

[SALEEM SHAHZAD MURDER INQUIRY]

REPORT OF THE COMMISSION OF INQUIRY

concerning the gruesome incident of the
abduction and murder of Syed Saleem
Shahzad

[Submitted to the Government of Pakistan on January 10, 2012]

[This Report has been prepared by the Commission in fulfillment of the Terms of Reference (ToRs) stated in Notification dated 21.6.2011. It is being submitted to the Government of Pakistan in the hope that its findings would be shared with all concerned and that its recommendations would be considered honestly and seriously.]

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EXECUTIVE SUMMARY

Syed Saleem Shahzad, a prominent Pakistani journalist, was abducted during broad day light from the heart of the capital on May 29, 2011. His abduction and subsequent brutal murder left everyone in a state of shock - not just his family and the community of journalist but also the public at large. Citizens were alarmed since the net of suspicious was cast, amongst others, on institutions of the state itself. The alarm soon turned into outrage, manifesting itself in the form of protests.

In response, the Government of Pakistan constituted the present Commission of Inquiry. The Commission comprised a judge of the apex Court, the Chief Justice of the Federal Shariat Court, Inspector Generals of Police for Punjab and Islamabad and the President, Pakistan Federal Union of Journalists (PFUJ). It was assigned the task of inquiring into the background of this incident and identifying the culprits involved in it. The Commissioners have also been asked to probe the constitutional implications of this situation, and to recommend measures to prevent the recurrence of such incidents in the future.

For six months, the Commission has done everything in its capacity to discharge its burden. The Commission held as many as 23 formal meetings, examined no less than 41 witnesses and went through a large volume of documents comprising the writings of the deceased, emails, telephone records and investigation reports as well as the reports of Commissions which have investigated similar incidents in the past. It is

on the basis of this extensive inquiry that the present report has been compiled.

The Commission has recorded all its findings and proposals in this Report, annexed by the appropriate records. In brief, the Commission concludes thus:

Firstly, in all probability, the background of this incident is provided by the War on Terror.

As an investigative reporter, Saleem's writings probably did, and certainly could have, drawn the ire of all the various belligerents in the War on Terror – the Pakistani state, the non-state actors such as the Taliban and al-Qaida, and foreign actors. Any of these could have had the motive to commit the crime. Clearly, he was also in close contact with all of these. The incident may also have been linked, as asserted by some of the witnesses examined, to the subsequent drone attack on Ilyas Kashmiri.

Secondly, the Commission has been unable to identify the culprits behind this incident.

The Commission looked very hard for the kind of substantial evidence/tangible material - direct or circumstantial - which would allow it to single out the culprits from the various suspected quarters. Yet such evidence has not surfaced. From what is available on the record, unfortunately, the culprits cannot be identified. Nonetheless, the Commission urges the Government to provide substantial compensation and support to the family of the deceased, and to deliver on promise already made. The Commission also urges the competent authorities to continue all investigations in the ordinary course of the law, and to

interrogate whosoever needs to be interrogated, diligently and without any fear.

Thirdly, the such incidents, and the climate of fear they give rise to, imperil the citizen's fundamental rights such as the right to life (Article 9), freedom of speech (Article 19), and freedom of information about public matters (Article 19A). The concept of rule of rule of law, under Article 4, is also put in danger.

Fourthly, noting the gravity of the situation, the Commission recommends, *inter alia*:

- that in the light of our Constitution, based as it is on democratic principles, the uncovering of Truth before the public is very much in our National Interest;
- that the Press be made more law-abiding and accountable through the strengthening of institutions mandated by law to deal with legitimate grievances against it.
- that the balance between secrecy and accountability in the conduct of intelligence gathering be appropriately re-adjusted, with the aim of restoring public confidence in all institutions of the state;
- that the more important Agencies (ISI and IB) be made more law-abiding through a statutory framework carefully outlining their respective mandates and role; that their interaction with the media be carefully institutionally stream-lined and regularly documented;
- that all the Agencies be made more accountable through effective and suitably tailored mechanisms of internal administrative review, Parliamentary oversight,
- that a forum of Human Rights Ombudsman be created for judicial redressal of citizens' grievances against Agencies,

particularly the grievances of the Press against attempts to intimidate, harass and harm them.

Ultimately, however, the Commission's recommendations should be considered only as well-considered and research-based suggestions. Ultimately, all organs of the state will have to effectively play their role if we are to achieve the goal stated in the preamble of the Constitution: "*the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny*" In that regard, where the work of the Commission stops, the work of the others starts.

Islamabad,
the 9th January, 2012

(Justice Mian Saqib Nisar)
President
Commission of Inquiry

FACTUAL BACKGROUND OF THE INCIDENT

Syed Saleem Shahzad, a citizen of the Islamic Republic of Pakistan, was an investigative journalist by profession. Now in the 40th year of his life, he was the Pakistan Bureau Chief of an online newspaper, the Asia Times Online. Saleem lived with his wife and children in a rented house located in sector F-8/4, Islamabad on the well-known Nazim-ud-Din Road. On the 29th of May, 2011, around 5: 30 p.m, he left his home for Dunya T.V. Islamabad station located in sector F-6/3. He was driving a white Toyota Corolla bearing registration No.ALR-085. He planned to participate in “In-Session”, a Dunya TV talk show hosted by the anchorperson, Ms. Asma Chaudhry. The topic for discussion that day was the recent terrorist attack on PNS Mehran in Karachi – an incident in which a large number of unidentified terrorists had stormed a high-security naval establishment and destroyed aircraft worth millions of dollars. The recording of the programme was scheduled to begin at 6:00 PM and Saleem hoped to get there well in time.

As it turned out, he never reached his destination. Somewhere between his home in F-8/4 and the TV Station in F-6/3, Islamabad Saleem Shahzad ‘disappeared.’

To the great anguish of his wife, he had not returned back home, as late as mid-night, nor was he responding to his mobile phone. His family then

began a desperate search for him and having failed at that, reported his sudden disappearance to the local police station.

By the next day, that is, the 30th of May, despite the hectic efforts of his friends and family, there was still no clue of his whereabouts. Naturally, concerns and speculations in this regard surfaced in the media too. Then, on the 1st of June, 2011, around 1:15 P.M, Hamza Ameer, who is Saleem's brother-in-law, and who had reported his disappearance to the police, received a call from the Station House Officer of the Margalla Police Station, Islamabad. The SHO informed Hamza that a car bearing the same description as that of Saleem had been found in Sara-e-Alamgir, parked at the bank of the Upper Jhelum canal. When Hamza went to the police station, he was further informed that a dead body had been recovered from the canal at some distance from the place where the car had earlier been detected. With a view to identify the dead body, and also the car, S.I. Shafique, accompanied by another person, went to site. Along with them, went Saleem's brother-in-law, Hamza Ameer, two of Saleem's friends, Faizan and Adil Ansari, a journalist colleague of his, Sharif Sheikh, and Atif Khan of Dawn News.¹

The car found near Sara-e-Alamgir, at the bank of the Upper Jhelum Canal was now parked in the Police Station at Sara-e-Alamgir. Hamza Ameer and the others present identified it as Saleem Shahzad's. The dead body, it turned out, had already been buried by the Edhi Foundation, on the behest of the police, after its postmortem conducted at

¹ Hamza Ameer and some of those who accompanied him suspected that the person with Shafique, SI belonged to some agency, but on inquiry by the Commission it turned out to be a police constable named Ansar. The car which Shafique drove also did not belong to any agency; it had been rented from a rent-a-car shop.

the local hospital, having been considered *lawaris*. It was exhumed. Hamza and the others confirmed that it was indeed the body of Saleem Shahzad. According to Hamza Ameer, it bore marks of torture on the head and the cheeks.

The dead body was first brought to Islamabad, where it was examined by a Board of Doctors at PIMS Hospital. Thereafter, in accordance with the wishes of his family, it was taken to Karachi for burial. On the 1st of June, 2011, Syed Saleem Shahzad was laid to rest in the Qayyumabad graveyard in Karachi.

STRONG AGITATION OF THE JOURNALISTS COMMUNITY OVER THE INCIDENT

Ever since the disappearance of Syed Saleem Shahzad (“hereinafter referred to as “Saleem”) there has been grave unrest and resentment in the community of journalists. This is so because even prior to this incident, many journalists have reportedly been victims of kidnapping, torture, harassment, intimidation, coercion and even murder. The general perception in the community was, and continues to be, that the responsibility for these incidents falls upon the state agencies responsible for intelligence gathering (“hereinafter referred to as the “Agencies”). Journalists have been raising their voice against such atrocities, but they feel that their grievances have not been adequately redressed. Such is the climate of fear, they complain, that most of the time no one has the courage even to register a case when such incidents happen; what to say,

then, of the chances of a fair investigation and probe into these incidents and of bringing the real culprits to justice.

In the wake of Saleem's death, this perception of the Agencies' wrongdoing was fortified on account of the news items appearing in the print media on 1.6.2010 with reference to an e-mail of Saleem which he had sent to an international NGO, the Human Rights Watch (hereinafter referred to as "HRW") about some threat he had received from senior officials of ISI. And that according to HRW, through 'reliable interlocutors', it learnt that Saleem had been detained by ISI. This was widely highlighted by the electronic media as well. Thereafter, a handout was issued by HRW on 3.6.2011, in which Mr. Brad Adams, the Asia Director of HRW, stated: *"Shahzad had previously complained of threats by ISI agents for his reporting on links between the ISI and Al-Qaeda. In October 2010, Shahzad sent an e-mail to Human Rights Watch outlining a recent meeting he had with the ISI and asking for the e-mail to be released if he or his family were harmed. Shahzad asked Human Rights Watch to make details of the meeting public "in case something happens to me or my family in future."*

The handout further mentioned that on Oct 19, 2010, Saleem had indeed sent an e-mail to "HRW". In that email Shahzad wrote that on Oct 17, he had had a meeting with Rear Admiral Adnan Nazir, the Director General of the Media Wing of the ISI and another official Commodore Khalid Pervaiz at the ISI Headquarters in Islamabad. According to

Shahzad, the meeting ended with the following comments by Rear Admiral Nazir:

“I must give you a favor. We have recently arrested a terrorist and have recovered lot of data, dairies and other material during the interrogation. The terrorist had a list with him. If I find your name in the list I will certainly let you know.”

These comments, Saleem believed, amounted in fact to a veiled death threat.

According to HRW, Saleem informed it later of two instances where he had felt that threats were being extended to him by or on behalf of the ISI, by people who identified themselves to him as belonging to the Agencies. On May 30, 2010, in line with her husband’s prior instructions, Saleem's wife, Anita Saleem, apprised HRW of her husband’s disappearance. According to her, she told HRW that she had received an anonymous phone call saying that Saleem would be released the same evening. Credible sources also told HRW that Saleem was in intelligence custody and was expected to be released in the evening of May 30.

This information, as mentioned above, was conspicuously picked up and carried by the print and the electronic media and was the subject of various articles and talk shows. Mr. Hameed Haroon of Dawn Group also confirmed that Saleem had sent him a similar e-mail which he (Saleem) had sent to HRW. He also said that the late journalist told him that the latter had received threats from various officers of the ISI on at least three occasions in the past five years.

The above undoubtedly added to the fury of the journalists, media personnel, human right activists, the civil society and the public at large. All and sundry agreed that such blatant violations of the fundamental right to life, particularly when attributed to state agencies, cannot be tolerated. A vociferous demand emerged that the matter be inquired into and those found responsible be punished.

It was urged from a number of quarters that the inquiry into this incident should be conducted by an independent and strong forum, such as a commission consisting of a judge of the apex court. Nothing short of that was acceptable to all those concerned. To cut short, it was on account of many rallies, street demonstration and protests all over the country, including an unprecedented sit-in at the capital organized by PFUJ attended by people from all walks of life and especially the media, that the present Commission was formed.

FORMATION OF THE COMMISSION AND ITS MANDATE

On the 21st of June, 2011, the Government of Pakistan issued a formal notification to constitute a 5-member Commission of Inquiry (“hereinafter referred to as “Commission”) under the provisions of the Pakistan Commissions of Inquiry Act 1956 (VI of 1956.) The Commission consisted of two judges - Mr. Justice Mian Saqib Nisar, Judge, Supreme Court of Pakistan, who also chaired the Commission and Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court – as well as two senior police officers - Mr. Javed Iqbal, Inspector General Police, Punjab and Mr. Bani Amin Khan, Inspector General,

Islamabad Police – and one senior journalist, Mr. Pervaiz Shaukat, the President of the Pakistan Federal Union of Journalists (PFUJ).

Mr. Taimur Azmat Osman, the Secretary, Ministry of Information and Broadcasting was appointed as Secretary to the Commission. Besides, upon the recommendation of the Chief Justice of Lahore High Court (as the recommendation was sought), the Commission appointed Mr. Sabir Sultan, District & Sessions Judge (Punjab) as its Registrar. The express purpose of constituting the Commission was “*inquir[ing] into the gruesome incident of the abduction and murder of Mr. Saleem Shahzad*”

The Terms of Reference (ToRs) of the Commission are four-fold:-

- a) *To inquire into the background and circumstances of abduction and subsequent murder of Mr. Saleem Shahzad;*
- b) *To identify the culprits involved in the abduction and subsequent murder of the said journalist;*
- c) *To recommend measures to prevent recurrence of such gruesome incidents against the journalists in future; and*
- d) *To probe the matters of conduct which are in derogation of Articles 4,9, 17, 19 and 19-A of the Constitution of the Islamic Republic of Pakistan 1973 and to investigate in depth such background/facts.*

PROCEEDINGS OF THE COMMISSION

In the course of the subsequent months, the Commission held as many as 23 formal meetings, the proceedings whereof are duly minuted, some by the Secretary to the Commission and others by the

Registrar. In all, 41 witnesses were examined. In addition, large number of meetings were held to confabulate and deliberate upon the various aspects of the matter at hand. The Commission also visited the site at the bank of Upper Jehlum canal where Saleem's car was found parked, and also the site where his body was recovered from the said canal, about 28 kilometers away from the car. Besides, to examine the normal and possible route, which he would have followed while going to the TV station, the Commission visited Saleem's house from where he set out for Dunya T.V.

In its first meeting held on 27.6.2011, the Commission discussed and settled the *modus operandi* for collecting the requisite material in relation to the first two ToRs, which are inter-twined and inter-connected. Amongst other things, for securing and accessing Saleem's Call Data Record (CDR), Base Transceiver System (BTS) record, e-mail record, the Commission took necessary steps and accordingly issued requisite directions. The Commission also directed the investigators of the Punjab Police and the Islamabad Police to continue with their investigation in the criminal cases respectively, vide two separate FIRs. Above all, as a foremost step, the Commission decided to issue public notices inviting Saleem's family and friends, as well as the community of journalists and the public-at-large to provide in writing any information, material, data which may be relevant qua the incident and helpful in resolving it. The notices were duly and conspicuously published and televised in the print and electronic media. This was continuously and repeatedly done for a number of days.

It may be, recorded with some concern and dismay, that in response to the above notice, no credible and serious response from the concerned quarter was received. Neither Saleem's family and friends nor his journalist colleagues came forward to share any information or to provide the Commission with evidence which would shed light on the background of the incident or upon the incident itself. Confronted with this predicament, the Commission decided to take the initiative of holding a meeting with the family members and friends of Saleem, as well as with journalists and human rights activists etc. One of the commission members, Mr. Pervaiz Shaukat, President, PFUJ, prepared a list of the relevant names and notices were accordingly issued to all of them including Mr. Hameed Haroon and Mr. Ali Dayan. Besides, eminent (Journalists) personalities were also invited through Mr. Pervaiz Shaukat so that they may provide some useful guidance and input in the matter.

In the above context, a meeting was held on 9.7.2011 in the Supreme Court building, Hamza Ameer (brother in law of Saleem) and large number of journalists participated. Some of the prominent persons present there were: Najam Sethi, Nusrat Javed, Hamid Mir, Absar Alam, Umar Cheema, Matiullah Jan, Shahid of Kyodo, News agency, Zahid Hussain, Jugnoo Moshin, C.R. Shamsi, Muhammad Faizan, Zafar Mehmood Sheikh, Nasim Zehra, Tahir Ali, Imtiaz Alam, Qamar-ul-Munir Yousafzai, Muhammad Amin Yousaf, Syed Aizaz Hussain, Abdus Salam Soomro, Aamir Sohail, Jehangir Aslam and many others. After having

listened to their point of view, and deliberating the matter at length, it was mutually decided that all those who wanted to share information or to provide material to the Commission in respect of all the ToRs, should file their statements in writing accompanied by supporting documents, if any, within a given period of time of 10 days, however as some could not adhere to the fixed time, therefore, their statements were even received after that.

Pursuant to this meeting, 13 persons either filed their statements in writing or appeared before the Commission to make statements. They are: Matiullah Jan CW-1, Atif Khan CW-2, Hamza Ameer CW-5, Muhammad Faizan CW-6, Hamid Mir CW-11, Zafar Mehmood Sheikh CW-12, Naseem Zehra CW-13, Tahir Ali CW-14, Imtiaz Alam CW-19, Qamar ul Munir CW-20, Absar Alam CW-25. Besides, Hameed Haroon of Dawn Group appeared as CW-26. Ali Dayan of Human Rights Watch as CW-27, Anita Saleem, widow of Saleem as CW-28. (All these witnesses are hereinafter referred to as family/friends/journalists - FFJ)

Yet another effort was subsequently made to reach out to all those journalists who wanted to provide the Commission with any further information with reference to Saleem or share with it their experience of any untoward incidents met by them. Notices were widely issued to all the concerned quarters through PFUJ. In response thereof, the following journalists came forward: Muhammad Amin Yousaf CW-30, Syed Aizaz Hussain CW-31, Farrukh Nawaz CW-32, Abdus Salam Soomro CW-33, Aamir Sohail CW-34, Jehangir Aslam CW-35. One Muhammad Raashed CW-39, a journalist, also volunteered to appear before the Commission,

when he met the members, while on a visit to the residence of Saleem. In addition, the following persons have also been examined by the Commission. Muhammad Bashir CW-3, Shahid Nadeem Baloch CW-4, Muhammad Jameel CW-7, Muhammad Aslam CW-8, SSP Dar Ali Khan Khattak CW-9, DPO Mandi Bahauddin, head of the investigation team, Punjab, Shafique Ahmad CW-10, Muhammad Shafique CW-15, Hamayun Shahzad CW-16, Raja Nisar Ahmad CW-17, Aamir Shahzad CW-18, Mohammad Yousaf Ali, SSP Islamabad, CW-41, head of the investigation team Islamabad. All the above-mentioned witnesses were examined by the Commission on oath.²

As noted earlier, a number of journalists and human right activists publically had blamed the Agencies, particularly the ISI, for this incident. Seemingly, this was due to two reasons: one, the journalists' previous experiences with the Agencies and their reputation of, and secondly, because of the information imparted by HRW and Mr. Hameed Haroon about Saleem's noted e-mail and their public comments. This as emerged in the proceeding was the primary cause of the attribution. Furthermore, as during the course of examination by this Commission, certain witnesses pointed the finger directly towards the ISI, naming some of its high officials. Therefore, the Commission considered it imperative for a fair and purposive inquiry to summon the agencies, examine the concerned officers and inquire about their version of the incident.

² Mr. Najam Sethi though filed his statement in writing, but he was not available for examination as having proceeded to USA. However, his statement has been taken into account.

Accordingly, the Commission issued notices to Secretary, Ministry of Defense and Secretary, Ministry of Interior, of the Government of Pakistan, requiring MI, ISI and IB to nominate their representatives for appearing before the Commission in the above context.

In response thereto, MI submitted that *“The mandate of MI is to formulate and disseminate external/internal threats through processing of operational/security intelligence. Thus, MI has neither any link/role to play in the subject matter nor the case falls within the purview of MI.”*

The Commission considering this response sufficient in the light of the fact that there was no allegation of the MI’s involvement made by anyone appearing before it, unanimously decided not to examine any of its officials. For IB, Mr. Asif Ali, Deputy Director General, and Mr. Javed Rafiq, Director appeared before the Commission. They were questioned and required to submit in writing IB’s version of the incident. They submitted a letter Ex.IB/1, according to which *“it may be intimated that IB is neither an investigating agency nor law enforcement agency equipped with powers to arrest, detain and interrogate. The Bureau gathers intelligence on matters of national security. In the instant case IB never came in contact with the journalist Saleem Shahzad for any purpose nor probed his activities. Similarly no investigation was made into his murder case due to the aforementioned reasons”*. The Commission interrogated the above named at length, whereafter no need was felt for any further examination of IB officers. On behalf of the ISI, a written response (Ex.CW-36/1) and (Ex.CW-36/2), representing the institution’s

perspective, was submitted by Brigadier Zahid Mehmood Khan (CW-36), Sector Commander, Islamabad. He was extensively examined by the Commission on more than one occasion. Rear Admiral Adnan Nazir, in-charge of the ISI's Media Wing was examined as CW-37. He was recalled for examination once more. Brigadier (R) Iftikhar Ali Khan, Deputy Director, ISI and Commodore Khalid Pervaiz, Director, ISI were also examined as CW-38 and CW-40, respectively.

**EVIDENCE/MATERIAL PRODUCED BY THE
FAMILY/FRIENDS/ JOURNALISTS (FFJ) ETC. AND
COLLECTED BY THE COMMISSION IN THE COURSE
OF PROCEEDING**

During the course of the Commission's proceedings, the evidence/material which has come on the record, falls broadly in five categories:

- (i) statements filed in writing by those noted below, including the documents produced by them;
- (ii) oral statements of witnesses examined by the Commission; and the documents brought on record through them.
- (iii) written version of the ISI along with the attached documents, and oral statements of senior officers of the ISI recorded by the Commission; and
- (iv) telephone and email record of Saleem procured by the Commission; his articles to which reference has been

made by the witnesses, and his book “Inside Al-Qaeda and Taliban.

- (v) other miscellaneous material.

**ANALYSIS OF THE STATEMENTS/EVIDENCE
PRODUCED BY FAMILY/ FRIENDS/
JOURNALISTS (FFJ)**

CW-1 Mr. Matiullah Jan, Deputy Bureau Chief, Dawn News submitted his statement in writing (Ex.CW-1/1). It consists of three parts:-

- i) evidence relating to the incident of Saleem’s abduction and murder and the sense of insecurity Saleem had before his death;
- ii) Mr. Jan’s personal experience which may help in gaining an understanding of the pattern of intimidation and violence against journalists; and
- iii) suggestions about how to avoid such happenings in future, on the basis of his journalistic experience.

In respect of the first part, the witness referred to a roundtable discussion which he had attended, along with Saleem and other journalists, the minutes of which have also been placed on the record. He states “*I can recall Shahzad referring to intelligence agencies and even the Military spokesman office closely working together to identify “trouble making journalist” and Shahzad also referring that the agencies keeping profile of the journalists marking these with different colours of flags according to the degree of defiance being shown by the marked journalist*”. It may

be pertinent to mention here that the minutes of the roundtable discussion placed by the witness on the record however do not make any mention of the above assertion. The witness has further stated that it has been appearing in the media that Saleem Shahzad had sent some emails to Ali Dayan of Human Rights Watch on the basis of which the incident was attributed primarily to ISI.

In the second and third parts of his statement, he mentioned certain encounters and experiences which he and other journalists have had with ISI officials. He referred, in particular, to an incident, where his colleague Mr. Aizaz Syed was allegedly harassed by ISI. However, in his statement (Ex-CW-1/1), which can, in legal parlance, be termed his examination-in-chief, Mr. Jan stated: *“Although I am not a direct witness to the tragic incident, like many others who may or may not be appearing before you (emphasis supplied), I strongly believe that my personal experience makes it obligatory upon me to appear before you and speak. This, I believe is an essential input expected from all senior journalists **to identify a pattern if not the killers of Saleem Shahzad** of intimidation, harassment and violence, to which journalists in Pakistan are subjected”.* In this regard, the Commission’s attention was drawn to the incidents of Hayat Ullah Khan, Umer Cheema and Wali Khan Babar etc. Be that as it may, while answering the questions posed by the Commission, he reiterated *“I have no personal knowledge or information about the incident of Saleem Shahzad, however, I think it is an act of ISI. I say so because of my personal experience which is narrated in my statement Ex.CW-1/1..
. In my professional career no official of ISI has ever threatened me*

personally, however, the way some of the ISI officials approached me and my superiors in Dawn Office, it is a matter of record especially when they asked about the family members and my children and I construe it to be a threat because asking for this kind of information is in fact tantamount to intimidation and harassment.”

