initiated the proceedings at the court. The other team will play as the Respondent. This is the team of advocates who will defend the allegation of the applicant team. The Advocates act as a counsel, providing legal representation for their representing state to the court. Each team of advocates will draft a memorandum, a list of evidence, a combined list of stipulations, and will examine witnesses. (These documents will be elaborated on later in the guidebook.) The advocates are the core center of the proceeding case. Any advocate in the ICJ is referred to as Advocate <<Last name>> of <<Country they are representing>>. For the purposes of this conference, please do not submit less than 4 and no more than 8 pieces of evidence per advocate team.

Applicant: An Applicant is the party that brings the case to the Court. By making the claim, they must first submit an application—hence the name Applicant. Applicants need to meet the burden of proof, showing that the other party has violated a certain international law. For the sake of simplicity, we will not dig deeper into the technicalities of what burdens of proof the Court will use. In short, the Applicant needs to show that there is a “sufficiency of the evidence” to meet this burden.

Respondent: A Respondent is the party that responds to the claims made by the Applicant. The Respondent does not need to meet the burden of proof. They are to

propose arguments to show that the opposition has not met that standard to make a claim. This can come in multiple forms of challenges before and during the hearing. Before the hearing, the Respondent can challenge the Applicant's claim on grounds of the Court's jurisdiction. During the hearing, challenges can also be brought on grounds of legal and factual objections.

Judges:

During the hearings, judges will listen to the arguments from both sides and are expected to ask questions to the advocates throughout the session, aside from certain restricted timeframes. There will be time for closed deliberations among the judges throughout the day, where judgment notes will be drafted. These notes will be the foundation for the final verdict of the Court on the final day of the conference.

ICJ also comprises a panel of 6-9 judges. They are responsible for ruling on the case. ICJ Judges will assess the arguments and evidence presented by each team of advocates and deliberate on a final verdict regarding the case. In general, there are three broad outcomes that Judges can conclude.

- 1) The ICJ does not have jurisdiction to rule on the case, and the case is dismissed.
- 2) The Applicant Party has met their burden of proof, thus Judges will create a verdict accordingly as "punishment" for the Respondent Party.

The Applicant Party has not met their burden of proof, thus the Respondent Party is free of applicant from all counts."Judges are referred to as Judge <<last name>> or Judge #(x).

Topic 1: The interpretation and application of UNCLOS in the South China Sea

TOPIC INTRODUCTION:

In recent years China has increased its enforcement of its territorial claims in the south china sea which stems from the 9 dash line, which was adopted in 1952 (Beech). China claims the territory for historical reasons dating back to the Song dynasty (Zhang). This has led to a military build up in the region, for example multiple artificial islands built for military purposes in the Spratly island region (Associated Press). The surrounding nations including the Philippines rebuke this claim and they say the territory doesn't belong to china as it is not in the 12 nautical mile range laid out in in Section 2, Article 3 of UNCLOS (United Nations) or the EEZ which stretches 200 Nautical Miles from the coast under Article 57 Part V of UNCLOS (United Nations). China counters this claim by saying these artificial islands extend its EEZ but others argue this is not in line with section 2, Article 11 of UNCLOS (United Nations) which states that artificial islands don't count as a nation's territorial coast.

This dispute is extremely important as the south China sea contains large quantities of natural resources such as: 190 trillion cubic feet of natural gas, 11 billion barrels of oil (Asia Maritime Transparency Initiative) and 12% of the world's fish catch (Harrington). In addition to this, the south China sea accounts for over a third of the world's shipping (Cordesman et al.) This is extremely significant because according to UNCTAD shipping accounts for 80% of annual global trade (United Nations Conference on Trade and Development).

