

PAKISTAN:
TRANSITION TO DEMOCRACY?

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PAKISTAN: TRANSITION TO DEMOCRACY?

EXECUTIVE SUMMARY AND RECOMMENDATIONS

As the national elections in Pakistan draw near, President, Chief Executive, and Chief of Army Staff General Pervez Musharraf has vowed to restore democracy and transfer power to an elected government. Musharraf's roadmap to democracy is in reality a blueprint for more military rule. If his political and constitutional reforms become the law of the land, any democratic transition will falter before it has started. The military government's constitutional and political reforms will radically transform Pakistan's parliamentary system, tilting the balance of power from elected representatives and democratic institutions to unelected leaders and organisations.

Negating the principal of parliamentary sovereignty, a powerful head of state will have the power to dissolve the National Assembly. Appointed by the President, provincial governors will have the authority to dismiss provincial legislatures. The President will appoint military chiefs, and the armed forces' political role will be sanctified through a National Security Council (NSC). Chaired by the president, this military-dominated, supra-parliamentary body will oversee the conduct of elected governments and the functioning of representative institutions.

Having indefinitely extended his tenure as Army Chief, President Musharraf has also given himself a five-year extension of his presidential term. Assuming the right to dismiss parliament, Musharraf has warned future parliamentarians of the choice before them – to either accept his constitutional engineering or lose their jobs. Leaving little to chance, the military government has also revised electoral procedures to neutralise civilian threats. Newly devised rules and regulations have disqualified scores of politicians

from standing in this month's parliamentary election.

Pre-election rigging cannot be ruled out since the same Election Commission that oversaw Musharraf's flawed referendum is overseeing the electoral process. Political leaders doubt that the elections on 10 October 2002 will be free and fair. The military government can, however, be reasonably confident that the judiciary will endorse them and the constitutional reforms. When it validated the October 1999 coup, the Supreme Court also gave Pakistan's military ruler the mandate to amend the constitution, but only within the framework of federal, parliamentary democracy. Subsequent forced resignations, selective appointments, and inducements have, however, subordinated the judiciary to the executive.

Almost all major Pakistani political parties, civic groups, and media have rejected Musharraf's constitutional and political reforms as an undemocratic means for perpetuating military rule. These parties have vowed to reject the constitutional amendments in parliament. Hoping to control a future parliament through divide-and-rule strategies, however, the military is using pressure and persuasion on the politicians.

In the past, the political elite has succumbed to the military's tactics, tempted by the spoils of power. From 1988 to 1999, Pakistan's democratic transition first faltered, then stalled when elected governments failed to deliver, their credibility undermined by maladministration, corruption, and political vendettas. The political elite failed to work collectively in parliament to strengthen democratic institutions and norms. Instead, elected governments and their political opponents joined hands with military leaders to gain or retain power. As the democratic transition stalled, the military was given the opportunity and the pretext to disrupt the process.

Should civilian leaders once again succumb to the military's pressures and incentives, Musharraf and his colleagues will retain absolute power. The political elite can revive the democratic transition only if they reach consensus within and outside parliament to correct the military's political and constitutional distortions. A consolidation of the democratic transition would then depend on the political elite's respect for democratic governance.

President Musharraf is not inclined to transfer power to civilians but could be persuaded to withdraw the military to the barracks by international pressure. Influential actors, in particular the U.S. and EU, could persuade military leaders to abide by their pledge to restore democracy. Musharraf and his military colleagues are hopeful, however, that the international community will accept military rule in civilian guise. The U.S. and its allies could indeed be tempted in misguided belief that the military is the only institution capable of governing the fragile state, holding back Islamic extremism, and combating regional terrorism.

It is in the international community's interest to encourage the military to withdraw to the barracks and restore democracy. Political stability will elude Pakistan without representative government. Only a stable, democratic country is a reliable bulwark against Islamic extremism and guarantor of its own security and that of its neighbourhood.

RECOMMENDATIONS

To the Pakistan Government

1. Take actions to demonstrate serious intent genuinely to restore democratic civilian government; in particular:
 - (a) give the Election Commission full authority to check unfair electoral practices in the pre-election phase and during the polling, including the right to identify and to censure wrong doers;
 - (b) provide unrestricted access to the electoral process and security to local and international observers; and
 - (c) withdraw the proposal to form a National Security Council and other constitutional amendments that undermine the 1973 constitution's

federal, parliamentary and democratic structure in order to forestall confrontation with the political elite and, thereby, to safeguard the true interests of the armed forces.