CW-2 Mr. Atif Khan of Dawn News also appeared but stated “*I do not intend to make any statement about Saleem Shahzad incident in writing or oral*” However, he produced the Daily Diary Report No.37 dated 31.5.2011 which was signed by the Senior Superintendent of Police, Islamabad and sent to Bureau Chief at Dawn News CW-2/1. He also produced a DVD Ex. CW-2/2. The Commission has scrutinized/viewed both these documents and in its view, these are neither of any value in establishing a direct or indirect nexus between the incident of Saleem’s abduction/murder and its perpetrators, nor do they shed much light on its background.

CW-5 Hamza Ameer is the brother-in-law of Saleem. His statement in writing, is Ex.CW-5/1. He is also the complainant in the case registered in Police Station Sector F-8, Islamabad, bearing an FIR No.309 dated 30.5.2011, about the disappearance of Saleem. Hamza’s statement (Ex.CW-5/1) narrates the key events of this incident in a chronological order, but simply to the extent of stating the facts as those occurred, such as: when and for what purpose did Saleem leave his house on the 29th of May? How was the search carried out and the matter reported to the police? How were the car and the dead body of Saleem identified? Except for these publicly known facts, Hamza’s statement (Ex.CW-5/1) does not

reveal any important fact which could lead the Commission to any objective conclusion, about the incident and the background thereto. He did not even remotely or indirectly mention the involvement of ISI or any other agency in the matter. His statement in writing is absolutely silent in this regard. However, while answering the Commission's questions, Hamza disclosed that for the last five years Saleem's main focus as a journalist (his 'beat' in the parlance of newsmen) was the 'War on Terror'. He covered issues relating to Al-Qaeda and the Taliban, terrorist activities, the Pakistani military operations to counter those, the insurgency in Afghanistan and tribal areas of Pakistan etc. For this purpose, Saleem has been frequently and extensively visiting Afghanistan and also the tribal areas of Pakistan. Hamza stated that Saleem never shared his professional affairs, including his interaction and relationship with Al-Qaeda or Taliban leaders, either with him or with his wife, Anita Saleem. Saleem believed in keeping these matters to himself. He had maintained close interaction with Al-Qaeda or Taliban leaders over the last many years. When asked about Saleem's interaction with the ISI, Hamza stated that some officials of the organization had indeed been visiting Saleem at his house; however, he cannot recall who they were and what their official position in the ranks of the ISI was. Responding to a query put to him by the Commission, he stated that ISI had certain reservations about some of Saleem's articles and also wanted him to share the information which formed the basis of his articles. As per Hamza, ISI also pushed Saleem to share information with them even before he had published the same in his articles. According to him, one such article is,

perhaps, the piece he published in October 2010 titled “ISI frees Taliban leader.” This article was written in relation to the release of Mulla Baradar, a Taliban leader. Replying to a question put to him by the Commission, he also stated that, on some occasions, Saleem was asked to visit the office of the ISI. In the wake of an article which he wrote in April, 2011, regarding Osama bin Laden’s reported meeting with Wali ur Rehman Mehsood in Pakistan’s tribal areas, Saleem was summoned. Hamza said: *“that the call was in respect of aforesaid article and ISI people were not happy. In response to this call Saleem Shahzad did not go to the office of the ISI. This was the last interaction as per my knowledge which ISI had made with him.”* Responding to yet another question put by the Commission, Hamza stated *“Saleem Shahzad had some personal contacts in Italy as he used to write for Adnkronos, an online news agency. Likewise, he also had some professional interactions in USA and UK. He had friends and acquaintances in USA and UK Embassies and would occasionally visit there. CIA as per my information, never had any interaction with him. It is possible, however, that he may [have] had any interaction with CIA people, because he was considered to be an expert on ‘War on Terror’ in which CIA obviously had vital interest”.* Replying to a question about the perception of Saleem’s family regarding the culprits behind this incident, Hamza categorically stated *“I and his family cannot point out any finger towards anyone whosoever” “For the time being we have no clue at all as to who could have done this. However, the main reason behind this incident is his writings on war on terror and his in-depth research and*

knowledge about Al-Qaida and Taliban insurgency in the region. For this I can refer to his book mentioned above, particularly that part of his book which relates to Ilyas Kashmiri and Bombay Attack From his conduct and attitude, he never ever gave us any impression that he [had] received threats from ISI or any other person/institution”.

In a rather lengthy statement submitted in writing (Ex.CW-6/1), Muhammad Faizan (CW-6), a reporter for the Daily Ausaf, has made general averments. Hamza Ameer (CW-5) identified Faizan as one of the closest among Saleem’s friends. In relation to the incident, Faizan mentioned:-

"پولیس کو اس موقع پر دیئے گئے اپنے بیان میں میں نے کہا کہ سلیم شہزاد کا قتل اس کی رپورٹنگ کی وجہ سے ہوا ہے اور حمید ہارون اور علی حسن دایان کو اسکی بھیجی گئی ای میل کی تحقیقات ہونی چاہیے اسکا موضع دہشت گردی کے خلاف جنگ تھا اور یہ ایک ایسا میدان ہے جہاں آپ کے دوست ہی آپ کے دشمن بھی ہوتے ہیں"

Faizan also mentioned in his statement (Ex.CW-6/1), about the harassment that he (Faizan) and his wife reportedly faced after Saleem’s abduction and murder.

"سلیم شہزاد کی میت لانے کے بعد سے میری بیوی اور گھر کے نمبروں پر مختلف موبائل فون نمبروں سے فون کر کے دھمکیاں اور گالیاں دینے کا سلسلہ شروع ہو گیا ان مذکورہ موبائل فون نمبرز سے دھمکیاں والے فون کیئے گئے، 03336758744, 03326219155, "03324725819, 03314234104, 03368608454,

Furthermore, he deposed about meeting Saleem a couple of days before the incident and the latter appeared rather upset on account of his Mehran Base story.

"اس کی نیوی میں القاعدہ سے تعلقات کے حوالے سے دی جانے والی کہانی کچھ حلقوں کو گراں گزر سکتی ہے پھر اس نے مجھ سے پوچھا کہ وہ برطانیہ میں اپنے بیوی بچوں کے ہمراہ مستقل سکونت اختیار کرنا چاہتا ہے"

The witness has also mentioned in his statement (Ex.CW-6/1) that in June, 2011, after the incident of Saleem's abduction and murder, it was reported in Nawa-e-Waqt that:-

"کہ سید سلیم شہزاد کو آئی ایس آئی پر دباؤ بڑھانے کے لیے قتل کیا گیا..... اس خبر کی تحقیقات کر لی جائیں ہو سکتا ہے کہ یہ اس کے قتل کا دوسرا پہلو ہو"

While responding to questions put to him by the Commission, Faizan stated that Saleem had close contacts with Al-Qaeda and Taliban leaders and he would frequently visit them. In his words, "*Saleem Shahzad would tell me about his relations with the Taliban group, some of groups had cordial and good relations with him, but some groups were annoyed with him* (emphasis supplied). *Saleem Shahzad told me that he is not on good terms with some agencies on account of some of his articles, such as, Mehran Naval Base and on article on Mulla Baradar release* (emphasis supplied). "*Saleem Shahzad never ever told me that any such institution/agency has ever threatened him of dire consequences on account of any of his articles or precluded him from reporting on any specific subject*". *His thought of settling in UK was on account of*

his certain articles which he meant were not only disliked by the ISI, but also so many others, which may include the non-State actors as well (emphasis supplied)". He would visit Tribal Area or Afghanistan either once in a month or once in two months. He would go to Afghanistan also via Chaman, Balochistan. On one occasion I had accompanied Saleem Shehzad to meet Major General Ehtisham Zameer, this is somewhere in the year 2005/2006, the venue was ISI Head Office at Islamabad. The meeting was very friendly and cordial.

Mr. Hamid Mir (CW-11), a renowned anchor person who currently works for the television channel GEO NEWS, also submitted a statement in writing (Ex.CW-11/1). Referring to the incident of the kidnapping and torture of Mr. Umar Cheema, Hamid has stated "*I told that commission last year very clearly that intelligence agencies were involved in threatening and kidnapping of many journalists including Umar Cheema. I also told the Commission that sometimes Intelligence agencies assassinate journalists, like Taliban*". He further stated that "*according to some **circumstantial evidence** and information, I believe that Saleem Shahzad was kidnapped and then killed by some government security agency. The way he was kidnapped in broad daylight from the capital of Pakistan and the way he was killed clearly indicates that he was targeted by those who could easily evade the security cameras and security checks of the capital.* Hamid further went on to state (See Ex.CW-11/1): "*I have also faced threats and attacks from Intelligence agencies many times in last 24 years. I faced threats from Intelligence agencies frequently during the movement for the restoration of deposed*

Judges” “Just few weeks before the restoration of Judges my children were attacked in Islamabad just to terrorize me.” Hamid categorically deposed: “I personally know that Rear Admiral Adnan threatened not only late Saleem Shahzad but many other journalists also” “Some secret hands tried to defame Saleem Shahzad even after his death and managed to publish baseless stories against him.”

Furthermore, *“I would like to request this commission to summon Rear Admiral Adnan Nazir of ISI for some more information”*. While responding to the questions put to him by the Commission, Mr. Mir admitted that he was not friend of Saleem. They did not have any social interaction nor were they on visiting terms. He stated *“he [Saleem] had never shared any matter/issue of personal or professional nature with me or confided in me in any respect Saleem Shahzad has never ever apprised me of any kind of interaction he ever had with any State agency including the ISI or told me about any threats to him by such agency”*.

The way he was kidnapped in broad daylight from the capital of Pakistan and the way he was killed clearly indicates that he was targeted by those who could easily evade the security cameras and security checks of the capital. Answering another important question asked by the Commission, Hamid (CW-11) stated *“according to me, two forces could be responsible for this gruesome incident of Saleem Shahzad: first, the forces within the Pakistan Security Establishment. The reason for this is that his last article about Mehran Base Attack could cause annoyance to such security agencies, besides there is material in abundance in his book titled Inside Al-Qaida and Taliban, which was against the interest of the security*

agencies within the security establishment. Secondly it is possible that some foreign agency may be involved and the reason for this could be to extract some important information from Saleem Shahzad about Ilyas Kashmiri, who was targeted and killed in a drone attack by the U.S. about three/four days after the incident of Saleem Shahzad. Such attack may be on the basis of information got from Saleem Shahzad. Volunteered, that for the accomplishment of their object, the foreign elements would have sought the help of local operators. In the present scenario, local operators from whom help could be taken by the foreign elements would not be the security agencies of Pakistan, rather such operators would be the people hired by U.S. working in some private securit[y] agencies in Pakistan. I say so on account of my journalistic experience (emphasis supplied)". He has also mentioned the incidents of Hayat Ullah Khan, Umer Cheema, Wali Khan Babar and Musa Khankhel to highlight the nexus of those (incidents) to this incident and for drawing an inference of pattern.

Zafar Mehmood Sheikh (CW-12) is a journalist. He was a close friend of Saleem – he admits this, and Saleem’s wife confirms it. He also filed his statement in writing (CW-12/1), in which he mentions that Saleem Shahzad used to report on the ‘War on Terror’. Zafar stated that Saleem had attained recognition on account of his writings on the subject. Yet, some of the information disclosed in his articles could damage the interests of Pakistan. In his words, he deposed:

" کیونکہ میری رائے میں سلیم بھائی بعض اوقات ایسی معلومات بھی لکھ جاتے تھے جو ملک کے لئے بدنامی اور نقصان کا سبب بنتی تھیں اور مسلسل اس طرح کی تحریروں سے پاکستان کے لئے عالمی سطح پر مشکلات میں اضافہ ہوتا تھا نہ صرف یہ بلکہ بعض اوقات سلیم بھائی کی تحریریں ایک خاص جانب جاتی ہوئی محسوس ہوتی تھیں جسکی وجہ شاید ان کی ایسے افراد سے قربت تھی جن کے نزدیک پاکستان کا مفاد مقدم نہیں تھا اور سلیم بھائی اس بات کا صحیح اندازہ کئے بغیر کامیابی کی سیڑھیوں پر آگے بڑھتے چلے گئے "

It is further stated:

"خصوصاً بعض تنظیموں کی جانب سے سخت اظہار ناراضگی بھی ہوئی اور اکثر اوقات ہم نے مشترکہ طور پر اس ناراضگی کا مداوہ بھی کیا اس طرح کئی پاکستانی انٹیلی جنس اداروں خصوصاً آئی ایس آئی کی جانب سے اظہار ناراضگی کیا جاتا رہا اور وہ سلیم بھائی کو بعض خبروں اور تحریروں پر وضاحت کے لئے بلا تے رہے اور اکثر اوقات سلیم بھائی مجھے بتا کر جایا کرتے اور واپس آ کر اپنی ملاقاتوں کی مکمل یا تفصیلی رُوداد سنایا کرتے تھے۔۔۔۔۔ میری معلومات کی حد تک سلیم بھائی کو آئی ایس آئی یا کسی اور پاکستانی ادارے کی جانب سے جان سے مارنے کی دھمکی نہیں دی گئی اور نہ ہی سلیم بھائی نے اپنی زندگی میں کبھی اس بات کا مجھ سے ذکر کیا۔۔۔۔۔ کچھ عرصہ قبل انہیں پاکستانی عسکری تنظیموں کی جانب سے جان سے مارنے کی دھمکیاں ضرور ملیں تھیں جو سلیم بھائی کے علاوہ دیگر ذرائع سے بھی مجھ تک پہنچی تھیں چنانچہ بعد ازاں ان کا سدباب کر دیا گیا تھا اور مجھے اور سلیم بھائی کو اس حوالے سے اطمینان ہو گیا تھا لیکن یہ ضرور ہوا کہ سلیم بھائی سے تعلق اور دوستی کی وجہ سے رپورٹنگ کے لئے میرا قبائلی علاقوں میں جانے کا سلسلہ بند ہو گیا۔۔۔۔۔"

"یہ ضرور ہوا کہ پاکستان کے انٹیلی جنس اداروں خصوصاً آئی ایس آئی کا صحافیوں کے ساتھ

Hostile رویہ ان شبہات کو تقویت دینے کا سبب بنا تھا"

"میں ذاتی طور پر بھی پاک فوج، آئی ایس آئی اور ان کے کردار سے خوش نہیں لہذا میں انہیں بھی تنقید کا نشانہ بناتا رہا ہے جن کا مقصد اپنے وطن کی خدمت اور اصلاح احوال کے سوا کچھ نہیں۔ صحافتی برادری کے ایک فرد ہونے کے ناطے مجھے ان سے سخت شکایات ہیں خصوصاً ان کا اہانت آمیز رویہ، صحافیوں کو زیر دست رکھنے کی کوشش اور ہر ایک صحافی کو کہیں نہ کہیں بریکٹ کرنے کی روش میرے لئے سخت تکلیف دہ ہے جب ایسے میں جب کہ ہمارے بہت سے ساتھی ان کے تشدد دباؤ دھونس اور دھمکیوں کا شکار ہو چکے ہیں اور مسلسل ہو رہے ہیں آئی ایس آئی یا فوج کی حمایت کرنا بعید از قیاس ہے اس بناء پر سلیم بھائی کے قتل کا الزام فوری جڑ پکڑ گیا تاہم بعد کی مہم اور کھلے عام امریکیوں کی جانب سے الزام تراشی کا کاروبار شروع کرنا خاص طور پر امریکہ نواز افراد اور صحافیوں کا خصوصی طور پر آئی ایس آئی اور فوج کو ٹارگٹ کرنا اس شبہ کو تقویت دیتا ہے کہ امریکہ کہیں نہ کہیں اس سانحہ میں ملوث ہو سکتا ہے یہ بھی ممکن ہے کہ یہ سارا سٹیج انہی کا تیار کردہ ہو کیونکہ (2) مئی کے بعد کی تبدیلی شدہ صورتحال میں ایسا بہت کچھ ہوتا نظر آ رہا ہے"

The Commission asked Zafar to clarify the allusion in his written statement CW-12/1 about certain organizations () which had expressed their annoyance at Saleem's reporting. He explained that he was referring to non-state actors such as the Tehrik-e-Taliban, 313 Brigade etc. Zafar stated that Saleem's relations with Al-Qaeda and the Taliban had not always been cordial. There were times when this was so, particularly when Al-Qaeda and the Taliban wanted to use Saleem, such as during the Swat operation and also in relation to Ilyas Kashmiri. The Al-Qaeda and Taliban personnel had a grievance against him; they felt that Saleem disclosed news about their offensive operations before hand. Zafar said: "I am personal witness to the fact that life threat was extended to him [Saleem] by Al-Qaida/Taliban people, but Saleem Shahzad was an

intelligent person, who would appease them and sorted [sort] out the issues somehow or the other”. Zafar also stated: “it is very difficult to point out who is responsible for this incident. However, I may add that what has been published/propagated in the media from the date of his abduction till his dead body was found/recovered, the incident can be attributed to those, who wanted to gain the benefit. I am of the candid view that the beneficiaries are not the local elements, but foreign, especially my view is strengthened on account of the news items appearing in New York Times; the statement of Mike Mullen and Hillary Clinton” “It is the Americans, who, prima facie, and ostensibly would make a gain out of the incident and could be responsible though it was assumed in the beginning that some State institutions may be responsible for this incident. But for the later development from the day of incident till now, to my mind and as per my journalistic experience, it is very much clear to me that the State institutions are not involved in the incident” “I do not see this incident in isolation, and in my view it is a part of larger plan/game, which is meant to destabilize the country and its institutions. Volunteered that I have omitted to mention an important feature/fact in my written statement, which I would like to bring on record i.e. how Pakistani media especially the print media is being influenced by the local as well as outside forces for using them for their cause and then after having used to dispose of [off] them in the manner as has been done in the matter “I think Saleem Shahzad’s murder is not just a murder of a journalist, but it is a sad demise of Pakistani media”.

Answering another question put to him by the Commission, he stated “I

would like to further add here that for certain reasons, the journalists' community become tools for extraneous reasons in the hands of some forces within or outside the country and these tools are used till they are useful and once the user [use] is over, they are disposed in the manner by using coercive, intimidating measures". "I was the most closest of Saleem Shahzad's friends". He also mentioned that the ISI authorities would only call Saleem to discuss about his writings and there was no element of harassment and threat involved at all. Saleem would meet ISI personnel on his own, as a matter of routine. Moreover, it is very difficult to point out who is responsible for this incident. But it is very much clear to me that the State institutions are not involved in the incident.

CW-13 is Naseem Zehra, a senior anchorperson, who hosts a programme on Dunya T.V. She also submitted her statement in writing (Ex-CW-13/1). Ms. Naseem deposed that Saleem's wife had apprised her that Saleem left his house at 5.30 pm. Within 12 minutes of his departure i.e. around 5.40 pm, his cell phone had been switched off. The witness expressed her dismay at the incident and questioned as to how the kidnapping of Saleem had gone unnoticed in broad day-light, and how come the incident was not captured by any CCTV system installed in the capital, nor had his car been checked at any of the city's numerous security check posts. According to her, this does not seem plausible. Therefore, she demanded that officials of the FIA, IB and ISI be summoned and questioned by the Commission. Moreover, she conjectured that the sophisticated manner in which the operation had been carried out was not the usual mode of operation of terrorists and militant

organizations. Instead, it strongly suggested the involvement of the Agencies. She categorically stated *“Saleem Shehzad’s professional interlocutors were the militants, the ISI and foreign missions especially the Americans. They should be investigated”*. While replying to the questions put by the Commission, the witness unequivocally stated her view that the incident was directly linked with Saleem’s writings. She said: *“In my view, his last article regarding Mehran Base incident is one of such writings of Saleem Shahzad which could cause displeasure to the concerned quarters”*. She also mentioned that Saleem was also writing Part-II of the article about the noted incident. When asked about whether she has any direct knowledge and information about the incident, Ms. Nasim replied *“the contents of my written statement (Ex-CW-13/1) are based upon the information I got from the family of Saleem Shahzad and media reporting, volunteered also from my twenty one years’ journalistic experience”*. She, however, admitted that she had no social interaction with Saleem. He never shared any of his personal matters with her nor apprised her about the threats from the ISI.

CW-14 is Tahir Ali, also a journalist. His statement in writing is Ex. CW-14/1. He mentions therein that he had accompanied Saleem to Swat, Bajaur and Waziristan for the purposes of reporting and that, at times, Saleem would also share his experience with him. In his statement in writing (Ex.CW-14/1), Tahir stated that *“regarding his killing, I don’t directly blame someone or any intelligence agency but I would like to share some information with the Commission that Saleem told me during his life”*. *“that in Karachi it was safe, but it was impossible to avoid*

intelligence agencies in Islamabad, who were chasing him like a shadow and he was summoned to the ISI Headquarters questioned about his writings and was asked to disclose the source". During the course of his examination by the Commission, the witness confirmed that Zafar Sheikh (CW-12) and Faizan (CW-6) were close friends of Saleem. Saleem never apprised Tahir of any threat to his life from the ISI. But, as recorded in his statement in writing, (CW-14/1) Saleem did apprise Tahir of his suspicion that ISI officials were behind [after] him. Responding to a question put to him by the Commission, Tahir stated: *"I have no reason to point out my finger towards any person/organization either local or abroad [foreign] who/which could be responsible for Saleem Shehzad's murder, volunteered, Saleem Shehzad, however, used to say, that when his book will be published, he will face trouble from the agencies"*.

CW-19, Imtiaz Alam is a renowned journalist who is currently the Secretary General of South Asian Free Media Association ("SAFMA"). He also produced his statement in writing (Ex-CW-19/1), which is in the form of an article, perhaps even published before being submitted to the Commission. In his statement he has commented upon and highlighted different aspects of the matter. Imtiaz mentions that there are inferences which can be drawn from certain factors for elucidating the incident. He specifically stated: *"although the ISI denied the allegation, fingers were raised against the agency, which the deceased had himself blamed in case of possible harm. **The suspicion about ISI's involvement might not have held ground had the same officer not made threatening calls to various journalists, including myself, regarding their***

views/reports which he thought to be inimical to Pakistan's interests". It is also stated "the ISI must deflate its larger-than-life image, focus on its mandated job, and evolve a transparent policy in its relationship with the media. It should drastically rethink its media-engagement policy and dispense with the army of pseudo-journalists that it keeps on its payroll and who have proved to be good for nothing. It must stop those elements within, that indulge in all manner of unlawful acts—harassing citizens and journalists—and bring a bad name to an otherwise most effective arm of our national security. I hope that the ISI under General Pasha's able and credible leadership will take all unscrupulous elements and stop dreaming about controlling the uncontrollable—the media of the new cyber age". While answering a question put to him by the Commission, Mr. Alam admitted: "I have no personal knowledge of the incident". He did, however, state that about two years ago, Saleem met him in Islamabad in the office of SAFMA and they talked about the 'War on Terror'. He said that they discussed the hazards that journalists face from all parties to the conflict, when reporting on the 'War on Terror'. Responding to a specific question, he stated "*the parties to the conflict on 'war on terror', which I have mentioned earlier are the non- State Actors, the Jihadis and the Malitia, the War Lords, the Criminal Gangs and, of course, the Law Enforcement Agencies, including the Armed Forces, F.C, Levies, Intelligence Agencies*". Mr. Imtiaz (CW-19) mentioned that in his meetings with Saleem, the latter never referred to any particular threat from any person or institution, but generally expressed his apprehension about his personal safety. However, answering to another question about

Saleem's connection with Al-Qaeda and the Taliban, Imtiaz stated that *"he had sufficient access to various Non State Actors, such as, Al-Qaida, variety of Talibans, Ilyas Kashmiri and other groups, volunteered, that there is inherent hazard and compulsion and if one wants to report on 'war on terror' he has to have access to various parties to the conflict"*. To another query though, having ruled out the involvement of Jihadis and the CIA in the incident, the witness stated *"this is only my thoughtful speculation as to who could have committed the incident, volunteered I am not sure whether the foreign agencies are involved. Likewise, ISI in response to the allegations and speculations by media that it is the organization which seems involved has given official denial therefore, I am not sure of its involvement, but despite the denial the allegations continued to be focused against the ISI and are still being imputed to the ISI by the media; volunteered, that the allegations continue to stick because the person handling media in the ISI, who threatened Saleem Shahzad according to his e-mail to the Human Rights Watch in which he alleged that if any harm is caused to him, the agency shall be responsible. The person named in that e-mail is Rear Admiral Adnan Nazir"*. The witness also mentioned that he had two interactions with Rear Admiral Adnan Nazir, which were not very pleasant and once he received an anonymous telephone call, which he believed was by that officer who abused a leading civil society activists and also threatened me "to be careful".

