

Starting from this week, this e-bulletin from IDSA will seek to focus on major developments in Pakistan on weekly basis and bring them to the notice of strategic analysts and policy makers in India.

## EDITORIAL

This week, the International Court of Justice (ICJ) order on Kulbhushan Jadhav case was a significant development that dominated the print and electronic media in Pakistan. In this bulletin, an attempt has been made to understand the implications of the ICJ order and also look at other important issues pertaining to politics, economy and security.

## COMMENTARY

### The ICJ and the Case of Kulbhushan Jadhav

*Dr Ashok K Behuria, Senior Fellow, IDSA*

On May 18, International Court of Justice (ICJ) acted on Indian request and “indicate[d] provisional measures” to Pakistan to take all measures necessary to ensure that Kulbhushan Jadhav— an Indian national arrested, tried and sentenced to death by a military court in Pakistan— is not executed. The order was adopted unanimously and Pakistan was asked to inform the court about measures it would take to implement the order.

#### The Case

On April 10, 2017, Pakistan military’s public relations wing, ISPR (Inter Services Public Relations) came out with a press release that, Kulbhushan Sudhir Jadhav— a retired Indian navy official and allegedly caught spying in Pakistan for Indian intelligence agency R&AW, in Pakistan on March 03, 2016— had been “tried through Field General Court Martial (FGCM)” under “section 59 of Pakistan Army Act (PAA) 1952 and Section 3 of

oficial Secret Act of 1923” and awarded death sentence and it had been confirmed by the army chief. Jadhav, it said, was tried for planning, coordinating and organizing “espionage/sabotage activities aiming to destabilize and wage war against Pakistan”.

India was informed about Jadhav’s arrest, 22 days after it was reported in the media and had sought consular access to him on the very same day. Until it moved the ICJ on May 08 and instituted proceedings against Pakistan, it had sought and was denied access repeatedly for 13 times. Pakistan requested Indian assistance in the investigation of Jadhav’s alleged “involvement in espionage and terrorist activities in Pakistan” only on January 23, 2017. Later, on March 21, 2017, through a *Note Verbale* it had informed India that “consular access [to Mr. Jadhav would] be considered in the light of the Indian side’s response to Pakistan’s request for assistance in [the] investigation process”.

#### Indian Argument

India argued in its ‘Application’ to ICJ that Jadhav’s execution “would cause irreparable prejudice to the rights claimed by India”. India had also simultaneously filed a ‘Request’ to the Court to indicate “provisional measures” to Pakistan to stop execution of Kulbhushan “without waiting for an oral hearing” 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”. , The Court could do that pursuant to Article 41 of the Statute of the Court.

The request also alleged that by denying India access to the accused, Pakistan “[had] prevented India from exercising its rights under the Convention and ...deprived

the Indian national from the protection accorded under the Convention”. Thus, there was a case of “brazen defiance” and “egregious violation of Vienna Convention on Consular Relations” (1963) by Pakistan.

In the hearings, Indian attorney, Harish Salve, asked ICJ to suspend Jadhav’s death sentence immediately expressing fears that Pakistan could execute him even before the hearing at the ICJ was over. It was emphasized that Jadhav was not provided proper legal assistance and the right to consular access and Pakistan had violated the Vienna Convention. India held that the execution of the death sentence while this court was hearing the appeal would be a violation of the Vienna Convention. “Graver the charges, greater the need for continued adherence of Vienna Convention”, Salve told the ICJ.

Dr Deepak Mittal, joint secretary from the Indian ministry of external affairs, pointed out that Pakistan had not so far provided India any chargesheet, copy of the verdict and other documents.

Indian position was that Jadhav was kidnapped from Iran where he was involved in business activities after retiring from the Indian Navy and he had no connection whatsoever with the government.

Salve had also argued that Jadhav’s human rights were violated during the conduct of the trial and even though Pakistan had said that Jadhav had right to further appeal, his mercy plea was to be heard by two-star generals, which put into question impartiality of the process. Therefore, there was a need for provision of “appropriate legal representation for Kulbhushan Jadhav”.

### **Pakistan’s Position**

The Pakistani position in the Court was that India’s application on Jadhav was “unnecessary and misconceived” and should be dismissed. Pakistan argued that had signed a separate agreement with India in 2008 to conduct consular relations between the two countries, which limited/qualified/supplemented the Court’s jurisdiction over the issue, as per the Article 73, paragraph 2, of the Vienna Convention.

