

# A CONFLICT OF PRESTIGE AND INTERESTS: ICJ, SOUTH ASIA AND MIDDLE EAST

Mr. Ubaid Ud Din & Ms. Rukhsana Rajput\*

## **Abstract**

*The paper refers to the conundrum that the International Court of Justice (ICJ) faces and highlights that the shortcomings are mostly its own doing which are politically motivated and same is the clout that does not allow it to serve justice and achieve its objective of bringing peace and stability to the world. The paper illustrates the recent high-profile case of Indian RAW agent Kulbhushan Jadhav and how India bringing into play inbuilt loopholes of ICJ's procedures and structural anomalies tried to get its desired judgment from the world court but failed miserably and exposed itself to the world. It was also an eye opener for decision-makers in the Indian hierarchy who thought it enjoys cordial relations with most of the VETO wielding countries in the United Nations Security Council. The case also highlights the state of relationship between Pakistan and India and how these relations would shape after ICJ's decision; because this case was approached from the Indian side with a very narrow prism whereas, for Pakistan, it opened new doors to resuscitate contentious issues and conflicts that it faces with its neighbours at global institutions including ICJ and influence court's decision. It can be safely said that this decision has dented the nonpartisan and neutral reputation of ICJ and cemented opinions of its critics that ICJ is monopolized. ICJ needs to follow legal norms and practices and there is a need of drastic changes in its overall design and the way it conducts its business.*

**Key Words:** International Law, World Court, Decision Making, States, ME, SA

## **Introduction**

**I**nternational Court of Justice (ICJ)<sup>1</sup> also referred to as the World Court, has remained insignificant and to a large extent unreliable primarily due to its functionality and structure resulting in failure to perform its role to bring peace to the world through its neutral and just adjudications in contentious matters involving states. For this repo, it is to blame itself because it has never been able to steer clear from the clout of members of the bench and who hail from politically and economically powerful countries. Even though the forum is to be used by states to settle their mutual contentious issues but the jurisdictional and procedural matters which drive the court functions and operations is lacking genuine force or effectiveness, eventually, becoming a catalyst of ICJ not being able to fulfil its reason of existence. The point pertinent to the subject is that the court is much more required to be effective especially in South Asia and Middle Eastern affairs where the states are more uneasy in their placing in the world map than states of any other continent of the world and therefore there does not seem to be any end to the conflicts in these two regions.

---

\*Mr. Ubaid Ud Din is an PhD Scholar and Mrs Rukhsana Rajput is President Mishal Welfare Organization.

## **ICJ: An Overview**

The ICJ bench, which comprises judges from major civilisations from around the world,<sup>2</sup> has not become a beacon of hope for justice under the umbrella of neutrality and impartiality. If that had been the case, then this forum could have become a source of enhancing the court's perception among comity of states. It was and remains a legal body, which can be ignored by any state. But it has failed to impress with its jurisprudence when the willing parties invoke its jurisdiction. The most recent cases involving an Indian Research and Analysis Wing (RAW)<sup>3</sup> agent apprehended in Pakistan for espionage and facilitating terrorism, is a glaring example of how the court did not follow basic legal methodology when a high profile case came for adjudication and how ICJ's judges carried themselves during course of proceedings.

## **ICJ and India**

Pakistan has relied on ICJ, but India always rejected its relevance and refused to accept its jurisdiction on numerous occasions. In May 1973, Pakistan instituted proceedings against India concerning Pakistani prisoners of war numbering approximately 195, who according to Pakistan, India proposed to hand over to Bangladesh and the latter intended to try them in courts for alleged acts of crimes against humanity and genocide. India claimed that there was no legal basis for the ICJ's jurisdiction in the matter under consideration and that Pakistan's application was without legal effect. Pakistan also filed a request for the indication of interim measures, ICJ held public sittings to hear annotations on this subject whereas India did not represent its stance at the hearings. In July of 1973, Pakistan requested ICJ to adjourn further hearings of its request in order to aid the negotiations which were due to commence. Afore, any pleadings had been filed before the court, Pakistan informed ICJ that dialogue had taken place and requested ICJ to record the discontinuance of the proceedings. Accordingly, the case was removed from the List by an Order of 15 December 1973.<sup>4</sup>

