

APCEL News
Advisory and Executive Committees

Highlights: July – Dec 2008

Advisory Committee Members

Tommy Koh (co- chair)

- 17 October 2008, gave a talk to the MEWR family, at their regular gathering called "MEWR Sling" (ie, "Sharing and Learning Session"): topic, "Singapore and the Environment".
- 21 October 2008, on the occasion of the President's Award for the Environment's ceremony, gave a speech to launch a new book by MEWR, with Tan Yong Soon as the lead writer, entitled "Clean, Green and Blue: Singapore's Journey Towards Environmental and Water Sustainability".
See <http://app.mewr.gov.sg/web/Contents/Contents.aspx?ContId=1254>

Parvez Hassan (co-chair)

Presented a paper "The Role of Lawyers in Protecting the Rule of Law in Pakistan" at the ABA Forum, July 2008, Vienna (see Appendix 1).

NA Robinson

Keynote speaker at the 9th Global Conference on Environmental Taxation (GCET), 6-7 November 2008, Concorde Hotel, Singapore (organized by APCEL, see below) paper entitled "Melting Down Financial 'Investment' Markets: Hedges Against Wider Market Collapse."

A. APCEL's activities and those of its members

1. APCEL-SAL Seminar on "Warming Up to Climate Change – Opportunities for Legal Practice" on Tuesday, 1 July 2008, Mediation Chamber 1, Level 2, Supreme Court Building. The speaker was Ms Susan de Silva, founding member of Messrs Alban Tay, Mahtani and de Silva. The seminar was chaired by Assoc Prof Lye Lin Heng, who gave an overview of Singapore's environmental laws and challenges. See <http://law.nus.edu.sg/apcel/activities/Registrationform20080701.pdf>

2. Report on Visit of Delegation from Vietnam, 2 – 4 July 2008

APCEL facilitated a visit of government officials from Vietnam, who were in Singapore to study Singapore's environmental taxation. Organised by Assoc Prof Lye Lin Heng, the delegation of 10 officials, mostly from the Ministry of Finance, Vietnam, were led by Dr VU Van Truong, Director-General, Tax Policy Department, Ministry of Finance, Vietnam. They were accompanied by Mr Michael A. Mehling, President, Ecologic Institute, Washington, D.C.

On the morning of 2 July, the delegation visited the Ministry of Finance and were briefed by officials from the Ministry, on the work of the Ministry, with particular emphasis on the current laws and policies in regard to environmental taxation. A private discussion was held in the afternoon, on cooperation between the two agencies.

The next morning, the delegation visited the Ministry of Environment and Water Resources where they were briefed on the work of the MEWR and its role in the design and implementation of tax policy in relation to the environment. The delegation visited the Housing and Development Board in the afternoon, at HDB hub, where they were briefed on Singapore's public housing, and viewed the HDB Corporate show "The World of HDB." They also visited the HDB Gallery and the show flats.

A seminar was held on the morning of 4th July, at the Law School, National University of Singapore. A/P Lye gave an overview of Singapore's environmental laws, with special emphasis on environmental taxation. The afternoon was spent at the Land Transport Authority, where they were briefed by officials from LTA on Singapore's transport policies, and innovative approaches to resolving road congestion. Members also toured the Land Transport Gallery. Thereafter, the delegation left for the Philippines.

3. APCEL organized the 9th Global Conference on Environmental Taxation, 6-7 November 2008: <http://law.nus.edu.sg/apcel/conference/gcet/index.html>

Prof Koh Kheng Lian, Assoc Prof Lye Lin Heng and Dr Asanga Gunawana served as resource persons in the above conference, which was co-hosted by the Singapore Academy of Law; and supported by the Centre on Asia and Globalisation at the Lee Kuan Yew School of Public Policy, NUS; the Association of Chartered Certified Accountants in Singapore (ACCA); the Inland Revenue Authority of Singapore (IRAS); the IUCN Academy of Environmental Law; the Environmental Tax Policy Institute, Vermont Law School, USA; the Department of Business Law, Macquarie University, Sydney, Australia; the Department of Accounting at Cleveland State University, USA; and the International Tax and Investment Centre (ITIC), Washington, DC, USA.

Prof Koh and Assoc Prof Lye chaired a number of plenary sessions.

Assoc Prof Lye presented a paper at the Plenary session, entitled: "Environmental Taxation in the Management of Transportation in Singapore". _

The conference was a great success – it was attended by over 140 participants from 25 countries.

4. Environmental Management Executive Programme for the National Parks Board, Board, 14 August 2008, Singapore Botanic Gardens

The following APCEL members served as resource persons and spoke on the topics mentioned below:

- * Prof KL Koh ("Environmental Law – Focus on the ASEAN Region"),
- * Assoc Prof LH Lye ("Introduction to Law", "Introduction to Environmental Law" and "Singapore's Law to Protect the Natural Environment") and
- * Asst Prof Lim Lei Theng ("Conflict Management and Resolution")

5. Updated APCEL Brochure

The APCEL brochure was updated to incorporate new members and activities (see Appendix 2).

6. Appointment of New APCEL Associate Member, Tan Kai Liang.

B. APCEL members' activities

Koh Kheng Lian

- World Justice Forum 2008, 2-5 July 2008, Vienna, Austria

Prof KL Koh presented a paper entitled "Calibrating the Doctrine of Sovereignty and the Principle of Non-Interference of Domestic Affairs: ASEAN and the World", Panel session at the World Justice Forum

- EROPA Seminar 2008: Governance in a Triptych: Environment, Migration, Peace and Order, 23 - 25 October 2008, Manila

Prof KL Koh presented a paper "Towards an Effective ASEAN Environmental Governance for Sustainable Development?"

- Participated at the conference, Enhancing FLEG (Forest Law Enforcement and Governance) in Southeast Asia & the Pacific: Regional Capacity Building Workshop for NGOs, 11-14 November 2008, Juldis Hotel, Khao Yai, Thailand

- Attended workshop on International Merbau Workshop: Sustainable Management of Merbau (*Intsia spp.*) for Trade, 17-18 November 2008, YMCA, Singapore
- Book review article: Governance, Politics and the Environment: A Singapore Study. K. L. Koh. pp. 171-173 - <http://rmbn.nus.edu.sg/nis/bulletin2008.php>
- Contributed an article, "Singapore" , in *2008 Top News on the Environment in Asia* (Institute of Global Environmental Strategies, Japan: 2008) accepted for publication.

