

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ  
MR. JUSTICE MIAN SHAKIRULLAH JAN  
MR. JUSTICE JAWWAD S. KHAWAJA  
MR. JUSTICE KHILJI ARIF HUSSAIN  
MR. JUSTICE TARIQ PARVEZ  
MR. JUSTICE ASIF SAEED KHAN KHOSA  
MR. JUSTICE AMIR HANI MUSLIM  
MR. JUSTICE IJAZ AHMED CHAUDHRY  
MR. JUSTICE SH. AZMAT SAEED

**CONSTITUTION PETITIONS NO. 77 TO 85, 89 & 92 OF 2011**

[Constitution Petition under Article 184(3) of the Constitution regarding alleged Memorandum to Admiral Mike Mullen by Mr. Hussain Haqqani, former Ambassador of Pakistan to the United States of America]

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Watan Party	...	PETITIONER [CP 77/2011]
M. Tariq Asad Advocate Supreme Court	...	PETITIONER [CP 78/2011]
Muhammad Nawaz Sharif	...	PETITIONER [CP 79/2011]
Senator Muhammad Ishaq Dar & another	...	PETITIONERS [CP 80/2011]
Iqbal Zafar Jhagra & another	...	PETITIONERS [CP 81/2011]
Lt. General ® Abdul Qadir Baloch & 2 others	...	PETITIONERS [CP 82/2011]
Raja Muhammad Farooq Haider Khan & another...	...	PETITIONERS [CP 83/2011]
Syed Ghous Ali Shah & 2 others	...	PETITIONERS [CP 84/2011]
Hafeez Ur Rahman	...	PETITIONER [CP 85/2011]
Shafqatullah Sohail	...	PETITIONER [CP 89/2011]

Shahid Orakzai ... PETITIONER  
[CP 92/2011]

VERSUS

Federation of Pakistan & others ... RESPONDENTS

For the petitioners: Barrister Zafarullah Khan, ASC in person  
Mr. Tariq Asad, ASC in person  
Khawaja Muhammad Asif, MNA in person  
Dr. M. Salahuddin Mengal, ASC  
Sardar Asmatullah Khan, ASC  
Mr. Naseer Ahmad Bhutta, ASC  
Mr. M.S. Khattak, AOR  
Mr. Shahid Orakzai in person

On Court notice: Mr. Irfan Qadir,  
Attorney General for Pakistan

For Mr. Mansoor Ijaz: Mr. Muhammad Akram Sheikh, Sr. ASC

Date of hearing: 12.06.2012

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## **ORDER**

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.** – In pursuance of directions contained in order dated December, 30, 2011 passed in Constitution Petitions No.77 to 85 and 89 of 2011, this Court constituted a Commission. Relevant para there from is reproduced hereinbelow: -

*“(b) To delineate measures with a view to ensure enforcement of the fundamental rights noted in para ibid, a probe is called for to ascertain the origin, authenticity and purpose of creating/drafting of Memo for delivering it to Chairman of the US Joint Chiefs of Staff Admiral Mike Mullen through Gen. (Retd.) James Logan Jones, former US National Security Advisor. Thus, in exercise of powers conferred upon this Court under Article 187 of the Constitution, Order XXXII, Rules 1 and 2 read with Order XXXVI of the Supreme Court Rules, 1980 coupled with the principle of Civil Procedure Code, a Commission is appointed. As the due process of law is the entitlement of all*

*the stakeholders, therefore, to ensure probe into the matter in an transparent manner the Commission shall be comprising of:*

- |       |   |                   |
|-------|---|-------------------|
| (i)   | <i>Mr. Justice Qazi Faez Isa,<br/>Chief Justice of Balochistan High Court</i>     | <i>(Chairman)</i> |
| (ii)  | <i>Mr. Justice Iqbal Hameed-ur-Rehman<br/>Chief Justice, Islamabad High Court</i> | <i>(Member)</i>   |
| (iii) | <i>Mr. Justice Mushir Alam<br/>Chief Justice, High Court of Sindh</i>             | <i>(Member)</i>   |

*Raja Jawwad Abbas Hassan, District & Sessions Judge, Islamabad is appointed as Secretary to the Commission."*

2. The Commission has submitted its report in a sealed cover along with 5 sealed envelopes and proceedings conducted by the Commission, which contain following documents: -

1. Report  
Confidential report of the Commission in a sealed envelop.
2. Envelop No.1 containing
  - (i) CD containing Mansoor Ijaz's Interview (Ex-W4-31)
  - (ii) Envelop containing transcript (Ex-W4-162)
  - (iii) Newspaper (Ex-W5-10)
  - (iv) Booklet (Ex-W5-11)
  - (v) Forensic Report CDs (Ex-CW1-20/2 & CW-1-20/3)
3. Envelop No.2 containing
  - (i) CD of Hussain Haqqanis Interviews
  - (ii) Book titled "Pakistan Between Mosque and Military"
4. Envelop No.3 containing  
Telephone Bills (02) of Mr. Mansoor Ijaz directly received from service provider & certificate
5. Envelop No.4 containing  
Telephone bills of Mr. Haqqani submitted by his counsel
6. Envelop No.5 containing  
Secret and confidential information
7. Complete order sheet of the commission (Book No.1)
8. Evidence/statement (Book No.2)
9. Exhibited documents (Book No.3/1)
10. Exhibited documents (Book No. 3/2)
11. Marked/exhibited documents (book No.4)
12. CMA,s (Book No.5)
13. Notices issued during the proceedings of the commission (Book No.6/1)

14. Published notices (Book No.6/2)
15. Miscellaneous (Book No.7)

3. The report along with envelopes was received in sealed covers. The envelope No.1, containing the report has been unsealed in the open Court and handed over to learned Attorney General for reading the final conclusion/findings of the Commission. For convenience same are also reproduced hereinbelow: -

**Final Conclusion and findings:**

- (1) *The Hon'ble Supreme Court appointed this Commission to probe, "to ascertain the origin, authenticity and purpose of creating / drafting of Memo for delivering it to Chairman of the Us Joint Chiefs of Staff Admiral Mike Mullen."*
- (2) *It has been incontrovertibly established that the Memorandum was authentic and Mr. Haqqani was the originator and architect of the Memorandum. Mr. Haqqani Sought American Help; he also wanted to create a niche for himself making himself forever indispensable to the Americans. He lost sight of the fact that he is a Pakistani Citizen and Pakistan's Ambassador to the United States of America, and therefore his loyalty could only be to Pakistan.*
- (3) *Mr. Haqqani's by offering his services as part of a proposed 'national security team' to a foreign government, voicing the 'great fears' that 'Pakistan's nuclear assets are now legitimate targets' and thus seeking to bring 'Pakistan's nuclear assets under a more verifiable, transparent regime,' stating that ISI maintains 'relations to the Taliban' and offering to 'eliminate Section S of the ISI and to help ' pigeon – hole the forces lined up against your interests' created fissures in the body politic and were acts of disloyalty to Pakistan, that contravened the Constitution of Pakistan.*
- (4) *The purpose of the Memorandum was to show that the civilian government was friends of America, but needed to be strengthened to prevail upon the army and the intelligence agencies, and to be able to do so American help was required to set up a civilian national security team, to be headed by Mr. Haqqani.*
- (5) *There can be no two views that terrorism must be contested, terrorists fought, nuclear proliferation opposed, civilians (and not the military) determine foreign policy and the ship of State guided*

*by civilian hands at the helm; however, what is not acceptable is for Pakistan's Ambassador to beseech a foreign government to with impunity meddle in and run our affairs.*

- (6) *We may observe that Mr. Haqqani has chosen not to live in Pakistan, has been working in USA, where he appeared to have made his life, held no property or asset in Pakistan, held no money (save a paltry amount ) in a Pakistani bank, but despite having no obvious ties to Pakistan was appointed to the extremely sensitive position of Pakistan's Ambassador to the USA, and in addition to being paid a salary and accompanying emoluments was handed a largesse of over an amount of two million dollars a year.*

4. Needless to observe that Commission was constituted in pursuance of a judicial order passed by this Court; its final conclusion and findings have also been read over by the learned Attorney General, therefore, formally we direct to make this report public.

5. As notices of the report have to be issued to all the respondents, therefore, case is adjourned for a period of two weeks. Office is directed to prepare the extra copies of the report for supplying to the respondents as well as the learned Attorney General. However, the petitioners, members of the media and general public have to obtain copies of the same according to the Supreme Court Rules.

6. *Prima facie* it seems that Mr. Hussain Haqqani, former Ambassador of Pakistan in USA has to answer about the findings so recorded by the Commission. He was allowed to leave the country with the commitment vide order 30.1.2012 that whenever the Court requires, he will appear in person within a period of four days, therefore, we direct his presence on the next date of hearing, which shall be intimated by the office according to the rules.

7. As far as remaining sealed envelopes containing documents, noted above, are concerned, same are ordered to be kept in the safe custody of the Registrar and any of them shall be opened, if need be, during the proceedings of the case.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MIAN SHAKIRULLAH JAN, J.

JAWWAD S. KHAWAJA, J.

KHILJI ARIF HUSSAIN, J.

TARIQ PARVEZ, J.

ASIF SAEED KHAN KHOSA, J.

AMIR HANI MUSLIM, J.

IJAZ AHMED CHAUDHRY, J.

SH. AZMAT SAEED, J.

Islamabad, the  
12<sup>TH</sup> June, 2012  
Nisar/\*