

Thursday, August 06, 2009

Victory for people of the law in Pakistan

◆Drones, enlightened judges exist today in Jekyll and Hyde form in the country

By Chibli Mallat

Daily Star staff



On July 31, 2009, the Pakistan Supreme Court excerpted on this page formally restored the rule of law to the country by considering null and void decisions and appointments of former military dictator Parvez Musharraf. While the decision is unprecedented, it is the judicial jewel in the crown of an effective, non-violent, dogged struggle of Pakistan's "people of the law."

In a fight carried out for over 10 years, lawyers under the leadership of Aitzaz Ahmad, and judges under the leadership of Chief Justice Iftikhar Choudhury, who was dismissed in 2007 then put under house arrest, stood up to the militarization of the political leadership. Militarization continues to date in the shape of the combined lethal hold of Pakistan's army and its Inter-Services Intelligence (ISI), the

murky agency at the root of both Pakistan and Afghanistan's extremist Talibans. The "people of the law" continue to be ignored by Western Realpolitik in Pakistan, while official US figures put at \$10 billion direct aid to the Pakistani Army and intelligence services over the past decade.

It takes far less money, though far more courage and wisdom, to support Pakistan's people of the law. With the signal decision of the Supreme Court, the people stand on a collision course with lawlessness in several parts of the country.

In the North West frontier territories, and along the full Pakistan-Afghanistan border, a ruthless civil war is taking hold. Civil war is the exact antithesis of a state ruled by law, and lawlessness in Pakistan is increasingly epitomized by the systematic use of killing machines known as drones in insurgent parts of the country.

In an interview last month, also excerpted on this page, senior British judge Lord Bingham of Cornhill drew the world's attention to the grave phenomenon of killing by drones, "so cruel as to be beyond the pale of human tolerance."

The use of drones has greatly developed in Pakistan and Afghanistan by US forces, following a pattern recognizable in Gaza and the West Bank in the past decade.

Unmanned drones, when compared to air raids by traditional planes or long-term artillery or Tomahawk missiles, may not appear particularly outrageous. In warfare, it is death delivered by air for Western powers who have long-mastered the air to prevail over their enemies.

And yet that use of drones features a frightening novelty of the use of force in the world. In part, one can imagine in a decade or so present or future foes retaliating with drones against Western political figures holding a rally in a stadium or a town hall. The technology does not appear particularly complicated. Drones are already becoming synonymous with the euphemistically sinister "collateral damage." Bruce Riedel, a US national security specialist, wrote last week that drones typically kill 10 civilians for each targeted victim. Even more tragically, behind drones is a decision to take a person's life by remote control, outside any judicial process. Who takes the decision and under what authority? In practice, the scheme is frighteningly simple: some obscure informant tells a foreign intelligence contact of the presence of an alleged enemy in a particular remote location. The relay passes the information on to some regional headquarter unit, which decides, in "real time," to take the target out by sending a teleguided miniature plane full of explosives. The informant may be ill-advised, or corrupt, often he's settling scores. The information could be totally wrong. The relay is typically a young intelligence field officer, with haphazard understanding of the Pakistani scene. The unit to whom the information is relayed has a list of "bad" guys and its commander has a few minutes, at best a few hours, to issue the death warrant. This is extrajudicial execution in pure form in an essentially domestic context, and prevents the exercise of any effort to arrest the person targeted. It is a remote shoot to kill policy.

The systematic use of drones in Pakistan should force us to pause. In the first place, what is the Obama administration doing in Pakistan and Afghanistan that is different from its harsh criticism of the Iraq war? Those in the United States and elsewhere who have supported candidate Obama in his attempt to disentangle their country from the Iraq swamps are befuddled. The amount of violence in the "Af-Pak theater of war" has increased several fold since Obama took over, as has the toll on US and other troops.

A parenthesis on Afghanistan is compelling: how could America allow the country it freed from Taliban rule in 2001 into the political deadlock resulting from of the current president running again despite his catastrophic political

performance, in a highly questionable race where he parades flanked by two of the worst warlords in the country as vice presidential candidates? This, after having dismissed his attorney general when he found out that he would be running for the presidency? Hamid Karzai has betrayed all hopes vested in him since 2001. The Obama policy-makers should awake from their lethargy and prevent his re-election going forward.

Thanks to its people of the law, the Pakistan situation is more hopeful, where the Supreme Court has led the way in restoring the pride of the country in its Constitution, and allowed the signal success for Pakistanis reclaiming their country from military dictators rightly called in the decision "usurpers" and "adventurers." There's a lesson for all of us in the Middle East with our military presidents. It is also a lesson of democracy for policy-makers in the West. Whether Musharraf is brought to account for dictatorship, a crime which deserves to become universally tried, or whether he is forced into exile, the people of the law in Pakistan have registered a rare victory in the Middle East.

Drones and forceful, enlightened judges, coexist today in Jekyll-and-Hyde form in Pakistan. The choice should not be difficult. Indeed, the Pakistan Supreme Court has long shown a remarkable power to tread into difficult political thickets marred by violence and factional interests, even developing a suo moto action, where it chooses to intervene for the sake of the law. In the case of the increased use of drones, no suo moto action is needed. There is no dearth of innocent victims, direct and "collateral," of this new, cruel manifestation of extra-judicial killing. It would be an important test for Pakistan, and the world of law, to see victims of the drones and their families test their use before Iftikhar Muhammad.

Chibli Mallat is *The Daily Star* law editor.