Lye Lin Heng

Publications

"Singapore" in *International Encyclopaedia of Laws*, pp 1- 128 with Index, Kluwer Law International Law Series: 2008)

- "A Fine City in a Garden – Environmental Law and Governance in Singapore", in *Singapore Journal of Legal Studies*, pp 68 – 117 (2008)
- "Nature Conservation Laws - The Legal Protection of Flora and Fauna in Singapore", Chapter 2 in *The Singapore Red Data Book*, Nature Society Singapore, 2008, pp. 5-13.

Conferences & Workshops

- Presented 2 seminars on "Pollution Laws in Singapore" & "Overview to Environmental Law - International, Regional and National Contexts" at the *MEM Executive Programme for Senior PUB Officials* (25-26 Feb 2008, NUS School of Design and Environment, Singapore)
- Presented paper entitled "Environmental Law, Governance and Management - Innovative Approaches from Singapore" at *Seminar for Staff and Students* (5 Mar 2008, Pace University School of Law, New York, United States)
- Taught a full day workshop on "Environmental, Health and Safety Laws in Singapore" *Regional Institute of Environmental Technology - Workshop on EHS* (7 May 2008, Copthorne Hotel, Singapore)
- Presented seminar entitled "Environmental Taxation in Singapore" to delegation of senior officials from Vietnam's Ministry of Finance (4 July 2008, NUS Law Faculty).
- Presented 3 seminars "Introduction to Law", "Introduction to Environmental Law" and "Singapore's Law to Protect the Natural Environment" at workshop on

Environmental Law & Conflict Management for officers from the National Parks Board, organized by the NUS MSc (Env Mgt) Program with APCEL (14 August 2008, Botanic Gardens, Singapore).

- 9th Global Conference on Environmental Taxation, *Environmental Taxation and Challenges of the Urban Environment: Exchange of Experiences between Developed and Developing Countries*, 6-7 November 2008, Copthorne Hotel, Singapore 6-7 November, Singapore
 - (a) Chaired Plenary Session I - “Environmental Taxation and the Urban Environment”;
 - (b) Chaired Panel 10 – “Transport & Congestion Management II” and
 - (c) Presented a paper “Environmental Taxation in the Management of Transportation in Singapore” at Plenary Session II on The Use of Taxation in Transportation Management

- 6th Annual Colloquium of the IUCN Academy of Environmental Law - Poverty Alleviation and Environmental Protection, Metropolitan Autonomous University, Mexico City, 10-15 November 2008
 - Presented a paper "Public Housing in Singapore –Transforming the Environment – the HDB Story" at the Plenary session on *The Challenges of Poverty Alleviation and Environmental Protection in the Urban Context*, on 13 November 2008

 - Chaired a Panel session on *Analytical Understanding of Poverty and the Impacts of Poverty on Human Populations*, on 10 November 2008.

 - Attended a meeting of the Governing Board, IUCN Academy of Environmental Law, as a member of the Board, for Asia, 9 November 2008..

 - Co-chaired 2 meetings of the Teaching and Capacity-Building Committee of the IUCN Academy of Environmental Law, 14 and 15 November 2008.

C. APCEL’s Associate Members

Asanga Gunawansa

- One of three Panellists at the “360 - Food and Energy Crisis” live discussion programme conducted by Channel News Asia on 19 June 2008.

- Presented a talk entitled "Climate Change, Energy and the Environment" for senior govt. officials from ASEAN. The programme is conducted under the joint auspices of MFA's Singapore Co-operation Programme (SCP) and JICA on 7 August 2008

- Presented a paper titled “Beyond Bali: Legislative and Policy Initiatives for GHG Reductions in the Energy and Construction Sectors” at the 14th International Sustainable Development Research Conference held in New Delhi India from 20 – 23 September 2008.
- Presented a paper titled “A Cross-country Review of Key Climate Change Legislations and Policies and the Sustainability Lessons for Singapore's Construction Industry” at the 14th International Sustainable Development Research Conference held in New Delhi India from 20 – 23 September 2008.
- Chaired the session entitled “Climate Change Policies and their Role in Sustainable Development” at the 14th International Sustainable Development Research Conference held in New Delhi India from 20 – 23 September 2008.
- Chaired the session entitled “A Phoenix Arising, or Sustainable Development Hijacked? Critical perspectives on the ‘business case’ for sustainable development” at the 14th International Sustainable Development Research Conference held in New Delhi India from 20-23 September 2008.
- Chaired the session entitled "Environmental Taxation and Construction Industry" at the 9th Global Environmental Taxation Conference held in Singapore on 6th and 7th November 2008.

Joseph Chun

- Publication: "Wildlife Law in Singapore: Protecting Wildlife in the "Garden City", in Raj Panjwani, (ed), Wildlife Law: a Global Perspective (USA: ABA Publishing, 2008), pp. 201-256 .

Jolene Lin

- Publication: 'Making Markets Work: A Review of CDM Performance and the Need for Reform' Charlotte Streck & Jolene Lin (2008) 19(2) European Journal of International Law 409-442.
- Report: 'The Legal, Regulatory and Institutional Measures required for Adaptation to the Impacts of Climate Change in the Asia Pacific region', the Centre of Environmental Research, Training and Information, Sri Lanka, 2008.
- Publication: 'Singapore and Renewable Energies: Carving Its Unique Role' in "Desalacion Agua con Energia Renovables" (National Autonomous University of Mexico Press, 2008).

- Conference paper: "Supporting Adaptation in Developing Countries at the National and Global Levels" presented at "Climate Law in Developing Countries post-2012: North and South Perspectives", September 26-28, 2008, at the Faculty of Law, University of Ottawa, hosted by the IUCN Academy of Environmental Law.
- Conference paper: "China's Environmental Policy Toolbox: A Legal Analysis" at 5th Asian Law Institute Conference, 22 and 23 May 2008, Singapore.
- Organized the "International Capacity-building Workshop of Environmental Information Disclosure", hosted by the University of Hong Kong and Greenpeace International, September 6-7, 2008, Hong Kong.

31 Dec 2008

The Role of Lawyers in Protecting the Rule of Law in Pakistan

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**Paper presented at the Human Rights Panel
chaired by the Honorable Justice Ruth Bader Ginsburg of the U.S. Supreme Court
at the World Justice Forum sponsored by the American Bar Association and
held in Vienna, Austria, on 2-5 July 2008**

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The Role of Lawyers in Protecting the Rule of Law in Pakistan*

Dr. Parvez Hassan**

The only thing worse than injustice is tolerating injustice

A. THE JUDICIAL CRISIS

During 2007-08, Pakistan experienced a most brutal assault on the independence of its judiciary which is the vanguard of the rule of law. On 9 March 2007, General Pervez Musharraf and five (5) of his Generals failed to intimidate the Chief Justice of Pakistan, the country's highest judicial officer, to resign. The Chief Justice was immediately suspended and removed from his office to be followed by the disgrace and humiliation of his arrest and incommunicado detention, the disconnection of his telephone and TV facilities and the forklifted removal of his official transport. His children suffered similar arrest and detention and were denied the opportunity to attend school. The nation, traumatized by this injustice and highhandedness, was relieved when, on 20 July 2007, over three (3) months later, the Supreme Court of Pakistan, acting through its full Bench of thirteen (13) Judges, restored and reinstated the Chief Justice of Pakistan in full view of the unconstitutionality and illegality of his suspension and removal.