To the Political Parties

2. Establish a joint monitoring centre to collate data on the electoral process, including the pre-election phase, and present a report on the conduct of the 2002 elections to parliament.
3. Issue a joint public declaration that they will not validate constitutional amendments in parliament that violate the structure of government contained in the 1973 constitution.
4. Institute mechanisms for internal democracy and introduce legislation in parliament for mandatory party internal elections.
5. Expand responsibility for appointment and promotion of judges beyond the executive to include representatives of the Bar Associations.

To The United States, The European Union, And Other Members Of The International Community

6. Call upon the government to remove all restrictions on political freedoms, including those on freedom of association and speech, during and after the October elections.
7. Give due weight to the findings of official and non-governmental election observers, including the European Union team, in formulating political and economic policy toward Pakistan after October 2002.
8. Make clear that it will not be acceptable internationally for Pakistan's military to retain power indefinitely, whether directly or behind a democratic façade, and strongly encourage it instead to withdraw those constitutional amendments that have the potential of stalling the democratic transition.

Islamabad/Brussels, 3 October 2002

PAKISTAN: TRANSITION TO DEMOCRACY?

I. INTRODUCTION

Ousting an elected government in October 1999, Army Chief Musharraf justified his coup on democratic grounds. “This is not martial law, only another path to democracy”, he said. “The armed forces have no intention of staying in charge any longer than is absolutely necessary to pave the way for true democracy to flourish in Pakistan”.¹ The military government’s agenda for democratic reform included eradicating corruption, devolving power to the lowest tiers of government, resolving internal tensions, reviving an ailing economy, and dispensing justice.² Although Musharraf suspended the 1973 constitution, the military government declared its willingness to work within constitutional confines and abide by the rule of law.

Fiscal accountability has been central to Musharraf’s reform agenda since the October coup. The accountability process is, however, marred since the National Accountability Bureau (NAB) has selectively targeted the government’s civilian opposition. Accountability courts are being used to debar politicians from participating in the October polls. The threat of facing such politically motivated investigations is also being used to pressure politicians to join pro-government parties and electoral alliances.

Having held district elections in 2001, the government says that it has fulfilled its pledge to

devolve political and fiscal power.³ Far from bestowing power to local stakeholders, the district government scheme has strengthened the centre’s control and created a new political elite, dependent on the military’s goodwill for survival. These district officials are being asked to assist the government’s allies during the election process.

In October 1999, the military government also committed itself to deliver justice but the judiciary has become powerless. Forced to swear an oath of allegiance to military rule and subjected to executive pressure, it is, for practical purposes, subordinate to the military establishment. Without judicial independence, there is no rule of law. As a consequence, corruption and tax evasion are rampant in public and private sectors alike, undermining a fragile economy, while state neglect of human development leaves the vast majority of the population impoverished and without hope.⁴

In October 1999, Musharraf also declared that he would strengthen the federation by resolving internal tensions. Military rule and the military’s internal and external preferences have, however, contributed to ethnic tensions and sectarian violence. Centralised rule by a Punjabi-dominated army is resented and rejected by ethnic minorities.⁵ Domestic security

¹ Text of Chief Executive’s speech, *Dawn* (Karachi), 18 October 1999.

² Ibid.

³ “Cementing the Federation is very vital”, said Musharraf in October 1999, “This will be achieved through devolution of power, from the centre to the provinces, and from the provincial to the local government”. Ibid.

⁴ In 2002, Pakistan ranked 138 out of 173 countries in the UNDP’s Human Development Report, the same ranking it had held in 1999, the year the military took over power.

⁵ Punjabis comprise between 60 to 65 per cent of Pakistani army officers, rising to over 70 per cent in its higher ranks, while the Pashtun component is between 30 and 35 per cent. The Baluch component of the army is approximately 2 to 3 per cent while Sindhis represent less than 1 per cent of the army’s

eludes citizens as Islamic extremists continue to wage a bloody jihad against their sectarian rivals.

Rejecting domestic criticism, President Musharraf has arbitrarily restructured the polity through the Legal Framework Order (LFO), 2002.⁶ Validating his constitutional and political reforms through the LFO, Musharraf says, "I have taken this decision in the greater national interest and for the sake of continuity and stability of the system and the reforms".⁷ This emphasis on continuity is aimed at both domestic and external audiences. In the former context, the military's civilian allies are assured of the benefits that would accrue from continued cooperation while political opponents are warned of the dangers of opposing the post-October political order.

Political parties have condemned the military's power bid. "Taking over the governance of the country and restructuring the system and democracy is neither the army's forte," says a political leader, "nor is it trained for it".⁸ But the military government is confident it can contain domestic opposition. It is far more concerned about international reactions. Musharraf hopes to gain in particular U.S. approval of his domestic agenda in return for continued cooperation in the campaign against international terrorism. Given the potential for domestic unrest, external support is essential for regime survival. The military's

assessment of external cost and benefits, therefore shapes its domestic policies.

