

# A REPRIEVE: ON THE KULBHUSHAN JADHAV CASE

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The [judgment of the International Court of Justice at The Hague in the Kulbhushan Jadhav case](#) has come as major relief for India, providing space and direction for Pakistan to reconsider the ill-formed process it pursued in convicting and sentencing to death the former naval officer. In its judgment, the ICJ ruled in favour of India's petition on six counts, finding that Pakistan was in breach of its own commitments to the Vienna convention on consular relations, and also rejecting its contention that the convention doesn't apply to the charges of espionage and terrorism levelled against Mr. Jadhav. Put plainly, the judgment castigates Pakistan's legal process against Jadhav *ab initio*: from the initial failure to inform India of the arrest, besides the failure to inform him of his rights, to provide him legal representation, and to provide him an open and fair trial. Pakistan's leadership may choose to publicly rejoice over the fact that the ICJ didn't annul the trial or direct a release, but the order should give it pause for thought, and allow saner minds within its establishment to order a comprehensive review of the trial process, if not a full retrial. The ICJ has worked with precedents in the cases of *Germany vs the United States (LaGrand)* and *Mexico vs the United States (Avena)*, both cases where it had ruled that the U.S. was in violation of the Vienna convention, and ordered a "review and reconsideration" of its process. Pakistan must realise that it cannot now emulate the example of the U.S., which defied the ICJ's ruling, and work instead in good faith to implement the ICJ's detailed recommendations for an effective process of justice for Mr. Jadhav.

## Takeaways from the Kulbhushan Jadhav case ruling

Those recommendations, however, can only ensure a fair trial process for Mr. Jadhav in Pakistan, and not his release or eventual return home. For its part, New Delhi must recognise that the verdict is only a breather, a window of opportunity in which to open talks with Islamabad, parallel to the trial review on Mr. Jadhav's future. Pakistan must recognise India's resolve in securing the safety of its citizen, and any rash move to try and put his sentencing into effect will cause deep and lasting damage to its own attempts to restart bilateral talks. This will be even more difficult to do than it was when Mr. Jadhav was arrested in March 2016, as at the time Prime Minister Narendra Modi had just visited Lahore, and despite the Pathankot attack the National Security Advisers had maintained their backchannel negotiations. India had yet to call off its participation in the SAARC summit in Islamabad (which it did after the Uri attack in September 2016), and the Foreign Secretaries had met in Delhi to discuss the summit in April that year. None of those avenues exists today, and new ones will need to be built, if not for the sake of a larger dialogue process, for the sake of Mr. Jadhav, who has secured a reprieve but still faces an uncertain future.

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