## **Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)**

In 1971, following an incident involving the diversion to Pakistan of an Indian aircraft, India suspended over-flights of its territory by Pakistan's civil aircrafts. Pakistan contended that this action was a violation of the 1944 Convention on International Civil Aviation and the International Air Services Transit Agreement<sup>5</sup> and complained to the Council of the International Civil Aviation Organization.<sup>6</sup> India raised preliminary objections to the jurisdiction of the Council, but these were rejected, and India appealed

to the Court. During the written and oral proceedings, Pakistan contended, inter alia, that the Court was not competent to hear the appeal. In its judgment of 18 August 1972, the Court found that it was competent to hear the appeal of India. It further decided that the ICAO Council was competent to deal with both the application and the complaint of which it had been seized by Pakistan and accordingly dismissed the appeal laid before it by the Government of India.<sup>7</sup>

### **Right of Passage over Indian Territory (Portugal v. India)**

India has previously refused to accept ICJ and its jurisdiction when the opposing party is not Pakistan. In subject case, the Portuguese possessions in India included the two enclaves of Dadra and Nagar-Aveli. Portugal contended that it had a right of passage to those enclaves and between one enclave and the other to the extent necessary for the exercise of its sovereignty and accepted that this right was subject to regulations and control of India; furthermore, in July 1954, contrary to the practice previously followed, India had prevented it from exercising that right. A first Judgment, related to the jurisdiction of the Court, which had been challenged by India. The Court rejected four of the preliminary Indian objections and joined the other two to the merits. In a second Judgment, the Court gave its decision on the claims of Portugal, which India refused to accept. The Court found that Portugal had in 1954 the right of passage claimed by it.<sup>8</sup>

### **Aerial Incident of 10 August 1999 (Pakistan v. India)**

On September 21, 1999, Pakistan filed an application which started proceedings against India in respect of a dispute concerning the destruction, on August 10, 1999, of a Pakistani aircraft. By letter of November 2, 1999, the agent of India notified ICJ that India wished to submit preliminary objections regarding the jurisdiction of the Court. On November 19, 1999, ICJ decided that the written pleadings would first address the question of the jurisdiction of ICJ and fixed time-limits for the filing of the Memorial of Pakistan and the Counter-Memorial of India. In its judgment of June 21, 2000, ICJ noted that to establish the jurisdiction of the Court, Pakistan had relied on Article 17 of the General Act for Pacific Settlement of International Disputes, signed at Geneva on September 26, 1928, on the declarations of acceptance of the compulsory jurisdiction of the Court made by the Parties and on Article 36, Para 1, of the Statute. It considered those bases of jurisdiction in turn. ICJ pointed out first that, on May 21, 1931, British India had acceded to the General Act of 1928. It observed that Pakistan and India had held lengthy discussions on the question of whether the General Act had survived the dissolution of the League of Nations and whether, if so, the two countries had become parties to that Act on their accession to independence. Referring to a communication addressed to the

UN Secretary-General on September 18, 1974, in which the Indian Government indicated that, since India's accession to independence in 1947, they had "never regarded themselves as bound by the General Act of 1928 . . . whether by succession or otherwise", ICJ concluded that India could not be regarded as a party to the said Act on the date application had been filed by Pakistan and that the Convention did not constitute a basis of jurisdiction. ICJ then considered the declaration of acceptance of the compulsory jurisdiction of ICJ made by the two States. The court noted that India's declaration contained a reservation under which "disputes with the government of any State which is or has been a member of the Commonwealth of Nations" were barred from its jurisdiction. ICJ recalled that its jurisdiction only existed within the limits within which it had been accepted and that the right of states to attach reservations to their declarations was a recognised practice. Consequently, Pakistan's arguments to the effect could not be upheld. Moreover, Pakistan being a member of the Commonwealth, the Court concluded that it did not have jurisdiction to deal with the Application based on the declarations made by the two states. Furthermore, the final basis of jurisdiction relied on by Pakistan, namely Article 36, Para 1, of the Statute, according to which "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations", the Court indicated that neither the UN Charter nor Article 1 of the Simla Accord of July 2, 1972 between the parties conferred jurisdiction upon it to deal with the dispute between them.