This report examines the military government's mechanisms for regime survival and their impact on civil-military relations. It analyses Musharraf's roadmap for democracy, including his electoral and constitutional changes, with the objective of identifying obstacles to democratic transition. Since the policies of influential actors like the U.S. and EU are critical, it recommends ways for the international community to assist the democratic process.

total strength, with very little presence in its higher ranks. Punjab constitutes 56 per cent of Pakistan's population, followed by Sindh's 23 per cent; the Northwest Frontier Province's (NWFP) 15 per cent and Baluchistan's 5 per cent. Ethnic groups are largely concentrated in their provinces: Punjabis in the Punjab, Sindhis in Sindh, Baluch in Baluchistan, and Pashtuns in the Northwest Frontier Province. Pashtuns are also 12 per cent of the population of Baluchistan. Sindh includes the Sindhis (14 per cent of the national population but dominant in their home province) and Muhajirs, migrants and their descendants from India (9 per cent). Azeema Faizunissa and Atif Ikram, *Pakistan's Population: Statistical Profile 2002* (Islamabad, 2002). At <http://www.pap.org.pk>; Samina Ahmed, "The Military and Ethnic Politics", Charles H. Kennedy and Rasul Baksh Rais (eds.), *Pakistan: 1995-96* (Lahore, 1995), p.106.

⁶Text of Legal Framework Order, 2002, *Dawn*, 22 August 2002.

⁷Chief Correspondent, "NSC Approved Despite Opposition", *The News* (Islamabad), 22 August 2002.

⁸ICG Interview, Farhatullah Babar, PPP Media Advisor and spokesperson for former Prime Minister Benazir Bhutto, August 2002.

II. THE MILITARY AND DEMOCRACY IN PAKISTAN

A. POLITICAL ROADMAP

Military or military-dominated governments have ruled Pakistan for most of its existence. Democratic transitions have failed to consolidate primarily because of military intervention. The Pakistan army has repeatedly stepped in to promote its political and economic interests and the interests of its leaders.⁹ Every military intervention, however, is attributed to the threats posed to national security by an incompetent and/or corrupt civilian leadership. The military, coup makers say, reluctantly intervened to defend the state. Every Pakistani military ruler has echoed these justifications.

In October 1958, General Mohammad Ayub Khan said that the army was forced to impose military rule to prevent the “complete ruination of the country” by “self-seekers who, in the garb of political leaders, have ravaged the country or tried to barter it away for personal reasons”.¹⁰ In 1969, the chief martial law administrator, General Agha Mohammad Yahya Khan, stressed that an apolitical military had reluctantly intervened to “save the country from utter disaster” because of “political agitation and violence”.¹¹ In 1977, Chief of Army Staff General Mohammad Zia ul-Haq declared, “when the political leaders failed to steer the country out of a crisis, it is inexcusable for the Armed Forces to sit as silent spectators. It is primarily for this reason that the Army perforce had to intervene to save the country”.¹² In October 1999, General Pervez Musharraf said that he had taken over power “in extremely unusual circumstances – not of my making” – and accused

Prime Minister Nawaz Sharif of “intriguing to destroy the last institution of stability left in Pakistan by creating dissension within the ranks of the armed forces of Pakistan”.¹³

The political elite has to share the blame for Pakistan’s failed democratic transitions. Elected governments have neglected democratic institutions and flouted democratic norms. Ignoring the need for tolerance and accommodation, politicians have subordinated “their larger political interests to petty rivalries and infighting”.¹⁴ Failing to deliver good governance, civilian governments have undermined their domestic legitimacy, rendering themselves vulnerable to military intervention. In a self-prophesying statement, Prime Minister Zulfikar Ali Bhutto warned in 1972: “Looking into the future, if we messed it up, if we didn’t make the parliamentary system work, if our constitution breaks down, then there is the possibility of the army stepping in again”.¹⁵

While the political elite’s failings undermine democratic transitions, military leaders are by no means innocent bystanders. Contemptuous of civilian leaders and impatient to regain absolute power, military leaders have played an active role in subverting the democratic process. “The military believes it is the custodian of Pakistan’s national interest. As a result, it tries to dictate the way Pakistan should be governed”, says a former general, adding “The military also has great contempt for politicians and no respect for the sovereignty of the people. Generals don’t understand the importance of building institutions, mixing up national interest with personal interests”.¹⁶

As a result, military leaders distort democratic institutions and processes until they are no longer sustainable, and enhance political divisions, often compounding and exploiting political crises to justify taking over power. “The different sets of politicians” are “never given the time to demonstrate if they could reconcile their differences and, at the same time,

⁹ Babar Sattar, “Pakistan: Return to Praetorianism”, Muthiah Alagappa (ed.), *Coercion and Governance: The Declining Role of the Military in Asia* (Stanford, 2001), p. 385.