KEY TERMS:

Term	Definition
EEZ	Exclusive Economic Zone, which is an area extending 200 nautical miles from a nation's territorial coast where a country has exclusive exploration and exploitation rights. (Metych)
UNCLOS	United Nations Convention on the Laws of the Sea

Territorial Sea	Waters extending 12 nautical miles from the territorial coast are the sovereign water of the coastal nation.
Territorial Coast/Baselines	The baseline is the line that acts as the origin for all further maritime territorial measurements. This is usually done in 2 ways: Straight baseline which divides internal waters and the territorial sea; this is done by drawing a straight line from the two nearest pieces of the nation's land. The other method is the coast at low tide (Ministry of Defence)
Continuous Water	In its contiguous zone, a coastal State may exercise the control necessary to prevent the infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea, and punish infringement of those laws and regulations committed within its territory or territorial sea. It extends another 12 nautical miles from the end of the territorial sea. (National Oceanic and Atmospheric Administration)
UNCTAD	United Nations Conference on Trade and Development

History of The Topic:

The south china sea has been the location of many territorial disputes originally being explored by chinese sailors in the 2nd century B.C. Later on, France claimed these islands as a part of its colony: Indochina (Freeman Jr), France justified this by using maps from vietnamese fishermen dating back to the 1600 to prove that vietnam had occupied these islands. After the french collapse at the start of WW2 the Japanese captured Indochina claiming these islands and building a large submarine base. After the war and Japan's surrender the Republic of China (Taiwan) Claimed the submarine base and a few other islands (in 1957) (Asia Maritime Transparency Initiative) while France had control over the rest of the territories. This was one of the first disputes over these Islands in the modern era as France still claimed all of the Islands as its territory.

In 1947 China posted the 11 Dash line (Clark) which later became the 9 dash line (Beech) and since 2013 some maps have been seen with 10 Dashes (Graham). China justifies these claims based on historical records because as stated earlier their fishermen were here earlier. However there is very limited evidence of occupancy as they were mostly used as a stop for the fisherman. The first power to undeniably occupy these islands was Japan. In 1951 Japan signed the San Francisco Peace Treaty (*Treaty of Peace with Japan (with Two Declarations)*). Signed at San Francisco, on 8 September 1951) to renounce all of its island claims to the Spratly and Paracel islands (Carpio (Ret.)). On 20 July 1954 French Indochina collapsed, splitting it into 3 (temporarily 4) different countries (*Geneva Agreements*) but the islands were not mentioned. In

1956 some Philipinos stumbled across some of the islands and decided to make the Free Territory of Freedomland. They were the first long term occupants of the islands and claimed they were the rightful owners as the Japanese never clarified to whom they seeded the islands to. In the Late 1960s Oil was discovered in the region and in the following years the leader of Freedomland was arrested and the territory was annexed into the Philippines (Municipal Government of Kalayaan).

During the Vietnam war there was an armed conflict between South Vietnam and China over islands they both claimed which were part of the Paracel islands. After this confrontation China took control of the Paracels. This conflict on January 19th 1974 was known as the battle for the Paracel Islands (Shuster). Meanwhile, in the Spratly Islands the South Vietnamese took control of a few islands while the guards were allegedly celebrating with one of the officers. Due to the Philippines and South Vietnam being allied no further conflict occurred. On April 9th 1975 the North Vietnamese attacked most if not all islands belonging to South Vietnam. This lasted 20 days and coincided with the capture of Saigon and the capitulation of South Vietnam. Malaysia and Brunei also made some claims in this region at this time.

After this UNCLOS was created. China had further conflicts killing multiple Vietnamese soldiers. Fast forward to 2011, Filipino fishermen were fishing when they were fired upon by Chinese military vessels. This happened again next to a filipino oil field. Another incident occurred in 2011 when Chinese vessels were caught cutting Vietnamese cables next to the Paracel islands. Later in the Scarborough shoal Philippine authorities tried to arrest illegal Chinese fishermen but they were intimidated by Chinese military vessels. There was another dispute where the Chinese tried to set up a Oil rig in Vietnamese waters. This resulted in a naval conflict involving 100+ ships (Blanchard and Linh). This is also when we began to see the building of artificial military islands (U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION).