The country's jubilation over the triumph of rule of law was, however, shortlived. On 3 November 2007, an unrepentant General Musharraf, expecting an unfavourable ruling by the Supreme Court in a constitutional petition which had challenged General Musharraf's eligibility

* Remarks made at the Human Rights Panel chaired by the Honorable Justice Ruth Bader Ginsburg of the U.S. Supreme Court at the World Justice Forum, sponsored by the American Bar Association, held in Vienna, Austria, on 2-5 July 2008. These remarks have been developed from earlier remarks on the subject by the author in:

- (1) Environmental Protection, Rule of Law and the Judicial Crisis in Pakistan, a paper presented at the 5th International Congress on Environmental Law held in Rio de Janeiro, Brazil, on 22-24 May 2007, and published in Daibert, A., DIREITO AMBIENTAL COMPARADO, 67-82 (2008), 10 Asia Pacific Journal of Environmental Law 167-181 (Issues 3 and 4, 2007), and in 35 Pakistan Law Journal 278-292 (2007).
- (2) Rule of Law and the Independence of Judiciary: The Judicial Crisis in Pakistan, 2007-2008, a paper presented at the 6th International Congress on Environmental Law held in Rio de Janeiro, Brazil, on 27-30 May 2008.

** B.A (Punjab); L.L.B (Punjab), L.L.M (Yale); S.J.D (Harvard); Senior Partner, Hassan & Hassan (Advocates), Lahore, Pakistan; President, Pakistan Environmental Law Association.

to be elected as President of the country for the following five (5) years, struck again – and with greater venom and lesser respect and regard for his constitutional responsibilities. He imposed Martial Law in the garb of an emergency and virtually sacked over sixty (60) Judges of the Supreme Court of Pakistan and of the four (4) provincial High Courts representing over 2/3 of about hundred (100) Judges of these superior courts. The Chief Justice of Pakistan who because of his earlier suspension and perceived conflict of interest in respect of General Musharraf, had recused himself from being a part of the Bench that was hearing the eligibility petition against General Musharraf, was among the sacked Judges. As he could not take these measures under the Constitution, General Musharraf suspended the Constitution and proceeded with his actions as the Chief of Army Staff, that is as the serving head of the Pakistan Army.

That *Might is Right* was further sought to be demonstrated by the arrest and incommunicado detention of the sacked Judges. The *de jure* superior judiciary of the country was sacked and silenced thereby eliminating an opportunity of judicial redress. General Musharraf, unashamedly, next proceeded to pack the Supreme Court and the High Courts with pliable Judges on their taking a new oath (of loyalty to General Musharraf's action) under a Provisional Constitution Order, 2007 (the "PCO").

It is a part of recent U.S. history to have witnessed outrage at the sacking of the Independent Special Prosecutor Archibald Cox by President Nixon during the Watergate crisis. I recall that the sacking was labeled by the U.S. media as the "Saturday Night Massacre" to reflect its week-end timing. But to draw parallels to the enormity of what happened in Pakistan, consider the outrage if the President of the United States had proceeded to sack 6 of the 9 Judges of the Supreme Court of the U.S., and 60% Judges of all the Courts of Appeal in the U.S. And, to enforce his orders, the U.S. President had called in the marines and the army to arrest and detain all the removed Judges and to hold them incommunicado without any remedies, constitutional or legal, for challenging their detention. This, in effect, is what happened in Pakistan in November 2007.¹

1. This analogy was drawn by Yasmeen Hassan in her acceptance speech in New York City on 30 January 2008 receiving an award, on behalf of the detained Chief Justice of Pakistan, from the New York State Bar Association.

This paper overviews Pakistan's reactions to the injustices resulting from General Musharraf's assaults on the judiciary in March 2007 and November 2007. It will show that the country refused to accept and tolerate the arbitrary, unconstitutional, illegal and immoral acts of a military dictator. It will highlight the leadership of the legal community in stirring, nurturing and capturing the imagination and support of the people of Pakistan and particularly its civil society and media to resist and fight the assault on the rule of law. It will also acknowledge, in gratitude, the important support extended to the lawyers' struggle in Pakistan by lawyers, bar associations and legal institutions across the globe.

Basically, this is a continuing story of the heroism, struggle and sacrifices of the legal community of Pakistan, a struggle that has involved police brutality, teargas, physical beatings, arrest, detention, humiliation, solitary confinement, torture and even deaths.

B. JUDICIAL ACTIVISM AS AN EMERGING THREAT TO MILITARY RULE

The judiciary in Pakistan has, in the past, been generally considered pliable (or helpless) as it has justified and legitimized each coup and military intervention in spite of a clear and specific Constitutional provision, since 1973, against high treason for abrogating or subverting the Constitution. The 1999 coup of General Musharraf was, similarly, approved by the Supreme Court. When General Musharraf saw the possibility of some challenge by certain judges, he removed them through a new constitutional oath of allegiance that such independent judges refused to take.

The sacked Chief Justice of Pakistan was a part of the Supreme Court that validated the coup of General Musharraf. He also took the new constitutional oath prescribed by General Musharraf. That seemed to be the false comfort in his appointment as the Chief Justice in 2005.

But, once appointed Chief Justice, Mr. Iftikhar Muhammad Chaudhry, pursued his judicial duties to the increasing discomfort of the Government. In 2006, his Court, led by him, struck down the privatization of Pakistan Steel Mills, an important initiative of the Musharraf Government. His Court started investigations of several persons who were "missing" and who were allegedly abducted by the secret service agencies and whose actions are generally not questioned by the judiciary. The Chief Justice also moved suo moto against human rights violations particularly

against women, sexual offences and gender exploitation to the great annoyance and humiliation of arrogant and uncaring public officials.

The Shehla Zia vs. WAPDA² case, decided by the Supreme Court of Pakistan in 1994, had pioneeringly held that the constitutionally-protected fundamental right to life included the right to a clean and healthy environment. I had the privilege of arguing this case before the Supreme Court. Fortunately, because of the value of precedent under the Constitution, Shehla Zia has spawned environmental suits before the courts and tribunals in Pakistan³.