CW-20, Qamar-ul-Munir alias Qamar Yousafzai, is the Editor of Daily Islamabad Times, Islamabad. He submitted his statement in writing

(Ex. CW-20/1). His statement has not imparted any important information regarding the incident, but contains certain suggestions to be kept in view while holding this probe. In the course of his examination by the Commission, Qamar (CW-20) stated that he has been accompanying Saleem to the areas of Al-Qaeda and the Taliban. He also stated “*once when we were together in Quetta, Saleem Shahzad asked me that I should plan for his fake kidnap, but I refused to do so*”. Qamar contended that Saleem had in fact never interviewed Ilyas Kashmiri. Qamar gave the Commission the impression that Saleem’s interview of Ilyas Kashmiri, may be a concoction. He has also stated that Saleem’s articles/interviews are either the result of his own creation/imagination or based upon extraneous information [gathered from other sources]. As per Saleem’s Article dated 4.5.2004, Ex. CW-20/2, he statedly interviewed Maulana Salah-ud-din, an elder of Shawal area, but Maulana Salah-ud-din was murdered four days after that interview. The people of the Shawal and all those close to Maulana Salah-ud-din believed that his murder is due to the above. In his articles, despite the requests being made by those who are mentioned therein, that their identity should not be disclosed, he has been naming them, which would thus create problems for those people. “*I have an impression that he was working for some other country, particularly some spy agency*”. “I believe that the articles written by Saleem were being fed to him by some other persons/institutions/agencies. In my opinion, he has been abducted and murdered by militant groups of Al-Qaida/Taliban because on account of his articles, there were [was] increase in the drone attacks and the militant organizations, in fact,

suffered harm on that account. Besides the spokesman of Ilyas Kashmiri by the name of Abu Qatada is the resident of Mandi Baha-ud-din. After his article/interview of Ilyas Kashmiri, he has been receiving threats from different sources”.

CW-21 is Asma Chaudhry, a senior anchorperson and analyst at Dunya TV. It was to participate in her talk show ‘IN-Session’ about the ‘Mehran Base’ attack in Karachi, that Saleem had left his house. Asma did not submit any statement in writing but was orally examined by the Commission. She was not able to provide the Commission any information or material about the incident itself or the background thereof. She did, however, state that Saleem was a bold journalist and he had also provided valuable and revealing information in one of her earlier programme about the Mehran Base incident.

CW-22, Asmat Jabeen, is the Coordinator of Dunya TV. She had been in touch with Saleem regarding his participation in the said programme. She did not file any statement in writing, but was summoned by the Commission for oral examination. She stated that on the day of incident, she spoke to Saleem at 5 p.m. The latter confirmed his participation in the programme. But, when he did not reach the T.V. station in time, she made another call to him at 5:43 pm. This time around, his mobile was switched off. She had no further contact with him.

CW-25 Absar Alam, a senior journalist and anchorperson in his statement in writing (CW Ex.25/1), has not provided any information about the incident itself or its background; rather, in the examination conducted by the Commission, he stated: “*I do not have any direct*

knowledge of the incident, however, I learnt through media that he [Saleem] is missing from Islamabad; that his car was found parked somewhere in Sara-e-Alamgir and near that car a body has also been found. The media has projected the involvement of local agencies in the incident of Saleem and I also have my reasons like other media persons to assume such involvement.” The reasons Mr. Alam gave in this regard are: firstly, it is based on the general perception that when a journalist goes missing, it is felt that the ISI or another intelligence agency must have picked him up and threatened him or beaten him. The basis of this perception is the number of incidents which have occurred in the past in which journalists were kidnapped, beaten up and then thrown at some place, at the behest of the Agencies; secondly, while Saleem was going to the Dunya TV studio/office which is on Margalla Road and these two areas are very well protected. The technology to ascertain the location of a person who is carrying a mobile is very sophisticated and is available with the top Pakistani agencies therefore, it should be assumed that his location could be ascertained through this mechanism. When questioned, he stated however, it is also possible that someone might have been chasing him. Those may even be some criminals or some non-State actors as well; thirdly, the possibility of the involvement of non-State actors/terrorists should be ruled out for the reason that Saleem was picked up from the place in a very secretive and professional manner and was taken out of Islamabad. *“Though these are suspicions which stem out of a news report which appear in one of the credible newspaper of Pakistan i.e. Dawn with the head line Saleem Shehzad is in the custody of ISI (the heading I do not*

exactly remember may be wording is somewhat different)”; fourthly, my suspicion is further confirmed that when I read this Dawn report it was not based upon any unknown source, rather they had quoted HRW Chief Ali Dayan, who had claimed that Saleem is in the ISI custody and lastly, the suspicion is verified that on account of the statement of Hameed Haroon who had received email that Saleem is a victim and his statement can be considered to be the “last statement” of such person who has pointed out finger in relation to any harm if caused to him. Besides, Mr. Alam has made reference to two encounters which he had with ISI officials. The first meeting he mentioned took place on account of his programme about Raymond Davis. That meeting with Rear Admiral Adnan Nazir and Brigadier Iftikhar took place at a restaurant in Islamabad. Absar said that at that meeting, Rear Admiral Adnan Nazir apprised him that the ISI has stopped interfering in the country’s domestic politics and hence its role should not be criticized by media persons anymore. Absar stated that he felt perturbed by the Rear Admiral’s lack of vision and the limited nature of his information about domestic and international affairs. However, on Commission’s question, he stated during my meeting to which I have made reference in my statement Ex-CW25/1, none of the person [s] I have met threatened or coerced me in any manner, except that some inferences can be drawn. The long conversation was, at times, laced with mildly harsh tone on both sides (him and myself) particularly discussing about the role of ISI in domestic politics (where I quoted recent examples of ISI cultivating certain

politicians) and the definition of “national interest” and “national security”.

CW-26 Hameed Haroon, is the Chief Executive Officer of Dawn Group of Publications, Karachi. He also filed a statement in writing (Ex-CW-26/1). He stated that like the HRW he too had received an e-mail from Saleem, whereby the latter informed him about a threat extended to him by Rear Admiral Adnan Nazir in a meeting held in the ISI Headquarters on 17th October, 2010. Hameed stated *“that the late journalist confided to me and several others that he had received threats from various officers of the ISI on at least three occasions in the past five years. Whatever the substance of these allegations, they form an integral part of Mr. Shahzad’s last testimony. Mr. Shahzad’s purpose in transmitting this information to three concerned colleagues in the media was not to defame the ISI but to avert a possible fulfillment of what he clearly perceived to be a death threat”*. The witness deposed that the threat extended to Saleem related to his article about the release of Mullah Baradar. ISI officials were perturbed about the leakage of news in that article regarding the release of the said Afghan Taliban Commander. The official wanted Saleem to divulge his source and also to issue a contradiction in that behalf. Mr. Hameed Haroon further deposed that *“Mr. Shahzad subsequently confirmed to me in a conversation that he not only interpreted this conversation as a veiled threat to his person, he also informed me that he let an official from the ISI know soon thereafter that he intended to share the content of this threat with his colleagues”*. Mr. Hameed also recommended that *“the government and the intelligence*

agencies should take the investigation into Mr. Shahzad's murder seriously and examine his last testimony closely". He has also mentioned "whether the October 18th incident itself or his last article in the Asia Times Online, that alleged Al-Qaeda penetration of the security curtain for Pakistani Naval establishment in Karachi or some other factor hastened his murder, is for the official investigation to uncover". It may be relevant to mention here that Mr. Hameed brought on record an e-mail dated 17.10.2010 which Saleem had sent to Mr. Tony of Asia Times Online. In that email, Saleem categorically stated that ISI officials were not comfortable with his story about the release of Mullah Baradar. The relevant contents of the e-mail are: *"Hi Tony, I need to tell you the situation emerged after Mullah Baradar's story. I request to keep this email as record if something happens to me in the future.....On Saturday evening I received the call from Commodore Khalid Pervaiz, Deputy Director General ISI and he lambasted me that I sold out the national interest by publishing that news"*. Furthermore, *"although there was no mince [mincing of] words in the room at any stage but I take Adnan's following statement as MURDER threat. He said.....Saleem I must give you a favor. We have recently arrested a terrorist and have recovered lot of data, dairies and other material during the interrogation. He has a hit list with him. If I find your name in the list I will let you know"*. Besides, Mr. Haroon has also produced an e-mail sent by Saleem to Rear Admiral Adnan Nazir in the context of the meeting of 17.10.2010 held between them in the office of ISI (Ex-CW-26/3) In that email, Saleem reiterated the veiled threat which the Rear Admiral had

allegedly hurled at him, the copy whereof was sent to Mr. Hameed Haroon.

NOTE: These two e-mails were brought on the record after having the email account of Hameed Haroon opened, before the Commission, verified and print outs taken by the staff of the Commission.

In the examination conducted by the Commission, this witness deposed that Saleem “*personally told me about the threat and also mentioned about second meeting with some official possibly by the name of Commodore Khalid Pervaiz..... The agency people were unhappy with the reporting/writings of Saleem Shehzad which had reflection upon the policies and also the interest of the State on War on Terror*”. When questioned about the cause of Saleem incident CW-26 stated “*in my view the relations of Saleem Shehzad with Al-Qaida and Taliban were those of a journalist seeking to cover his stories, volunteered that Saleem Shehzad certainly knew them better than others. Further volunteered that at that point of time he was also apprehended by Afghanistan Taliban who threatened to even execute him. I think his writings are the cause of his death. In my opinion there are two different pieces of his writings which might point towards his killing, firstly, his report on Mehran Base incident which has two parts, one already published and the second was withheld by Asia Times Online. Secondly, his writing about the interview with Ilyas Kashmiri which was published few days before his death. “Volunteered that after few days of the incident of Saleem Shehzad, Ilyas Kashmiri was allegedly killed in drone attack by U.S. and to me*

there seems to be a nexus in these two incidents". Further added, that in my candid view the incident of Ilyas Kashmiri and Mehran Base attack are the two most vital reporting [reports], regarding the incident of Saleem Shehzad. I do not think that the book of Saleem Shehzad could give a cause to anyone for committing this incident". At the time of the incident, this witness was in the USA; except for this statement, he was not able to provide any other information or material in this regard. His obvious emphasis is/has been that because the ISI officials were earlier interacting with Saleem and had also threatened him of dire consequences, therefore, it should be presumed that the instant incident is also in connection therewith and has nexus thereto. Mr. Hameed however has admitted that Saleem while in Karachi had close links with Mr. Zaki ISI, Director, Karachi.

CW-27 Ali Hassan Dayan is HRW's representative in Pakistan. He has produced his statement in writing (Ex.CW-27/1). As stated above, it is Human Rights Watch which primarily and initially revealed the e-mail of Saleem, about his interaction with Rear Admiral Adnan Nazir on 17.10.2010 and the threat extended to him. In his lengthy statement submitted in writing, Ali referred to many cases of human rights violations against various persons and sections of society at the hands of the Agencies. In particular he mentioned lawyers, journalists (specially referring to the case of Mr. Umar Cheema) and politicians (specially referring the case of Rana Sanaullah Khan, now the Law Minister of Government of Punjab, who was manhandled and mistreated by the ISI, when Rana was in opposition during the military rule of General Pervaiz

Musharraf). About Saleem, Ali stated “*Shahzad had previously complained of threats by ISI agents for his reporting on links between the ISI and al-Qaeda. On 19 October 2010, Shahzad sent an email to Human Rights Watch outlining a recent meeting he had had with the ISI and asking for the email to be released if he or his family were harmed. Shahzad asked Human Rights Watch to make details of the meeting public “in case something happens to me or my family in future”.....Shahzad told Human Rights Watch that he had been threatened by the ISI at the 17 October meeting at the ISI headquarters in Islamabad with the director-general of the Media Wing of the ISI, Rear Admiral Adnan Nazir, and another ISI official, Commodore Khalid Pervaiz. Shahzad wrote that the meeting ended with the following comment from Rear Admiral Nazir, which Shahzad construed as a death threat*”. The witness further stated that “*Commodore Pervaiz was appointed the new commander of the Mehran naval base in Karachi, the subject of Shahzad’s last story for Asia Times Online, in which he alleged that al Qaeda had attacked the base in Karachi on 22 May, after talks with the military to release two naval officials accused of militant links broke down. Later, in January and March, Shahzad informed Human Rights Watch by telephone of two other instances where he felt threats were given to him by or on behalf of the ISI by people who identified themselves as belonging to the agency*”. Another very important part of his statement is that “*following her husband’s instructions, Shahzad’s wife, Anita Saleem, informed Human Rights Watch of her husband’s going missing on 30 May. She told Human Rights Watch that she received an anonymous phone call saying that*

Shahzad would be released the same evening (emphasis supplied). I made inquiries and credible sources claimed that Shahzad was in intelligence agency custody and was expected to be released in the evening of 30 May. However, despite repeated inquiries, Human Rights Watch received no official response from the government of Pakistan about Shahzad's whereabouts or well-being". It may be pertinent to mention here that this has also been the pivotal disclosure made by HRW right in the beginning of the incident on account of which primarily the aspersion was cast on ISI. On account of all the above, the witness stated "*given the threats from the ISI alleged by Shahzad and a long pattern of similar cases involving the ISI, there is a strong basis to suspect the ISI's involvement in his abduction and death*". In reply to a question put to him by the Commission, Ali admitted that HRW is not a registered body in Pakistan and only has a field presence here, without a formal office. He stated "*I am the only employee of the Human Rights Watch. I am responsible for all human rights material produced in Pakistan*". Furthermore "*I have a Bachelor degree from London School of Economics and Masters degree in History. I do not have any academic qualification either in criminal investigation or related matters.*" However, he claims to have the experience/expertise in monitoring and documenting the human rights violations and analyzing such violations in the light of the International Law and International Humanitarian Law. When asked about whether he had himself received any threatening calls from the Agencies, he answered in the affirmative. But he could not identify the number he had received the calls from, because, according to him, it was withheld

(unknown). He did, however, mention the name of one Major Ali who had threatened him. However, when further asked, he stated *“I cannot rule out the possibility that any such calls received by me were obnoxious calls. I have never been summoned by any security agency in Pakistan to any of its office to intimidate/threaten me etc.”*. However, he admitted it is *“absolutely correct that even non State Actors would commit human rights violations, if their agenda is sabotaged or being prejudiced. I do not have any direct information or knowledge about the incident of abduction and killing of Mr. Saleem Shahzad ”*. *“However, I have reasons to believe that Saleem Shahzad was abducted by the ISI. My this judgment is based upon my extensive experience of documenting other such incidents committed by the ISI and other security agencies in Pakistan.”* On a specific question put to him about whether he had any personal knowledge of any specific incidents of abduction and killing by the ISI, he answered: *“I have never witnessed the abduction and killing of any person by the ISI. However, I have documented cases where abduction, torture, mistreatment, illegal detention and murder at the hands of the ISI have been alleged”*. He states Saleem was not known to him personally, though he knew him through his writings. He had interacted with Saleem once or twice on phone. The Commission asked about what, in his opinion, could have motivated any security agency in Pakistan to commit this incident. He responded that it may have been because Saleem had repeatedly ignored ISI advice and warnings given to him to discontinue reporting on counter-terrorism, particularly the nexus between the security agencies and the Jehadi groups including Tehrik-e-

Taliban Pakistan (TTP) and Al-Qaeda. Responding to another question, he stated *“about the advise from the ISI to which I have made reference above is the one contained in e-mail sent by Saleem Shahzad to me, which I already produced”*. The advise or warning was extended to Saleem by Rear Admiral Adnan Nazir and Brigadier Khalid Pervez. Furthermore, I was told by Saleem in a telephonic conversation that he had received follow up threats from the individuals named in the e-mail and other unnamed ISI official. However, this information about the warnings was not given to me by Saleem through any e-mail etc; ISI was interested in finding out the sources of Saleem for his writings, such as, the story he wrote in connection with Mulla Baradar. At the conclusion of his statement the witness sought the permission of the Commission to add to his statement in writing **“this case is a case which should be investigated thoroughly by the Police, particularly the role of the ISI and its officials named by Saleem Shahzad”**.

CW-28 is Anita Saleem, the widow of Saleem. Anita has chosen not to file any statement in writing, but she was orally examined by the Commission and also answered a questionnaire served upon her. She stated that her husband’s area of expertise in field of journalism was the ‘War on Terror’. She said that after having shifted to Islamabad, Saleem would move around freely. He had no fear and never expressed any apprehension about threat to his life or to that of his family from any quarter whatsoever. He never faced any security problem while living in Islamabad nor did he ever receive any threat, he never apprised her of having received any threat from any agency particularly the ISI. But,

perhaps in February or March, 2011, he told her that some ISI officials had asked him over for a meeting, which was held, however she did not know about the venue. When he came back after the meeting, he was fine and normal. He did not express any fear or apprehension of any threat extended to him. After his article about Mehran Base, Saleem Shahzad was quite normal. However, *“he told me that it shall be a breaking news”*. *“None from any agency had ever called Mr. Saleem Shehzad in connection with Mehran Base article or threatened him in this behalf”*. Anita also mentioned *“we wanted to settle in UK but it was not due to any fear or threat, rather one of our children is a special child and it was on my instance for his better look after and treatment that Saleem Shehzad thought to settle in UK provided his book was launched and generated sufficient funds for our settling over there”*. *“Moreover, I have no clue at all as to who is responsible for this incident. I cannot point out finger towards any person, agency or organization in this context”*. *“There has been no pressure on me since the day of incident from any corner whatsoever and this is true for myself and also from my children and other family members”*. When asked by the Commission, the witness stated ***“The agitation of the journalists community on account of the incident of Mr. Saleem Shehzad and its attribution to a particular agency is possibly due to the e-mail which Mr. Saleem Shehzad sent to Mr. Hameed Haroon and Mr. Ali Dayan”***. She in her examination stated in the month of August, 2010 while our whole family had gone for swimming in F-6 at ex-UN Club where Saleem Shahzad had a quarrel with the guard who was rude to Saleem Shahzad and had fired at him with

pistol which caused injury to his liver, but that matter was subsequently settled because Saleem had forgiven him. Saleem was not yet fully recovered from that injury when the present incident took place. She confirmed that while in Islamabad, Zafar Mehmood Sheikh and Muhammad Faizan were his closest friends. Saleem had never ever shared any fear or apprehension of any threat even with Hamza Ameer and also not discussed with him any professional affairs/matters. About the statement of Ali Dayan that Anita contacted HRW as per the instructions of her late husband and an anonymous call was received by her. She stated I called Ali not on the instruction of my husband, but as told by 'Mary' an Irish journalist, who was friend of Saleem told and only informed Ali that Saleem was missing. She categorically stated that Saleem had never left any instruction with her in this behalf to contact HRW if any thing went wrong, because he was fearless. Regarding the anonymous call she specifically responded *"I did not receive any anonymous call, so I did not call Mr. Ali Dayan at all"*.

CW-29 Syed Waseem Fawad is Saleem's brother. He did not submit any statement in writing. Upon examination by the Commission, he mentioned that in October, 2010 Saleem had visited him in Karachi. Saleem told him that some ISI personnel had threatened him. Saleem stated that he had spoken about the situation to Hameed Haroon from whom he always sought advise and the latter had promised him to tackle the matter. Waseem also stated *"I do not have any clue as to who is responsible for this incident, there may be some others than ISI who have done this to benefit and serve their own purpose"*.

It is pertinent to mention here that on 26.6.2011 in order to seek further input, material and information about the incident and its background and to share the similar personal experiences of other journalists, the Commission directed PFUJ to notify to all of its chapters and affiliated units, so that anyone who still wished to share any information/experience with the Commission might come forward. Muhammad Amin Yousaf (**CW-30**), who is the Secretary General of PFUJ, appeared and produced the letters and notices issued accordingly. He stated that he had gotten in touch with all the concerned, either verbally or through SMS, and that he had apprised all the presidents and secretaries of the various unions, units and chapters about the Commission's call. Notices were also uploaded on the PFUJ's website.

In response to the Commission's call, yet more witnesses came forward and were duly examined. These include: Jehangir Aslam, correspondent ARY News, Turbat, Abdus Salam Soomro, Awaz TV, Karachi, Malik Munawar, Channel Five, Karachi, Aamir Sohail, Radio FM 103, Lahore, Shamim Shahid, Journalist and Ayub Tareen, Quetta contacted and expressed their desire to share their experiences. However, Mr. Umer Cheema did not come forward.

CW-31 Syed Aizaz Hussain Shah, a reporter for Dawn News submitted his statement in writing (Ex.CW-31/1). He stated that in the year 2010, he had three personal encounters through which the Commission can have an insight into the conduct of intelligence agencies. The first incident took place on the 27th of December, 2009, when he (Aizaz) met with Col. Tariq, head of the ISI's Islamabad detachment, and

with one of his officers at the ISI's office. According to Aizaz, these officers informed him that the ISI's Director General, Lt. General Ahmed Shuja Pasha, was not happy with him because of some of his stories. Aizaz reported the detailed account of his meeting with the ISI officials immediately to his Bureau Chief, Arshad Sharif (The email record is attached with his statement). Aizaz shared another incident in which the ISI officials restrained him from doing sensitive stories and urged him to avoid naming military officials in his stories. The officials had information about a story which Aizaz was already doing, and they had required him to avoid such stories (3) The story which he was working on was about the weak military justice system. The ISI officials already knew the details of his story which was yet to publish. In this story he had also requested his senior colleague Mattiullah Jan to help him. On account of the above, he statedly faced some unusual situations which he has explained in his statement in writing (4) That before airing of the story some unknown persons attacked his house on 19.1.2010 (5) that about three months after the above incident, another incident of firing took place in his house on 7.5.2010. He approached the police, attributing the incident to the ISI officials but to-date the case has not been registered. He has also made reference to the case of Mr. Umar Cheema. However, in his statement in writing Ex.CW-31/1, he categorically stated "I do not have any evidence or information which could prove that ISI was involved in kidnapping, torture and murder of Mr. Saleem Shahzad, but my above mentioned experience forced me to believe that only ISI has the capability to carry out such kind of operation". Besides, on a Commission query

the witness stated *“I cannot say as to who is responsible for this incident, however, my suspicion upon ISI is based upon my own personal experience and that of Umer Cheema which I had narrated in my statement. Saleem Shehzad never confided [in me] or apprised me of any of his interaction with ISI or any other organization or any threat extended to him in this regard”*.

Farrukh Nawaz (CW-32) provided no valuable information about the incident nor shared any of his experience which would have nexus thereto.

Abdus Salam Soomro (CW-33) is a cameraman for Awaz TV. He is stated to have shot the video footage of the Sarfraz Shah’s incident of 8th June, 2011 in which Sarfraz Shah was killed by some Rangers in Karachi. This material also does not have any relevance to the incident of Saleem. He stated that after having shot that famous video, he too received threatening call, urging him to be careful in future.

Aamir Sohail (CW-34) is an anchor person for FM Radio 103, Lahore. He stated that on account of his programme “Aaj Ki Baat”, he had received threatening calls from “unknown persons”. The unknown callers threatened him that since he was generating public opinion against Jehadi Organizations, unless he ceased his present activities, he would meet the same fate as that of Saleem.

CW-35 Jehangir Aslam, is a a reporter for ARY News from Turbat. He has not given any valuable input qua the incident. However, he stated that he has been receiving threats from unidentified “private numbers”.

However, when questioned, he stated that he had never had any interaction with the Agencies.

