

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Misc. Petition No. 01 of 2020

Secretary, Ministry of Law and Justice

Vs

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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- 03) 06-10-2020. Mr Khalid Javed Khan, Attorney General for Pakistan.
Mr Tariq Mehmood Khokhar, Additional Attorney General.
Syed Muhammad Tayyab, Deputy Attorney General.
Mr Arshad Mehmood Kiani, Deputy Attorney General.
Mr Saqlain Haider, Assistant Attorney General.
Mr Muhammad Nadeem Khan Khakwani, Assistant Attorney General.
Ch. Muhammad Tahir Mehmood, Assistant Attorney General.
Mr Farrukh Shahzad Dall, Assistant Attorney General.
Mr Nazar Hussain Syed, Assistant Attorney General.
Mr Ahmed Irfan Aslam, Consultant to Attorney General/Head International Disputes Unit, Office of the Attorney General for Pakistan.
Mr Hamid Khan, Senior ASC (Amicus Curiae) assisted by Mr Ajmal Ghaffar Toor, Advocate and Barrister Najam-us-Saqib.

ATHAR MINALLAH, CJ.- The learned

Attorney General has informed us regarding the exchange of correspondence between the Government of the Republic of India (*hereinafter referred to as the "Government of India"*) and the Government of the Islamic Republic of Pakistan (*hereinafter referred to as the*

"Government of Pakistan"). Prima facie, it appears to us that the Government of India is reluctant to join these proceedings or to avail the remedy provided under the International Court of Justice (Review and Reconsideration) Ordinance, 2020 (*hereinafter referred to as the "Ordinance of 2020"*). We have also been informed that the stance of Commander Kulbushan Sudhir Jadhav (*hereinafter referred to as "Commander Jadhav"*) remains unchanged. The Government of India has not made any attempt to approach this Court directly despite opportunities extended in this regard. We are mindful of the fact that rights of Commander Jadhav are involved in the matter before us. We are also conscious that it is an obligation of the Government of Pakistan to give effect to the judgment of the International Court of Justice (*hereinafter referred to as the "International Court"*). Keeping in view the importance of the matter in hand, particularly when the right to life and right to fair trial of Commander Jadhav are involved, it is important to proceed with abundant caution.

2. The learned Attorney General has drawn our attention to paragraph 146 of the judgment of the International Court. In order to meet the ends of justice and ensure implementation of the judgment of the International Court in letter and spirit, it would be beneficial

if the learned Attorney General could assist us regarding the scope of the obligation of “providing effective review and reconsideration” and its modalities in the context of the principles and law expounded by the International Court. We also expect to be assisted regarding the interpretation of the expressions “an obligation of result” and “must be performed unconditionally”. We further expect the learned Attorney General and the amici curiae to assist us in ascertaining the obligations of the Government of Pakistan relating to implementation of the judgment of the International Court, if the Government of India continues to show reluctance in extending support to Commander Jadhav.

3. The Registrar of this Court is directed to fix the proceedings at 02:00 p.m. on 09-11-2020.

(CHIEF JUSTICE)

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE