

From Waseem Hussain in Zurich

Swiss Miss

The Swiss authorities have been motivated by regional and domestic political compulsions rather than the supremacy of the rule of law in their efforts to build a case against Benazir Bhutto. The situation has been made worse by the blatant lies of the Pakistan government

The government of Pakistan has made much political capital out of the "neutrality" of the Swiss authorities in their investigations into the finances of the Bhuttos. Swiss legal assistance was merely used by the Pakistani government to lend its own prosecution extra credibility: if a so-called clean country like Switzerland can start investigations against Benazir Bhutto, then surely something must be wrong with her. However, what most people fail to realise is that, while Switzerland may not be Pakistan, the Swiss are hardly above reproach when it comes to their handling of financial matters. Switzerland has historically maintained its political neutrality and economic well-being by consistently ignoring the demands of morality.

In recent years, there has been a backlash against Swiss banking practices in the western world. The callous role of the Swiss financial houses in the case of the assets of holocaust victims has emerged as an emotive issue in the West and Israel. In response to the general condemnation heaped upon them, the Swiss government decided to tighten restrictions on the flow of ill-gotten wealth in and out of the country. However, Swiss efforts in this regard appear to be little more than selective public relations



exercises. While much has been made of the aid provided by Swiss authorities in recovering money stolen by the likes of Mobutu and Marcos, the fact remains that to date no attempt has been made by them to control inflows of wealth amassed by serving heads of governments or states. Even in the case of Pakistan, it is commonly known that the Bhuttos are by no means the only party that has funds secreted away in Swiss banks.

It is clear from correspondence exchanged between the Pakistan government and the Swiss Federal Department of Police (Bundesamt fuer Polizeiwesen, BAP), that on September 8, 1997, the latter ordered the freezing of accounts held by

Benazir Bhutto, Asif Zardari and Nusrat Bhutto in Geneva as a precautionary measure. This was ordered a few hours after a request was received by fax from Islamabad. Subsequently, in mid-October, when legal assistance was formally granted to Pakistan, the accounts were frozen by the BAP until the end of the legal assistance process. However, in doing this, the BAP relied on obviously incorrect and misleading information provided by Islamabad.

According to the BAP, in order to obtain legal assistance, there has to be an open case against the accused at a court of law in the requesting country. Furthermore, the case has to concern the matter for which legal assistance is being requested. Senator Saifur Rehman, chairman of the then Accountability Cell, introduced himself as legal prosecutor when he visited the BAP in Bern, Switzerland. The Accountability Cell was only entitled to collect incriminating evidence against people suspected of corruption. It is only when two further authorities examine the dossier and are satisfied with its substance that criminal proceedings can commence. Although this was not the case in Pakistan, Switzerland still granted it legal assistance.

When questioned, the BAP justified its action on the grounds that the legal system of Pakistan is

similar to the Anglo-Saxon one, which regulates the authority of government offices differently from the Swiss legal system. BAP spokesman Folco Galli said, "Switzerland recognises foreign legal systems when it comes to legal assistance." The fact, however, is that the BAP did not undertake any effort to assess the competency of the Accountability Cell. Instead, it based its action on the revised Swiss Legal Assistance Law which came into effect on February 1, 1997. The law allows for a speedy reaction upon incoming requests for legal assistance.

Pakistan changed the name of the Accountability Cell to the Accountability Bureau on February 5, 1998. Thus, a former department of the prime minister's secretariat became a regular bureau. It was only then that Senator Saifur Rehman acquired legal prosecuting authority. However, the BAP failed to take notice of the fact that the Accountability Cell had been placed directly under the authority of the incumbent prime minister (Nawaz Sharif), and that therefore, the principle of independent prosecution was being violated.

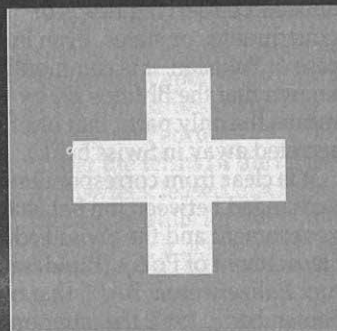
To hush up the lack of legal grounds at the time Switzerland granted assistance to Pakistan, Senator Saifur Rehman asked Attorney General (AG) Chaudhry Farooq to write the formal request for legal assistance. The AG wrote that he had, based on the competency of his office, authorised one of the highest courts of law in Pakistan to commence criminal proceedings against Benazir Bhutto and others. In this manner, an impression was created that Benazir Bhutto had been formally charged by a Pakistani court of law for corruption — although this was not true. The Swiss authorities made no attempt to check on the veracity of this claim. A simple phone call to the Swiss embassy in Islamabad could have cleared up this misconception. In any case, it is difficult to believe that this was a genuine oversight by the Swiss authorities.