CW-39 Muhammad Raashed is a journalist and is engaged in running a media office in the premises which were earlier occupied by Saleem (his residence). He met the members of the Commission on their visit to the house of Saleem. He volunteered to appear before the Commission and on questioning has stated that Saleem was very well known to him and they would normally discuss and exchange their experiences, views and information, as both of them were working on the 'beat' of terrorism/Taliban/ Al-Qaeda. He mentioned *"In my view and impression, which I have formed from the discussions that Saleem Shahzad's source of access to the Taliban/Al-Qaida was Mr. Khalid Khawaja, who has since been murdered by the Punjabi Group of Taliban. He was quite a close friend of Saleem Shahzad"*. He also stated, *"it is around April, 2010 that through my source I received an audio tape regarding the conversation between Mr. Hamid Mir, a known anchor person, and Usman Punjabi alias Imran Moota, who belong to Sipah-e-Sahaba, pertaining to the abduction and murder of Khalid Khawaja. I disclosed this to Saleem Shahzad, who wanted to write a story, but giving it some cosmetic effect, by amplifying and adding certain facts, which were not true. I declined it. From his various articles which I have read over the period I find that the things and events were not accurately/truly stated and depicted. Saleem Shahzad had apprised me what was the reaction and views of US embassy in Pakistan about the audio tape of Hamid Mir and Usman Punjabi. As per my personal knowledge, Saleem*

Shahzad was very close to US embassy in Pakistan All the articles of Saleem Shahzad for the last 4/5 years before his death contained 60% true facts, whereas 40% were otherwise. As per my experience, quite a many journalists carry agenda for someone else and in my opinion Saleem Shahzad was carrying the agenda for US. I have read the articles of Saleem Shahzad on Ilyas Kashmiri, Mulla Baradar and Mehran Base. In my firm view, there was no cause for the ISI on account of these articles to commit murder of Saleem Shahzad. The reason for this is prior to Saleem Shahzad one Pir Shah alias Zubair Shah, who was a journalist working in New York Times had also written an article about Mulla Baradar, but he was not targeted as is allegedly said to be in case of Saleem Shahzad". He categorically stated "In my opinion, certain articles were got written from Saleem Shahzad and few other journalists and after having achieved the object, this incident was committed by the US/CIA with an object to exert more pressure on Pakistani agencies" "It is possible that Ilyas Kashmiri could have been targeted by the US in drone attacks after having got information from Saleem Shahzad about his whereabouts". "Once Saleem Shahzad had apprised me that he received some threats from ISI. This was 20/25 days before the incident".

SUMMONING OF THE AGENCIES

As stated above, in order to inquire into the matter it was considered expedient by the Commission to summon the relevant officials of the Military Intelligence (MI), Intelligence Bureau (IB), and the Inter-Services Intelligence (ISI). Accordingly, the Ministry of Defence and

Ministry of Interior were directed to ensure the representation of these organizations before the Commission. M.I. wrote to the Commission apprising that it had no nexus with the incident nor does it have a Media Cell. IB responded in a similar vein. The ISI, however, has borne the brunt of blame right from the day one, and was expected to answer the concerns. Therefore, Brigadier Zahid Mehmood Khan, Sector Headquarter Central Islamabad appeared as a representative of the ISI and was examined by the Commission on various dates. He was directed to present the written response of the ISI in the light of the material already available on the record. In the presence of the Registrar of the Commission, ISI officials were given an opportunity to examine that material. Thereafter, Brigadier Zahid filed a statement in writing, which presents the version of his institution. This has been placed on record (Ex.CW-36/1). Besides, Brigadier Zahid's supplementary statement, submitted in writing, has also been placed on record (Ex.CW-36/2). These statements consist of three parts. In the first part, the object of the ISI has been highlighted, stating that ISI is a strategic intelligence organization and provides input to the government for the formulation of the policies. Its officials, in performance of their national duties, interact with different institutions and people from all walks of life to benefit from their experience and consequently feed the Government of their input. It is further mentioned that in the course of discharging their duty, officers of the ISI remain in touch with all segments of society including journalists. (emphasis supplied). This interaction is always reciprocal and cordial. The main purpose of such interaction is a voluntary and mutual exchange of

accurate information of national importance. It is categorically mentioned that Saleem was in contact with the ISI and the interaction was on the required basis. It is Saleem, who on 17th October 2010 when published a story “Pakistan Frees Taliban Commander” in Asia Times Online on 15.10.2010 and its contents were carried by a section of Pakistani press and international media, that his attention was drawn towards the article where he had **falsely quoted** an un-named senior intelligence officer, he preferred and insisted on personal meeting, rather than a chat on telephone. Therefore he was invited to the office of the ISI where he met Rear Admiral Adnan Nazir on 17.10.2010. It is stated in statement (CW-36/1) that the meeting took place in a cordial and friendly manner, which was acknowledged by him in his email dated 18.10.2010. (Note: this is the crucial e-mail). He suggested that if he wished to bring the contents of the meeting on record, then as a norm its proceedings ought to be mutually agreed upon and signed to which he declined.(Note: But there is no proof of this fact as no document has been produced and it barely is an oral assertion).

In the written version, the allegation about the ISI’s role in the incident has been refuted and it is further stated had Saleem been threatened or coerced, he would have broken all contacts and refused to interact anymore with the ISI, something he did not do. In this statement, it is also mentioned that the last telephonic interaction with Saleem took place on 3.5.2011 soon after the US operation in Abbottabad. In his article “Osama Bin Laden ready for a fight” dated 3.5.2001, he falsely quoted that DG ISI had said that the ISI was aware and part of the US operation.

He was again contacted on telephone where he accepted his fault and issued a clarification in Asia Times Online. Besides, denying its involvement in the incident it has been mentioned that ISI is operating under a tense environment and is engaged in multiple complex challenges, both internal and external and it is in order to keep the ISI from meeting these challenges that the ISI is often dragged into these controversies. While responding to certain statements of witnesses in which the coercive, intimidating and threatening attitude and behaviour of the ISI officials have been reflected certain comments have been made e.g. about Mr. Muhammad Faizan of Daily Ausaf, it is stated that *“he has claimed in the statement Ex. CW-6/1 that he rang at Saleem Shahzad’s cell phone at about 2350 hours on 30.5.2011, but his call was rejected and the phone was switched off. Upon which he contacted Saleem Shahzad’s family who told him that he had yet not returned home. He claims that having failed to get in touch with Mr. Saleem Shahzad on 30.5.2011 he contacted the family of Mr. Saleem Shahzad whereafter he started receiving threatening calls from mobile numbers 0336-8608454, 03336758744, 0332-4725819 and 0331-4234104 after returning from Mandibaha ud Din where he had gone to take the dead body of Mr. Saleem Shahzad certain threatening calls were made from mobile numbers given in the statement. However, his above statement is not substantiated as in between 30th and 31st May, 2011 he has not made any call on the mobile telephone of Mr. Saleem Shahzad and this is so refuted from his call data”*. As regards threatening calls at his residence and to his wife from certain numbers given by Faizan in his statement, it is mentioned *“that from the call record of*

Faizan's wife attached with the statement of Ex.CW-36/2 as Annexure 'C' the numbers 0336-8608454 and 0332-4725819 were in contact with her mobile number and according to the investigation conducted by the ISI the individuals having these numbers belong to Dera Ghazi Khan and they have been making obnoxious calls to the lady. In this regard, audio/video evidence of the interviews conducted with them has been placed on the record".

About Hamid Mir, CW-11, it is stated that *"he condemns Saleem Shahzad being a dubious case, laments Americans for their extraordinary interest in this case"*. In this behalf, a telephonic conversation of Mr. Mir with an ISI official has been placed on the record.

For Ali Hassan Dayan, it is stated that *"the statement also states that Saleem Shahzad was threatened by some persons in January and March who identified themselves as belonging to ISI, however, they were never confirmed to be from ISI. It means that Saleem Shahzad and Ali Dayan were in doubt about their identity who could be anybody, even an impersonator as ISI officer. Impersonating as ISI person is not a new phenomenon".* Furthermore, the statement finds mention *"the defamation campaign especially from the West itself speaks volumes about how serious an impediment this organization is between realization of their objectives in the country. Whereas their attempt to malign ISI is understandable, same done by few quarters from within, is painful."* It is also stated *"Attention of honourable Commission is also drawn towards who could be the beneficiary of murder of Saleem Shahzad. If he was a man of intellectual integrity and his writings were based on acquired*

intelligence through his contacts, then obviously he could be considered a great threat to Al-Qaeda when he dared and promised to expose strategic assets of the terrorist organization in his article on Mehran Base attack”.

In Part II of this statement on the basis of Saleem’s CALL DATA RECORD (CDR) comments have been made about his connection abroad, with the militants and with various international spy agencies, besides the interest and anxiety of the American high-ups in this incident. In this respect, it is stated *“Why in this case from President Obama to every man worth a name in the US felt disturbed. Was he a pawn who could be used at appropriate time to further use the US objectives and create a wedge between establishment and other segments of society? In the statement, it is mentioned that tentacles of ISI in deep cover revealed that associates of Ilyas Kashmiri were not happy with Saleem as they suspected him of having divulged Kashmiri’s locations to the Americans. They also thought of him as a double cross and a potential hazard who might disclose some of their precious assets in various organizations (reference Saleem’s article on Mehran Base). The individual named Nawaz Khan, an important militant of the Ilyas Kashmiri (Al-Qaeda) network, is detained in Adiala Jail on the charges of abduction for fund generation for terrorists and murder. He was in contact with Saleem. After Saleem’s abduction and murder, while discussing the matter with a front man of the Ilyas Kashmiri group, Nawaz expressed praise for Saleem, but Ilyas Kashmiri’s front man cursed Saleem for the damage that he had done to their network and remarked that a bad man had only met his fate. This, according to the statement of Brigadier Zahid Mehmood Khan of ISI, speaks volumes of*

the Ilyas Kashmiri group's enmity with Saleem and provides evidence for Al Qaida's possible involvement. It is also mentioned that allegations against the armed forces of Pakistan and the ISI are part of a bigger game which is aimed at destabilizing the Pakistani state. Forces inimical to state have their own national security perspectives and operate within that ambit, keeping in mind the 'end state', for which they can go to any extent. Articles of Dexter Filkins, published in the New Yorker, provide a classic case in point, in which he in the garb of Saleem's incident has lamented the state institutions in most part of the article.

About the threats of ISI officials to the journalists and others, it is added that various persons have been detected and intercepted as impersonating ISI officials and in this regard certain details have also been mentioned in this written version.

It may be pertinent to point out that alongwith the statement, the witness has placed on record the e-mail dated 18.10.2010 (the crucial e-mail), which was actually sent by Saleem to Rear Admiral Adnan Nazir, and the copies thereof with some modification were forwarded to Ali Hassan Dayan and Hameed Haroon, however it is stated that this e-mail does not postulate any threat to Saleem by Adnan Nazir, rather it is conspicuously mentioned therein by Saleem that "*the conversation was held in an extremely polite and friendly atmosphere and there was no mince word in the room at any stage*".

It is, however, denied that the words attributed to Rear Admiral Adnan Nazir perceived by Saleem as a threat were uttered by him, and contended that if any threat was hurled, Saleem would not have interacted

with Adnan Nazir any further, but on 22.10.2010 an e-mail (Ex.36/2) was sent by Saleem to Adnan Nazir, which reads:-

“Dear Adnan Nazeer Saheb,

Please read my recent article for Middle East Political and Economic Institute, European think tank for bringing EU and Muslim world closer. the article is released by Asia Despatch.

I am also an Associate of Pakistan Security Research Unit of the University of Bradford UK.

Can we discuss further on the lobbying prospects for Pakistan’s strategic interests in Europe?

best,

Saleem”

This was replied to by Rear Admiral Adnan Nazir on 23.10.2010 (Ex. CW-36/3) as follows:-

“Dearest Saleem

Certainly, I will coordinate time, location your choice.

Regards Adnan”

On 3.11.2010, Saleem again sent an e-mail to Rear Admiral Adnan Nazir to which the latter replied. The contents of the e-mail and reply Ex.CW-36/4 are reproduced below:-

“Dear Adnan Saheb,

I am back in Islamabad again. It would be a real pleasure to have a cup of tea with you.

best,

*Syed Saleem Shahzad
Asia Despatch (www.asiadespatch.com)”*

Reply of Rear Admiral Adnan Nazir on 25.11.2010

“Dearest Mr. saleem

Sorry for the delayed reply, will coordinate as soon as possible. A little busy these days. Cup of tea will be cup of tea, no minuting (emphasis supplied)

Regards Adnan”

Brigadier Zahid Mehmood Khan, who has propounded institutional version of ISI before this Commission has been subjected to lengthy examination by the Commission. He categorically has denied any involvement of the ISI in the harassment and intimidation of any of the journalists who appeared before the Commission and made attributions in this regard. Brigadier Zahid has termed Saleem's article about "Mullah Baradar", as fake and frivolous. The Commission asked him about whether a public denial had been issued by the ISI in this regard. This was answered in the negative; no explanation was given for this; rather it was stated that the denial was made in the meeting with Saleem and this was considered sufficient. He also stated that Mr. Hamid's allegations of having personal knowledge of threats made by the ISI officials to certain journalists are false, bald and without any substance. About Saleem's e-mails sent to Mr. Hameed Haroon, Mr. Ali Dayan and Mr. Tony, it is stated that the attribution to Rear Admiral Adnan Nazir and Commodore Khalid Pervaiz are totally false and concocted. He has categorically denied that the book and writings of Saleem in any way has caused any grievance to the Establishment/Agencies, and in this context deposed "*I do not think that most of the articles written by Saleem Shahzad were against the national interest, rather those exposed Al-Qaida and Taliban; qua their way of working and even their entering into Armed Forces and the Navy. This is particularly so envisaged by his Article on 'Mehran Base' "*". The witness also mentioned "*Though I do not have any concrete evidence, but Saleem Shahzad in my presence stated that he was approached by Indian Intelligence Agency (RAW) and now he has to*

present a paper in U.K. on which he wanted the input of ISI. He also stated that he is in contact with the intelligence agency in U.K. I do not remember the exact date of this meeting, but perhaps it was in the month of October, 2010”.

As according to the media reports and discussion, it was alleged that threat was extended by Rear Admiral Adnan Nazir to Saleem and it had also been so stated by some of the witnesses appearing in the course of these proceedings, that the attitude of Adnan Nazir was harsh and untoward towards the journalists, therefore the Commission decided to summon him. Besides, as the names of Brigadier® Iftikhar Ali Khan and Commodore Khalid Pervaiz had also surfaced as the ISI officials who had been interacting with Saleem and/or other journalists in the context of threats and unbecoming attitude etc. resultantly all these gentlemen were also summoned.

CW-37 Rear Admiral Adnan Nazir while appearing before the Commission has explained about the functions of the Media Cell in ISI of which he was Incharge for the last two years and stated *“What this Wing does is to read, collect, analyze and prepare a report of all the media reports to be used by the Government of Pakistan. At times for the purposes of collection of information, the officials of this Wing do interact with the journalists’ community. I personally also have been interacting with the journalists. The interaction of ISI with the journalists’ community is both the way; mostly, the journalists’ community in order to seek the information get in touch the Information Wing of ISI. The meetings with the journalists are usually of professional nature”.* He

has admitted to have met with Mr. Absar Alam, an Anchor of Aaj T.V. and Mr. Imtiaz Alam of SAFMA, but denied of having ever extended threats to them or having used any harsh language or intimidating them or have called Imtiaz Alam to which reference was made by Mr. Imtiaz. He also denied any attempt or role on part of ISI to implicate Mr. Hamid Mir in the incident of Mr. Khalid Khawaja. He has admitted his meeting with Saleem particularly the one dated 17.10.2010 in connection with Mullah Baradar story, but has vehemently denied of saying to him *“I must give you a favor. We have recently arrested a terrorist and recovered a lot of data, diaries and other material during the interrogation. The terrorist had a hit list with him. If I find your name in the list, I will certainly let you know”*. He however admitted of receiving the e-mail dated 18.10.2010 from Saleem containing the above portion and when questioned that if the contents of this e-mail were incorrect why did he not contradict the same, he stated *“It is correct that the above quotation is a part of this e-mail. I did not respond to this e-mail. Though I found that the quotation portion of the e-mail was wrong and false, but I did not find it expedient to respond”*. He has, however, mentioned to other e-mails i.e. Ex.CW-36/3 and Ex.CW-36/4 to reiterate the version of ISI propounded by Brigadier Zahid Mehmood Khan CW-36, that even after the e-mail dated 18.10.2010 containing the objectionable and false attribution the interaction between Saleem and him continued, which was warm and cordial, therefore he has impressed upon the Commission to draw an inference about the inaccuracy of the said part of the e-mail. He has also mentioned that the article Ex.CW-37/1 which was written by Saleem

titled “Bin Laden sets alarm bells ringing” in which Saleem indicated visual sighting of Osama Bin Laden, as this was an important information because Bin Laden was alleged to have been seen after a long time, thus for the ISI it was significant for the verification thus Saleem was asked for the meeting, which was accordingly held in a cordial atmosphere. About the story of Mullah Baradar, the witness stated “*The story propounded by Saleem Shahzad in the article pertaining to Mullah Baradar was creating mistrust between the Pakistan and the allies and in this context it can be said to be injurious to the national interest*”. About his interview with Ilyas Kashmiri, the witness stated that “*I cannot make comment about the writings of Saleem Shahzad about Ilyas Kashmiri, but I have [a] feeling and perception, that he in this respect had created a story; he would create stories and may be it was one of those*”. The witness in categorical terms stated that “*The article of Saleem Shahzad regarding Mehran Base could cause no grouse and grievance to the Pakistan Navy or Armed Forces or ISI, it was just a casual journalistic story. Besides, in the article Saleem Shahzad has exposed the assets of Al-Qaida and Taliban and in no way has caused any harm to the Pakistani interest*”. As this witness was not able to give any plausible explanation as to why he did not respond to the e-mail of Saleem dated 18.10.2010 containing false attribution to him, and also for some more questioning, the witness was re-called on 30.11.2011. He was asked if ISI had any authority to call the journalists to the office of ISI, his reply was that it was on mutual understanding and basis, that on certain issues the journalists would be requested/asked to come. Most of the time, requests to meet the ISI

officials were on behalf of the individuals and they were thus welcomed to the ISI office. In connection with the above noted portion of the e-mail, a specific question was repeated/put to him, Why did you not respond to the e-mail of Saleem, which subsequently has been construed as a veiled threat by him and the others, you had earlier answered that I did not deem it expedient. This being a matter of some significance in relation to the incident, would you like to explain your position now? He replied *“My answer again is almost the same, but I would further add I really did not consider it necessary to answer. Further added that about two months down the line when Saleem Shahzad again asked for the meeting I wrote the words no minuting, because anything which is to be recorded it has to be done with the consent of both and it had to be accurate. Whereas the earlier attribution to me was blatantly false and incorrect”*.

CW-38 Brigadier (R) Iftikhar Ali Khan is Deputy Director General, ISI Headquarters, Islamabad. It was stated by Mr. Absar Alam (CW-25) that he had some meetings with him, one in the presence of Rear Admiral Adnan Nazir and another meeting separately. On account of both these meetings, some adverse inference has been drawn by Mr. Alam. It is in this reference the witness was summoned who stated that his mandate of job was to look after the electronic media reports to be used by the Government and has been meeting the journalists occasionally which according to him mostly were on the request of the journalists. He stated *“we would also have to meet them to share their professional views on some issues. I had never met Saleem Shahzad. I had never any telephonic conversation with Saleem Shahzad”*. He admitted to have met Mr. Absar

Alam twice, but denied if any unpleasant incident occurred during these meetings or any exchange of harsh words took place viz-a-viz Rear Admiral Adnan Nazir and Absar Alam. He when confronted with the statement of Mr. Absar Alam totally denied the attributions made to him. He has further stated that I have never met Mr. Faizan, the journalist, but might have met Mattiullah Jan in one of the workshops, but has no unpleasant interaction with them.

CW-40 Commodore Khalid Pervaiz. His name finds mentioned in certain statements particularly that of Mr. Hameed Haroon and also in an e-mail dated 17.10.2010 sent by Saleem to Mr. Tony. He was, accordingly, summoned who has admitted his meetings with Saleem in Karachi, as also in Islamabad, particularly one of the meetings, which was with reference to Bombay Attacks. He stated Saleem in his article wrote that the terrorists involved in that attack were from PNS Iqbal, which is a naval wing and the boats were also provided by PNS team. But the above statement in the article was totally incorrect, frivolous and baseless, Saleem was apprised by him in this behalf. CW-40 also admitted the meeting of Saleem with Rear Admiral Adnan Nazir in October 2010 in which he was present, however when confronted with the controversial portion of Saleem's e-mail (crucial e-mail), he categorically denied that any such words were uttered by Adnan Nazir. As Ali Dayan in his statement gave an impression that the incident of Mehran Base took place the same day when Commodore Khalid Pervaiz took charge thereof, therefore the Article of Saleem is the cause of the abduction/murder on that score. The witness when questioned in this regard stated that he on

account of being very busy in connection with the Mehran Base incident had no chance or occasion to even read that article, but he learnt about it later. On a further question, he deposed “*that I cannot say whether it was false or correct story because I had never read it*” “*I cannot say if the story is in the national interest or otherwise because I have not read it even so far*”. He categorically refuted of having threatened Saleem as being imputed by Mr. Hameed Haroon or mentioned in the e-mail sent by Saleem to Tony.

OTHER FORMAL EVIDENCE

CW-3 is Bashir Ahmad, who is General Manager (Operations), National Highway Authority. He appeared to answer a query of the Commission whether the CCTV system installed at toll plazas Mandara, Tarakai and Jehlum recorded the images of Saleem’s white Toyota Corolla car bearing registration No.ALR-085. He categorically stated that the system is exclusively meant and is designed for the purpose of collection of toll and to detect toll evasion and for no other purpose, such as security measures. Therefore, the images of all vehicles which pass through the toll plazas are not recorded in the system. The system only records and retains the images of those vehicles which evade the toll payment and/or to resolve the controversy between operator’s judgment and system judgment when such data is needed. Besides, it records the images of those vehicles which claim exemption from the toll. He categorically stated that from such CCTV system, it cannot be ascertained if the car in question had passed through these toll plazas on the given dates and time. In order to seek the verification of his version, a report has

been sought from Inspector General Police, Punjab who after having the analysis of the system by the Technical Experts, has placed on record the report as Ex. IGR/1, which affirms the viewpoint of the witness.

CW-4 Mr. Shahid Nadeem Baloch (DIG), Director, Cyber Crimes, FIA, was summoned for enabling access to the e-mail account of Saleem because according to the family of Saleem (Hamza Ameer) they did not possess Saleem's password. This witness, however, required the laptop/computer in the use of Saleem, but as it was also not available, therefore when he re-appeared again, alongwith his team, he apprised the Commission about a cumbersome legal procedure, for the access thereto. However, the Commission of its own was able to open Saleem's email accounts, which contained more than 33000/- emails.

CW-7 is the SHO, Police Station, Sara-e-Alamgir, who after getting information on 30.5.2011 from Moharar Ansar of the said police station, that an un-attended/abandoned car Toyota Corolla bearing registration No. ALR-085 (Sindh) is parked at the bank of Upper Jehlum Canal facing towards Mandi Bahauddin, went to the site and tried to open the car and despite the help of a mechanic failed to do so. Thus, he was compelled to break the window, opened the car and took in possession certain articles which are mentioned in the memo of recovery Ex.CW-7/1. The car was then brought to the police station and was subsequently handed over to the family. It may be pertinent to state here that no forensic check up of the car was done and especially the finger prints and other marks/contents were not scientifically procured, secured or retained. This seems to be a serious lapse on part of the police.

CW-9 Dar Ali Khan Khattak, DPO, Mandi Bahauddin, who is the member of the investigation team constituted by Inspector General of Police, Punjab for the investigation of the matter registered vide FIR No.192 dated 30.5.2011 at Police Station Saddar Mandi Bahauddin has appeared before the Commission on 18.7.2011 and 30.11.2011 as CW-9. He has placed on record the interim report of investigation so far conducted as Ex.CW-9/1. But there seems no significant progress in the course of investigation. However, in the examination by the Commission he has admitted that no official of the ISI has been joined in such interrogation.

SI Shafique (**CW-10**) of Margalla Police Station, Islamabad, is the officer who accompanied Hamza Ameer and others to Sara-e-Alamgir for the identification of the car of Saleem and also his dead body. He clarified that the other person accompanying him, who was suspected by some of the witnesses appearing before the Commission as belonging to agencies was in fact, Constable Ansar (Belt No.2823/C).

CW-15 Muhammad Shafique is a Baildar posted at Rasool Power House, Mandi Bahauddin. He located the dead body of Saleem entangled in the power house system. He reported the matter to the police and ultimately retrieved the dead body.

CW-16 Hamayun Shahzad is the Supervisor, Edhi Welfare Centre, Mandi Bahauddin, who upon the request of the police provided services and also managed the burial of the dead body of Saleem as *Amanat*.

CW-17 Raja Nisar Ahmad is *Sarbrah Lumberdar* of Mauza Ragar. He informed the police on 30.5.2011 about the unattended car of Saleem,

parked at the bank of Upper Jehlum canal. His house is abutting the place where the car was parked. He was informed in this regard by Aamir Shahzad, his servant, that an unattended car is parked there since morning.

CW-18 is servant of Raja Nisar Ahmad who informed him about the car.