Lastly, ICJ stated that there was "a fundamental distinction between the acceptance by a state of the Court's jurisdiction and the compatibility of particular acts with international law" and that "the Court's lack of jurisdiction [did] not relieve states of their obligation to settle their disputes by peaceful means". Apropos, with this case law it could be easily concluded that ICJ took a way out by referring to jurisdictional impediments and in that respect did not even endeavour to resolve a dispute. Once both countries i.e. Pakistan and India have become members of the UN after the dissolution of the League of Nations (LON) then why should there be any issue related to acceptance or applicability of jurisdiction? ICJ is for states and to keep world peace through the Court's legal process, so, it means that ICJ should cease to exist if it is dependent on acceptance and approval by the states for performing its duty. Courts should have enough force within their structure to do the thing that they are meant for and in the subject case, it was world peace and therefore it is incumbent on states to accept its jurisdiction and implement its orders without any objections.<sup>9</sup>

### **Apprehension of a Serving Indian Military Agent Handler**

Spotlight fell on India when it brought to the world stage the case of Kulbhushan Jadhav at ICJ.<sup>10</sup> There are not many examples in the past where such a high-profile

apprehension was carried out by any state where a serving armed forces officer has been apprehended red-handed while actively performing the Indian government-assigned task of espionage and terrorism in Pakistan.

## **ICJ's Proceedings & Judgment**

Indian agenda was to bring the matter to ICJ to get Jadhav released from Pakistani custody but that didn't happen, and the court gave Pakistan vindication that it had apprehended an Indian spy which is truly unprecedented.<sup>11</sup> The court also gave legitimacy to the formulation and decision-making authority of Military Courts in Pakistan and rejected foul play claims of India. Even though there is considerable opposition against the establishment of military courts even from organizations like Human Rights Commission of Pakistan (HRCP)<sup>12</sup> declared them undemocratic<sup>13</sup> but now there is vindication from ICJ. Military courts in Pakistan were established in the aftermath of a horrific terrorist attack carried out on December 16, 2014, in a school namely Army Public School (APS) located in Peshawar, KP province of Pakistan. The unabashed attack had left at least 144 dead, 133 of them children. In early January 2015, an All Parties Conference (APC) sanctioned the proposed 21<sup>st</sup> Constitutional Amendment, which came into effect on the 6<sup>th</sup> of January, 2015. It also allowed alterations to the Pakistan Army Act to extend its jurisdiction for much-needed speedy trial of cases under specified acts and provided the constitutional cover with a sunset clause of two years from the date of enactment and implementation. On 9 January 2015, Pakistan lifted the cessation of the death penalty to pave the way for trials by the military courts.

As per the Centre for Research & Security Studies (CRSS) article quoting official statistics that suggested that as of December 2018 ever since their inception, roughly one dozen military courts handled 717 cases and finalised 546 of them. The courts awarded capital punishment to as many as 310 terrorists whereas 234 were awarded rigorous imprisonment of varied durations ranging from 5 years to life imprisonment. Two accused had also been acquitted.<sup>14</sup>

## **Why did India take the matter to the World Court?**

India has been using every medium to its disposal and using diplomatic outreach to undermine Pakistan at every stage including the economic domain of the Financial Action Task Force (FATF).<sup>15</sup> India never took any other matter of gravest importance to ICJ including the Kashmir dispute. If Indians were so sure of justice in ICJ, then it should have taken Pakistan to the court and asked for its decision and to settle the matter once and for all but it never did, similarly, it did not take the disputes of Siachen, Sir Creek or

border disputes with China to ICJ so why this matter was so important and why Indians trusted ICJ's decision in this particular issue? It would not have done so unless they were expecting a decision in their favour. It could be that politics of ICJ and its members who mostly belong to friendly countries as far India is concerned; might have given India some sort of assurance or hope that India will get the decision in its favour and they were not wrong in this scheme because all the Indian contentions before the court were accepted, for instance, the court decided that Pakistan should “*take all measures necessary to ensure that Mr. Kulbhushan Sudhir Jadhav is not executed*” and to “*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 th[e] Court may render on the merits of the case*”, but what it refrained to state was that Jadhav be handed over to India.<sup>16</sup>