Pakistani representative, Muhammad Faisal of Pakistani foreign office, accused India of setting the stage for “political theatre” over the case and held that Vienna Convention provisions on consular access were not in-

tended for a “spy” involved in terror activities. Pakistan’s attorney, Khawar Qureshi held that contrary to Indian apprehension of immediate execution of Kulbhushan, there was a clemency period of 150 days available to him, which could extend beyond August 2017. There was also the possibility of a writ petition being filed in the High Court.

Faisal also claimed that India had been unable or “unwilling” to provide an explanation for Jadhav’s passport which had a Muslim name on it, and held that India could and should have responded to Pakistan’s letter of request seeking India’s assistance to investigate the criminal activity and links with people of India” which Jadhav had revealed.

### **The ICJ Order**

In its unanimous order, the jury upheld the Indian viewpoint on “provisional measures”, after judging the eligibility of the case in the matter. It endorsed India’s stand that there was “a risk of irreparable prejudice and urgency” because Jadhav was under a death sentence and could be executed anytime.

The order read out by ICJ president, Ronny Abraham, took due account of Pakistan’s indicative statement that Jadhav would not be executed within 150 days of the passing of the sentence, and noted that there was an urgency, because Pakistan had not given any assurance that Jadhav would not be executed before the Court rendered its final decision.

The Court held that it had *prima facie* jurisdiction to hear the case because the parties had differing views about India’s consular assistance to Jadhav. The order said that it “[did] not need to decide at this stage of the proceedings” whether the 2008 agreement limited India’s rights as per the Vienna Convention. It was rather “sufficient at this point to note that the provisions of the 2008 Agreement do not impose expressly such a limitation”. Therefore, it observed that “there [was] no sufficient basis to conclude at this stage that the 2008 Agreement prevent[ed] it from exercising its jurisdiction under Article I of the Optional Protocol..”.

The Court considered the Indian allegation “plausible” that Pakistan had violated Article 36 (1) of the Vienna Convention by not allowing India to exercise its rights to fulfil its consular obligations. Therefore, according

to the Court, there was a link between the rights claimed by India and the provisional measures requested to ensure those rights.

Given such urgency, the Court felt the need to indicate to Pakistan that it should take all measures at its disposal to ensure that Jadhav would not be executed pending the final decision, and it should inform the Court of all the measures taken by it to implement the Order. The Court also decided to remain seized of the matters, until its final decision.

## THE WEEK AT A GLANCE

### OBOR/CPEC

#### OBOR Summit and Pakistan

At the BRI Summit held in Beijing on May 15, Pakistan and China have signed six accords of cooperation in diverse fields: The framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road initiative and agreements on economic and technical cooperation, two cooperation agreements worth \$333m for an airport in Gwadar, a deep water port that is to provide an outlet to the Arabian Sea from the far western Chinese province of Xinjiang, establishment of the Havelian dry port in Pakistan, agreement on economic and technical cooperation (\$160m) for the East Bay Expressway linking Gwadar to Pakistan's highway network. In addition to the \$57 billion for the CPEC, the Chinese have pledged additional 1.5 billion RMB for Gwadar Airport, among others 1.1bn RMB for East Bay Expressway). The total worth of the accords is about \$500 million. On the sidelines of the BRI summit, the Pakistani leadership discussed the possible assistance of China in building the Diamer-Bhasha dam. The Minister for Planning, Reform and Development, Ahsan Iqbal has recently pointed out that CPEC's impact on GDP growth would be around 1.5 percent which will create around 1.5 million additional jobs according to some estimates.

*Source: The Nation, <http://nation.com.pk/columns/20-May-2017/obor-summit-and-pakistan>*

#### China to invest \$50bn on mega dams in Pakistan

In a first-of-its-kind investment in Pakistan's troubled energy sector, Islamabad and Beijing signed a memorandum of understanding (MoU) to develop North Indus River Cascade with an estimated cost of US\$ 50 billion that has the potential of generating approximately 40,000mw of hydroelectric power. Under the initiative, initially five huge dams will be built in a region that starts from Skardu in Gilgit-Baltistan and runs through Khyber-Pakhtunkhwa as far as Tarbela, in the first-ever private sector investment in Pakistan's mega hydel projects. Only Water and Power Development Authority (WAPDA) would undertake such projects in the past. With the inking of the MoU - signed by Water and Power Secretary Yousuf Naseem Khokhar and Chinese Ambassador in Pakistan Sun Weidong and witnessed by Prime Minister Nawaz Sharif - China has emerged as the biggest financier of infrastructure projects in Pakistan. This \$50 billion investment is in addition to the \$57 billion projects being executed by Beijing in power and road infrastructure sectors in Pakistan under the China-Pakistan Economic Corridor (CPEC).