CW-23 Dr. Iftikhar Hussain Hashmi is the Senior Medical Officer, District Headquarter Hospital Mandi Bahauddin, who had conducted the postmortem of Saleem. He concluded that the deceased has died less than 48 hours before the postmortem examination. However, he could not calculate the minimum time that had lapsed since death, for the reason that the dead body had been recovered from water. He records that the body looked fresh and there were no wrinkles on it. It was not at putrefying stage and there was no water in the stomach. On this basis, he concluded that the dead body had remained in the water for about 2 to 4 hours. His postmortem report is Ex. CW-23/1. According to him, following were the injuries found on the person of the deceased:-

- “1. Contusion mark 5 x 4 cm present on forehead middle part.
2. Contusion mark 5 x 3 cm on left side of forehead above left eye brow.
3. Contusion mark 8 x 0.5 cm of left side of head.
4. Contusion mark 4 x 3 cm about 2 cm above injury No.2
5. Contusion mark 7 x 6 cm lateral to left eye.
6. Contusion mark 5 x 6 cm anterior to left ear.
7. Lacerated wound 7 x 3 cm muscle deep on left nipple area of chest. Damaging skin muscle and on dissection there is fracture of sixth (6) rib seen.
8. Contusion mark on antero lateral aspect of right chest 15 x 12 cm area on dissection of injury 9th rib right side found fractured. Liver is also damaged
9. Three contusion marks smaller being 7 x 2 cm and longer being 9 x 2 cm on left arm above left elbow joint.
10. Contusion mark present on back of right wrist and hand 12 x 7 cm.
11. Contusion mark semi circular on anterior aspect of left knee joint 7 x 3 cm
12. Contusion mark .8 x 4 cm semi circular on right knee joint.
13. Contusion marks 3 in numbers on middle of left leg anterior side each 12 x 3 cm in size.
14. Contusion mark on back of left wrist and hand 12 x 6 cm sized.
15. Contusion mark 6 x 5 cm on right shoulder top.”

CW-24 Dr. Ashok Kumar is an Associate Professor in PIMS hospital, Islamabad and was the Head of the Board of Doctors, which was constituted by the Additional Deputy Commissioner, Islamabad, to re-examine Saleem's dead body, when it was brought from Mandi Bahauddin to Islamabad. He placed on record his report (Ex.CW-24/1), which is duly signed by all Board members. Board's finding about the injuries and the cause of death is as follows:-

“The deceased died due to multiple injuries from 1 to 17 which caused ruptured [and] damaged both lungs, liver and fractured 6th rib on Lt. side, 9th rib on right [which] caused death. All injuries are ante mortem in nature and sufficient to cause death in ordinary course of nature.”

He could not, however, calculate with much confidence the probable time of Saleem's death nor the period of time his body had remained submerged in the water.

CW-41 Muhammad Yousaf Malik, SSP Islamabad has produced the interim investigation report as CW-41/1. He, however, when questioned has admitted not having investigated about the incident from any official of the ISI.

OTHER MATERIAL COLLECTED AND RELEVANT STEPS TAKEN BY THE COMMISSION

In order to inspect the site/spot from where Saleem's dead body and his car had been recovered on 29.7.2011, the Commission visited the site/spot. According to those who saw it, the car was parked right on the bank of Upper Jehlum Canal and abutting thereto, at about a distance of

500 yards, is the house of Raja Nisar Ahmad, who on the date of the inspection alongwith other residents of the area was present. The Commission interviewed the people gathered at the site, but no one provided any information about who had brought the car there and when; nobody had witnessed anyone driving the car, parking it or throwing the body into canal. They all stated that there were no marks on the earth or the bushes to indicate if the body was dragged from the car and thrown into the canal at that point. The Commission proceeded about 28 kilometers alongwith the canal to Head Rasool Power House. The XEN as also other staff of the power house, gave a complete demo to the Commission as to how the body was detected and then recovered/retrieved from the canal with the help of the crane system. At that time, certain instructions were given by the Commission to Dar Ali Khan Khattak, DPO, Mandi Bahauddin and also the XEN of WAPDA to report about the possibility as to where the dead body could have been thrown and in how much time it could reach the power house, because according to the doctor's report CW-23, the dead body seems to have remained in water for 2 to 4 hours. In this behalf, Inspector General of Police, Punjab has submitted a report, which is placed on the record as Ex. IGR-2. The expert(s) has given the technical advise on the following points:-

- a) Expert opinion from Irrigation Department about the speed, the volume and flow pattern of the water in Upper Jehlum Canal and Head Rasool Power House;
- b) Advise from the Technical Expert regarding possibility of identifying of vehicle through analysis of CCTV system.

While considering all the facts, such as the flow of water on the dates given, the water level, weight of the human body, the speed of the water, following conclusion has been drawn:-

“The distance between the point from which the car is recovered and the point where there is bifurcation of Rasul Power Channel on Upper Jehlum Canal is approximately 28.65 Kms. The distance of the Rasul Power Channel up to protective gates of the head works is 1.96 Kms. Hence the maximum distance that can be traveled by the dead body, if we assume that it was thrown into the water near the place where the car of the victim was parked, is 30.61 Kms. The reports submitted by the irrigation authorities and WAPDA clearly indicates that it would be extremely difficult for them to determine the speed at which a dead body can travel in these water tributaries. The traveling speed of a dead body varies due to the obstructions and hindrances in the waterbed like piers of bridges, stone pitching and vegetation. The velocity of dead body is also affected by the velocity of floating objects alongside it in the water. If we assume that the dead body traveled at maximum speed with least possible hindrance it would take the dead body 7.71 hours to reach the point where the body was finally recovered.

The report also suggest that authorities are unable to even guess about the location at which the dead body was thrown into water.”

With a view to ascertain the route which Saleem possibly took on 29.5.2011 while going from his house to the Dunya T.V. station, the Commission visited and proceeded from there to the TV station. The Commission required the Joint Investigation Team (JIT) of Islamabad Police, to indicate if any CCTV systems were installed in any of the public places or private buildings which could possibly have captured the incident. Some private properties were identified. However there was no such system installed on any poles or public buildings.

**THE RELEVANT FACTS/EVIDENCE/MATERIAL
(WHICH HAS COME ON RECORD)
FOR THE CONSIDERATION OF THE COMMISSION**

- * The news items (based on HRW information) and the handout of HRW revealing the threat allegedly given by Rear Admiral Adnan to Saleem, which Saleem disclosed vide certain e-mails mentioned above.
- * According to the news/handout of HRW, Saleem had given instructions to his wife that in case of any untoward incident she should contact HRW, which she did. Furthermore, Saleem's wife also got an anonymous call on 30.12.2010 telling her that Saleem shall be let off that night – a call presumably from the agencies.
- * HRW sources also confirmed that Saleem was in the custody of agencies.
- * FFJ statements that Saleem apprised them that he has or has been receiving threats from the ISI officials. And his intention to shift abroad.
- * Statements of FFJ that they have been threatened by the ISI or have personal knowledge of such threats to other journalists.
- * Pattern of the incident not in consonance with that of Al-Qaeda/Taliban, rather the sophisticated way the incident has been accomplished by evading vigilance/security set up in the capital, it should be presumed that the act is that of the agencies.
- * Articles (various articles) and the book authored by Saleem.

- * Threat by Rear Admiral Adnan Nazir mentioned in the (crucial) e-mail of Saleem. And on that basis e-mails sent by Saleem to Tony, HRW and Hameed Haroon.
- * Mobile call data record (CDR) and BTS record of Saleem procured by the Commission from the company/ies and accordingly analyzed.
- * E-mail record of Saleem accessed to by the Commission.
- * Al-Qaeda/Taliban were also annoyed with him as Saleem would divulge and disclose their plans and operations before hand, and on that account they would suffer.
- * Ilyas Kashmiri was killed few days after the incident in a drone attack. This was a big achievement for the Americans, whether it was on account of any information extracted from Saleem, whereafter he was murdered?
- * Postmortem reports/Mandi Bahauddin and PIMS Islamabad.
- * Site inspection/both at where the car was parked and from where the body was recovered.
- * Threats on telephones through “unknown number” to various witnesses who have appeared as FFJ or other before the Commission and share in this behalf. And the element of impersonation asserted in this behalf by ISI.
- * Interim investigation reports submitted by the investigating team of Islamabad and Punjab Police.

QUESTIONS EMERGING FROM THE ABOVE FACTS/MATERIAL/STATEMENTS/EVIDENCE

On account of the above, the questions relating to the TORs 'a' and 'b' which emerge for consideration of the commission are:-

- 1) What could be the motive behind the incident and who could have had the motive to commit it?

- 2) Is there any direct or sufficient circumstantial evidence/tangible material on the record enabling the Commission to adjudge the background of the incident and to identify the culprits?

However, before adverting to these questions, it may be pertinent to mention that the statements of the witnesses (specially FFJ) and some parts of documentary evidence have been extensively quoted and reproduced above; the object is three fold, firstly, the referring authority and reader of this report should have a fair idea while appreciating the basis of the conclusions drawn herein, secondly, to preclude the chances of any erroneous factual inference; and thirdly, to avoid repetition while answering the questions and dilating on other aspects of the matter.

ABOUT MOTIVE (QUESTION NO.1)

To answer Question No. 1, we need to first explain the ordinary/judicial meaning of the term '**Motive**'. Motive means "something (such as a need or desire) that causes a person to act", or "a reason for doing something". "Motive is that which moves a man to do a particular act. It is that which is in his mind, which moves him to act,

whether the belief which produces that state of mind is true or false”. Like most mental or composite facts, it needs not usually be proven by direct testimony, Instead, inference as to the motive behind an incident can be drawn from the facts of the incident.

In Pakistan, the most usual motive behind incidents of abduction and murder is personal enmity or monetary and property disputes etc. That does not seem so in the present case; no one has alleged this nor does anything on the record suggest that.

Hamza Ameer, the complainant of the case, has not identified any motive behind the incident nor imputed that to anyone in particular. Neither in the FIR nor in his statement Ex.CW-5/1. This is also true for Anita Saleem, when she appeared as CW-28. These were the two most important persons who should have indicated the motive. However, while responding to a Commission’s query Hamza stated that *“the main reason behind this incident is his [Saleem’s] writing on war on terror and his in depth research and knowledge about Al-Qaida and Taliban insurgency in the region. For this I can refer to his book mentioned above, particularly that part of his book which relates to Ilyas Kashmiri and Bombay Attack”*. Mr. Hameed Haroon CW-26 has also stated *“I think his writings are the cause of his death”*. Likewise, almost all other witnesses who have appeared as FFJ have deposed that the **writings** of Saleem were the cause and the reason of this incident, although they differ as to which of his writings could be such and who could have the motive. Reference has mostly been made to his articles on “Bombay Attack”, “Mullah Baradar”, “Mehran Base”, “Ilyas Kashmiri” and to his book. With regard to the

book, it is relevant to mention that there are also some witnesses, for instance Hameed Haroon, who ruled out Saleem's book as a probable cause. Hameed stated "*I do not think that the book of Saleem Shahzad could give a cause to anyone for committing this incident*".

In any case, most of the witnesses (FFJ) have stated that the Agencies were not happy with his writings and had even threatened him, a perception evidently held by Saleem himself. At the same time, however, some of the witnesses (FFJ) were of the view that non-state actors, such as, Al-Qaeda and Taliban were also unhappy/annoyed with him; he had even been threatened by them and was also confined at a point of time. The statements of Zafar Sheikh CW-12 and Hameed Haroon CW-26, in this behalf, *inter alia*, can be referred. The later stating "*that at that point of time he [Saleem] was also apprehended by Afghanistan Taliban who threatened to even execute him*". There is yet another important version which has emerged from the statements on the record; that is, as propounded for instance by Hamid Mir CW-11, the incident could possibly have been committed by those acting at the behest of the US, on account of Ilyas Kashmiri, who was killed a few days after Saleem's incident in a drone attack. Mr. Hameed Haroon in this regard also stated "*after few days of the incident of Saleem Shahzad, Ilyas Kashmiri was allegedly killed in drone attack by US and to me there seems to be a nexus in these two incidents*". This also is the view of Muhammad Raashed CW-39 and some others as well. ISI also claims to have provided a lead to the Commission and the investigator in this behalf in the shape of conversation between one Nawaz and the front man of Ilyas Kashmiri

group. Beside the above, some of the witnesses (FFJ) have attributed the incident to foreign elements hoping to bring harm and disrepute to the ISI and to prevent it from playing its crucial role for the preservation and security of Pakistan. This is also the viewpoint that emerges from the written version of ISI, where it responds to the attribution of motive behind the incident to it. However, ISI has also claimed that the writings of Saleem have caused grievance to the militants and non-state actors.

From the foregoing, it seems clear that, in all likelihood, the motive behind the incident was provided by the writings of Saleem. What is not so clear is the question of who had that motive and actually acted upon it.

Be that as it may, in relation to the relevance/significance of the motive to an incident, though it can be said to be a cause and reason to act, however, it is not a crime by itself. It is an element towards the preparation for the commission of crime, but it is not an evidence of the crime. **The motive in law is not a substantive piece of evidence, but it can only be used in support of substantive evidence;** motive is not an evidence of crime; at the best, it can corroborate the evidence of crime; that too, if there is a direct, substantive, convincing and proved evidence; motive is thus a reason for the commission of crime and not proof of commission; motive therefore cannot be a substitute for evidence; it can only lend support to the evidence(emphasis supplied). In order to elucidate the above, following illustration may have some relevance:-

A has enmity with B, C and D, individually and independently;

B, C or D may each have a personal motive to kill A; however, C kills A;

B and D had the same motive as A but they cannot be found guilty of the commission of murder, just because of this commonality of motive.

Therefore, even if, on account of the statements of certain witnesses and examining Saleem's writings, it is considered that the ISI officials were unhappy and rather annoyed with Saleem and at a point of time a threat was also extended to him, all this shows is that they may have had a 'motive' to commit the incident. We cannot, however, ignore the fact that the same motive is also attributable to others as there are substantial statements of the witnesses in this behalf (see e.g. statement of CW-12). This does not, therefore, constitute a 'substantive piece of evidence' and, on its own, it does not allow us to safely conclude that the ISI was the culprit behind this incident. In view of the above, the Commission is constrained to hold that on the basis of the aforementioned motive, without there being corroboration from other evidence, the culpability of the incident cannot be settled. It may be pertinent to mention here that in the context of motive the drone incident of Ilyas Kashmiri cannot also be ignored.

ABOUT EVIDENCE/MATERIAL (QUESTION NO.2)

In the course of criminal dispensation of justice, the law permits courts to draw conclusions and inferences on the basis of evidence placed on the record. We are conscious that the instant Commission is not performing its functions exactly as a court adjudicating the matter; rather, it is holding "a fact finding inquiry/exercise", which should not be strictly structured on the usual rules and criteria of a judicial

determination. Also, *stricto sensu*, the functions and authority of the Commission are not circumvented by the limitations of investigation in a criminal matter conducted by an investigator. At the same time, however, in order to reach factual conclusions, the Commission cannot resort to an arbitrary, capricious, and **subjective** approach; rather, it has to draw its conclusion **objectively** by confining itself to the material which is available on the record and is relevant for the present purpose. It was with this primary object in mind that public notices were issued by the Commission calling upon, all and sundry to provide any information/evidence/tangible material to the Commission so that it could reach the required conclusion about the background of the incident and also for the purposes of fixing the culpability. The meeting dated 9.7.2011 with the FFJ was held with the same object, where the participants were emphasized and required to apprise the Commission in this behalf.

Anyhow, as stated above, with a view to reach to a correct factual conclusion, the Commission is obliged to adhere to certain limitations of appraising the evidence/material on the record. In this context, a FACT can be said to have been proven by direct evidence or circumstantial evidence. Therefore, it is expedient to examine as to what nature of evidence/material is available on the record, which could either be **Direct Evidence** or **Circumstantial Evidence/Tangible Material**.

DIRECT EVIDENCE: 'A' saw 'B' committing the murder of 'C', the testimony of 'A' about this incident is direct evidence. However, from all the evidence/statements (FFJ) available on the record, it is not established if anyone has **seen** the incident/occurrence of Saleem's

abduction from Islamabad or has witnessed him being tortured and murdered by some one at some place. No one has seen Saleem's body being thrown in the canal and the point/spot where it was so done. There is absolutely no ocular evidence in this behalf; the Commission has also interviewed many persons on its visit to the spot, but no clue could be found. Therefore, for all intents and purposes the incident is to be considered an un-witnessed, unseen occurrence. Therefore, the Commission is constrained to hold that there is no **direct evidence** forthcoming on the record about the incident. It may be pertinent to mention here that all the witnesses, when examined by the Commission and even in their statements in writing in categorical and unequivocal terms deposed of having no information or proof about the incident of Saleem and could not even point out finger towards any one. Not a single witness has propounded the account/evidence of the incident.

CIRCUMSTANTIAL EVIDENCE /TANGIBLE MATERIAL: On account of lack of direct evidence, the Commission is left with no other option except to examine if there is some **circumstantial evidence/tangible material** enabling the Commission to ascertain, resolve and adjudge the incident itself, as well as its background. However, before proceeding further in this behalf, it seems expedient to comprehend, what is meant by '**circumstantial evidence**'. Circumstantial evidence means the evidence afforded not by the **direct evidence** of an eye witness to the fact to be proved. It is the evidence of facts, from which facts in issue should be **inferred** as a natural or probable conclusion. In order to form basis for a conclusion, circumstantial evidence must be free from any doubt and no

other explanation should be possible except that the conclusion derived. Though circumstantial evidence can be a valid basis for drawing the conclusion/inference, but as mentioned earlier, the circumstances should be of the nature, which are unexceptionable and which lead to no other inference or hypothesis, except the guilt of the accused and the commission of offence by him. For proving a case on the basis of circumstantial evidence and to draw a probable conclusion through circumstantial evidence, following four essentials are required:-

- i) Circumstances from which conclusion is to be drawn should be fully established;
- ii) All facts should be consistent with the hypothesis;
- iii) Circumstances should be of conclusive nature; and
- iv) Circumstances should lead to moral certainty and should actually exclude every hypothesis, save the one proposed to be proved.

The Commission is mindful that the above rules though are more relevant for the courts in the determination of the guilt or otherwise of a person/ accused of an offence. But, to a considerable degree, these rules are also germane and required for the purposes of a “**fact finding inquiry**” of the present kind, so as to draw a valid “factual conclusion”. Because as stated above, even for a fact finding forum, it is impermissible to draw conclusions arbitrarily, in a fanciful and subjective manner; rather, such conclusions must qualify the tests of **objectivity**, by all means. The factual conclusions/inferences certainly cannot be drawn on mere suspicion.

Having set out the aforesaid criteria, the Commission is now obliged to examine if the evidence/material brought on the record by FFJ, or otherwise which the Commission was able to collect or the facts available on the record, is/are in the nature of requisite circumstantial evidence. In this behalf, the evidence/material/facts is/are examined as follows:-.

- a) **Writings of Saleem:** Although this material has already been dealt with while addressing the issue of motive, the Commission has decided to also consider whether independent of the motive, these writings can be said to be the circumstantial evidence/tangible material on the basis of which the Commission can reach to the genesis of the incident or the offenders. In this category, there are two kinds of writings (1) in the shape of Saleem's Articles appearing from time to time over a number of years (2) the book of Saleem "Inside Al-Qaeda and Taliban". The category of Saleem's Articles can be further subdivided into two: (a) generally about the 'war on terror' including those in which the armed forces of Pakistan and its policies on the subject came under criticism, and the achievements of Al-Qaeda etc. were amplified and glorified etc., such as, "Usama Bin Laden ready for fight", "Military out of the step", "Al-Qaeda had warned Pakistan of strike", "Pakistan's military under Al-Qaeda attack", "Trouble ahead in Pakistan's new US Phase", "US broke deal with Osama hit", "Kicking around in South Waziristan", "Taliban and Al-Qaeda friends in Arms", and "Pakistan has a price to pay" (b) those Articles which are specifically mentioned by the FFJ to be directly relating to the cause of the incident, these are "Bombay Attack", "Pakistan frees Taliban Commander" (Mullah Baradar), "Ilyas Kashmiri interview" and "Mehran Base Attack". Do these writings serve as circumstantial evidence for resolving the incident?

If one looks at history, there are authors, journalists, media persons who have been writing and speaking against ISI and the Armed Forces openly. These are “**publically known facts**” and reference can be made to considerable material in this behalf, available in the market, the libraries and on the internet. But the question is how many of such persons have been eliminated by the ISI and what is the proof in this behalf. Nothing has been brought on the record. In this context, it may be relevant to mention here that some of the FFJ have stated that they on account of their bold writings have been threatened by the ISI/Agencies personnel, but no one whosoever, either beaten, abducted, tortured has come forward to share his experience with the Commission. Even Mr. Umer Cheema has not appeared personally though he was present in the meeting dated 9.7.2011 and all of them who were present were invited to share their experience. Besides, special notices were issued to all the chapters of PFUJ as mentioned above, but Mr. Cheema did not respond. Nonetheless, the Commission summoned the report of the Commission constituted for probing into the matter of the Umer Cheema, and on perusal thereof, it turns out that no definite finding could be given in that case too, nor could the responsibility be fixed on anyone.

About the second category of Saleem’s articles, his story about Mullah Baradar has undoubtedly antagonized the ISI and this has been so admitted by the ISI as it is clear from the written version and the tone and tenure of its (ISI) witnesses. And perhaps this was the reason why Rear Admiral Adnan Nazir uttered the words attributed to him in the meeting dated 17.10.2010 with Saleem. But Ilyas Kashmiri’s interview does not seem to have given any cause of reaction to the agencies. As far as the ‘Mehran Base’ story is concerned, the bare reading thereof, indicates that it is a double edge weapon. On the one hand, it has divulged the penetration of Al-Qaeda into the

Armed Forces and also its influence therein, clearly conveying the fragility and vulnerability of the forces, which is alarming; on the other hand, however, it can also be construed as exposing Al-Qaeda assets in the forces and could therefore be a source of hampering its (Al-Qaeda) interest in present and also the future. This writing is capable of being interpreted either way. About “Bombay Attack” so much has been said by now by many people; the trial of the case in India perhaps has concluded, and the facts and information on the subject is in the public domain therefore this article by no stretch of reasoning can be considered to be an immediate cause of incident. Thus, on the basis of these writings alone, without any concrete corroborative material, it cannot be held that the rule of circumstantial evidence has been satisfied.

(b) **Book of Saleem**

Summary of the book titled “Inside Al-Qaeda and the Taliban; beyond Bin Laden and 9/11” written by Mr. Saleem Shahzad

Saleem’s book can be summarized as under:-

- * The creation, the motto, the ideology, the evolution, the objects and purpose of Al-Qaeda and the role played by certain persons, such as, Osama Bin Laden, Aiman-al-Zawahiri, Sheikh Esa, Abu Obaida, Al-Zarqawi, Khalid Sheikh Muhammad, Ilyas Kashmiri, Capitan ® Khurram, Major (R) Haroon, Qari Zafar and Tahir Yaldochiv in achieving its goal and in strengthening the network and improving operational tactics/capabilities of Al-Qaeda.
- * 9/11 attacks on the USA were planned and launched by Al-Qaeda to invite and trap USA in the difficult terrain of Afghanistan.

- * Due to stern USA reaction, Al-Qaeda was on a virtual collapse after the Tora Bora bombings. It was left with only few hundred fighters. Its members escaped from Afghanistan and took refuge in tribal areas of Pakistan. Support from tribes gave Al-Qaeda a new life – by providing it shelter, support, space for training and new recruits.

- * Al-Qaeda used the Haqqani and other Pakistani militant groups to host their members so that they could avoid operation from Pakistan Army. Haqqani network proved to be the real strength of Taliban and Al-Qaeda. Al-Qaeda also sought assistance from other groups and commanders including Hafiz Saeed for logistic support and transportation of its men to and from Pakistan.

- * After gaining a breathing space, Al-Qaeda started establishing its own network by giving power and by supporting the local warlords. Massive money was injected by Al-Qaeda for this purpose. At the same time, Pakistan Army started crackdown against Jihadi elements. This resulted in their escape to tribal areas of Pakistan which provided recruits to Taliban and Al-Qaeda. Using their sentiments against Pakistani Government and Army, organizations like Jundullah and TTP were created and leader like Nek Muhammad, Abdullah Mehsud, Baitullah Mehsud, Hakim Ullah Mehsud, Maulana Fazal Ullah etc. were set in place to lead these organizations. Al-Qaeda eventually got complete control of South and North Waziristan. Subsequently, all international operations of Al-Qaeda were planned, executed and monitored from Al-Qaeda's headquarters located in these agencies.

- * ISI had a tacit agreement with Al-Qaeda that Pakistan will not play hostile to Al-Qaeda, if it did not harm Pakistan's

interests. However, Al-Qaeda attempted to kill President Musarraf in 2003 and subsequently, Pakistan Army launched operations in tribal areas, which ended this agreement.