### **Why did India not Invoke ICJ's Jurisdiction on Similar Cases Involving Indian Citizens?**

Jadhav was not the first Indian spy apprehended in Pakistan on charges of espionage, subversion and terrorism. There have been other Indian spies apprehended in Pakistan but in none of those cases any legal proceedings were initiated, nor the matter was taken to ICJ by the Indians. Some of the most prominent cases are: -

- **Ravindra Kaushik<sup>17</sup> given the spy name Nabi Ahmed Shakir** was an Indian spy agency RAW agent who lived undercover in Pakistan before he was captured. From 1979 to 1983, while working as an officer, he passed on valuable information to RAW<sup>18</sup>. He was given the title of 'Black Tiger' by India's then Home Minister S. B. Chavan. In September 1983, Indian intelligence agencies sent a low-level operative, Inayat Masih, to get in touch with Kaushik. However, Masih was caught by Pakistan's intelligence agencies and revealed Kaushik's true identity and thereafter Kaushik was captured. He was given the death sentence in 1985. His sentence was later commuted to a life term by the Supreme Court of Pakistan. In November 2001, he succumbed to pulmonary tuberculosis and heart disease. Indian Government not only refused to accept him as its citizen, but India did not demand his corpse after he died in a Pakistani prison.
- **Sarabjit Singh aka Sarabjeet Singh aka Manjit Singh** was an Indian national convicted of terrorism and spying by a Pakistani court<sup>19</sup>. He was tried and convicted by the Supreme Court of Pakistan for a series of bombings in Faisalabad and Lahore that killed 14 bystanders in 1990.

- **Kashmir Singh** (born 1941) was an Indian spy who confessed to have been sent and tasked to spy for RAW inside Pakistan. He spent 35 years in Pakistani prisons before he was released with a Presidential pardon by Pervez Musharraf<sup>20</sup>.

Above are some of the instances that never invoked saw Indian urge for International Court's involvement rather Indians refused to give these spies any basic assistance and in certain instances refused to own them as Indian citizens. These examples prove that there is something more than what meets the eye in Jadhav case and why India took the matter to ICJ.

India though claiming that it is a victory that after ICJ's decision, they have councillor access to their RAW agent but the subsequent action by the Indian councillors who were allowed to meet their agent reveals a different story and proves that this was not their actual desire and they had no intention to follow direction of ICJ in true letter and spirit as Indian councillors when given the opportunity to meet their spy refused to listen to Jadhav. The Indian diplomats left the meeting without hearing the RAW agent, which compelled Pakistan's the then Foreign Minister (FM) Shah Mehmood Qureshi to conclude that India was never interested in the consular access, moreover, the FM stated that "Commander Jadhav kept calling Indian diplomats, but they turned a deaf ear towards his calls".<sup>21</sup> This Indian behaviour proves beyond doubt that councillor access to Jadhav was not the motive of Indians to invoke ICJ's jurisdiction.

## **Media Frenzy**

ICJ's decision stimulated a media war as its decision, other than not releasing Indian spy, is vague, unfounded and clearly lacks legal acumen. India is claiming victory which is surprising because it did not want to add or give further vindication to ICJ nor it desired that provisions of international law be clarified on various points raised by Indian side but on the contrary, India desired to humiliate Pakistan at international forum and use the forum to declare Pakistan as a human rights violator as well as a country where judicial system is fraught and wanting legal acumen. Instead, it has handed down legitimacy of Pakistani civil and military courts and to their decisions.