Timeline

Date	Description
1909	China's Island claims emerge (Hayton)
1933	France seized the Paracels and Spratlys, announced their annexation, formally included them in French Indochina, and built a couple of weather stations on them, but did not disturb the numerous Chinese fishermen it found there. (Freeman Jr)

Septembre 3rd 1937	Japan Invades the south china sea islands ultimately claiming the Spratly Islands Decembre 1938 (Council on Foreign Relations). In 1945 at the end of the war they handed it over to Taiwan.
1947	Eleven dash line is established (Clark)
1952	Nine dash line is established after a deal with vietnam removes the previous 2 dashes (Beech)
1970-1971	Philippine soldiers occupied five features in the Spratly Islands group and attempted to force Taiwan units from Itu Aba Island. (The National Bureau of Asian Research)
1995-2015	China significantly started island building projects creating over 3000 acres of land from 2013-2015 (U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION).
July 12th 2016	The arbitral tribunal adjudicating the Philippines' case against China in the South China Sea ruled overwhelmingly in favor of the Philippines, determining that major elements of China's claim—including its nine-dash line, recent land reclamation activities, and other activities in Philippine waters—were unlawful. (U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION).
August 28th 2023	China released a 10 dash line reinforcing its claim over the region (Yusof).

Global Reform Efforts:

The first action to attempt to resolve this issue was the creation of UNCLOS which was signed on 10th December 1982 and went into force on 16th November 1994 (International Tribunal for the Law of the Sea). As mentioned earlier it establishes where a nation's maritime territory starts and ends (United Nations). The Declaration on the Conduct of Parties in the South China Sea was signed by China and the Asean nations in Phnom Penh in 2002 and it reaffirmed freedom of navigation and overflight, peaceful settlement of disputes, and self-restraint in the conduct of activities (Maritime Awareness Project).

On 22 January 2013, the Republic of the Philippines instituted arbitral proceedings against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea.

The arbitration concerned the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features in the South China Sea, and the lawfulness of certain actions by China in the South China Sea that the Philippines alleged to be in violation of the Convention. China adopted a position of non-acceptance and non-participation in the proceedings (Permanent Court of Arbitration). On July 12, 2016, the arbitral tribunal adjudicating the Philippines' case against China in the South China Sea ruled overwhelmingly in favor of the Philippines, determining that major elements of China's claim—including its nine-dash line, recent land reclamation activities, and other activities in Philippine waters—were unlawful. Predictably, China reacted negatively to the ruling, maintaining it was “null and void.” (U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION)

Topics the Court Should Address:

Legitimacy of artificial islands as a nation's sovereign territory and their eligibility to act as a baseline under UNCLOS.

A key point of contention is if artificial islands count as a nation territory and therefore do they also count as a new baseline which would result in the expansion of the nations territorial waters and EEZ under UNCLOS. As mentioned earlier the baseline is the line that acts as the origin for all further maritime territorial measurements. This is usually done in 2 ways: Straight baseline which divides internal waters and the territorial sea; this is done by drawing a straight line from the two nearest pieces of the nation's land. The other method is the coast at low tide (Ministry of Defence).

Has one party rightfully gained possession of land from another?

There are many rightful and legal ways to obtain territory from another country. This is generally done by cession which is the formal giving up of rights, property, or territory by a state (University of Oxford). This is usually due to a sale of territory or a bilateral treaty for example at the end of a war. Please also note that before The Draft Declaration on Rights and Duties of States, formulated in 1949 by the International Law Commission of the UN, contained (in Article XI) (The Editors of Encyclopaedia Britannica) the right to conquest was an acceptable and lawful way of gaining territory.

Are there other justifiable reasons for the extension of the EEZ

One reason for justifiable extension of the EEZ is the continental shelf as a nation can gain the right to exploit and explore its continental shelf (United Nations) if it meets the criteria set out in Part XI of the UNCLOS.