The Chief Justice, using Shehla Zia some times, intervened repeatedly to prevent ambitious development schemes of the Government (New Murree Development, Murree) and private developers (Islamabad Chalets, Mini Golf, Islamabad) which environmental groups had opposed. He also directed pollution abatement measures in respect of industrial activities around the nation's capital in Islamabad. What appeared particularly ominous to the Government was the infectious effect of this activism on the subordinate judiciary.

The judicial activism of the Chief Justice – and his increasing challenges to Governmental actions – had led to his removal by General Musharraf in March 2007. But when, four (4) days after his arrest, on 13 March 2007, the Chief Justice was taken for his appearance before the Supreme Judicial Council, a constitutional body that oversees the removal of judges of the superior courts, he emerged from his detention to find that thousands of lawyers from all over Pakistan had descended in Islamabad to show their admiration and gratitude for his courage and defiance against the military rulers. The Government was rattled by this unforeseen spontaneous support of the legal community. It panicked. In the highly charged emotional outburst of the adulating crowds that tried to shower flowers and devotion on the highest judicial officer of the land, the Governmental police and para-military forces physically manhandled the Chief Justice as he walked defiantly to defend himself before the Supreme Judicial Council in the Supreme Court. And, all this was watched live in millions of homes all over Pakistan carried dutifully and with almost a missionary zeal by our blossoming electronic media. The maltreatment of the Chief Justice outraged the conscience first of the legal community and the bar associations all

2. PLD 1994 Supreme Court 693.

3. Dr. Parvez Hassan, Shehla Zia vs WAPDA: Ten Years Later, PLD 2005 Journal 48, and also published in International Environmental Law Committee Newsletter of the American Bar Association's Section on Environment, Energy and Resources 13-19 May 2005. See also Ben Boer, Koh Kheng-Lian, C.O. Okidi and Nicholas A. Robinson, "Training the Trainers Program", (1999) 4 (2) Asia Pacific Journal of Environmental Law 175, remarks by C.O. Okidi, 179, at 181.

over Pakistan and spread to all sections of civil society resulting in a mass protest movement against General Pervez Musharraf.

Although the matter of the removal of the Chief Justice was referred to the Supreme Judicial Council, the Supreme Court itself took on the entire issue and, on 20 July 2007, it announced its historic decision to reinstate the Chief Justice of Pakistan.

With the reinstatement of the Chief Justice, we began to look forward to the upcoming general elections, due after five (5) years, at the end of 2007. But General Pervez Musharraf provided fresh challenges to Pakistan's judiciary and, particularly, its Supreme Court. He declared his intention to seek his re-election as President for another five (5) year term. But some fundamental constitutional issues posed the following challenges:

1. A serving Military General which Pervez Musharraf had continued to be while President was ineligible under the Constitution to seek re-election as President although he had engineered his election for the first term under a Constitutional amendment. General Musharraf relinquished his military rank and retired from the Army in anticipation of this challenge but the Constitution also bars a retiring Government servant, which includes an Army General, as being ineligible for a constitutional office for two (2) years after retirement.
2. The next challenge to General Musharraf was the view of several jurists that the re-election for the following five (5) years can only be by the Parliament that was to be elected at the end of 2007. The existing Parliament had been elected in 2002 in elections in which General Musharraf had rigged the success of his supporters. As a "lame duck" Parliament, it could not elect, in its final days, a President for the following five (5) years. General Musharraf, on the other hand, determined as he was, forced his election for five (5) years by the pliable Parliament that was completing its term by the end of 2007.

The above challenges inevitably came up before the Supreme Court of Pakistan in its constitutional jurisdiction. The Chief Justice, because of his earlier removal and reinstatement and his controversy with General Musharraf, recused himself from the hearing of cases against General Musharraf and constituted a large bench to hear these cases. As the cases were progressing before the Supreme Court, the Judges raised several issues during the hearings to the

discomfort of General Musharraf's legal team. The general expectation was that the Supreme Court was about to rule against General Musharraf.

General Musharraf struck, on 3 November 2007, with a declaration of emergency (read Martial Law), suspension of the Constitution and the sacking of over sixty (60) Judges of the Supreme Court of Pakistan and the four (4) Provincial High Courts. These acts were held unconstitutional and declared void by the Supreme Court hours before the sacked Judges were physically removed. General Musharraf ordered that the sacked Judges be arrested and held incommunicado. The sacked Judges were replaced by Musharraf loyalists and the reconstituted Supreme Court, on 19 November 2007, dismissed the challenges to Musharraf's re-election as President.

The bar associations all over Pakistan exploded with anger over General Musharraf's actions against the judiciary which he himself admitted, in an interview with BBC, were unconstitutional. The resentment against General Musharraf has intensified and Pakistan seems all set for a popular movement for his removal. The Long March to Islamabad on 11-13 June 2008, joined by hundreds of thousands of political activists led by the legal community, was the apex demonstration of the vitality and success of the lawyers movement for the reinstatement of the deposed Judges.

C. RULE OF LAW IN PAKISTAN

Sixty (60) years after its founding and following three Constitutions (1956, 1962 and 1973) and several mutilations and revivals (Provisional Constitution Orders and Revival of Constitution Orders) by military rulers, the Rule of Law remains elusive in Pakistan and a dream more distant than it appeared in 1947. Rule of Law is founded and flourishes on the supremacy of law facilitated by a system of governance that is democratic, participative and transparent and, importantly, supported by a strong and independent judiciary.

Each of the Constitutions of Pakistan provided an unequivocal vision for this country: a system of governance dedicated to social justice, fundamental rights, inter-provincial co-ordination and harmony and anchored on principles of federalism and on separation of powers between the

Executive, Legislature and the Judiciary. A specific and separate role was visualized and provided for each of these important organs of the State. The 1973 Constitution, presently in force, reinforces this vision with the helpful interpretation by our superior judiciary.

The landmark case, Al-Jehad Trust vs. Federation of Pakistan⁴, explains the doctrine of separation of powers in the following words:

... the Legislature has to legislate, the Executive has to execute laws and the Judiciary has to interpret the Constitution and laws. The success of the system of governance can be guaranteed and achieved only when these pillars of the State exercise their powers and authority within their limits without transgressing into the field of the others by acting in the spirit of harmony, cooperation and coordination.⁵

But it was the Judiciary which was made responsible for checking the transgressions of the Constitutional provisions by either the Executive or the Legislature. As commented by Mr. Ajmal Mian, Chief Justice of the Sindh High Court, as he then was (and later to be the Chief Justice of Pakistan):

I may observe that 1973 Constitution was framed with consensus of all the political parties and the members of the National Assembly. It contemplated trichotomy of power between the three organs of the State, namely, the legislature, the executive and the judiciary. Each organ of the State was to function/operate within the bounds specified in the Constitution. The judiciary was assigned very important role to play, namely, to act as the Watch Dog and to ensure that none of organs or the Government functionaries acts in violation of any of the provisions of the Constitution or of any other law. Since the above role entrusted to the judiciary under the Constitution was very delicate, it was envisaged that the judiciary would be independent and separate from the other organs of the State.⁶

This important “watch dog” role is, crucially, enabled by provisions in the Constitution that secure the independence of the judiciary.