*Source: Daily Times <http://dailytimes.com.pk/pakistan/14-May-17/china-to-invest-50bn-for-mega-dams-in-pakistan>*

#### Exclusive: CPEC master plan revealed

The *Dawn* newspaper published a report on the master plan of the CPEC which is yet to be made public by the government. Main features of the CPEC according to the master plan agreed by the government of Pakistan are: (i) thousands of acres of agricultural land will be leased out to Chinese enterprises to set up "demonstration projects" in areas ranging from seed varieties to irrigation technology (ii) A full system of monitoring and surveillance would be built in cities from Peshawar to Karachi, with 24 hour video recordings on roads and busy marketplaces for law and order. (iii) A national fibreoptic backbone would be built for the country not only for internet traffic, but also terrestrial distribution of broadcast TV, which will cooperate with Chinese media in the "dissemination of Chinese culture". (iv) creation of industrial parks, or special economic zones, which "must meet specified conditions, including availability of water...perfect infrastructure, sufficient sup-

ply of energy and the capacity of self service power”, (v) from provision of seeds and other inputs, like fertiliser, credit and pesticides, Chinese enterprises will also operate their own farms, processing facilities for fruits and vegetables and grain. Logistics companies will operate a large storage and transportation system for agrarian produce, (vi) to maintain a mechanism that will “help Chinese agricultural enterprises to contact the senior representatives of the Government of Pakistan and China”, (vii) the construction of one NPK fertilizer plant as a starting point “with an annual output of 800,000 tons”. Enterprises will be inducted to lease farm implements, like tractors, “efficient plant protection machinery, efficient energy saving pump equipment, precision fertilization drip irrigation equipment” and planting and harvesting machinery, (viii) Meat processing plants in Sukkur are planned with annual output of 200,000 tons per year, and two demonstration plants processing 200,000 tons of milk per year, (ix) in crops, demonstration projects of more than 6,500 acres will be set up for high yield seeds and irrigation, mostly in Punjab. “ (x) a nationwide logistics network, and enlarge the warehousing and distribution network between major cities of Pakistan” (xi) a vegetable processing plant, with annual output of 20,000 tons, fruit juice and jam plant of 10,000 tons and grain processing of 1 million tons. (xii) “China-invested enterprises will establish factories to produce fertilizers, pesticides, vaccines and feedstuffs”; in the form of joint ventures, shareholding or acquisition, the China invested enterprises would cooperate with local enterprises of Pakistan to build a three-level warehousing system (xiii) there are plans to set up 12 marble and granite processing sites in locations ranging from Gilgit and Kohistan in the north, to Khuzdar in the south. (xiv) In the central zone “in the future, there is a larger space of cooperation for China to invest in the cement process transformation”. (xv) according to the master plan in the textile sector “China can make the most of the Pakistani market in cheap raw materials to develop the textiles & garments industry and help soak up surplus labor forces in Kashgar”. (xvi) in “land, tax, logistics and services” as well as land price, China would like “enterprise income tax, tariff reduction and exemption and sales tax rate.” (xvii) there is a plan for a terrestrial cable across the Khunjerab pass to Islamabad, and a submarine landing station in Gwadar, linked to Sukkur, Islamabad and other

major cities in Pakistan to help cultural transmission. The future cooperation between Chinese and Pakistani media will be beneficial to disseminating Chinese culture in Pakistan, further enhancing mutual understanding between the two peoples and the traditional friendship between the two countries. (xviii) deployment of explosive detectors and scanners to “cover major roads, case-prone areas and crowded places...in urban areas to conduct real-time monitoring and 24 hour video recording.” (xxi) The report recommends that China’s maximum annual direct investment in Pakistan should be around US\$1 billion” and suggests a ceiling for preferential loans should be \$1 billion, and for non preferential loans no more than \$1.5 billion per year. (xx) the master plan proposes tripling the size of the swap mechanism between the RMB and the Pakistani rupee to 30 billion Yuan, diversifying power purchase payments beyond the dollar into RMB and rupee basket, tapping the Hong Kong market for RMB bonds, and diversifying enterprise loans from a wide array of sources.

<https://www.dawn.com/news/1333101>

### **Absence of Gilgit-Baltistan Chief Minister in OBOR Forum triggers strong reaction**

The absence of Chief Minister Gilgit-Baltistan, Hafiz Hafeezur Rehman in the Pakistan delegation that went to attend OBOR events in China has drawn strong reaction in the region. University students, lawyers and other professionals, have equated his absence in the delegation as a continuation of Pakistan’s neglect of the strategic region that connects Pakistan with China, and through which the China-Pakistan Economic Corridor passes. Hundreds of memes, short write-ups, and statements posted on social media websites, like Facebook, are being used to protest the absence of Gilgit-Baltistan’s elected Chief Minister in the delegation. A national daily, Pakistan Today, has reported that for ‘unknown reasons’ the name of Chief Minister Gilgit-Baltistan was allegedly dropped from the list of Pakistan’s official delegation on the last minute.

