

INTERNATIONAL COURT OF JUSTICE

## **APPLICATION**

### **INSTITUTING PROCEEDINGS**

filed in the Registry of the Court

on 21 September 1999

### **AERIAL INCIDENT OF 10 AUGUST 1999**

(PAKISTAN v. INDIA)

1999 General List No. 119

#### **APPLICATION OF THE ISLAMIC REPUBLIC OF PAKISTAN**

21 September 1999.

I, the undersigned, being duly authorized by the Islamic Republic of Pakistan, being the Ambassador of the Islamic Republic of Pakistan accredited at The Hague:

have the honour to refer to the declarations made by the Islamic Republic of Pakistan and by the Republic of India respectively, accepting the jurisdiction of the Court as provided for in Article 36, paragraphs 1 and 2, of the Statute of the International Court of Justice, and by virtue of the consent to the jurisdiction based upon those instruments and in accordance with Article 40 of the Statute and Article 38 of the Rules of the Court, make this application instituting proceedings in the name of the Islamic Republic of Pakistan against the Republic of India on the following grounds:

#### **I. STATEMENT OF FACTS**

On the 10th day of August 1999 an unarmed Atlantique aircraft of the Pakistan navy was on a routine training mission with sixteen personnel on board. While flying over Pakistan air space it was fired upon with air to air missiles by Indian air force planes, without warning. All sixteen personnel, mostly young naval trainees, on board the aircraft were killed. This act of blatant military aggression was unprovoked and in contravention of all universally accepted existing international norms relating to sovereignty and inviolability of national borders.

The Atlantique aircraft was conducting scheduled instrument flight training.

In accordance with the standard operating procedures the Karachi civil airport was informed of the flight plan of the aircraft. The plane took off at 0915 hrs (Pakistan time). Radar contact was maintained with the aircraft until it was lost at 1055 hrs. The general area of operation

was approximately 70 to 90 miles east of Karachi. All through the one hundred minutes of flying time the Pakistan naval aircraft was visible on the radar within Pakistan air space.

Moreover, since the aircraft was flying at a height of 7,000-9,000 feet, it was visible on the Pakistani radar in Karachi and should have been visible on Indian radar at Nalya Air Base, in Gujrat, throughout the flight time.

From 1030 to 1055 hrs, when it was shot down, the aircraft was in the same area carrying out various training exercises and manoeuvres of instrument flying within Pakistan air space. The flight pattern during such training activities is generally circular.

Once radar contact was lost with the aircraft an intensive search was under taken by Pakistani aircraft and helicopters at about 1206 hrs. The wreckage of the Atlantique was discovered around 1455 hrs scattered across the area of a radius of one square kilometre. The wreckage of the plane was about 2 km inside Pakistan territory which is a clear proof that when the aircraft was shot it was well within Pakistan's air space.

By the time the wreckage was found by Pakistan navy's Sea King helicopters there was a gap of about 2½ hours. The Indian helicopters, knowing the actual position of the shooting down of Pakistan's aircraft, sneaked into Pakistan's territory to pick up a few items from the debris. By this criminal act India once again violated Pakistan's air space and territorial sovereignty, by sending helicopters into Pakistan territory to remove parts of the wreckage, before Pakistan's search party discovered it, in order to produce "evidence" for its initial claim that the Atlantique had been shot down over Indian air space. Subsequently, because of the overwhelming evidence which left no shadow of doubt that the plane was well within Pakistan air space the Indian officials were obliged to admit that the Atlantique had indeed been shot down over Pakistan's air space.

## II. LEGAL GROUNDS ON WHICH THE CLAIM IS BASED

On the basis of the above facts Pakistan claims that India has incurred legal responsibility for the breach of its fundamental obligations under the United Nations Charter, as well as those arising under bilateral treaties, apart from constituting a breach under well-established obligations of customary international law.

The particular legal grounds on which Pakistan bases its claim are as follows :

### *(1) Breaches of the Charter of the United Nations*

The facts on which Pakistan bases its complaint disclose serious violations of the various provisions of the United Nations Charter, particularly Article 2, paragraph 4, according to which all Members of the United Nations are under an obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations. India's unprovoked and blatant use of force against an unarmed Pakistani aircraft over Pakistani territorial air space contravenes the basic purpose of the United

Nations, i.e., to maintain international peace and security and to develop friendly relations among nations.

*(2) Breaches of the bilateral Agreement*

India's actions described above also constitute serious violations of the provisions of the Agreement concluded on 6 April 1991 between Pakistan and India on Prevention of Air Space Violations of which Article 1 enjoins both parties to ensure "that air violations of each other's air space do not take place". Moreover, the Agreement clearly rules out the use of force even in case a violation is believed by either side to have taken place. Article 1 also stipulates that "if any inadvertent violation does take place, the incident will be promptly investigated" and the other side's headquarters informed of the results "without delay".

*(3) Breaches of the obligations of customary international law not to use force against another State*

India committed breaches of the obligations imposed on States by customary international law not to use force against another State. By attacking and shooting down Pakistan's unarmed aircraft inside Pakistan's air space, without warning and without any provocation on its part, constitute serious breach of that obligation.

*(4) Breaches of the obligation of customary international law not to violate the sovereignty of another State*

The incursion into Pakistan's air space by the Indian air force jet fighters and their attack on, and shooting down of, unarmed Pakistan's naval aircraft on routine training mission inside Pakistan air space constitutes violation of Pakistan's sovereignty and breach by India of its obligation under customary international law.

#### THE NATURE OF THE CLAIM

On the basis of the foregoing statement of facts and considerations of law, and while reserving its right to supplement and or to amend this Application, and subject to the presentation to the Court of the relevant evidence and legal argument, Pakistan requests the Court to judge and declare as follows:

(a) that the acts of India (as stated above) constitute breaches of the various obligations under the Charter of the United Nations, customary international law and treaties specified in the body of this Application for which the Republic of India bears exclusive legal responsibility;

(b) that India is under an obligation to make reparations to the Islamic

Republic of Pakistan for the loss of the aircraft and as compensation to the heirs of those killed as a result of the breaches of the obligations committed by it under the Charter of the United Nations and relevant rules of customary international law and treaty provisions.

The Government of the Islamic Republic of Pakistan has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Embassy of the Islamic Republic of Pakistan, Amaliastraat 8, 2514 JC, The Hague.

Respectfully submitted,

*(Signed Saeed M. KHAN ,*

Agent of the Islamic Republic of Pakistan.