Party Stances:

China

As you should know, China is a key player in the south china sea and the defendant in this case. It claims this territory on largely historic grounds claiming that its fishermen discovered it first. Furthermore the current chinese government didn't create these claims but rather continued them as the first claimants of the south china sea were the Republic of China now known as Taiwan. There are other reasons why China would like access to this sea which include the resources mentioned at the start of the reports as well as China's current security environment. China would like to control the sea as in the past they have suffered a lot of harm from western powers who invaded them using it during the "century of humiliation" for example the opium wars (Pletcher). Now that China is becoming a dominant regional and global superpower it would like to avoid the exploitation of this weakness.

Philippines

The Philippines claim to the land is largely based on UNCLOS. The Philippines argues that the islands fall within their EEZ therefore they should have rights to the islands. Furthermore a lot of the islands are occupied by the philippines for example the Scarborough shoal which has a Filipino naval presence. The Scarborough shoal is also closer to the Philippines than any other nation including China. Being only 240 km from the main island of Luzon (Hindustan Times). On the other hand the closest part of mainland China is Hainan which is around 900 km away (Hindustan Times).

Vietnam

As mentioned above, Vietnam has laid claim to multiple islands in the south china sea and has been the only nation to successfully make China retract some of its claims when it got

2 dashes that claimed the gulf of tonkin removed from the 11 Dash line back in 1952 (Beech). The Vietnamese also used to own a large part of the Paracel island before China took them over by force on January 19th 1974 during the battle of the Paracel islands (Shuster). Tensions have cooled down since then except the aforementioned incident in 2011 which involved a Chinese contractor with the support of a Chinese government vessel. They attempted to set up an oil rig in Vietnamese waters resulting in a naval conflict involving 100+ ships. This resulted in 1 Vietnamese ship being sunk (Blanchard and Linh).

Questions to Consider

- Determine who is the rightful owners of each island (Only islands disputed by the People's Republic of China and the Republic of the Philippines) based off of UNCLOS.
- Determine what counts as the baseline for both nations. Especially, do artificial islands count towards it under UNCLOS.
- Determine if either parties broke any of their international obligations and if so which ones.
- Determine if the issue requires reparations, and if so under the ICJ Statute (Article 36(2)(d)), the ICJ can decide on inter-State disputes concerning “the nature or extent of the reparation to be made for the breach of an international obligation” (Pérez-León-Acevedo).
- Determine if there are any other rightful justifications for any other points of contention including but not limited to the boundary of the EEZ.

Recommended Websites to Use

A few links to articles/videos/journal entries/other resources that provide further context or information on the topic in a list format. Links should be written as the title of the resource.

- [Asia Maritime Transparency Initiative](#)
 - [Hindsight](#)
 - [The National Bureau of Asian Research](#)
 - [Council on Foreign Relations](#)
 - [UNCLOS](#)
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Topic 2: Jadhav case (India v. Pakistan)

TOPIC INTRODUCTION:

After the dissolution of the British monarchy in India, on 14-15 August 1947 India was divided into two independent states of India and Pakistan. Since then both countries have had a tense diplomatic relationship, and have gotten into numerous disputes. Furthermore, two of the many disputes included ICJ presiding over a case between the two countries, none of which the court issued any ruling as it found it didn't have jurisdiction on the matters. The Jadhav case marks the first case where the court issued a direct verdict to settle a dispute between the two countries.

The Jadhav case is a dispute between India and Pakistan over the sentencing, and handling of Jadhav's arrest by Pakistan. Jadhav is an Indian national who crossed Pakistan's borders and was arrested by Pakistani security forces; where the arrest took place is disputed. After India was notified around 20 days later, India requested consular access multiple times but it was eventually denied by Pakistan citing an unprecedented argument that consular access doesn't apply to spies. Pakistan accuses Jadhav of being a spy and reportedly has overwhelming evidence in their possession to suggest so. Jadhav was eventually tried by Pakistan's military court known as the Field General Court Martial, found guilty, and sentenced to death. India argues through numerous points that Pakistan's actions constitute a violation of the Vienna Convention on Consular Access, and the International Covenant on Civil and Political Rights.

