

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE AERIAL INCIDENT  
OF 10 AUGUST 1999

(PAKISTAN *v.* INDIA)

**ORDER OF 19 NOVEMBER 1999**

**1999**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE L'INCIDENT AÉRIEN  
DU 10 AOÛT 1999

(PAKISTAN *c.* INDE)

**ORDONNANCE DU 19 NOVEMBRE 1999**

Official citation:

*Aerial Incident of 10 August 1999 (Pakistan v. India),  
Order of 19 November 1999, I.C.J. Reports 1999, p. 1038*

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Mode officiel de citation:

*Incident aérien du 10 août 1999 (Pakistan c. Inde),  
ordonnance du 19 novembre 1999, C.I.J. Recueil 1999, p. 1038*

ISSN 0074-4441  
ISBN 92-1-070838-5

Sales number	<b>766</b>
N° de vente:	

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INTERNATIONAL COURT OF JUSTICE

YEAR 1999

1999  
19 November  
General List  
No. 119

19 November 1999

CASE CONCERNING THE AERIAL INCIDENT  
OF 10 AUGUST 1999

(PAKISTAN v. INDIA)

ORDER

*Present: President SCHWEBEL; Vice-President WEERAMANTRY; Judges ODA, BEDJAOU, GUILLAUME, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOIJMANS; Registrar VALENCIA-OSPINA.*

The International Court of Justice,

Composed as above,

Having regard to Article 48 of the Statute of the Court and to Articles 44 and 48 of the Rules of Court,

Having regard to the Application filed in the Registry of the Court on 21 September 1999, whereby the Islamic Republic of Pakistan instituted proceedings against the Republic of India in respect of a dispute concerning the destruction on 10 August 1999 of a Pakistani aircraft;

Whereas on 21 September 1999 a certified copy of the Application was transmitted to the Republic of India;

Whereas the Islamic Republic of Pakistan has appointed as Agent His Excellency Mr. Saeed M. Khan, Ambassador of Pakistan to the Netherlands; and whereas the Republic of India has appointed as Agent His Excellency Mr. Prabhakar Menon, Ambassador of India to the Netherlands, as Co-Agent Mr. P. S. Rao, Joint Secretary and Legal Adviser in

the Ministry of External Affairs, and as Deputy Agent Ms Murugesan Manimekalai, Counsellor at the Embassy of India in the Netherlands;

Whereas, in its Application, Pakistan, in order to found the jurisdiction of the Court, invokes Article 36, paragraphs 1 and 2, of the Statute and the declarations whereby the two Parties have recognized the compulsory jurisdiction of the Court;

Whereas, by letter dated 2 November 1999, the Agent of India notified the Court that his Government "wish[ed] to indicate its preliminary objections to the assumption of jurisdiction by the . . . Court . . . on the basis of Pakistan's Application"; and whereas those objections, set out in a note appended to the letter, were as follows:

- “(i) That Pakistan's Application did not refer to any treaty or convention in force between India and Pakistan which confers jurisdiction upon the Court under Article 36 (1).
- (ii) That Pakistan's Application fails to take into consideration the reservations to the Declaration of India dated 15 September 1974 filed under Article 36 (2) of its Statute. In particular, Pakistan, being a Commonwealth country, is not entitled to invoke the jurisdiction of the Court as subparagraph 2 of paragraph 1 of that Declaration excludes all disputes involving India from the jurisdiction of this Court in respect of any State which 'is or has been a Member of the Commonwealth of Nations'.
- (iii) The Government of India also submits that subparagraph 7 of paragraph 1 of its Declaration of 15 September 1974 bars Pakistan from invoking the jurisdiction of this Court against India concerning any dispute arising from the interpretation or application of a multilateral treaty, unless at the same time all the parties to such a treaty are also joined as parties to the case before the Court. The reference to the UN Charter, which is a multilateral treaty, in the Application of Pakistan as a basis for its claim would clearly fall within the ambit of this reservation. India further asserts that it has not provided any consent or concluded any special agreement with Pakistan which waives this requirement”;

Whereas, at a meeting between the President of the Court and the representatives of the Parties held on 10 November 1999, the Parties provisionally agreed to request the Court to determine separately the question of jurisdiction in this case before any proceedings on the merits, on the understanding that Pakistan would first present a Memorial dealing exclusively with this question, to which India would have the opportunity of replying in a Counter-Memorial confined to the same question;

Whereas, by letter of 12 November 1999, the Agent of Pakistan confirmed the agreement to the procedure given *ad referendum* on 10 November 1999;

Whereas it is necessary for the Court to be informed of all the contentions and evidence of fact and law on which the Parties rely in the matter of its jurisdiction;

Taking into account the agreement concerning the procedure reached between the Parties, consulted under Article 31 of the Rules of Court, and their views regarding the time-limits to be fixed for that purpose,

*Decides* that the written pleadings shall first be addressed to the question of the jurisdiction of the Court to entertain the Application;

*Fixes* the following time-limits for the filing of those pleadings:

10 January 2000 for the Memorial of the Islamic Republic of Pakistan;

28 February 2000 for the Counter-Memorial of the Republic of India;  
and

*Reserves* the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of November one thousand nine hundred and ninety-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Islamic Republic of Pakistan and the Government of the Republic of India, respectively.

*(Signed)* Stephen M. SCHWEBEL,  
President.

*(Signed)* Eduardo VALENCIA-OSPINA,  
Registrar.

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