But Chief Justice Hamoodur Rahman, speaking for the Supreme Court of Pakistan in State vs. Ziaur Rahman⁷, explained that the power of judicial review given to the superior courts under the

4. PLD 1996 Supreme Court 324.

5. Id. at 399.

6. Sharaf Faridi vs. Federation of Pakistan, PLD 1989 Karachi 404, at 427–28.

7. PLD 1973 Supreme Court 49.

Constitution is not to be construed as the supremacy of the judiciary over the Executive or the Legislature:

In exercising this power [of review], the judiciary claims no supremacy over other organs of the Government but acts only as the administrator of the public will. Even when it declares a legislative measure unconstitutional and void, it does not do so, because, the judicial power is superior in degree or dignity to the legislative power; but because the Constitution has vested it with the power to declare what the law is in the cases which come before it. It thus merely enforces the Constitution as a paramount law whenever a legislative enactment comes into conflict with it because, it is its duty to see that the Constitution prevails. It is only when the Legislature fails to keep within its own Constitutional limits, the judiciary steps in to enforce compliance with the Constitution.⁸

The Objectives Resolution, the preamble, Article 2A, and Article 175 of the 1973 Constitution provide for the independence of the judiciary. There are other provisions that support and further such independence. These include the detailed provisions with regard to the composition of superior courts, the qualification and eligibility for appointment of judges, and the conditions of their service. Even the removal of judges is specifically provided through the Supreme Judicial Council under Article 209.

A former Chief Justice of Pakistan, Mr. Saiduzzaman Siddiqui, emphasised the central role of the appointment of judges in the independence of the judiciary in Asad Ali vs. Federation of Pakistan⁹:

Right of access to impartial and independent Courts/Tribunals is a fundamental right of every citizen. The exercise of this right is dependent on the independence of judiciary which can be secured only through appointment of persons of high integrity, repute and competence, strictly in accordance with the procedure prescribed under the Constitution to the high office of the Judges of superior Courts. The selection of a person to the high office of the Chief Justice of Pakistan is a pivotal appointment for maintaining the independence of judiciary and for providing a free and unobstructed access to impartial and independent Courts/Tribunals to the ordinary citizens. Therefore, any deviation from the method prescribed under the Constitution for appointment to the high office of Chief Justice of Pakistan, would give rise to the infringement of the right of a citizen to have

8. Id. at 70.

9. PLD 1998 Supreme Court 161.

free, fair and equal access to an independent and impartial Court/Tribunal, thus violating the rights guaranteed under Articles 9 and 25 of the Constitution.¹⁰

Another former Chief Justice of Pakistan, Mr. Nasim Hasan Shah, summed up the consensus of jurists on the independence of the judiciary:

- (a) that every Judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without improper influences, inducements or pressures, direct or indirect, from any quarter or for any reasons; and
- (b) that the judiciary is independent of the Executive and Legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.¹¹

The matter of the separation of the judiciary and its independence from the executive came up for consideration before the Sindh High Court at Karachi in Sharaf Faridi vs. Federation of Pakistan¹². The Court held in this case that it is incumbent upon the Government, under Articles 175 and 203 of the Constitution, to bifurcate the magistracy into judicial and executive branches and to place the magistracy under the exclusive administrative control of the relevant High Court. The Court also dealt with the matter of the transfer of judges which could be used to victimize independent judges. It held that the transfer of judges from one High Court to another or to the Federal Shariat Court should be with the consent of the judges. The decision of the Sindh High Court was upheld by the Supreme Court of Pakistan in Government of Sindh vs. Sharaf Faridi¹³. The Supreme Court highlighted the need for the financial autonomy of the judiciary as an important element in its meaningful independence.

In Al-Jehad Trust vs. Federation of Pakistan¹⁴, and Asad Ali vs. Federation of Pakistan¹⁵, the Supreme Court further strengthened the independence of the judiciary by making it obligatory for the President to accept appointments to the vacant posts to fill vacancies in the posts of judges in the Supreme Court and High Courts on the recommendations of the Chief Justice

10. Id. at 189

11. Government of Sindh vs. Sharaf Faridi, PLD 1994 Supreme Court 105, at 107.

12. Supra note 6.

13. Supra note 11.

14. Supra note 4.

15. Supra note 9.

unless the President recorded “sound and valid reasons” to the contrary. Similarly, the appointment of the Chief Justice is to be on the basis of seniority except for “concrete and valid reasons”. The Supreme Court also held, in these cases, that the transfer of a judge from a High Court to the Federal Shariat Court, without the consent of the judge, shall be violative of the Constitution. All these safeguards were intended to check political influence being exercised in judicial appointments and transfers.

The classical formulation of the supremacy of the Rule of Law is included in Article 4 of the Constitution:

4. Right of individuals to be dealt with in accordance with law, etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- (c) no person shall be compelled to do that which the law does not require him to do.

It is one of the most valuable virtues of the Constitution that it provides extensively for the powers and functions of the superior judiciary. The power of judicial review and the other wide-ranging powers under Article 199 and Article 184 with respect to fundamental rights have given a broad sweep to the role of the superior courts. A complete Chapter I in Part II deals with Fundamental Rights that are enforceable by the High Courts under Article 199(1)(c) and by the Supreme Court when the Fundamental Rights present questions of public importance (Article 184). These rights cannot be abridged (Article 199(2)).

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 had set a “common standard of achievement” for the global community and had

catalysed the formulation and development of the international protection of human rights. Included in this catalogue of human rights were rights to life, liberty, security, freedom from arbitrary arrest and detention, right to a fair trial, freedom of association, religion, and expression. These declaratory principles were concretized in treaty obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966.

In the meantime, at regional levels, the European Commission and the European Court of Human Rights had developed extensive jurisprudence, under the European Convention of Human Rights, to internationalize the protection of human rights. Similarly, the Inter American Commission and the Inter American Court of Human Rights had promoted the Inter American Convention of Human Rights across national boundaries in the region.