- * Though Pakistan Army launched operations in tribal areas on USA's insistence but it miserably failed in almost all operations and resultantly Shakai Agreement (2004) and Sararogha Agreement (2005) were signed between militants and Pakistan Army.
- * These failures of Pakistan Army provided Al-Qaeda with the space to re-group, realign its associations with local tribal militant groups and become a strong force.
- * Prior to start of military operation, ISI had contacted Jalal ud Din Haqqani and assured him that the operation in North Waziristan was superficial, and once the situation changed, Pakistan would support Taliban again.
- * Al-Qaeda imported its resistance strategies from Iraq. In addition, inclusion of members like Captain (R) Khurram, Major (R) Haroon and Ilyas Kashmiri helped Al-Qaeda tremendously in revolutionizing its tactics and strategies.
- * In 2006, Taliban's Spring offensive in Afghanistan against NATO forces was launched with a strength of 40,000 fighters. It was planned and originated from the South and North Waziristan. The fighters mainly consisted of tribal pashtuns (around 12000) but also had around 10,000 men from other settled areas of Pakistan, 3000 Afghans and 2000 foreigners. At the same time, in order to ensure that Pakistan Army did not disturb the plan, Al-Qaeda got an agreement signed by Uthmanzai tribe and Pakistan Army to maintain peace and not to act against each other in North Waziristan.

- * Taliban's spring offensive also caused USA to believe that Afghanistan and Pakistan were a single theatre of war and Pakistan's tribal regions were the root cause of trouble. It also caused USA to believe that Musarraf regime was not able to handle the affairs, so process of democratizing Pakistan started and plan to install Benazir Bhutto as PM was finalized. US-approved COAS i.e. General Kiyani also took over command of armed forces.
- * Al-Qaeda killed Benazir Bhutto in a bid to dent the USA's plan for Afghanistan-Pakistan theatre of war. Mumbai Attacks were also launched by Al-Qaeda with the aim to bring India and Pakistan to the brink of war so that Pakistan Army could not undertake operations in the tribal areas.
- * Al-Qaeda established TTP with the aim to engage Pakistan Army, disrupt NATO supplies and to create chaos in Pakistan so that popular opinion can be turned against army operations in tribal areas. TTP's operations relieved and provided space for Al-Qaeda to focus on its international agenda.
- * Al-Qaeda maintained links with Abdul Malik Raigi and Iranian Jundullah, in order to find escape routes through Iran, leading to Iraq, Turkey, Europe and Middle East for shifting manpower and logistics.
- * Militancy in Swat was deliberately set up by Al-Qaeda with the help of Bin Yameen, Mufti Aftab and Maulana Fazal Ullah to trap and engage Pakistan Army so that its attention and efforts could be diverted away from the tribal agencies/battle areas.

- * Predator drone strikes in Pakistan take place as a result of a secret agreement between Pak and USA government and it has approval of General Ashfaq Pervez Kiyani.
- * Pakistan's ISI recruited, trained, maintained, supported and launched Kashmiri Mujahedeen. On 9/11, Pakistan had around 1,00,000 active Mujahedeen in Kashmir. These Mujahedeen had carried out numerous attacks in Kashmir and India including attack on Red Fort and Indian Parliament. ISI also has its network in Bangladesh with the aim to rout Indian influence there. However, ISI and Pakistan's Army succumbing to the USA and launching attacks against own Mujahedeen led these Mujahedeen and their leaders including Ilyas Kashmiri to join Al-Qaeda alongwith famous 313 Brigade. Ilyas Kashmiri had developed links with serving and retired army officers as well as with ISI's assets in India and Bangladesh. He was also aware of various plans which ISI had chalked out against India. It was Ilyas Kashmiri's plan to drag India and Pakistan into war to release pressure from the tribal areas. Mumbai Attacks were planned and executed by him with this objective. He used an old man formulated by ISI for this purpose.
- * Both Pakistan and USA have not fully understood the structure of Al-Qaeda as an organization and have treated it as a low intensity insurgency. Therefore, the efforts made to control Al-Qaeda have failed. Al-Qaeda has benefited from it and continues to successfully execute its strategically woven plans.

Saleem's book was referred to by some witnesses (FFJ) as a cause of grievance to the Intelligence Agencies and thus they have co-

related this to his abduction/murder. However, no one has specified as to which part of the book was relevant in this regard. But this aspect has been specifically ruled out by Hameed Haroon, who stated “*I do not think that the book of Saleem Shahzad could give a cause to anyone for committing this incident*”. Anyhow from the perusal of the book, the broad features of which are highlighted above, it transpires that many books containing such material against Intelligence Agencies and Military are available in the market and it shall be far-fetched and hypothetical to form this as a part of circumstantial evidence in drawing the conclusion. Despite the fact that in his book certain aspects of Al-Qaeda/Taliban, its activities and operations have been glorified and the Armed Forces seemingly belittled, but at the same time, important strategic and operational aspects of Al-Qaeda etc. seem to have been exposed, so is the position in terms of its (Al-Qaeda) assets all around, in Pakistan, abroad and also in the establishment.

c) **Experience of the Journalists**

Number of witnesses (FFJ) have shared their experiences with the Commission as to how they have been threatened, and intimidated by the ISI officials, the conspicuous statements in this behalf are that of Matiullah Jan CW-1, Muhammad Faizan CW-6, Hamid Mir CW-11, Imtiaz Alam CW-19, Absar Alam CW-25, Syed Aizaz Hussain CW-31. It may be mentioned here (as given in the narration of facts) that notices were issued to all the organization of journalists enabling any of its member to share his experience with the Commission, but it may be noted with dismay that a negligible response was received (barring Syed Aizaz

Hussain) none provided any valuable input to the Commission. Though such threats and acts of intimidation are denied by the ISI in its written version, and the ISI official appearing before the Commission and explanations have been given, that some people would also impersonate for ISI, in this behalf certain incidents of impersonation are quoted and the people involved and apprehended have been mentioned. Yet from the statements of the above named, the Commission cannot hold that their understanding and perception about the threats etc. extended to them are misconceived, simply for the reason that it had been refuted by the ISI official. When so many senior and respected journalists have come forward to record their perception that they found certain words, gestures and acts of ISI officials as intimidating and threatening, then it is hard to dismiss it lightly, merely on account of a bald denial by ISI. Even Zafar Sheikh CW-12, who has been praised by the ISI in its written version as the trustful witness has accused ISI of such intimidation etc. Therefore, from the overwhelming material available on the record, the Commission is convinced that there are sufficient reasons to believe that the agencies including ISI have been using coercive and intimidating tactics in dealing with those journalists who antagonize the Agency's interest. This needs to be deprecated in strongest terms/words and must be remedied at all the levels, by executive arrangements/steps to be taken up within the organization/s and the ministerial level and/or by taking appropriate legislative measures. However, this by itself (a single factor) cannot be taken as the circumstantial evidence/tangible material. However, in some cases the possibility of impersonations cannot be ruled out, especially in the cases of telephone calls made from unknown numbers as the concealment of identity can always be managed.

d) **Pattern of incident not like Al-Qaeda or Taliban**

Some of the FFJ stated that the pattern of the incident is not like that of the Al-Qaeda/Jihadis etc. in this behalf the statements of Hamid Mir CW-11, Naseem Zehra CW-13, Absar Alam CW-25 and some others, reproduced above are relevant. In this context, they stated that the *modus operandi* of the above militants/non-state actors is to abduct or kill. Generally, they would neither torture, nor dispose of the body in the manner as has been done in this case. Besides, the incident has been accomplished in a most sophisticated way; it is a broad day occurrence, yet no traces are found. Even the various check posts/points in the most secured part of the capital have been evaded. Only the Agencies are capable of this.

FFJ (witnesses) also flagged the issue that how is it that the three toll plazas, Mandra, Tarakai and Jehlum on way to Sara-e-Alamgir did not record the passing of the Saleem's car. This also is the query about the CCTV system installed en-route to Dunya T.V. station from the house of Saleem.

About the pattern, it shall be most presumptuous to decide the factual aspects of this matter, only on the basis and the perception of certain witnesses that Al-Qaeda, Taliban have a different mode/mechanism of dealing/executing their victims. Besides Hamid Mir (CW-11) has stated that the incident if committed by the foreign elements would be with the help of the local operator, who obviously would have expertise and the ability to avoid being noticed and commit the incident in such a discreet manner. As far as the CCTV systems are concerned, the Commission visited the possible route taken by Saleem for going to Dunya T.V. station and

noticed that there are a few private properties in which CCTVs were installed. However, their coverage was not towards the public road. Rather, it focused on the gates and the area surrounding thereto. There is no CCTV system either installed at any public buildings or poles. As far as the toll plazas are concerned, it has been elaborately mentioned above that the system installed there only catered for a specific purpose. About the security check point, nothing can be held with certainty, as to how, when (what time) and which of such points were evaded as it is not known when and wherefrom the culprits passed by taking Saleem and his car out of Islamabad, and whether he was alive or otherwise at that time.

e) **Four earlier incidents of the journalists**

About instances of M/s. Umer Cheema, Musa Khankhel, Hayatullah Dawar and Wali Khan Babar, it has been the viewpoint of FFJ that these (instances) shall be relevant to explain the background of the matter in hand, as such earlier incidents were also attributed to the ISI/agencies and this has been the general perception of the journalists community, therefore, should be taken into consideration, while deciding the present reference. The Commission has already mentioned in the preceding part of this report that **Mr. Umer Cheema** did not appear for examination; however, the report of the Commission constituted to probe his incident (“the Umer Cheema Commission”) was summoned by the Commission and according to it, no conclusive finding was given about the involvement of ISI in that matter. The Umer Cheema Commission noted “*the said two star witnesses have supported the subject matter of this Inquiry Commission but bare statements of witnesses cannot lead the investigation to any logical conclusion for laying hands on the real culprits*” . The Commission also observed: “. .

. . . Mr. Umer Farooq Cheema laid stress on the point thatin the past people had been abducted and tortured in the manner he was and that the agencies were involved in the abduction of those personsaccording to [the]statements [of Syed Aizaz Hussain, Hamid Mir, Kamran Shafi, Sirmad Manzoor, Shakeel Ahmad Turabi, Rana Sana Ullah and Shakeel Anjum]the modus operandi for their abduction and torture by the culprits was the same which had been adopted by the accused in the case of Umer Cheema”. In sum, the Commission could not identify the culprits behind the incident for lack of evidence. However, it also noted that “in the light of the statement of witnesses, the possibility of involvement of some of the secret agencies could not be ruled out”. In respect of **Musa Khankhel**: He was murdered near Dait Banda, Tehsil Matta, District Swat on 18.2.2009, where he had perhaps gone to cover the expected talks to be held in between Taliban of Swat chapter and Maulana Sufi Muhammad. He was shot dead by some unknown persons. It is the perception that he was killed by the Agencies, but according to the written version set out by the ISI in this case, the ISPR Swat had directed all journalists to assemble at Circuit House, Saidu Sharif for safe transportation to the meeting/venue under the Army escort. It is claimed that Musa Khankhel did not reach on the given time and accompanied some unidentified persons for the destination and on his way was killed by the miscreants. Anyhow, no credible evidence except the perception of FFJ (journalists) has been propounded.

Hayatullah Khan Dawar: A journalist, who was working for different newspapers and had also established a school at Eidak, North Waziristan on 5.12.2005, was kidnapped from village Eppi (North Waziristan) while on his way to Government Degree College Mir Ali. It is alleged by ISI in its written version that he and his wife were both suspected

by Taliban of spying on Hamza Rabbih, an Al Qaeda leader, who was killed in a drone attack in 2005. After one year of the death of Hamza Rabbih, the wife of Hayatullah was also killed by miscreants through an IED, planted in his house on 6.12.2005. However, Hayatullah escaped from the kidnappers and sought refuge with one Haji Yaqoob, but Haji Yaqoob, being a staunch supporter of the foreign fighters, handed over Hayatullah to the miscreants who on 16.6.2006 brutally tortured and killed him. His dead body was found in the nearby rivulet. It is averred by ISI that the attribution of this incident to it is also a nefarious design of certain elements, who wanted to destabilize ISI and Pakistan Army and the country. Again no sufficient material has come on the record to verify the involvement of the ISI in the incident and from the bare facts of the incident, no conclusion can be drawn that ISI has been instrumental in this regard. The report of Commission constituted for probing into this incident (“the Hayatullah Commission”) has been summoned from the concerned quarters and examined. The Hayatullah Commission noted “. . . . *whereas the family members of the deceased charged the Government agencies for the gruesome offence. Sufficient evidence is not available to substantiate the said allegations*”. The Commission could not point out the culprits primarily because “*no direct evidence [was] available about the occurrence*”. The **Wali Khan Babar** was a reporter for the TV channel GEO News. He was killed at Super Market, Liaqatabad, Karachi. The journalists’ community publically blamed this incident on the ISI. However, the ISI has placed on record an investigation report of the police, as per which, the incident is imputed to some local miscreants, who are named therein (report). Few of them are stated to have been arrested while others are yet absconders. Be that as it may, except the

perception of the journalists the proof of agency's involvement is lacking in this incident as well.

f) **News items and the HRW handout**

It has been mentioned in the factual narration that right from 1.6.2011 certain news items started appearing in the print media that ISI Media Incharge Rear Admiral Adnan Nazir has threatened Saleem, which is proved by an e-mail sent by the latter to HRW. Anita Saleem, wife of Saleem, has contacted HRW pursuant to the instructions of her husband that she should disclose any such untoward incident to HRW. Furthermore, Anita had also apprised HRW about an anonymous call received by her on 30.5.2011 and the caller stating that Saleem shall return home late at night. This was confirmed by the hand out of HRW dated 3.6.2011 with a further assertion that the HRW sources also indicated that Saleem was in the custody of the agencies. The disclosure of Saleem's e-mail was fortified by Mr. Hameed Haroon vide a later item appeared in Daily Dawn. It is established on the record that due to this news item/handout etc. the involvement of ISI was believed to be almost certain. The debate commenced on the media both print and the electronic to form a strong opinion in this direction and the agitation of the journalists and human right activists aggravated on that account. Though the Commission shall discuss about that crucial e-mail separately, but it is expedient to mention here that the e-mail of Saleem is dated 18.10.2010, whereas the present incident took place on 29.5.2011. There is a lapse of about seven months. Be that as it may, certain important contents of the news item and the handout in a way are not supported by other evidence on the record, as the most important and direct witness of these attributions, Anita Saleem has not supported the version. In her statement and in response to the questionnaire sent to her she admits having

contacted HRW about the Saleem's disappearance, simply placing the information, but not as per the instructions of her late husband because he had left none, having such a fear, rather she was asked to do so by Mary, an Irish journalist/friend of Saleem. In categorical terms, Anita has refuted receiving any anonymous call on 30.5.2011, and the caller apprising her that Saleem shall return home the same night. In her own words "*As I didn't receive any anonymous call, so I didn't call Mr. Ali Dayan at all*" "*Saleem never instructed me to call anyone because he was fearless*". It is also in the news item, which is with reference to HRW and the handout issued by it, that the sources of HRW confirmed that Saleem was in the custody of ISI/agencies, but Mr. Ali Dayan has not been able to identify the source, which posted and passed on this information to the HRW when he appeared before the Commission. The Commission has given a serious thought to this material brought on the record, but on account of the rules of evidence, particularly the rule against hearsay, and also because of the contradiction between the statements of Ali Dayan of HRW and Anita highlighted above, no much value can be attached to this. Rather, the Commission is of the view that the news and handout created a hype and ignited the issue.

g) **Crucial e-mail dated 18.10.2010**

This is an e-mail Ex-CW-26/3 firstly produced on the record by Hameed Haroon in which there is a clear mention of certain utterance to Saleem by Admiral Adnan Nazir (such utterance has been reproduced at a number of places in this Report). Hameed Haroon has also produced an e-mail dated 17.1.2010 Ex.CW-26/2, sent by Saleem to Mr. Tony, the copy whereof was forwarded to him. Mr. Ali Dayan has produced an e-mail in this context sent to him by Saleem. These all are dated 18.10.2010. In its written version, ISI has

not denied the receipt of this e-mail and has itself produced a print-out thereof. However, it is the stand of ISI that Admiral Adnan Nazir never uttered these words and that such words even otherwise in no way can be construed to be any threat; moreover, in the same e-mail, it is also categorically stated by Saleem in the meeting dated 17.10.2010 “*the conversation was held in an extremely polite and friendly atmosphere and there was no mince word in the room at any stage. Nazir also offered Syed Saleem Shahzad a favor in the following words.*

“I must give you a favor. We have recently arrested a terrorist and have recovered a lot of data, diaries and other material during the interrogation. The terrorist had a hit list with him. If I find your name in the list I will certainly let you know.”

Above all, Saleem after this e-mail has been interacting with Admiral Adnan Nazir and two e-mails exchanged between them have been brought on the record as Ex.CW-36/3 and Ex.CW-36/4 (the contents of which have been reproduced above in this report). The Commission has examined these e-mails the genuineness all of which is confirmed and established from the e-mail accounts of Saleem (opened by the Commission). While appearing as CW-37, Rear Admiral Adnan Nazir was confronted with the allegedly threatening words attributed to him and was asked that if he did not say this, why did he not respond to Saleem for refuting the allegation. But as mentioned earlier, the gentleman though given chances twice has not come out with satisfactory explanation. The Commission thus has reason to believe that these words were indeed uttered by Rear Admiral Adnan and were accordingly perceived by Saleem to be a threat; this fact is also fortified that in the e-mail of Admiral Adnan dated 25.11.2010 Ex.CW-36/4, he asked Saleem for “no

minuting” meaning thereby that the controversial contents of the e-mail were considered by the Admiral as the minutes of the meeting dated 17.10.2010. Anyhow, the Commission has no reason to discard the perception of Saleem in construing such words as a threat and showing his reaction, but the reaction in this regard seems to be momentous in nature and perhaps with the object to avoid any immediate predicament, which he on that account (his prompt reaction) was able to avoid. However, there is evidence available on record which shows that in the subsequent seven months, Saleem and Admiral Adnan Nazir kept interacting with each other and the tone of the interaction is absolutely normal, decent, courteous, friendly and cordial, as if no threat was ever given to or perceived by Saleem. This dilutes the effect of the crucial e-mail. This threat, after the lapse of seven months, cannot singularly be taken as a sufficient circumstantial evidence to conclusively hold that ISI is responsible for the incident on that account. As far as the plea of Hameed Haroon, Ali Dayan (HRW), Absar Alam and others that such threat be considered the ‘last testimony’ of Saleem, perhaps they mean that it should be taken to be in the nature of “dying declaration” of Saleem in which he himself has indicated the culprits and also mentioned that such document be used as his stance, if anything happens to him and his family. The Commission has considered this e-mail seriously because the perception and the blame of the incident primarily is attempted to be linked with this document. The effect of the e-mail in respect of connecting the same with the death of Saleem shall however disappear by the subsequent events and conduct of Saleem as highlighted above. If

Saleem's perception was true and correct in his own wisdom, he would not have continued his cordial relations with the same person and agency anymore, but the reality is otherwise, which shows that his earlier perception stood washed away for whatever reason. Therefore, the e-mail cannot be said to be his last statement. In this regard, it is pertinent to mention that the tone and tenure of Saleem's interaction with ISI prior and subsequent to the problematic meeting with Adnan remained cordial. This does not match with the initial perception of Saleem's under which the e-mail was sent. In this context, certain e-mails retrieved by the Commission from Saleem's account are worth mentioning. These read as below:-

E-mail dated 24.10.2010

"Dear Adnan saheb,

Let me come back to Islamabad by the end of coming weekend then plan a meeting.

regards

Saleem"

E-mail dated 31.10.2010

"Dear Adnan saheb,

I hope you would like the content and the website. Look forward for your feedback. (see www.asiadespatch.com)

best,

Saleem"

E-mail date 3.5.2011

"Please publish the clarification from my side.

"ATol wrote

Bin Laden's death was confirmed by Pakistani Intelligence. Lieutenant General Ahmad Shuja Pasha, the director general of Inter-Services Intelligence (ISI), said the ISI had been aware of the operation and was part of the whole process." the information came from Pakistani TV channel's Naseem Zehra which was broadcast at Dunya TV on Monday. ATol simply reproduced the information. ATol did not speak to Pasha and the citations in the media are wrong."

Note: This e-mail has been sent to Admiral Adnan Nazir.

Even otherwise the said e-mail does not meet the conditions and qualify the test of Article 46 of the Qanoon-e-Shahadat Order 1984, which is the relevant provision of law in this context.

h) **Relationship of Saleem with ISI**

It has emerged from the record that Saleem has been interacting with the ISI officials since long. CW-6 has stated that he along with Saleem had met Major General Ehtisham Zameer in the year 2005/2006 and the meeting was quite cordial. Mr. Hameed Haroon stated that while in Karachi Saleem was in contact with Mr. Zaki, an ISI Director. Saleem also looked after him when perhaps he [Zaki] was indisposed. ISI has conceded that Saleem was in regular contact with the organization. From the statements of Hamza Ameer CW-5 and Anita Saleem CW-28, it also transpires that Saleem and ISI officials were interacting throughout in Islamabad; CW-12 Zafar Sheikh stated “*Saleem in routine would meet ISI people of his own. It was common that he would ask me if his transport was not available to drop him at certain common places where ISI people would also be present*”. According to one of the above e-mails Saleem even when contacted by ISI to issue a contradiction in relation to one of his articles about Abbotabad incident, duly issued it. It is also the stance of ISI that when Saleem got injured in a club in Islamabad and was hospitalized, ISI officials helped him get his case registered and treatment, however, there is no corroboration of this plea. Anyhow, from the record, it is proved that relations between Saleem and ISI have not always been tense; most of the time, he enjoyed a good and working relationship with ISI.

i) **Saleem informing FFJ about threats to him from ISI etc.**

The Commission has no reasons to disbelieve such witnesses those have stated that Saleem informed them about certain threats from ISI, although some of the FFJ have not agreed to it. Anyhow, it may be mentioned that this could be a factor towards the motive and may have relevance about the background of the incident, but without any direct or circumstantial evidence cannot be considered as a conclusive element in deciding the culpability of the incident. However, about the intention of Saleem to settle abroad, and the reason given by some of the witnesses that it was on account of such threats. This assertion has been completely knocked out by Anita Saleem when she stated that it was on her insistence that Saleem thought of that, and it was not due to any fear/threats from any quarter whatsoever, rather for the reason that one of their children is a special child and it was for his better look after and handling that they thought of the above.

j) **E-mail record of Saleem**

The Commission was able to have access to the e-mails of Saleem, which contain above 33,000/- e-mails. The important e-mails which have come on the record, from the FFJ and ISI, were duly confirmed/verified. Besides some more e-mails have been taken into account. However, from the perusal of this voluminous (e-mails) record, which includes his articles, interaction with numerous persons in and outside Pakistan with foreigners etc., no break through could be made in finding out any valuable information relating to the present incident.

k) **Mobile Call Data Record (CDR) and (BTS) of Saleem**

The call data record of Saleem pertaining to his mobile No.0345-8287046 (previous No.0300-8287046) for the last six months was fully secured and was thoroughly examined by the Commission. The Geo-fencing of which was also conducted. From such record, it transpires that Saleem was in contact with Al-Qaeda/Tehrik-e-Taliban Pakistan, elements, such as, Usman Punjabi 928311876, Punjabi Taliban Markaz 928312150/928313593, Abu Hafsa Al Qaeda 928313098, Al-Gamyat Al-Islamiyah (Egyptian Organization associated with Al Qaeda) 0300-8285888, Shakib Al-Turkistani, Jamal Ismail (associated with miscreant Shakir of Abu Zubaida network) 0300-8542147, Afaf Fuad Mustafa Salah and Muhammad Said 0321-8555511. This record also divulges his contacts in different countries of the world including India, Europe and America. Upon close analysis of the call data record, the Islamabad Investigating Team was directed to get in touch with some regular contacts, such as, Mr. Ahsan Ullah, Muhammad Anwar, Miraj Fatima, Amir Latif, Syed Zia-ul-Naeem, Mehr Afshan and Professor Motahir Mustafa and some others who were examined by the investigating team, and as per the statement of the above persons which are attached to interim report submitted by Islamabad Police, no valuable information about the incident could be obtained. Anyhow, on account of the scrutiny of call data record for the month of May, 2011, special attention was paid to few/one time call numbers and one of such number i.e. 0323-9332210 was conspicuous, having basis in South Waziristan. According to ISI version the number as per their source belongs to one Qari Ismail, a militant of Ilyas Kashmiri group. Further scrutiny of Qari Ismail shows that he also contacted Mehr Bokhari (an anchor person) on 19.4.2011 on her number 0344-4448023. Mehr

Bokhari was contacted by the Commission through I.G. Islamabad and also Mr. Pervaiz Shaukat, but she was reluctant to share any information. Anyhow, on Geo-fencing of the said number, it was found to be in Islamabad on 27.5.2011 two days prior to Saleem's kidnapping. A call on the said number was also made by Saleem on 27.5.2011. The Commission on examination of the call data record has not been able to find any telephonic interaction between Saleem or any of the ISI officials in this period which could shed any light upon the incident. The Commission also got conducted the Geo fencing of Saleem's telephone number around his residence, the Geo fencing at Sara-e-Alamgir where his car was parked and also at Mandi Bahauddin, but no clue could be found. In view of the investigating team Islamabad, at the time of the incident, either the culprits had not used their cell phones or they did not have the same at all. This record obviously has not led the Commission to any fruitful factual conclusion.