Jadhav was tried in the Field General Court Martial which is Pakistan's military court. The court was established under the Pakistan Army in 1952. Section 2 of that act has been amended multiple times, and in January 2015, military courts were allowed to try civilians for terrorism-related offences. Although Pakistan claims Jadhav had adequate representation throughout his trial, the court has come under heavy criticism from the international community. The European Parliament in a resolution of 15th June 2017, the parliament censured Pakistan for abusing the military court system to hold secretive trials and putting civilians on trial. It also called for the court to be more transparent.

For this, it calls into question Pakistan's handling of Jadhav's arrest, and the legality of the sentence imposed by the military court.

KEY TERMS:

Term	Definition
Espionage agent	Someone employed to spy on another country
Nationality	Nationality is the state of being a citizen of a particular country. A person who is a national of a country is called a national
2008 India-Pakistan Bilateral Agreement on Consular Access	A bilateral agreement on consular access between India and Pakistan was signed by both nations in 2008. It's an agreement which both countries came to if one nation detains another nation's citizens.
Detained Person	The condition of a person who is deprived of personal liberty, except as a result of a conviction for an offense.
Note of Verbal	A diplomatic communication between governments, delivered through their diplomatic representative.
Abuse of Process	Abuse of process refers to the misuse or manipulation of legal procedures or systems for improper purposes, such as to harass, delay, or gain an unfair advantage over another party in litigation or legal proceedings.
Due Process	The principle that ensures fair treatment and procedural fairness in legal proceedings.
Counselor access	Refers to the right of a foreign national who has been arrested or detained in another country to have access to consular officials from their home country.
First information report (FIR)	A report detailing information of a crime the police files when they are first notified of that crime.
Clean hands doctrine	Legal principle that essentially states that a party seeking relief or asserting a right in court must not have engaged in any wrongdoing or unethical behavior related to the subject matter of the dispute.
Travaux préparatoires	Preparatory work or discussions leading to the drafting of a treaty or convention.

Actual Case:

Facts in dispute:

Pakistan asserts Jadhav was arrested in Balochistan near the border with Iran. Furthermore, he was an Indian spy who bore an authentic Indian passport with the name “Hussein Mubarak Patel” and wore Muslim clothing (undertaking a Muslim identity). Furthermore, according to Pakistan, Jadhav admitted in a confession he’s Officer 41558Z, Commander Kulbushan Sudhir Jadhav and currently serving in the Indian Navy. Pakistan alleges India provided Jadhav with the fake passport so Jadhav could hide under a Muslim identity, and work as a spy for India. India alleges Jadhav is a retired naval officer, not an active serving one, and denies providing Jadhav with the passport adding he did nothing illegal.

Provisional measures:

On 8 May 2017, before the trial even began, India submitted a request for the indication of provisional measures to prevent Pakistan from executing Jadhav until the case was decided. The court agreed with this ruling and informed Pakistan to do everything in its power to prevent the execution of Jadhav. **Please note that this ruling CANNOT be used against Pakistan in the trial. The court granting this measure does not imply Pakistan's guilt of violating the convention. It is merely to stop Jadhav from being executed until a verdict is reached.**

Arguments

India

India submitted this case to the ICJ under the Article I of Optional Protocol Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes.

India made three main arguments, all centring around the fact that the Vienna Convention and the ICCPR were violated. The first was by not informing India without delay of the detention of Jadhav, the second was not informing Jadhav of his rights to consular access under Article 36, and the third was denying consular access to Jadhav.

Turning to India’s first argument. India notes that looking at Pakistan’s conduct in not granting India consular access to Jadhav, and Pakistan’s assertion that the Vienna Convention does not apply in this matter since Jadhav was accused of being a spy, strongly suggests that Pakistan did not inform Jadhav of his right to consular access as required in Article 36 (1)(b). As a result, Pakistan violated the Vienna Convention of that article by not notifying Jadhav of his consular access rights.