Human Rights had, therefore, come a long way and, when the National Assembly of Pakistan undertook the drafting of the Constitution in the early 1970's, it was inevitable that it could not be oblivious to the international trends towards strengthening the Rule of Law in domestic regimes. Influenced by these developments, at the regional and international level and, undoubtedly, by national experiences, the 1973 Constitution made a commendable commitment to the declaration and protection of a broad range of fundamental rights covering the right to life, safeguards against arrest and detention, right to dignity, freedom of movement, freedom of association and assembly, freedom of trade, business, or profession, freedom of speech and freedom to profess religion, and the right to acquire, hold and dispose of property. Equality of citizens and provisions on non discrimination are also included in the Fundamental Rights.

For individuals and members of Pakistan's civil society, the superior courts have been a major bulwark against encroachments of their fundamental rights. The country's law reports are replete with examples when the judiciary used the Constitutional provisions to prevent oppression, usurpation and injustices. Particularly commendable has been the activist suo moto interventions of its superior courts, in public interest litigation¹⁶, to protect the poor, voiceless and

16. See, generally, Dr. Parvez Hassan, Securing Environmental Rights through Public Interest Litigation in South Asia, presented at the Global Judges Symposium on Sustainable Development and the Role of Law, at Johannesburg, South Africa, 18-20 August 2002, organized by the United Nations Environment Program, and with

marginalized sections of our communities, or address pressing social issues such as environmental degradation, malpractices in the educational system, bonded labour, child abuse, and gender exploitation. In many ways, this experience in the protection of Fundamental Rights¹⁷ and the Rule of Law has been the finest hour of Pakistan's judiciary.

But inspite of these welcome gains introduced by the Constitutional framework on Fundamental Rights and the equally salutary jurisprudential interpretations and rulings of Pakistan's superior courts, the recent actions by General Musharraf against the Chief Justice of Pakistan and the other Judges of the superior judiciary, in an illegal and unconstitutional manner, highlighted the fragility of the Rule of Law in Pakistan.

D. THE MAGIC OF ELECTIONS

On 2 January 2008, Musharraf announced the elections to be held in February 2008 and first tried to exclude the two (2) mainstream political parties, the Pakistan Peoples Party and the Pakistan Muslim League (N), by not allowing its exiled political leaders, Benazir Bhutto and Mian Nawaz Sharif to return to Pakistan. General Musharraf even disobeyed a Supreme Court order, which allowed the return of Mian Nawaz Sharif, by deporting him forcibly in a commando action on his arrival in Islamabad on 10 September 2007. However, international pressure prevailed to later allow the return of the leaders of the Pakistan Peoples Party and the Pakistan Muslim League (N).

Inspite of the massive pre-poll rigging, the results of the election on 18 February 2008, over-whelmed by the tragic assassination of Benazir Bhutto on 27 December 2007, were a rejection of General Musharraf. His sponsored political party suffered a crushing defeat and the Pakistan Peoples Party and the Pakistan Muslim League (N) emerged as the two (2) strong winners in the Parliament. Both these parties had campaigned on an anti-Musharraf platform and

Azim Azfar in 22.3 *Virginia Environmental Law Journal* 216-236 (2004)). See also Nasim Hasan Shah, *Public Interest Litigation as a Means of Social Justice*, PLD 1993 Journal 31.

17. The observance of religious freedoms under our Constitution has been dealt in an earlier article, Dr. Parvez Hassan, *Religious Freedom: A Comparative Analysis of the U.S. and Pakistan Constitutions*, PLD 1987 Journal 157-170.

manifesto. The most popular demand of the people of Pakistan during the elections was the reinstatement of the sacked Judges. The other welcome result was that the rightist parties which had joined to support Musharraf were also rejected and the secular Awami National Party received major support to face the challenges of terrorism and talibanization in the North West Frontier Province (NWFP) adjoining Afghanistan.

As the new elected Government continues to find a way out of the arbitrary, immoral, illegal, and unconstitutional acts, General Musharraf and the establishment and the apparatus that he had put together for the last eight (8) years to prop him up, continue to conspire to defeat the new democratic forces. The popular impression is that the U.S. continues to support General Musharraf as its “indispensable” ally in the war against terror. It is further the popular impression that the U.S. is trying to prevent the restoration of the Chief Justice because of the actions taken by the Chief Justice to inquire into the disappearance of several hundred persons, many of whom are reported to have been handed over to U.S. custody.

Pakistan has been traumatized beginning with the forced ouster of the Chief Justice on 9 March 2007. The reversal of that act by the Supreme Court in July 2007 led to a massive assault in the removal of two thirds (2/3) of the country’s superior judiciary on 3 November 2007. The action of 3 November 2007 became the rallying point for the country in the elections held in February 2008 and the Parliament is seeking to undo that damage. General Musharraf had, on the removal of over sixty (60) Judges, packed the Supreme Court and the High Courts of Pakistan with pliable Judges, many of whom were appointed without regard to the provisions of the Constitution. Post-elections, efforts are underway to restore the removed de jure Judges but the whole issue is now confused by the addition of Musharraf’s handpicked de facto Judges. It is likely that the deposed Judges will all be restored but, in the process, the country will also likely accept the continuation, under a “constitutional package” that is being debated in the Parliament and the country, of General Musharraf’s loyal judges who are being described as PCO Judges, that is, the Judges who took oath under General Musharraf’s Provisional Constitution Order of 3 November 2007.

E. GOLDEN NUGGETS FROM THE LAWYERS MOVEMENT IN PAKISTAN

But let us look at the positive aspects of what has happened in Pakistan in the last fifteen (15) months: these are the nuggets from the Lawyers Movement in Pakistan, 2007-2008:

1. Leadership of Legal Community

The legal community of Pakistan spearheaded the movement against General Musharraf. The lawyers movement in Pakistan has virtually retained its vigour and mobilization for over one (1) year. Regular strikes, boycotts and processions in courts and bar associations all over Pakistan – from the important urban centers to towns with only a handful of lawyers – are commonplace. What explains this endurance?

The rampant unpopularity of General Musharraf appears a relevant factor but, in the final analysis, the grotesque moves by him against first the Chief Justice in March 2007, and, in November 2007, against almost the entire Supreme Court and the four (4) High Courts infuriated, particularly, the community that drinks continually from the fountain of justice.

I want to acknowledge the heroism and the economic sacrifices of the lawyers in the movement for the restoration of the Chief Justice and the other Judges removed by General Musharraf. Many lawyers have boycotted the courts and the Musharraf loyalist PCO Judges as a protest against the unconstitutional reconstitution of the Supreme Court and the High Courts. This means that they have dried up the most important source of their income. And, this has now lasted several months. For a senior lawyer like me, the decision not to appear before the PCO Judges and to return the professional fee for all the pending cases that had not been completed by 3 November 2007 appeared significant but it is dwarfed by the inspirational boycott of thousands of younger lawyers who have had difficulty in feeding their families in this period and yet held to their principled stand.