1) **Another aspect of Ilyas Kashmiri**

Alongwith written version by the ISI, it has propounded that one individual named Nawaz Khan, who is an important militant of Ilyas Kashmiri (Al-Qaeda Network) is detained in Adiala Jail on the charges of abduction for fund generation for terrorism and murder vide FIR No.74 dated 24.2. 2009, I-9 Police Station, Islamabad. It is claimed that Nawaz had the facility of mobile telephone which was under the surveillance of the ISI and was in interaction with a front man of Ilyas Kashmiri group through such phone. After the incident of Saleem, Nawaz expressed praise for Saleem. However, the front man of Ilyas Kashmiri cursed Saleem for the damage he had done to their network and remarked that a bad man had met his fate. In this context, the audio conversation has been brought on the record, which has been

carefully listened to by the Commission and for the voice testing and matching of Nawaz, the duty was assigned to Inspector General Police, Punjab, who through the report Ex.CW-IGR/3 has confirmed that it was Nawaz who spoken to someone alleged to be the front man of Ilyas Kashmiri. Following portion of his conversation is relevant and therefore, it is reproduced (Note: 'A' is Nawaz and 'B' the front man) :-

- A" سلیم کا تو پتہ چلا تھا سلیم شہزاد کو مار دیا تھا جنہوں نے
 B یا روہ تو بہت اچھا ہوا
 A ہیں
 B بہت اچھا ہوا
 A کیوں
 B اس خبیث نے ہمارا سارا کباڑا اسی نے کیا ہے
 A کے
 B اس نے وہ آخری مطلب اس نے وہ اس پہ جلتی پہ تیل پھینکا تھا اس پہ تبصرہ کر کے کاروائی
 یہ کراچی جو کاروائی ہوئی تو اس نے جو تبصرہ کیا تھا وہ بالکل اس نے ایسے تیل کا کام کیا ہے
 A نہیں وہ ٹھیک ہے بات
 B نہیں بات تو ٹھیک نہیں تھی بس اس کا تبصرہ جو تھا وہ بہت نقصان کا سبب بنا ہے
 A اسکی کتاب آج کل میں نے منگوائی پڑھ رہے ہیں ناں کتاب تو اس نے بہت اچھی لکھی
 ہے
 B بس چلا گیا اپنے انجام کو پہنچ گیا
 A کتاب تو نہت اچھی لکھی ہے آخری ٹائم تک ہمارے ساتھ تو رابطے میں ہی تھا
 B لیکن بہر حال اس بندے نے بہت زیادہ نقصان کیا ہے ظفر سے کبھی بات ہوئی ہے "

From the tenor and tone of this conversation, the involvement of Ilyas Kashmiri group in the incident cannot be ruled out especially in view of the statements of the witnesses, referred to above who have deposed that the incident of Saleem, possibly has some nexus to the drone attack on Ilyas Kashmiri in which he was killed few days after Saleem's abduction and murder. This therefore could also be a part of the motive of the present incident.

m) **Postmortem reports of Saleem**

As far as the postmortem reports of Saleem are concerned, from the injuries specified therein it is clear that he was subjected to severe torture and beating, but on account of these reports simplicitor no determination can be made as to who, how and where he was subjected to the torture and done to death.

n) **Statement of Najam Sethi**

About the statement in writing of Mr. Najam Sethi, submitted to the Commission is concerned, reference has been made to the same crucial e-mail of Saleem to Mr. Ali Dayan and Mr. Hameed Haroon, besides, it is also mentioned that the agencies have been coercing and intimidating the journalists he has shared his personal experience and perception in this behalf; systematic causes have been indicated; some suggestions for future preventive measures are provided about the incident, it is stated “*I can personally vouch that Saleem Shehzad was one of several Pakistani journalists on the ISI’s list of troublemakers*”. Be that as it may, except the above quoted portion, there is no reference to any personal information or knowledge possessed by Mr. Najam Sethi in respect of the incident of Saleem.

o) **Statements of US officials and news reports**

About the statement of Hillary Clinton and General Mike Mullen imputing the incident to the ISI or the Government, suffice it to say that despite notices issued to the public at large, no one from the U.S. Government or U.S. Embassy came forward to share any such information with the Commission. Besides, on account of complicated relations between the two States and their divergent interests and also lacking full comprehension about the background in which

these statements were made the Commission has decided not to rely upon them.

For the articles appearing in the foreign press, such as, New Yorker and New York Times, the contents are based upon some information collected by the writers and obviously are hearsay in nature, but again these writers have not taken the trouble to appear before the Commission to provide any valuable information in respect of the incident.

p) **Investigation Reports (interim)**

About the investigation reports of Islamabad and Punjab Police placed on the record, as a President of the Commission, I am compelled to express my dissatisfaction and dismay on these reports. This is particularly so, qua the Punjab report, in which no effort at all seems to have been made to properly investigate the matter on scientific basis, besides, when questioned the Dar Ali Khan Khattak, CW-9, the head of the team has admitted that no ISI official was arraigned in the investigation; this in the facts and circumstances of the matter is a very serious lapse. As regards the Islamabad Police report is concerned, though it does show endeavours and some investigative exercise resorted to, but again none from the ISI was arraigned in the investigation. Although the allegation of the journalists community and the human right activists right from the beginning was that such agency is responsible for the incident. Therefore, this is a vital and serious lapse on part of the investigators which cannot be approved. And it is a deplorable aspect of the investigation.

SUMMARY OF DISCUSSION PERTAINING TO ToRs (a) AND (b)

The upshot of the discussion about Items (a) and (b) of the ToRs is this: Saleem's death was, in all likelihood, a result of his coverage of the 'War on Terror' which was unusually uninhibited (leaving aside the question of whether it was fair or unfair, which is not very relevant to the present inquiry). It seems clear that what he said contained enough which could give offence to just about any of the belligerent parties – the Pakistani state, Al-Qaeda and the Taliban and foreign states. Yet, it is also clear from the evidence that as a war correspondent, the deceased maintained active links with all these parties; presently, it is hard to pinpoint the blame on any one because the Commission cannot rule out the possible involvement of the others. The link between this incident and the subsequent drone attack on Ilyas Kashmiri, to which some witnesses have drawn the attention of the Commission, and on which the ISI has also placed reliance, cannot be ignored.

Such a determination of culpability would have been possible, only if we were presented with direct evidence such as oral testimony of eye-witnesses to the crime, or substantial circumstantial evidence indicating some perpetrator's intent to commit the crime. Yet, we have seen that the incident concerned went unseen by any witnesses – there is no direct evidence whatsoever. And the circumstantial evidence (written or audio-visual) too, does not allow us to confidently single out anyone. It seems

likely that it was one of the belligerents in the War on Terror who conspired to harm Saleem; he evidently feared this and many of his journalist colleagues suspect the same. However, suspicion does not amount to proof. While allegations have indeed been leveled against many, in the present case, the evidence before us does not allow us to identify the culprits and prove the charge against them.

The Commission directs the Islamabad and Punjab Police to investigate the matter diligently, impartially without any fear or favour by interrogating all those (whosoever) who should in the normal course be interrogated in the present incident.

The Commission also recommends to the competent authority that:-

- i) The amount of Rs.30,00,000/- (thirty lacs), which has been announced by the President of Pakistan, on the insistence of PFUJ, as compensation/help to the widow of the deceased, should be immediately disbursed.
- ii) The children of the deceased should be provided free education at least up to the level of Graduation.
- iii) Since the wife of the deceased is an educated lady, she be provided some appropriate teaching assignment in a government institution close to her residence.

ToR (d) – CONDUCT IN DEROGATION OF ARTICLES OF THE CONSTITUTION

The failure of this probe to identify the culprits does, in all seriousness, raise a big question about our justice system's ability to resolve such 'mysterious' incidents even in the future – a concern eloquently reflected

in the Asia Times Online's Editorial published after the passing away of Saleem:

*“Whoever is responsible for Shahzad's barbaric murder, one thing is for sure - he will not be the last journalist to have sacrificed his life for uncovering the truth, as there are many more newsmen in Pakistan who firmly believe that the ‘truth’ remains superior to the so-called ‘national interest’.”*³

This is a serious and real concern. Journalists have indeed been rather frequently harassed, abducted, assaulted and killed in Pakistan, particularly during the course of the War on Terror because of what they write or say.⁴ One does not have to be a constitutional lawyer to know that this situation involves grave violations of the principles of due process of law (Article 4) as well as an infringement of fundamental rights, such as the right to life and liberty (Article 9), freedom of expression (Article 19) and the right to information (Article 19A). Also, it is self-evident that if ever an institution of the State were to deliberately get involved in events of the sort, this would imperil the constitutional foundations of the state of Pakistan.⁵ This becomes even more evident when we look at the origins, purpose and ambit of the relevant articles in the light of our constitutional history and jurisprudence.

³ “Who killed Syed Saleem Shehzad?” by Amir Mir, published on June 4, 2011 (http://www.atimes.com/atimes/South_Asia/MF04Df03.html)

⁴ See, for instance, the inquiries conducted in the cases of Hayatullah Khan, Omar Cheema, Wali Khan Babar and others. Also, HRW's deposition and Hameed Haroon's deposition.

⁵ The Attorney General of Pakistan essentially accepts this contention. See his deposition: “...prima facie, it can be said that any physical attack on, threat, intimidation to person, family or property made to a journalist made in connection with him performing his professional obligations would amount to a violation of A. 4,9,19,19(A).”

FREEDOM OF THE PRESS IN OUR CONSTITUTIONAL HISTORY

Article 19 of the 1973 Constitution states: “*Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.*”

Recently, via the 18th Amendment, a related article, the Article 19A has been added to the Constitution. It states: “*Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.*” The right of access to information and the right to freedom of expression clearly complement each other. A citizen’s right to know is, quite obviously, dependant upon a writer’s right to write.

To fully comprehend the meaning of these articles, it is useful to look at their historical context. The state which the 1973 constitution (and its predecessors) envisaged was meant to be a radical departure from the colonial state in British India. The colonial state did not consider its subjects as bearers of any fundamental rights and this authoritarianism also reflected itself in the field of press censorship. The will of rulers was the law; all serious opposition was considered ‘seditious.’ This did not, of course, keep our forebears from speaking out against the oppression and

the tyranny, whenever they got a chance. And the press took a lead in this. Many were the editors and journalists who endured gagging, torture and incarceration during the freedom movement.

Eventually though, the freedom movements gained enough momentum and the people of Pakistan and India were able to free themselves from the colonial yoke. It should be remembered here that it was not officers of the British India or Indian Civil Service, or even judges of the judiciary whose agitation brought the state of Pakistan into being. It was the ordinary people, working under the able guidance of a visionary political leadership, duly supported by a vibrant press, who together performed this miracle. It is in the context of this struggle that we can fully appreciate the emphasis placed by Pakistan's founders on the idea of a free and vibrant press.

In the ringing words of the Objective Resolution, Pakistan was meant to be state “*wherein shall be guaranteed fundamental rights including ... freedom of thought [and] expression...*” Subsequently, this constitutional norm found a place in Article 8 of the 1956 Constitution, Article 9 of the 1962 Constitution and Article 19 of the 1973 Constitution. It is true that, like almost any other fundamental right, the right to free speech is not absolute; it can be regulated and limited by law in the interest of certain vital concerns, such as the security of the State. However, the law cannot be relied upon to negate or nullify the very essence of the protected right of speech; instead, it can be relied upon only in exceptional cases, where there is a real danger to the interests of society. Keenly aware of the possibility that governments sometimes “*give these rights with one hand*

and take them away with the other...”, Pakistan’s founders promised the people otherwise. They clarified that it was their intention “to build up a truly liberal Government where the greatest amount of freedoms will be given to all its members.”⁶

FREEDOM OF THE PRESS IN OUR CONSTITUTIONAL JURISPRUDENCE

In interpreting the free-speech related Articles of our successive constitutions, the dominant trend of our judiciary has been to pay heed to the founders’ promise. Generally, the Pakistani constitutional courts have scrutinized restrictions of free speech rather closely, ensuring that state does not give these rights with one hand i.e. by promising these in the Constitution, and then take them away with the other i.e. by acting to the contrary through statutory or executive action.

In his treatise “The Judicial Review of Public Action”, Justice (R) Fazal Karim, a former judge of the Supreme Court, makes a powerful observation which reflects the ethos of our constitutional jurisprudence: “*Without freedom of expression by the media, freedom of expression would be a hollow concept.*” This is particularly so in the context of present-day realities. Justice Fazal Karim quotes an English judge who points out: “*In a modern, developed society, ... the majority cannot participate in the public life of their society ... if they are not alerted to and informed about matters which call or may call for consideration and action...The proper functioning of a modern participatory democracy*”

⁶ Prime Minister Liaqat Ali Khan’s Speech before the Constituent Assembly in support of the Objective Resolution in 1949.

*requires that the media be free, active, professional and enquiring.*⁷ And nowhere is the feedback of a free press more important than in informing the public about war-time affairs. Justice Fazal Karim also quotes a potent statement made by the Justice Black in the seminal case *New York Times v. United States* (1971) where the United States Supreme Court upheld the right to free speech, at the height of the Vietnam War. Allowing the publication of the leaked “Pentagon Papers” by the New York Times, Justice Black held that the Constitution protects the freedom of press precisely so “*that it could bare the secrets of government and inform the people. ... And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.*” We need to pay heed to this in our context of the equally unending “War on Terror”.

In sum, while it is true that our Constitution allows the state to legitimately exercise reasonable censorship, this censorship must be of a limited nature. And it can only be exercised within the limits of the law. Exercise of legally circumscribed censorship is one thing; silencing dissident voices for ever is quite another. That would be simply unacceptable. It can never be justified.

Therefore, it should be clear that incidents such as the present one involve the gravest possible violation of Articles 19 and 19A; nothing inhibits a citizen’s freedom of expression more than the fear that he might lose his life or limb because of what he says or writes. When a society’s writers

⁷ [2000] 4 All ER 913

live under fear, then the general public too cannot effectively exercise its right to information about matters of public importance. In addition, the murder of an innocent person infringes, quite obviously, the Article 9 which protects the right to life. And along with the right to life, there is an infringement of, by necessity, all the others. Here we may briefly elaborate upon the import of the Article 9 too.

THE RIGHT TO LIFE

What makes the planet Earth unique in the whole universe is the fact that is the only planet which is the cradle of life. As we are reminded by the Divine Being: “Have We not made the earth as a cradle (for the living)?”⁸ It would not be an exaggeration to say that the earth is all about life in its extensive and expanded forms. The evolution of the modern state fortifies the idea that at all times, mankind has striven so that living beings on this planet may be protected and so that they may flourish and abound – not only human beings, but also animals, plants and others. It is this drive for the protection of life that lies at the core of history’s greatest constitutional documents such as the Edicts of Ashoka, the Charter of Medina, the Magna Carta, the American Declaration of Independence and, closer to our times, in the wake of the ghastly atrocities of the Second World War, the UN Declaration of Human Rights. In all these lofty charters, the loftiest of all protected rights is the right to life. Every constitution of the world now conspicuously provides guarantees for it – and the State is entrusted with the task for protecting it.

⁸ Al-Qur’an, 78:6

It would, therefore, be a matter of great misfortune if some day the State itself were to become a predator whose agents feed on the life and liberty of its citizens. When we talk about the state in this context, it includes, of course, all its limbs.

ToR (c) - LOOKING AHEAD IS THE NEED OF THE HOUR

If incidents like the present one recur, the climate of fear and insecurity may some day become so overwhelming that the freedoms promised in our constitution would be reduced to hollow promises. Therefore, avoiding the recurrence of such incidents, and if at all they do recur, quickly tracking their culprits are questions worth serious public discussion. In fact, in the longer run, it is these questions which are, of all those presently before the Commission, the most important. Thus, we proceed to tackle these head-on, in accordance with Item (c) of the ToRs, which requires us to “*recommend measures to prevent recurrence of such gruesome incidents against journalists in future.*”

At the onset of this discussion, we note that, in the light of the evidence before us, we cannot pin the perpetrators down; the present incident could as well have been the doing of non-state actors or foreign actors as that of the state itself. However, the Commission’s recommendations focus on state actors as well as those under the state’s regulatory ambit. This is so because as far as state actors such as the security agencies or regulated sectors like the press are concerned, their conduct is, and can further be, informed and regulated by the law. On the other hand, while reforming the conduct of non-state actors like militants and foreign actors like

foreign intelligence agencies is a task no less important, it is beyond this Commission's competence. These actors exist, by definition, beyond the purview of Pakistan's law. Dealing with them requires a political strategy, not a legal one.

In short, there is a dire need to ensure that:-

- a) State actors such as the Agencies do not get involved in illegal and unconstitutional acts; and that, in particular they do not get involved in any attempt to intimidate or harm members of the Press.
- b) The conduct of the Press remains fully in line with the national interest.
- c) Neither the Agencies nor the Press get unfairly blamed for acts which they haven't done.

To achieve these ends we need to adopt a comprehensive strategy with both theoretical and practical components. In this regard, the Commission received numerous suggestions. Some of these suggestions are reproduced here for the sake of reference.

SUMMARY OF RECOMMENDATIONS RECEIVED PERTAINING TO TORs (c) AND (d)

- 1) **Matiullah Jan** called upon the Commission to take stock of "*previous commission reports about violence on journalists.*" In particular, he urged us to look into, amongst others, the reports of the Inquiry Commissions set up to investigate the murder of Hayatullah Khan in 2005 led by High Court Justice Mohammed Reza Khan and the abduction of Omar Cheema. Accordingly, the Commission did obtain copies of these reports and the relevant sections were perused.

Matiullah also invited the Commission's attention to the 'systemic causes' of violence against journalists – including the civil-military imbalance and the lack of accountability in the intelligence community.

- 2) **Hamid Mir** submitted that in his view there should be no media management wing in the ISI. Since the armed forces of Pakistan can already communicate effectively through the ISPR, such a set-up is, in his view, a source of unnecessary interference in the affairs of journalism. Hamid also pointed towards the need for strengthening of the complaints redressal mechanism. For this purpose, he suggested setting up a system similar to the Press Complaints Commission in the UK.
- 3) **Imtiaz Alam** emphasized the need for ensuring the freedom of the press, particularly from state pressure; at the same time, however, he proposed the idea of a press Ombudsman who could be approached in case of valid complaints against journalists.
- 4) **Absar Alam** proposed setting up a Journalists-Citizens-Intelligence Agencies Liaison Committee. He also proposed setting up a special cell at the Supreme Court and the High Courts to deal effectively and expeditiously with cases of kidnapping and 'missing persons'.
- 5) **Hameed Haroon** drew the Commission's attention to the dangers that journalists in Pakistan sometimes face. He said: "*Pakistan has one of the highest rates in the world for journalist killings and such an environment is inimical to the functioning of democracy.*" If true, this figure is indeed disturbing and calls for a thorough introspection at all levels of Pakistani society and the state. Hameed also suggested

that the police should investigate this case and catch the culprits.

- 6) **Zia Shahid** stressed upon the urgent need to make the Press Council of Pakistan more effective.
- 7) **Arif Nizami**'s proposal was similar. He proposes that it should be part of its term of reference of the Press Council "*to engage all the stakeholders including intelligence agencies to devise a safe and transparent system for journalists to do their job.*"
- 8) **Ali Dayan** urged the Commission to, amongst other things, "*fully investigate the ... policies and practices of the ISI and other intelligence agencies.*"
- 9) **Mujib ur Rehman Shami** suggested that a Complaints Office should be set up at the Ministry of Information. This office should have a help-line to which any aggrieved journalist can make a phone call and register his/her complaint. Also, he proposes that this office should work either with, or under, the Human Rights Cell. In short, he stressed the need for a "*credible and transparent system*" for redressal of journalists' grievances against the intelligence agencies.
- 10) **Pervaiz Shaukat** urged the need for creating an Ombudsman; he also stressed upon journalists to adhere to a Code of Conduct , which should include a direction that there should be no interaction between Journalists and the Agencies. He also directed our attention to PFUJ's draft Press Complaint Commission.

- 11) **Justice (R) Tariq Mehmood** proposed the creation of a “*High-powered Commission with representation of the judiciary, the executive and the media ... to oversee the issue of journalist safety*” He also proposed a reform in the manner in which the Agencies conduct their investigations. He proposed that “*whenever an agency needs to question a journalist, it... should be bound to obtain warrants...*” And also, the agencies should “*keep a log of such interrogation sessions in the shape of audio, video or minute records*” – these records may then form the basis of later scrutiny by investigators. He also reiterated that the “*responsibility of a journalist above everything else is to truth, ethics and their country.*”
- 12) **Asma Jehangir** urged the Commission to look into “*the mandate, the legal framework and the accountability system under which the ISI operates.*” She also called upon the Commission to “*highlight the gravity of the situation... [and] discuss the stumbling blocks for those investigating crimes, where the perpetrators are non-state militant groups or state actors.*”
- 13) The **Attorney General of Pakistan** proposed the creation of “*Specialist Police Cells ... devoted to investigating complaints made by ... journalists in connection with assaults, threats/intimidation etc... equipped with all the latest technology and [which] have agreement with PTA to ensure the tracing of cell phone numbers, emails, wiretapping facilities etc... a member of IB may also be assigned.*” He also stressed the importance of the Press Council of Pakistan. Also, with reference to the ToR (d), he stated: “*...prima facie, it can be said that any physical attack on, threat, intimidation to person, family or property*

made to a journalist made in connection with him performing his professional obligations would amount to a violation of A. 4,9,19,19(A)."

- 14) **Brigadier Zahid's** key concern was that the relevant institutions, i.e. PEMRA, its Councils of Complaints and the Press Council of Pakistan have, in his words, *"failed to regulate the national media."* He also lamented that *"the democratic structure and institutions are yet too weak to sustain the media pressure, as the monopolized media gangs up with [the opposition]... to damage it [i.e. the government] politically..."* Therefore, he suggested that *"under these circumstances, the onus comes on all the three state organs to harmoniously establish an effective media regulatory system..."* He also proposed that a *"judicial commission may be established"* and that *"PEMRA and Council of Complaints may be made more effective..."* He also urged that *"punitive action against those leveling baseless allegations [on the intelligence agencies]..."* be taken. Referring to a recorded conversation (reproduced elsewhere in this Report) between two alleged terrorists, who seem to be congratulating each other upon Saleem's death, Brigadier Zahid urged that the *"police be directed now to exploit leads provided by ISI."* Finally, while recording his observations before the Commission, he made a proposal which seems directed at his own institution. He said: *"ISI/ISPR and other agencies should stop patronizing and protecting 'favourite' journalists."*

Recommendations of all of these witnesses, as well as any other recommendations which the Commission received, have been thoroughly considered. The recommendations have also been incorporated by the

Commission as far as possible, while still remaining within the ambit of its own ToRs.

Having deliberated upon these suggestions, and after doing further research, the Commission has been able to formulate its own set of proposals. While these proposals are carefully considered, the Commission is fully conscious it would not be prudent to treat these proposals as the last word. Indeed, the best solution to this problem will emerge only after a free, honest and informed public debate on this national issue in the Parliament, on the media, and amongst the general public. The nature of this complex problem demands such consideration and so do the imperatives of our democratic system. However, for the purpose of stirring the necessary debate, the Commission suggests the following **roadmap**, which can help avoid the recurrence of incidents such as the one being investigated here.