In India’s second argument, it claims that Article 36 (1)(b) requires Pakistan to immediately inform India of Jadhav’s arrest without delay. Pakistan informed India about Jadhav’s arrest 22

days after Jadhav's detention, India asserts this was a clear violation of Article 36 (1)(b) Vienna Convention on Consular Access since Pakistan did not inform India right away after his arrest.

India's third argument is that Pakistan violated the Vienna Convention by initially ignoring India's requests for consular access and later making its decision conditional upon India granting Pakistan's request for MLA access first.

Pakistan

Admissibility of India's arguments

Pakistan raised three objections with the court in response to India's arguments. The first is India's alleged abuse of process, abuse of rights, and unlawful conduct.

In the first objection, Pakistan alleges abuse of process, which has two main arguments. First, it alleges that when India was submitting the provisional measures to the court before the trial began, it withheld the information that there was no urgency in staying Jadhav's execution since there was a 150-day period after Jadhav's death sentence, which would have stayed his execution anyway. This information was made publicly available in a press statement dated April 14, 2017. In Pakistan's second argument, Pakistan asserts that India did not exhaust nor considered all other dispute settlement mechanism as recommended in Articles II and III of the Optional Protocol.

In Pakistan's second objection, it contends that India abused rights under various international laws which has three main arguments. Firstly, refers to India's refusal to provide evidence of Jadhav's nationality, which Pakistan claims was India's duty. Secondly Pakistan cites India's refusal to engage with the MLA. Thirdly, Pakistan claims India was responsible for sending Jadhav over the border under a false identity in order to conduct illegal espionage and terrorist activities. Furthermore, Pakistan cites various obligations set out in the Security Council resolution 1373 (2001).

In Pakistan's third objection, it argues unlawful conduct by India in which it bases its argument on the "clean hands" doctrine, and the principles of "ex turpi causa non oritur actio", and "ex injuria jus non oritur". Pakistan argues that India didn't respond to the request for assistance, and was responsible for Jadhav's espionage and terrorism activities.

Contentions

Pakistan raises two contentions regarding the applicability of certain Vienna Convention articles to this case. The first is that the Vienna Convention is not engaged in this case. Secondly, even if the Vienna Convention has been engaged, Pakistan has not breached any articles.

In the first contention, Pakistan has two arguments. Pakistan's first argument is that India never proved Jadhav's nationality. Due to this, Pakistan argued India wasn't entitled to consular access due to the lack of evidence of Jadhav's nationality. Furthermore, the Vienna Convention could only be engaged once the accused's nationality is established. In Pakistan's second argument, it argued the Vienna Convention can't be engaged in espionage cases. Pakistan submits that in the *Travaux préparatoires* to the Vienna Convention, the drafters of the convention intended matters of espionage, and terrorism acts that threaten national security to be left up to the sending state. Furthermore, Pakistan also cites examples of customary international laws that do not require consular access to espionage cases.

In Pakistan's second contention, Pakistan makes two arguments, the first argues immediate access isn't required. Pakistan argues that in the *Avena* case, and *travaux préparatoires* of the Vienna Convention, that consular access right after the individual's arrest isn't required. The second argues that the 2008 Bilateral Agreement Between India and Pakistan dictates consular access, and thus, is up to the states to grant consular access. Pakistan argues that the part which the Bilateral Agreement states "in case of arrest, detention or sentence made on political or security grounds, each side may examine the case on its merits.", clearly gives Pakistan the authority to decide "on its merits" consular access to Jadhav. Furthermore, Pakistan also argued that the effort by both parties to negotiate the terms of this document for two years, points towards both country's intentions for it to dictate consular access. Not only that, but Pakistan also goes on to say that the Bilateral Agreement did not divert from the Vienna Convention in any way.