Professional support Trust Funds, supported by bar associations and philanthropic groups, were set up in some cities to help the needy lawyers but, given the enormity of the sacrifices of the young lawyers, this was merely a drop in the ocean.

The just-concluded Long March to Islamabad in June 2008 was a spectacular success in the mobilization of popular support when “Peoples Power” was demonstrated in support of the ousted judiciary.

In any history of the legal profession in Pakistan, the sacrifices made by the lawyers in facing police brutality, arrests, incommunicado detentions, even solitary confinements, and boycotting court work for such an extended period during 2008-2009 will all represent their finest hour.

But we need to understand why the lawyers in Pakistan are always in the forefront of such national struggles. The decolonization of British India and the resultant independence of India and Pakistan in 1947 is mostly attributed to the valiant leadership and efforts of Mahatama Gandhi, Jawaharlal Nehru and Mohammad Ali Jinnah, all three of whom were lawyers. The legal community was thus identified closely, from the beginning, with nation-building. This was the historical legacy of the creation of the two countries in South Asia.

In Pakistan, particularly, repeated military interventions led to struggles and movements against military dictators. Interestingly, each struggle was, in the mirror of the independence movement against the British, led by the legal community. When the nation has felt helpless against the military might of the usurper, it has invariably looked to the bar associations for leadership. I recall how in 1983, I deputized for the arrested Chairman of the All Pakistan National Lawyers Co-ordination Committee to lead the lawyers movement against General Zia ul Haq¹⁸. Police arrests and brutality were as much a part of that effort as during General Musharraf’s rule.

2. Role of Civil Society

The lawyers could not have done it alone. Civil society in Pakistan comprising activist groups, students, academics, intellectuals, writers, political workers and professional associations thronged to support the lawyers movement adding to its potency. An important constituent of civil society was the poor and the uneducated “common man”. The call for the restoration of the Judges has had a unique resonance in the masses of Pakistan. Although previous movements led by the lawyers against other military usurpers had won public support in the past, this was the first time in Pakistan’s history that the support of civil society was institutionalized through

18. For the author’s articles and speeches during the lawyers’ movement against General Ziaul Haq, see Dr. Parvez Hassan, PERSPECTIVES ON PAKISTAN 47-87 (1992).

regular solidarity meetings in effective co-ordination with the lawyers group. This has given a new face and strength to the struggle for the rule of law and justice in Pakistan.

As has been well commented by Dr. Tariq Hassan in an acceptance speech on receiving an honorary Degree of Doctor of Laws on behalf of the Chief Justice of Pakistan on 10 May 2008 from the Nova Southeastern University, Florida, U.S.A.:

The ordinary citizen of Pakistan often finds himself prevented from accessing justice due to lack of awareness of his rights or due to the exorbitant cost of legal remedies. In an atmosphere such as this, [Chief] Justice Chaudhry's activism, if that is what we may call it, was a breath of fresh air. It infused hope in the hopeless. It allowed people to feel that for once there was a person who cared about their plight and their troubles. It is for this reason alone that in the course of the last fifteen months, people across the length and breadth of Pakistan have thronged to Justice Chaudhry. They have stayed up all night in scorching heat merely to receive him in their cities and have showered him with rose petals upon arrival. And, in a testament to the strength of democratic forces in Pakistan, they have voted in the February 18 election this year, for parties that have promised his return and have guaranteed the independence of judiciary.

3. Vindication of National Pride

A nation that had been humiliated by the arbitrary acts of a military General against the country's Chief Justice and its superior judiciary and its anticipated reversal mostly on the strength of a popular movement is a huge vindication of national pride. A country with a staggering poverty rate of about twenty five percent (25%) of its total population of about 165 million (with about 10% living on less than US\$ 1 a day) has shown its true mettle by prioritizing issues of rule of law to the more appealing economic issues of livelihood, food and housing. If the poor have the ability to transcend their economic survival issues to a higher debate of justice and rule of law, this should be the most encouraging sign of the times for Pakistan.

4. Tribute to Sacked Judges

No popular movement is possible without a hero. The defiance of the Chief Justice in resisting the coercive threats of General Musharraf and his top Generals to resign was unique and assumed mythical status in March 2007. Over sixty (60) Judges of the Supreme Court and the High Courts followed that inspiration to refuse, in November 2007, to take an oath under the Provisional Constitutional Order, 2007 and were, resultantly, sacked by General Musharraf. These Judges

were arrested and detained incommunicado with their families and the children of the Chief Justice were not even allowed to go to school.

This is the first time that the superior judiciary in Pakistan has shown this defiance against the arbitrary actions of a military dictator. And, this unique defiance has inspired and sustained the lawyer's struggle.

5. The Support of Media

The print and electronic media of Pakistan provided immeasurable support to the lawyers and the civil society. Each newspaper and each channel was spending virtually almost all its time and efforts in support of the cause of the lawyers and the civil society. Widely-watched talk shows on practically all the channels dominated national discourse and created an "evil versus good" hype around the treatment of the superior judiciary by a military dictator, motivated by the naked ambition of the dictator to prolong his absolute rule in Pakistan.

6. Global Support

The protesting black coats, the official dress of the legal fraternity in Pakistan, became a familiar sight on CNN and BBC with haunting images of police brutality and savagery. The print media all over the world also covered, to full prominence, the struggle of the lawyers in Pakistan. We were most encouraged by the resultant support that we received, particularly, from lawyers and bar associations in foreign jurisdictions. This became truly a movement of universal solidarity among the legal communities across national boundaries. Nothing would encourage us and liven our hopes more than the sight and news of foreign lawyers marching in solidarity with the movement in Pakistan, or foreign bar associations passing supportive Pakistan-specific resolutions, or foreign universities honouring and decorating the sacked Chief Justice of Pakistan.

The legal community in the U.S. has been particularly effective in mobilizing international public opinion in support of the struggle in Pakistan. Each news of a march in Washington D.C. or New York in support of the "black coats" in Pakistan is headlined in the Pakistan media to the gratitude and encouragement of the protestors in Pakistan. The award of a Medal of Freedom to Pakistan's Chief Justice in November 2007 by the Harvard Law School, of his choice as the Lawyer of the Year 2007 by the U.S. National Law Journal, and the rallies and resolutions of the

American Bar Association, led by President William Neukom, have been particularly appreciated. Equally welcome was an award to the detained Chief Justice received on his behalf by my daughter, Yasmeen Hassan, from the New York State Bar Association.