FIXING THE SYSTEMIC CAUSES OF TENSION BETWEEN THE AGENCIES AND THE MEDIA

First of all, it is important to address the systemic causes which lead to a tense relationship between the press and the Agencies. In the ideal political order, both sectors should be working towards the same goal: creating a more informed, well-governed polity, where the people and their government are both provided with the information they need to effectively play their constitutional role in taking the country forward. To overcome the present relationship of mutual suspicion and antagonism, two conceptual shifts are needed:

CONCEPTUAL FRAMEWORK

Concept 1: Overcoming the dichotomy of ‘Truth’ and ‘National Interest’

The first step in this regard is to drive home, at all levels of the state apparatus, the realization that the uncovering of truth before the public **IS** very much in our national interest. In fact, the Truth itself is our National Interest. Viewing the two as dichotomous is a source of irreconcilable tension between the Agencies and the Press - and can potentially result in events like the one being investigated.

The question of whether sharing bitter truths about public affairs with the general public is in our national interest or against it, needs to be analyzed, like all other public questions, in the context of our constitution. When we read it carefully, we realize that the constitution envisages for us a democratic order where ultimate decision-making responsibility (and blame too) falls upon the people, and not upon any single omniscient state institution or group of officials. Since this is so, our national security cannot possibly be protected by lying to our people on matters of public policy or by concealing the truth from them. Therefore, if a journalist makes any contribution toward uncovering the pure and unadulterated truth laying it bare before the public, it should be viewed as a measure which enhances our national security, even when it embarrasses the country’s reigning government and its institutions. Once this realization sinks into all relevant quarters of the state, the hazards currently associated in this country with speaking the truth about public affairs will

automatically come down. And those who are in this business – those professional ‘eyes and ears’ of the public – will get attacked less often.

In sum, as a first step, it is important to pay heed to the message of our Constitution; this will demolish the theoretical justification for such crimes against journalists. Once such incidents have been de-legitimized at the theoretical level, we can also start tracking them in practice, more effectively.

Concept 2: Striking a Balance between Stealth and Accountability in the conduct of intelligence gathering

One of the reasons why such incidents are happening again and again is our inability to find the culprits and award them exemplary punishments – the usual course of the law. Therefore, there is an urgent need to ensure that if at all such incidents happen again, we are in a better position to track down the culprits. This can be done by striking the right balance between two competing concerns: the need for stealth in effective intelligence gathering, on the one hand; and, on the other, the need for ensuring accountability of the intelligence community, for restoring public confidence in state institutions. The reports of this Commission as well as that of the “Commission of Inquiry on Enforced Disappearances” released on December 30, 2010 (the Missing Persons’ Commission), indicate that, in our present circumstances, investigating criminal allegations against security agencies is a rather difficult task. Pointing out the urgent need to restore the general public’s trust and confidence in the institutions responsible for protecting our national security, the Missing Persons’ Commission observed: “*We, on our part, tried to persuade the*

representatives of the agencies in every possible manner, impressing upon them that such illegal detentions for indefinite periods would be counter-productive and not only bring a bad name to the country but would also lower the esteem of these agencies and our armed forces, which is in no way desirable. (para. 19, Report of the Missing Persons' Commission)

The sooner there is a realization of this the better for all of us."

In a large part, the problem of 'opaqueness' arises because of the absence of a well-defined legal framework to govern the intelligence agencies. Also, there is a lack of documentation in the conduct of their operations. This makes it difficult to investigate any untoward incidents; whenever a legal investigation takes place, the evidence available on record is not enough to legally implicate the Agencies. However, the same dearth of evidence makes it equally difficult to convincingly exonerate them in the eyes of the general public and to repair their tarnished reputation. Therefore, these investigations end up with a double failure – neither convicting the accused and clearing away the climate of fear, nor convincingly exonerating the accused and restoring citizens' confidence in sensitive institutions. The only path out of this catch-22 situation, and indeed from so many of our national crises, is following the constitution and the law in their letter and spirit.

Organizations which put a premium on being law-abiding, and being seen as such, are quite scrupulous about ensuring that their members maintain logs and records and generate scrupulous documentation of their activities. In case of suspected crimes, these records assist the independent investigators in tracking the guilty down. Investigators and adjudicators

can seize and summon the relevant records and peruse them, latching on to any shred of evidence which points to the perpetrators of a crime. Scrupulous documentation also adds to the efficiency of large organizations, which can otherwise lose focus.

Our intelligence agencies, however, do not yet seem to be operating with much by way of documentation procedures. It seems that they do not require their operatives to maintain electronic and paper records of their internal communication and activities or meticulous logs of searches and seizures; and if at all they do, such records are not laid bare before investigators for inspection. They were certainly not available to this Commission or the Missing Persons' Commission.

Unfortunately, this is the work-culture which has led us to the disturbing situation where the very people whose security these agencies were supposed to be ensuring –the people of Pakistan – often suspect them as the perpetrators of heinous crimes. Yet, given the dearth of evidence, they can neither be convicted nor convincingly exonerated.

At times like these, it is important for us as a nation to re-consider the necessary trade-off between secrecy and accountability. It is true that there must remain a careful balance between the two: if an intelligence agency were forced to become as transparent in the conduct of its activities as, for instance, the Parliament or the Judicature, it would simply cease to be effective, given the nature of its job. But, the reverse is also true. If the agencies conduct their activities completely beyond the purview of the law, and without maintaining any sense of transparency and accountability in their conduct, they risk losing their most precious

strategic asset - the trust of the public whose security they are supposed to ensure. Currently it seems that we would be better off with more accountability than we presently have, even when it means a little less of secrecy. Extra-secrecy can be counter-productive, leading to a crisis of legitimacy. There is a fear that we in Pakistan are unfortunately veering in that direction Yet, this impending crisis of legitimacy can still be averted if we re-evaluate our priorities.

CONCRETE PROPOSALS

Practical Step 1: Making the Press Law-abiding and Accountable

- a) **Recourse to the Professional and Regulatory Bodies against delinquent or compromised journalists:** There are a number of Professional and Regulatory Bodies which are meant to perform a regulatory function. Foremost amongst these is the Press Council of Pakistan created by the Press Council of Pakistan Ordinance in 2002.

PRESS COUNCIL OF PAKISTAN

The Press Council of Pakistan is not a government department; rather it is meant to be an “*autonomous and independent*” statutory body (Preamble, Ordinance). By and large, the form of regulation envisaged in the Ordinance is self-regulation since most members of the Council are press insiders, not state representatives. (Section 6, Ordinance) The Ordinance also lays down an Ethical Code of Practice. (Schedule, Ordinance) The Council is entrusted with the task of “*maintain[ing] highest professional and ethical standards of newspapers and news agencies with a view to making them more responsive to the issues and concerns of the society in Pakistan.*” while also

“*preserving the freedom of the press...*” (Section 8(i), Ordinance)

The Council has the power to “*receive complaints about the violation of Ethical Code of Practice...*” (Section 8(1)(v)) The Council is also

entitled to receive complaints by members of the press against

“*Federal Government, Provincial Government or any other organization ... for interference in the free functioning of the press.*”

(Section 8(2), Ordinance) To deal with the complaints it receives, the

Council can appoint three-member “*Enquiry Commissions*”, (Section

8(1)(vi), Ordinance) chaired by a “*retired High Court Judge or a*

person qualified to be the judge of the High Court.” (Section 9) An

Enquiry Commission has the power to:

“(a) direct the editor or publisher to publish a contradiction or clarification in the manner and time specified by the Commission;

(b) direct the editor or publisher to publish an apology for the matter complaint against in the manner specified by the Commission and shall also warn or reprimand the concerned journalist, editor and publisher responsible for such publications;

(c) make such other direction as may be considered appropriate in the circumstances of the case keeping in view the objectives of th[e] Ordinance.” (Section 10, Ordinance)

Therefore, it seems that as far as complaints against the Press are concerned, the Ordinance provides a sufficient forum. If officers of the state, including those in the intelligence agencies, have clear evidence to prove that a journalist is delinquent or compromised and that his writings and other activities violate the Code, they can take recourse to the Council. The Council may then appoint a Commission to decide the matter in accordance with law and justice. There should, however, be no

room for harassing journalists on the mere perception that they are compromised or their reporting is unethical since, like everyone else, they are entitled to be considered innocent until proven guilty.

It is important to note here that while the Ordinance contains ample provisions for dealing with grievances against the Press, it does not sufficiently clarify the mechanism available for dealing with grievances of the Press itself – such as its grievances against the Agencies or other state institutions. This short-coming is amply reflected by the complaints procedure, which does not seem tailored to complaints of the Press against Agencies or other state institutions, which may be involved in intimidating, abducting and torturing journalists and may be responsible or guilty of the incidents, such as the present one. Also, the remedies prescribed which again are not really sufficient for cases of this sort. For dealing effectively with such complaints, the Commission proposes the creation of an Ombudsman, as sketched out later in the Report.

Practical Step 2: Making the Agencies Law-abiding and Accountable.

No less important, of course, is the task of making the Agencies accountable. This is necessary to ensure that the Agencies remain law-abiding and also that the public perceives them as such. This would require a serious effort from the Parliament. Currently, it seems that the legal and organizational foundations of the two major Agencies (ISI, IB) all rest on mere executive orders; there is therefore an urgent need for

laying down a comprehensive statutory framework – perhaps a Pakistan Secret Services Act. In various countries of the world, intelligence agencies were first created under executive orders, but subsequently brought on a statutory footing to improve their level of accountability; it is high time we brought the same change in Pakistan.⁹ The legislature is indeed the organ of the state most capable of, and entitled to, laying down the relevant framework. The Commission’s recommendations in this regard may only be treated as research-based suggestions to assist the Parliament in its task. However, whatever the details, the framework adopted must ensure constitutional standards of accountability. The Agencies can be held accountable at three levels: within the Agency and before the Minister-in-Charge; before a Parliamentary Committee (and thus the Parliament and the public); and before a judicial forum.

a) Improving the system of Internal Administrative Accountability for the Agencies:

The proposed statute should delineate, amongst other things, the purpose and object of the various Agencies.¹⁰ Duties which fall beyond the competence of these agencies, such as press censorship, liaising with political parties and the conduct of foreign policy

⁹ For instance, in the US the Office of Strategic Services (OSS) was set up in 1942 under an Executive Order by President Roosevelt. Then, two years after the end of World War II, the Congress enacted National Security Act 1947 to create the CIA which inherited many of the function of the OSS. In the UK, the Secret Service started its career as Secret Service Bureau in 1909, becoming the Directorate of Military Intelligence, Section 5 (popularly know as ‘MI5’) in 1919. Only in 1989 was it first put on a statutory basis, through the Secret Services Act. Many other intelligence agencies also share a similar history.

¹⁰ See for instance Section 1 of the UK’s Security Service Act, 1989, which states: “(2) The *function* of the Service shall be the protection of *national security* and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to *overthrow or undermine parliamentary democracy* by political, industrial or violent means; (3) It shall also be the function of the Service to safeguard the *economic well-being* of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands”

should be expressly excluded from their mandate.¹¹ Given our current crisis, being explicit about these matters would be more than worth it.

Furthermore, the chain of command of the Agencies should be clearly demarcated. The structure should be designed such that the Minister-in-Charge as well as the head of the agency is able to ensure internal administrative accountability. Therefore, in case of an alleged wrong-doing, the first level of inquiry should be from within the Agencies.

In this regard, it may be useful to set up an internal but independent office for review, such as a Counsel General (CIA), an Inspector General of Intelligence (Australia) or Auditor, whose job is to assist the Minister-in-Charge and/or the Head of the Agency in ensuring compliance with ministerial policy as well as with legal and constitutional limits. (*for details, see Annexure.*)

¹¹ See for instance the UK's Security Service Act, 1989, Section 2 of which clearly states: "The Director-General shall be responsible for the efficiency of the Service and it shall be his duty to ensure—(a)that there are arrangements for securing that *no information is obtained by the Service except so far as necessary* for the proper discharge of its functions or disclosed by it except so far as necessary for that purpose or for the purpose of the prevention or detection of serious crime or for the purpose of any criminal proceedings; and (b)that the Service *does not take any action to further the interests of any political party...*"

Similarly, Article 4 of Argentina's of National Intelligence Law No. 25520 declares: "*No intelligence agency shall: 1. Perform repressive activities, have compulsive powers, fulfill police functions or conduct criminal investigations unless so required by justice on account of a judicial proceeding or when so authorized by law. 2. Obtain information, collect intelligence or keep data on individuals because of their race, religion, private actions, and political ideology, or due to their membership in partisan, social, union, community, cooperative, assistance, cultural or labour organizations, or because of legal activities performed within any field. 3. Exert influence over the institutional, political, military, police, social, and economic situation of the country, its foreign policies, and the existence of legally formed political parties, or influence public opinion, individuals, the media, or any kind of associations whatsoever*".

The need for a more accountable work culture

The work-culture of the Agencies may also need some change if oversight of any sort upon them, internal, parliamentary or judicial, is to be meaningful. In this regard, the proposed statute may require them to adopt by-laws which mandate their operatives to follow internationally recognized Standard Operating Procedures. The procedures should be defined in such a manner as to improve the level of documentation. In case of a complaint of misconduct, the relevant documentation should be handed over to the investigators for a proper inquiry. This change is absolutely necessary for increased accountability. Otherwise, without the relevant documentation, no investigation would have much chances of success and it would be hard to rule out the possibility of the Agencies' involvement in incidents like the murder of Saleem Shahzad.

b) Improving the system of Democratic Accountability for the Agencies:

The Agencies should also be made directly accountable to the Parliament. In this regard, the Parliament should consider creating bi-partisan Standing Committees on Intelligence in both houses of the Parliament. There are numerous such committees in parliaments around the world. The Parliament may consider and deliberate upon various existing models of legislative accountability of the intelligence community to tailor the solution most appropriate for our context. (For details, see Annexure). The aim of parliamentary

scrutiny should be two-fold: (i) improving the efficiency of the agencies; (ii) preventing excesses through oversight and ensuring public confidence in the Agencies.

c) Improving the system of Judicial Accountability for the Agencies:

In extreme cases where internal review as well as parliamentary review is not sufficient, the Agencies may also be held accountable to a specially constituted judicial forum. A special judicial oversight mechanism may be set up for dealing fairly and effectively with complaints against the Agencies, whether emanating from the Press/Media, as in this case, or from other sectors of society. While the forum should be of a general nature, particular importance should be given in this regard to the complaints of the Press.

For this purpose, it may be useful to create an office of Human Rights Ombudsman. While it is the Parliament which has the authority and the capacity to create any such mechanism, a brief sketch can be laid out here for consideration.

Here again it would be useful to consider the example of various such bodies already present around the world, and to tailor a solution best suited to our conditions. (*for details, see Annexure*)

Nonetheless, whatever the form of such a judicial forum, it is important to ensure that it works fairly, effectively and transparently, and enjoys the confidence of the complainants.

SKETCH OF THE OFFICE OF HUMAN RIGHTS OMBUDSMAN

Object and Jurisdiction: The Ombudsman should have the mandate to redress grievances of anyone who complains of misconduct, or suspected misconduct by intelligence officials and agents. The complaints of the Media should be treated with particular seriousness.

Composition and Tenure: This Ombudsman should consist of a retired judge of the Supreme Court with the security of tenure to ensure impartiality and independence.

Nature of Proceedings: The proceedings of the Ombudsman and the standards it applies should reflect the principles of natural justice, but it should also be tailored to the extra-ordinarily sensitive nature of this sector. Therefore, the Ombudsman should be a quasi-judicial forum. Proceeding may be conducted *in camera* where necessary, but the must be conducted in a manner which inspires the confidence of both the complainant and the respondents. If the circumstances require it, complete privacy should be assured to the complainants' identity. Similarly, if an intelligence officer or agent is subject to investigation, but needs confidentiality, the same should be ensured. The Ombudsman's decision should be final, with only a narrow right to appeal to the High Court upon procedural ground. The Ombudsman should not disclose to the public anymore information that it deems necessary.

SUMMARY OF THE COMMISSION'S RECOMMENDATIONS

The Commission recommends, *inter alia*:

- that in the light of our Constitution, based as it is on democratic principles, the uncovering of Truth before the public is very much in our National Interest;
- that the Press be made more law-abiding and accountable through the strengthening of institutions mandated by law to deal with legitimate grievances against it;
- that the balance between secrecy and accountability in the conduct of intelligence gathering be appropriately re-adjusted, with the aim of restoring public confidence in all institutions of the state;
- that the more important Agencies (ISI and IB) be made more law-abiding through a legislation carefully outlining their respective mandates and role; that their interaction with the media be carefully institutionally stream-lined and regularly documented;
- that all the Agencies be made more accountable at three levels: within the Agency and before the Minister-in-Charge, i.e. through internal administrative review; through a

Parliamentary Committee responsible for oversight over their affairs; and through a suitably tailored judicial forum for redressal of grievances against them;

- that, in this regard, a forum of Human Rights Ombudsman be created for judicial redressal of citizens' grievances against Agencies, particularly the grievances of the Media against attempts to intimidate, harass and harm them;
- that the Islamabad and Punjab Police should continue investigating the matter diligently, impartially without any fear or favour by interrogating all those (whosoever) who should in the normal course be interrogated in the present incident.
- that the competent authority should ensure the immediate disbursement of the amount of Rs.30,00,000/- (thirty lacs), which has been announced by the President of Pakistan, on the insistence of PFUJ, as compensation/help to the widow of the deceased;
- that the children of the deceased should be provided free education at least up to the level of Graduation;
- that the wife of the deceased, who is an educated lady, be provided some appropriate teaching assignment in a government institution close to her residence; and

PLEA TO MAKE THIS REPORT PUBLIC

Finally, the Commission concludes on the note that the Government should make this Report available to the public. This would be closer to the spirit of Article 19A of the Constitution which promises to each citizen “*the right to have access to information in all matters of public importance.”* The matters dealt with in this Report are very much of public importance; giving citizens the right to access such information would thus be in line with Article 19A and, therefore, be in the interest of all and sundry.

(Agha Rafiq Ahmed Khan)
Chief Justice, Federal Shariat Court/Member

(Mian Saqib Nisar)
Judge, Supreme Court of Pakistan/President

(Bani Amin Khan)
I.G. Islamabad/Member

(Javed Iqbal)
I.G. Punjab/Member

(Pervaiz Shaukat)
President, PFUJ/Member

Islamabad, the
9th January, 2012

ANNEXURE – HOLDING THE AGENCIES ACCOUNTABLE – THE GLOBAL PERSPECTIVE

A - Internal Review Bodies

Australia: Office of the Inspector-General of Intelligence and Security Act 1986.

“The objects of this Act are: (a) to assist Ministers in the oversight and review of: (i) the compliance with the law by, and the propriety of particular activities of, Australian intelligence agencies; and...”

USA:

Office of the Consul General

The General Counsel is the chief legal officer of the CIA. The General Counsel serves as the legal advisor to the Director of the Central Intelligence Agency and is responsible for the sound and efficient management of the legal affairs of the CIA. The CIA Office of General Counsel (OGC) is an *independent office* of the CIA that is headed by the General Counsel and assists the General Counsel in carrying out his statutory and other responsibilities.

Office of the Inspector General

The CIA Office of Inspector General (OIG) is an independent office of the CIA that is headed by the Inspector General. Created in 1989, the OIG was meant to: to “(1) create an objective and effective office, appropriately accountable to Congress, to *initiate and conduct independently inspections, investigations, and audits* relating to programs and operations of the Agency; (2) provide leadership and *recommend policies* designed to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and detect fraud and abuse in such programs and operations; (3) provide a means for *keeping the Director fully and currently informed* about problems and deficiencies relating to the administration of such programs and operations, and the necessity for and the progress of corrective actions; and (4) in the manner prescribed by this section, ensure that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (hereafter in this section referred to collectively as the *"intelligence committees"*) *are kept similarly informed* of significant problems and deficiencies as well as the necessity for and the progress of corrective actions.

B - Parliamentary Oversight Bodies

U.S.A:

Senate Select Committee on Intelligence

In the wake of growing concerns about excess committed by the CIA, a “Select Committee on Intelligence” was created by the Senate of the Congress of the United States in 1976. It was formed through Senate Resolution 400 of the 94th Congress., 2nd Sess., 122 CONG. REC. 4754 (1976). The objective of this 15-member bipartisan committee is stated in the Resolutions thus:

“to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.” (For full text of Resolution 400, see <http://cryptome.org/jya/senate-sci.txt>)

House Permanent Select Committee on Intelligence

Similarly, the House of Representatives of the Congress of the United States has a Permanent Select Committee on Intelligence. It was created in 1977 through House Resolution 658 of the 95th Congress. 1st Sess., 123 CONG. REC. 22,932 (1977). Its mandate is nearly identical to the Senate Committee.

U.K

The Intelligence and Security Committee

In the United Kingdom, the Parliament created “The Intelligence and Security Committee” through the Intelligence Services Act, 1994. This 9-member committee is bicameral and also bipartisan. Its objective is: “to examine the expenditure, administration and policy of (a)the Security Service; b)the Intelligence Service; and c) GCHQ.” This Committee is known to hold regular weekly meetings while Parliament is in session to discuss issues pertaining to the work of the three British intelligence

services. It submits an Annual Report to the Prime Minister and the Parliament.

Germany

The Parliamentary Control Panel (PKGr)

The Parliamentary Control Panel (PKGr) of the Bundestag is responsible for scrutiny of the work of the intelligence services at Federal level. The Panel can demand the submission of detailed information by the Federal Government on the federal intelligence services' general activities and on operations of particular importance.

Canada

Security Intelligence Review Committee

In Canada, an independent body called "Security Intelligence Review Committee" has been created through the Canadian Security Intelligence Service Act (R.S.C., 1985, c. C-23). It consists of "a Chairman and not less than two and not more than four other members." They are appointed from amongst senior lawyers by the Prime Minister of Canada in consultation with the Leader of the Opposition in the House of Commons. The appointments full-time, paid are for a period of 5 years.

Italy

Parliamentary Committee on the Security of the Republic (COPASIR)

In Italy, a Parliamentary Committee on the Security of the Republic (COPASIR) was constituted only recently. The power of the COPASIR are laid down in Section 30 of Law No. 124 of 2007 in the following terms: "(1) A Parliamentary Committee for the Security of the Republic is hereby established... (2)The Committee shall constantly and systematically verify that the Security Intelligence System's activities are carried out in observance both of the Constitution and of the law and in the defence and exclusive interests of the Republic and its institutions. "

(For details, see:

http://www.sicurezza.gov.it/web.nsf/pagine/en_legge_124_2007)

Australia

Intelligence and Security Committee

In Australia, the Intelligence and Security Committee of the Parliament of Australia looks into the affairs of a number of Australian intelligence agencies. It is appointed under section 28 of the [Intelligence Services Act](#)

[2001](#) (the IS Act) and is the success of the earlier [Parliamentary Joint Committee on ASIO, ASIS and DSD](#).

Section 29 of the Act states that the functions of the Committee are to: “review *the administration and expenditure* of the ASIO, ASIS, DIGO, DIO, DSD and ONA including the annual financial statements of ASIO, ASIS, DIGO, DIO, DSD and ONA; review *any matter* in relation to ASIO, ASIS, DIGO, DIO, DSD or ONA *referred to the Committee* by the responsible Minister or a resolution of either House of the Parliament; review, as soon as possible after the third anniversary of the day on which the *Security Legislation Amendment (Terrorism) Act 2002* receives the Royal Assent, the operation, effectiveness and implications of amendments made by that Act and the following Acts - *The Border Security Legislation Amendment Act 2002*, *The Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002* and *The Suppression of the Financing of Terrorism Act 2002*; review, by 22 January 2016, the operation, effectiveness and implications of Division 3 of Part III of the *Australian Security Intelligence Organization Act 1979*; and report the Committee's comments and recommendations to each House of the Parliament and to the responsible Minister.

C - Judicial Oversight Bodies

UK:

Investigative Powers Tribunal:

Created by the Regulation of Investigatory Powers Act (RIPA, 2000), the Tribunal can investigate complaints about any alleged conduct by, or on behalf of, the Intelligence Services - the Security Service (sometimes called MI5), the Secret Intelligence Service (sometimes called MI6) and GCHQ (Government Communications Headquarters). The scope of conduct the IPT can investigate concerning the Intelligence Agencies is given in Section 65 of RIPA 2000. It is much broader than it is with regard to the other public authorities.

India

(Proposed) National Intelligence Tribunal

The Intelligence Services (Powers and Regulation) Bill, (No. 23 of 2011) was introduced in the Indian Lok Sabha by Manesh Tenawari M.P in March 2011. The Bill seeks to give a statutory cover to India's secret services. It also proposes the creation of “*a tribunal to be known as the National Intelligence Tribunal ... for the purpose of investigating complaints against the R&AW, the IB or the NTRO*” (Section 23, Bill).