## **Implementation of ICJ's Decision**

Pakistan has already granted councillor access to Indian diplomats who did nothing but create a scene and still Pakistani government is willing to allow them another opportunity to have access to their spy. The decision could not affect the release of

Kulbhushan Jadhav which has jolted India and that was the only reason why ICJ's forum was used. Pakistan does not have to make its actions and decisions regarding Jadhav acceptable to India because it is enough that Indian counsellors have been provided access to Jadhav and that was what ICJ directed. Any other issue over technicalities should be referred back to ICJ to put the responsibility on the world court because India never wanted councillor access, but it is now a game that they are playing to drag Pakistan back into ICJ, as it is doing now, to malign Pakistan in the eyes of the world. If there is an issue with the semantics of the phrase "unimpeded, unhindered and unconditional" used in ICJ's decision then Pakistan could ask ICJ for clarification of the phrase by invoking its advisory jurisdiction and thereafter proceed accordingly.<sup>22</sup>

### **2008 Bilateral Agreement on Consular Access**

India has managed to annul the 2008 agreement regarding councillor access vis-à-vis procedural effect on detainees held in custody of opposing countries as well as invoking the agreement's para V which asked the parties to return such detained individuals within one month.<sup>23</sup> This case severely undermined any legal position or stance that India could have taken on its nationals or spies in future and they failed to realise their folly and continue to celebrate.

It is also be taken of note that India asserted and the ICJ accepted that the clauses in the 2008 agreement on councillor access do not mean that Article 36 of the Vienna Convention does not lose its applicability and runs side by side with the agreement.<sup>24</sup> But, ironically, the 2008 agreement's clauses also do not mean or state that Article 36 of the said convention would continue to apply so it is a clear misinterpretation of the agreement. If Article 36 was to be made applicable, then what was the need for the 2008 agreement? The interpretation done by the World Court does not take logic under consideration and it misinterpreted the 2008 bilateral agreement which depicts bias.

### **Kashmir Dispute No Longer a Bilateral Issue?**

Shimla agreement,<sup>25</sup> and Lahore declaration<sup>26</sup>, prima facie, precludes any bilateral issue between India and Pakistan, including Jammu and Kashmir, to be decided outside bilateral arrangements or at the multinational forum. Hence, taking set precedence with regards to Jadhav case which has been taken to the international legal forum; it will now mean that the Kashmir issue is no longer a bilateral issue, nor any agreements as mentioned above can limit the UN charter or Security Council resolutions hence India cannot take plea of bilateralism in any respect or contention. This has opened legal avenues for the resolution of bilateral issues especially for the Kashmir issue which was



interpreted to have been closed by Simla Agreement.<sup>27</sup> Pakistan should not hold back now and will also take up matters such as the Kishanganga Hydroelectric Project under the Indus Water Treaty 1960.<sup>28</sup>

## **USA and the World Court**

Since 1946, the United States has had an edgy affiliation with the World Court. Whereas the US clasps the rule of law within its own realm and as a norm within the global system of countries. The US has been and remains an active contributor in matters presented before ICJ. Having said that, the US has never been keen to submit itself to the plenary authority of ICJ. On most occasions, it reacted negatively and unfavourably to verdicts of ICJ that are averse to US interests. As is well known, in reaction to decisions that were reached by the Court, the US withdrew from the Court's compulsory jurisdiction in 1986, refused to partake in the proceedings of the case brought by Nicaragua in 1984 and aborted its approval of ICJ's jurisdiction over disputes arising under the Vienna Convention on Consular Relations.<sup>29</sup> The US did not take up the matter of Jadhav in the media. All the US did was to give a diplomatic statement which is that "We encourage India and Pakistan to engage in direct dialogue aimed at reducing tension".<sup>30</sup> US's take is relevant and important because being the leader of the free world it needs to take a decisive stance and as it is an integral part of ICJ's system hence the court's prestige would be enhanced if the US takes a more active part in its deliberation and outlook. At present Judge Joan E. Donoghue,<sup>31</sup> is representing the US on the bench and she has been serving since 2010. As mentioned in view, the USA will not vacate its seat from the court, but it will never, as a state, accept ICJ's existence and jurisdiction to the world because of its interests.