On a personal note, I want to gratefully acknowledge the tremendous support that I received from my friends all over the world when I was arrested and brutalized by the police in Lahore on 5 November 2007.¹⁹ This was shown on international news channels and reported in the New York Times and other newspapers in the U.S. and U.K. Many friends outside Pakistan reached out to me as well as to their foreign offices and Parliaments to inquire about our safety and to support our cause. In response to these dedicated efforts, Ambassadors serving in Pakistan called on many of us to assess the struggle and movement for the rule of law in Pakistan. These efforts of friends and well-wishers facilitated a supportive diplomatic corps in Pakistan.

We rejoice in this first-ever international solidarity between the legal fraternities in support of a rule of law movement in one country.

7. Education of Masses

The literacy level in Pakistan is about fifty percent (50%) but what the lawyers movement and the media campaign against the actions of General Musharraf has done is that the common, even uneducated Pakistani, has been exposed to the pivotal need of the rule of law for the country. The result is a high degree of awareness about the Constitution and the legal provisions on good governance in Pakistan. All this would augur well for the future of Pakistan.

F. CONCLUSIONS

Beginning with the founding inspiration and vision of the founder of Pakistan, Mohammad Ali Jinnah, and the Objectives Resolution, 1949, the rule and supremacy of the law found abundant recognition in the various compacts evolved over the last sixty (60) years. Each of the Constitutions, as noted, made a profound commitment to the separation of the three (3) branches of the Government. With the justiciability of fundamental rights and the independence of the judiciary guaranteed in the Constitution, Pakistan was all set to structure its national life and policies on the equality of all citizens, on their free accesses to courts and on a predictable jurisprudential regime based on the binding nature of precedents of the superior courts. Article

19. For an account of the police action and arrests in the Lahore High Court on 5 November 2007, see Dr. Parvez Hassan, November 5, 2007, at the Lahore High Court, in The News, 13 November 2007, and At the Sabzazar Police Station, in The News, 14 November 2007.

189 binds all courts in Pakistan to any decision on law of the Supreme Court. Article 201 mirrors a parallel provision binding the subordinate courts to the decisions of the High Courts.

In normal times, this was a sure recipe for success but, unfortunately, the military Generals intervened, time and again, and for long durations, to distort and destroy the founding dream. In fact, as much as over a half of Pakistan's total life of six decades as an independent country has been under the military rules of Ayub Khan, Yahya Khan, Ziaul Haq, and Pervez Musharraf. The encroachment of the military in all aspects of Pakistan's national life has distorted the national landscape.²⁰ The civil-military imbalance, today, is the most important hurdle in the way of the rule of the law. The military in Pakistan is the Big Bully on the Block and no meaningful effort can be made to energize and strengthen the rule of law in Pakistan unless the military is, first and foremost, defanged.

The movement in Pakistan, led by the lawyers, has, however, shown a new "source" of strengthening the Rule of Law. It has shown that, irrespective of the might of military dictators, the people of Pakistan will not tolerate and allow an assault on the independence of the judiciary. Their quest for the "restoration" of the sacked judiciary is unique in the annals of human history. Equally unique was the expression of solidarity by bar associations across the globe in making the movement a truly international one.

A respected national commentator recently summed up the gains of the lawyers movement:

It has created the space for the political parties to operate in, it enabled the return to Pakistan of Benazir Bhutto and Nawaz Sharif, it bunkerised General Musharraf and pressured the Americans enough to insist that he doff his uniform and hold elections, it gave the politicians a platform and it ensured the defeat of General Musharraf's party in the elections.²¹

The superior judiciary of Pakistan will, hopefully, draw strength from this new-found support from the bar associations, civil society, media, the masses and the international legal community to deal with rule of law issues without fear or pressure from future military adventurists. If that should happen, the legal community of Pakistan would have lit, during the judicial darkness of 2007-2008, a bright candle for guidance in the years ahead.

20. Farhatullah Babar, The Armed Forces and the Corporate Sector, The News, 30 April 2007, documents, based on records before the Parliament, the all-pervasive intrusion of the military in several corporate and real estate enterprises, many supported by public funds, and the resultant "un-level" playing field created for other enterprises. The article records the view of a former British High Commissioner in Pakistan that the military's growing commercial interests in Pakistan were hampering poverty reduction efforts and the effectiveness of the judiciary in the country. See also Dr. Ayesha Siddiq, MILITARY INC: INSIDE PAKISTAN'S MILITARY ECONOMY (2007).

21. Ayesha Tammy Haq, Sending Shivers Down an Undemocratic Spine, The News on Sunday, 22 June 2008.



Established February 1996

Appendix 2



Asia-Pacific Centre *for* Environmental Law

Established in February 1996 by the Faculty of Law, National University of Singapore, at the initiative of the Faculty and the World Conservation Union - Commission on Environmental Law (IUCN - CEL), and in collaboration with the United Nations Environment Programme (UNEP), APCEL was launched on 1 July of the same year. The initiative was in response to the call in Agenda 21 to build capacity in environmental law and to promote awareness of environmental issues. APCEL has established itself as a centre of excellence in the region for capacity-building in environmental law, and is highly regarded worldwide.

The main objectives of APCEL are:

- To serve as a regional training centre for the teaching of environmental law;
- To organise conferences, seminars and other programmes on environmental issues;
- To serve as a regional centre for research, including multi-disciplinary research on international, regional and national environmental law and policy;
- To promote the exchange of information on international, regional and national environmental law and policy;
- To cooperate and collaborate with law schools, institutes, centres and such other organizations to further its objectives.

APCEL collaborates with many international, regional and local institutions in developing capacity-building courses in environmental law and management. Its courses include 'Training the Trainers' such as environmental law professors in the region. One of such training courses has led to the two-volume publication entitled, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* (Asian Development Bank: 2nd edition, 2003). This publication is being widely used in the region as well as internationally. It has also conducted numerous other capacity building courses, including those for the Singapore Ministry of Foreign Affairs and the Singapore Environment Institute aimed at policy makers, senior officials and administrators of the environment in developing countries. Its members have served as resource persons in many workshops and seminars in the region as well as internationally, and have taught at universities in the United States, Australia, Mexico and elsewhere. It plays a leading role in the university's multi-disciplinary environmental management programme, the M.Sc. (Env. Mgt), hosted by the School of Design and Environment. See <http://www.sde.nus.edu.sg/MEM/index.htm>

APCEL's activities also include the organization of various conferences on cutting-edge issues such as sustainable development of coastal and ocean areas in Southeast Asia, trade and environment, intellectual property rights and biological resources, and crucial issues in climate change and the Kyoto Protocol.

APCEL members have undertaken research in various areas of the environment including pollution laws, biodiversity conservation, trade in endangered species, marine environmental law, transboundary haze issues, environmental aspects of zoonotic diseases, environmental impact assessments, climate change, trade and the environment, water resources management, ASEAN environmental law and governance, and environmental law in Singapore and Southeast Asia.

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