To create the impression that the matter was most urgent, on September 8, 1997, Senator Saifur Rehman wrote in a fax to the BAP that the Pakistani press had come to



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know through leakages about Bhutto's bank accounts in Geneva. Under the circumstances, he felt that Benazir Bhutto could try to rush the money out of Switzerland.

However, at least since April 1997, it was Senator Saifur Rehman himself who had been talking about the 'evidence' he was holding against Benazir Bhutto. In fact, he even went as far as to show 'documentary evidence' to local and foreign journalists in Pakistan. It is absolutely impossible to believe that the Swiss authorities were unaware of the senator's public statements.

In early March 1999, Moazzam Hayat, additional registrar at the Lahore High Court, left for Switzerland to compare documents in the Pakistani court files with some of those at the Geneva court. When asked on March 4, the Swiss investigating magistrate, Daniel Devaud, denied having an appointment with Moazzam Hayat. However, Devaud claimed he had read about the visit in the Pakistani press. Devaud is possibly the only Swiss magistrate who makes it a point to read the Pakistani papers. Only one day later, Devaud, under pressure from investigating journalists, admitted to having an appointment with the man from Lahore but refused to say when. The meeting finally took place on March 8, 1999, in Geneva at Devaud's office.

Devaud allowed Moazzam Hayat to see some of the documents which were annexed to the notice the Swiss authorities had sent to the accused parties. This document was sent to Pakistan because Switzerland had begun investigations into alleged money laundering by Benazir Bhutto and Asif Ali Zardari, and was obliged by Swiss law to present the accusations to the accused. While allowing Hayat to examine the file was not illegal, the ethics of the act are questionable. Far more important and highly problematic, however, is the fact that some of the documents in this file were extracted from those which the Ehtesab Cell had earlier provided to Switzerland. Should some or all of these documents be forged, as Benazir Bhutto claims, the validity of the cases in both Pakistan and Switzerland is brought into serious question.



Saw no evil, did no evil: Bhutto claims innocence

Evidently then, there are very serious flaws in both the Swiss and Pakistani arguments. How are the Swiss investigating authorities relying on documents with highly suspect antecedents? How can a Pakistani court send a representative to "authenticate" documents from "originals" that are of suspect origin themselves? In short, there appears to be a process of cross-validation going on by both investigating parties on the basis of possibly dubious documents supplied by one party to the other.

These arguments have also been presented in a Swiss daily, *Neue Zuercher Zeitung*. To date, the relevant article has not been contradicted by any of the Swiss authorities involved.

The silence of the Swiss authorities in this regard is explained by the attempts to improve Switzerland's image, nationally and internationally. In order to overcome its image as a safe haven for dirty money, Switzerland has started moving its judiciary quickly and efficiently against any presumed culprit.

Marcos, Duvalier, Pinochet and Mobutu are only some of the more famous names in this context.

Swiss voters also expect their government to take steps to change the current international perception. The Swiss government is taking public opinion seriously, as federal and local elections have shown that voters do indeed reward politicians who promise to deal with this problem. It thus makes good sense for the Swiss authorities to quickly and openly grant legal assistance to Pakistan. In the case of the conviction of Benazir Bhutto, Switzerland could present itself as a reliable partner in the so-called international battle against corruption and money laundering. The Swiss government is taking a well calculated risk by ignoring

proper authentication procedures and other legal niceties. In all probability, the requesting government would only be too happy and the Swiss government would win domestic and

international kudos for punishing the corrupt. Justice, however, suffers in the process.

The Pakistani authorities have preempted the Swiss in this instance. Benazir Bhutto and Asif Ali Zardari have been convicted in Pakistan even before the legal assistance process in Switzerland has been finalised. This, however, only lends credence to the contention that the Pakistan government

had no intention of waiting for the completion of the process. Rather, their priority was to get a quick local conviction, based on incomplete and dubious material from Switzerland. ■

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