## **ICJ Composition and Motivations**

ICJ's composition tells a lot about its functionality. ICJ is more or less composed on the same lines as the UN Security Council which simply means that the powerful states will always have representation than smaller and economically weaker ones. Hence, the USA, China, Russia, United Kingdom and France will always have representation and the common position among all of them is that they all have cordial relations with India. At present, this is a grave problem which infuses miscarriage of justice because if economically and politically, Pakistan and India are compared then one would realize that if a legal matter is presented in front of ICJ for adjudication then due to political and economic tilt or compulsions; India is likely to win most votes from the judges or members of the world court. Moreover, Judges are to serve for a nine-year renewal term

which means that the above referred political alignment will influence the court's every decision and, in this background, a country would first have to be in the good books of UNSC members if it wants to get a favourable decision in ICJ.<sup>32</sup> Apropos, how can any country or aggrieved party turn to ICJ for redress of its genuine grievances and when it does the math then it will conclude that it cannot win unless above mentioned stipulations are satisfied. It is worth noting that the judges representing the UNSC permanent members have been continuing in their place for eight to ten years and they have every likelihood to get re-elected for the next term as well. It is also worth noting that at higher judicial forums the judges are addressed and designated as "Justice" and the designation "Judge" is used by officers of the lower judiciary while the most senior or highest ranking Justice is called "Chief Justice" whereas, ICJ appears to be more of conglomerate where the chief is titled 'President' and bench comprises of officials who are termed as 'Member' and 'Judge'.

### **ICJ's Budget and Financial expenditure**

ICJ is funded from the regular budget of the United Nations and its members. ICJ's services are otherwise free of charge,<sup>33</sup> but looking at the functioning of ICJ and its reputation as a body entrusted to deliver justice, it can be safely asserted that the funding is being wasted while UN members are not at all interested in ICJ's existence nor trust its efficacy and that is evident from the current political issues including outstanding disputes like Kashmir and conflicts like Russia and Ukraine, Israel and Palestine.

### **ICJ's Decision Making Process**

A decision is taken on a majority basis in most countries but in those countries, the judges are of the same nationality and do not carry any political baggage. The same is the case in ICJ where the decision is to be taken on a majority basis as enunciated in Article 55 of the statute of ICJ.<sup>34</sup> However, the issue in ICJ is that this practice has always been worrisome and a major cause of its flawed decisions because judges with political backing can never ignore their native country's political considerations and preferences while adjudicating cases.

There are contentions that ICJ is not allowed to work, and it cannot control state actions, but this case presents another view which is that the ICJ itself is in a self-destructive mode and it violates the basic norms and regulations including agreements, treaties and state laws etc. which brought it to life in the first place. It must respect conventions, treaties, rules, and judicial decisions as it was envisaged otherwise ICJ will plunge deeper into oblivion.

## **ICJ Violating its Own Cardinal Principals**

Bilateral agreements, treaties and conventions between state parties are primary sources of international law and that is the law on which the complete setup of ICJ has been built.<sup>35</sup> But in its decision, ICJ has managed to overlook and violate its cardinal principle or giving due weightage to the bilateral agreement of 2008. It can also be construed in terms of ICJ's desire to be relevant and that has cost its primacy in subject contention because ICJ tried to present itself as an omnipotent and self-sufficient body which is it not. The countries are not bound to bring into effect its rulings to effect but if ICJ continues to override all agreements, treaties and agreements between the parties then ICJ will lose whatever left of its prestige there is. This decision will open a Pandora box if only Pakistan and Indian relations are taken into perspective because this decision now undertakes that every bilateral agreement between the two countries does not have any legal recognition in the realm of international law and any party can violate or rescind it at will.<sup>36</sup>

## **Recommendations**

There are tremendous changes needed to make ICJ more dependable for the task it was originally conceived to carry out and it includes the structural and procedural changes in its design. The most politically and economically strong nations sitting at the table should place the people who are practitioners of international law and have a record of being impartial, objective and neutral on the bench. They could be from any country how small that may be. This will give the court more independence and enhance its prestige.