*Source: Pamir Times: <http://pamirtimes.net/2017/05/13/absence-of-gilgit-baltistan-chief-minister-in-obor-forum-triggers-strong-reaction/>*

## ECONOMY

### Rising external deficit

The latest data for the country's external account shows that the current account deficit is rising at a rapid pace. In the first 10 months of the fiscal year, the deficit has risen to \$7.2bn, more than triple the figure for the same period last year. Even month on month, between March and April of this year, there was a sharp spike of almost 100pc in the size of the deficit.

Source: Dawn <https://www.dawn.com/news/1333972/rising-external-deficit>

## POLITICS

### TV channels warned for airing anti-army content

A statement issued by the Pakistan Electronic Media Regulatory Authority (PEMRA) on carried a warning for all TV channels against airing unverified news or analyses themed around Pakistan Army or its relationship with the civilian government. PEMRA, in its latest statement, made it clear that all news and current affairs TV channels, including its employees, panelists and anchorpersons, shall not divulge in discussing unverified news or analyses pertaining to the country's civil-military relations without confirmation from the institutions concerned. The content, PEMRA maintains, would be especially problematic if it accuses the military of something, tarnishes its 'image' or if it encourages anyone to take extra-constitutional measures.

Source: <http://dailytimes.com.pk/pakistan/13-May-17/tv-channels-warned-for-airing-anti-army-content>

### FATA Reforms Bill put on hold

Qaumi Watan Party chairman Aftab Ahmed Khan Sherpao has said the federal government's 'delaying' tactics on merger of Fata with Khyber Pakhtunkhwa is tantamount to deceiving the tribesmen. Speaking at a public meeting at Hazarkhwani he said delaying the merger of Fata with KP was against the wishes of Pakhtuns. Senior provincial minister Sikandar Hayat

Khan Sherpao and other leaders of the party were also present. Aftab Sherpao said pleasing those who were objecting to Fata-KP merger would harm the image of the ruling Pakistan Muslim League-Nawaz among the people of Fata and KP.

Source: <https://www.dawn.com/news/1334469/govt-deceiving-fata-people-on-merger-sherpao>

## DAWN LEAKS

### Dawn Leaks issue stands settled: Govt

The prime minister was pleased to approve the 'unanimous recommendations' of the Dawn Leaks Inquiry Committee vide Orders No. 1707/M/SPM/2017 dated 29th April 2017, the new notification reads. "There is a need to develop a Code of Conduct for the Print Media especially when dealing with issues relating to Security of Pakistan. The Committee recommends that the role of Daily Dawn/Mr Zafar Abbas/Mr Cyril Almeida, in the instant case, may be referred to the All Pakistan Newspapers Society (APNS) with a direction to take disciplinary action against Daily Dawn/Zafar Abbas/Cyril Almeida, besides developing a Code of Conduct for publishing stories on issues of national importance/security by abiding to the basic journalistic/editorial norms," it said.

Source: <http://dailytimes.com.pk/pakistan/11-May-17/dawn-leaks-issue-stands-settled-govt>

### Civil-military 'consensus' on Dawn Leaks investigation

Interior Minister Chaudhry Nisar claimed *there was complete civil-military consensus on the Dawn Leaks inquiry report*. "It wasn't as big of an issue as it was made out to be," Nisar told reporters, a day after Inter-Services Public Relations (ISPR) Director General Maj Gen Asif Ghafoor announced the decision to withdraw his tweet rejecting the prime minister's directives on the recommendations of Dawn Leaks inquiry committee.

Details: <http://dailytimes.com.pk/pakistan/12-May-17/complete-civil-military-consensus-on-dawn-leaks-investigation-nisar>



INSTITUTE FOR DEFENCE  
STUDIES & ANALYSES  
रक्षा अध्ययन एवं विश्लेषण संस्थान

Institute for Defence Studies and Analyses  
1, Development Enclave, Rao Tula Ram Marg  
New Delhi 110 010 India  
T +91-11-2671 7983 F +91-11-2615 4191  
contact.idsa@nic.in www.idsa.in Twitter @IDSAIndia  
www.facebook.com/InstituteforDefenceStudiesAnalyses