Topics the court should address

1. The Vienna Convention on Consular Access
 - a. Timing of Pakistan's notification to India
 - i. Does the wording of Article 36 paragraph b "the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state" imply when the receiving country deem it's appropriate to notify the sending state without delay, or for the sending state to notify the receiving state the moment the sending state's national is arrested regardless of circumstances
 - ii. Does the 2008 Bilateral Agreement take precedence over the Vienna convention

 1. Pakistan's timing of the notification of Jadhav's arrest
 - a. Pakistan notified India 22 days after his original arrest date
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- i. Does the 2008 India-Pakistan Bilateral Agreement on Consular Access allow Pakistan to notify India whenever it deemed appropriate
 - ii. Does the bilateral agreement between India and Pakistan take precedent over the Vienna Convention on Consular access
 - iii. Did India not qualify for immediate notification of Jadhav's arrest since he was a spy
 - iv. Does the wording of Article 36 paragraph b "the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state" imply when the receiving country deem it's appropriate to notify the sending state without delay, or for the sending state to notify the receiving state he moment the sending state's national is arrested regardless of circumstances
 2. Pakistan denial of India's request for consular access
 - a. India has requested Pakistan for consular access multiple times but it was eventually denied
 - i. Does the Vienna Convention on Consular Access article 36 apply to those charged with crimes of espionage
 3. Evidence against Jadhav and India refusal for MLA
 - a. India repeatedly denied Pakistan's MLA request
 - i. Did India lack good faith when it denied Pakistan the MLA request
 - ii. Does India's refusal for MLA constitute abuse of process
 - b. Passport and evidence of Jadhav's alleged espionage intentions were collected by Pakistan
 - i. Is India approaching the court with unclean hands due to its alleged illegal actions in sending Jadhav to secretly cross the border and spy on Pakistan as alleged by Pakistan
 4. Nationality of detainee
 - a. India never proved Jadhav nationality since Pakistan assumed he was an Indian national
 - i. Does the sending state still need to prove the national of the detainee even if the receiving state is assuming the detainee's nationality

Timeline:

Date	Description
3rd March 2016	Jadhav was detained by Pakistan's security forces based on the accusation of being a spy agent for India. Jadhav gave a confession which Pakistan has a transcript of.
25th March 2016	The Foreign Secretary of Pakistan informed the Indian High Commissioner in Islamabad of the "arrest". India immediately sought consular access to an unspecified Indian who was arrested in Balochistan; Pakistan didn't reply. Pakistan notified the P5 states of the arrest by providing a 10-page briefing.
8th April 2016	An FIR was registered by Pakistan's law enforcement.
15 April 2016	Pakistan notified the members of the Arab League and ASEAN of the "arrest" of Jadhav.
22 July 2016	Jadhav's confession was recorded before a magistrate under Section 164 of Pakistan's Code of Criminal Procedure.
21 September 2016	The trial of Jadhav commenced before a Field General Court Martial.
23 January 2017	Pakistan then requested MLA from India in the investigation of an FIR against "an Indian national".
21 March 2017	India received a note of verbale saying Pakistan would consider the request for consular access based on the response Pakistan gets from India regarding the MLA.
10 April 2017	Pakistan's Inter-Services Public Relations announced that an Indian RAW Agent and Naval officer Commander Kulbushan Sadhir Jadhav was arrested, tried and found guilty in the Field General Court Martial for espionage and sabotage activities against Pakistan; the death penalty was awarded.
17 April 2017	The Director General of Pakistan's Inter-Services Public Relations, Major General Asif Ghafoor spoke on the matter of consular access to Jadhav. He conveyed Jadhav was apprehended based on

	evidence that he was a spy, Pakistan hasn't made any and will not make any compromises for a spy.
22 June 2017	Pakistan's ISPR issued a press release revealing Jadhav had appealed to the Military Appellate Court which was rejected. He then made a mercy petition to the Chief of Army staff, and if that fails he can also make a mercy petition to the president of Pakistan.
8 May 2017	India initiates proceedings against Pakistan. On the same day, India submitted a request for the indication of provisional measure in the Jadhav case (India v. Pakistan). In it, India asked the court to order Pakistan to stay the execution until a verdict in the India v. Pakistan case.

Further reading (The court's actual rulings are irrelevant in this MUN ICJ trial)

[link 1](#)

[link 2](#)

[link 3](#)

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