Judges should only have one term to serve and should not be re-elected because then the consistency could lead to monopoly and politics within the court structure. Supreme courts in each country are appellate courts while there are trial courts which deal with matters related to evidence and recording witness statements but there is no such mechanism or backing for ICJ so the World Court must amend its rules and allow witness testimony to be recorded in the court to give more legitimacy to its rulings. For the sake of justice and clarity, the proceedings must be telecasted live to the global audience and that open channel will give the proceedings more legitimacy under public scrutiny.

## **Conclusion**

ICJ is the most important UN body, and it must enjoy the honour and prestige that an apex legal institution should have. But major changes are needed to make ICJ a

real court and custodian of international law with timely, impartial and just decision making. It includes administrative and legal procedures. In present conditions, ICJ will remain insignificant because of its present dimension, reliance on powerful states approval and support for its existence and to safeguard their interests. It has been vociferously debated in Pakistan that it was a mistake to accept ICJ's jurisdiction to trial Jadhav case. ICJ violated every legal and procedural norm that a superior court must follow to come to a just decision, but legal analysts know that the decision in Jadhav case was expected and rigged with political bias and partisanship. ICJ's Judges need votes to continue on the bench and those votes are acquired through politics hence each judge who wants to stay in the court needs political backing and support of other countries and that is how they survive and stay in power. The court used Jadhav's case to enlarge its scope and to stretch out to cases involving espionage and terrorism where a foreign national is involved even though this topic falls under the realm of the International Criminal Court's (ICC) jurisdiction. ICJ used this issue to expand its scope and if this politically motivated trend takes hold then ICJ would like even ICC and other tribunals to be abolished and take on their mandate as well.

Superior court judges in every country do not sit as mere observers and decide the case after every evidence and supporting document is presented to the court by the contesting parties including verbal statements. The judges indulge in the proceedings and ask questions to contesting parties or to their lawyers on issues which need clarification but ICJ judges during the proceedings behaved as if they are least pushed if the parties speak on relevant legal, procedural or factual points and after the proceedings are over they simply write their judgments. ICJ judges need to take interest in every case and every case deserves a very indulgent, attentive, impartial, apolitical and interested judge. The military actions have been taken by parties in the Middle East and in South Asia are a growing concern for the world community because there is a question of nuclear capability being involved which could take a minor skirmish to a world altering event and the results could be catastrophic hence the world needs to call spade a spade and take decisions not motivated by their political or economic interests but with just reasoning and for a better tomorrow.

## Endnotes

- <sup>1</sup> *International Court Of Justice*. (2018). Retrieved from <https://www.icj-cij.org/en>.
- <sup>2</sup> Headquarters, United Nations. "Voting Process & Election to the International Court of Justice: General Assembly." *Voting Process & Election to the International Court of Justice: General Assembly*. United Nations, November 13, 2020.
- <sup>3</sup> Pringle, Harry Howe Ransom & Robert W. "Research and Analysis Wing | Indian government agency." Britannica.
- <sup>4</sup> "Trial of Pakistani Prisoners of War (Pakistan v. India)." International Court of Justice.
- <sup>5</sup> *International Air-Services Transit Agreement*. 1944.
- <sup>6</sup> Nations, United. ICAO. <https://www.icao.int/about-icao/Council/Pages/vision-and-mission.aspx> (accessed 2022).
- <sup>7</sup> "Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)." August 18, 1972.
- <sup>8</sup> *Right of Passage Over Indian Territory (Portugal v. India)*. (2019). Retrieved from International Court Of Justice: <https://www.icj-cij.org/en/case/32>.
- <sup>9</sup> "Aerial Incident of 10 August 1999 (Pakistan v. India)." n.d. Www.icj-Cij.org. Accessed March 20, 2024. <https://www.icj-cij.org/case/119>.
- <sup>10</sup> *who is kulbhushan jadhav*. (2019). Retrieved from Business Standard: <https://www.business-standard.com/about/who-is-kulbhushan-jadhav>.
- <sup>11</sup> "Kulbhushan Jadhav: Pakistan told to review 'India spy' case." BBC, July 17, 2019.
- <sup>12</sup> "Human Rights Commission of Pakistan." 2022.
- <sup>13</sup> Hasan, Mehdi. "Military courts are anti-democratic." Human Right Commission of Pakistan, January 12, 2019.
- <sup>14</sup> Gul, Imtiaz. "Military Courts – Performance, Review and Challenges." Center for Research and Security Studies (CRSS).
- <sup>15</sup> FATF. <https://www.fatf-gafi.org/> (accessed 2022).
- <sup>16</sup> "Jadhav (India v. Pakistan)." International Court of Justice.
- <sup>17</sup> "How ISI Caught Indian Raw Agent | Real Story of Ravindra kaushik." February 24, 2021.
- <sup>18</sup> *Story of RAW agent, Ravinder Kaushik, who worked as a Pakistan Army Major*. (2017, April 18). Retrieved from The Economic Times: <https://economictimes.indiatimes.com/news/defence/story-of-raw-agent-ravinder-kaushik-who-worked-as-a-pakistan-army-major/forgotten-hero/slideshow/58240719.cms/>
- <sup>19</sup> Ahuja, R. (2013, May 06). *Hindustan Times*. Retrieved from Was Sarabjit Singh a RAW agent?: <https://www.hindustantimes.com/delhi/was-sarabjit-singh-a-raw-agent/story-62qEnuOGefXFSckX7ovfN.html>.
- <sup>20</sup> *I was a spy, says Kashmir Singh*. (2008, March 08). Retrieved from Hindustan Times: <https://www.hindustantimes.com/delhi/i-was-a-spy-says-kashmir-singh/story-sNr1TuDMEIhurYneYUDByJ.html>
- <sup>21</sup> "Indian officials left without hearing Jadhav." South Asia Monitor, July 17, 2020.
- <sup>22</sup> *How the Court Works*. (2018). Retrieved from International Court Of Justice : <https://www.icj-cij.org/en/how-the-court-works>.
- <sup>23</sup> Agreement on consular access between the Government of the Islamic Republic of Pakistan and India. (2008, May 21). Registration with the Secretariat of the United Nations: Pakistan, 17 May 2017. Retrieved 2019, from <https://treaties.un.org/doc/Publication/UNTS/No%62oVolume/54471/Part/I-54471-o800002804b7dde.pdf>
- <sup>24</sup> Nations, United. *Vienna Convention on Diplomatic Relations, 1961*.
- <sup>25</sup> "Agreement between the Government of India and the Government of the Islamic Republic of Pakistan on Bilateral Relations (Simla Agreement)." *United Nations Peacemaker*. <https://peacemaker.un.org/indiapakistan-simlaagreement72> (accessed 2022).
- <sup>26</sup> "Lahore Declaration ." *Pakistani.Org*. [https://pakistani.org/pakistan/lahore\\_declaration.html](https://pakistani.org/pakistan/lahore_declaration.html).
- <sup>27</sup> Hashmi, Asad. *Timeline: India-Pakistan Relations*. ALJAZEERA, March 01, 2019.
- <sup>28</sup> Iqbal, Anwar. "Explainer: What is the Kishanganga water dispute." Dawn.com, May 20, 2018.
- <sup>29</sup> Murphy, S. D. (2008). The United States and the International Court of Justice: Coping. GW Law Faculty Publications & Other Works. Retrieved from [https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1902&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1902&context=faculty_publications)
- <sup>30</sup> *Kulbhushan Jadhav row: US urges India, Pakistan to engage in direct dialogue*. (2018, July 11). Retrieved from The Economic Times: <https://economictimes.indiatimes.com/news/defence/kulbhushan-jadhav-row-us-urges-india-pakistan-to-engage-in-direct-dialogue/articleshow/58687436.cms?from=mdr>
- <sup>31</sup> "Judge Joan E. Donoghue." United Nations , 2015.
- <sup>32</sup> "United Nations Security Council." *Security Council Members*. United Nations, 2019.
- <sup>33</sup> "The International Court Of Justice." Encyclopedia.com.
- <sup>34</sup> "Statute of International Court of Justice." International Court of Justice.
- <sup>35</sup> "International Court Of Justice." *Statute of International Court of Justice*. International Court Of Justice, 2010.
- <sup>36</sup> "PAK INDIA TIES." DAWN, 2020.