¹⁰ Text of General Ayub Khan’s first broadcast to the nation, 8 October 1958 in Hasan Askari Rizvi, *The Military and Politics in Pakistan 1947-1997* (Lahore, 2000). Appendix C, pp. 292-295.

¹¹ Text of General A.M.Yahya’s first broadcast to the nation, 26 March 1969. Ibid., Appendix F, pp. 302-303.

¹² Text of General Mohammad Zia ul-Haq’s first address to the nation on 5 July 1977. Ibid., Appendix H, pp. 306-310.

¹³ Text of Chief Executive Pervez Musharraf’s speech, *Dawn*, 18 October 1999.

¹⁴ Mushahid Hussain and Akmal Hussain, *Pakistan: Problems of Governance* (Lahore, 1993), pp. 28-29.

¹⁵ Omar Noman, *Pakistan: A Political and Economic History since 1947*, 2nd ed. (London, 1990), p. 55.

¹⁶ ICG interview, Islamabad, July 2002.

promote national unity along with the country's physical development".¹⁷

Justifying military rule on the grounds of democratic reform is a time-honoured tradition in Pakistan, where the military can intervene at will but lacks domestic legitimacy because of popular support for democratic representation and constitutionalism.¹⁸ To attain legitimacy and thus ensure regime survival, military governments adopt a two-pronged approach. They attempt to justify authoritarian intervention as a necessary precursor of democratic reform. At the same time, military governments use a variety of strategies to contain civilian challenges and consolidate power. These include coercion and co-optation of the political elite and subordination of the judiciary. Using intimidation and divide-and-rule tactics, military governments initially manage to curb civilian dissent.

To consolidate power and legalise their actions, military governments create a democratic façade with the judiciary's assent, and often with some civilian support.¹⁹ Democratic rhetoric and political manipulation, however, fail to resolve the tussle between authoritarian control and democratic aspirations. Pakistani military rulers, moreover, confuse "the establishment of institutions with the process of political institutionalisation", which "implies legitimacy for the formal structures of public authority". Since military governments establish "public institutions without consent", instead of "neutralising political tensions these institutions become a symbol of mass alienation".²⁰ The civilian guise created to mask military rule fails to deliver the legitimacy needed for regime consolidation.

When this lack of legitimacy threatens the personal interests of military leaders or the corporate interests of the armed forces, the military grudgingly enters into agreements on a democratic transition with the political elite. Reluctant to abandon the political and economic benefits of power, these military-dictated pacts are heavily weighted in favour of the armed forces. As a result, they collapse under the weight of internal contradictions.²¹ The military then has a choice – either disrupt the democratic transition by reimposing direct rule or opt for tactical withdrawal to the barracks, until conditions are conducive for yet another intervention.

The military's decision to retain, share, or abdicate power is also determined by perceptions of external costs. Democratic transition stalls if the international climate is conducive to continued military rule. Conversely, if the military believes that external costs, diplomatic and economic, will be unacceptably high, it revives the democratic process by either entering into power-sharing arrangements with the political elite or withdrawing to the barracks and transferring power to an elected government.

Army Chiefs Ayub Khan, Yahya Khan, and Zia ul-Haq followed this roadmap. General Musharraf's path is no different. He and his military colleagues believe that their personal ambitions and the corporate interests of the armed forces are best served by continued military rule. Since internal costs are considered bearable and the external environment is tolerant, the military government is more inclined to retain military rule under a democratic façade rather than proceed toward a democratic transition that would transfer power to the political elite. Should the domestic and/or external costs change, it will tailor its political roadmap accordingly.

¹⁷ Lawrence Ziring, *Pakistan in the Twentieth Century: A Political History* (Karachi, 2001), p. 452.

¹⁸ Mohammad Waseem, "Electoral Reforms: The Political Context" in Mohammad Waseem (ed.), *Electoral Reform in Pakistan* (Islamabad, 2002), p. 2.

¹⁹ "The responses of the judiciary to interruptions in the political process have not only given legal sanction to military interventions", says Gillani, "but have been largely responsible for making a space for the acceptability of these interventions". Hina Gillani, *Human Rights and Democratic Development in Pakistan* (Montreal, 1998), p. 35.

²⁰ Noman, op.cit., p. 28.

²¹ The military refuses to accept civilian guidance or civilian authority on matters ranging from security policy to the defence budget. According to a former air chief, the armed forces have "been able to effectively control the allocation of their share of the Federal budget. Any meaningful discussion in the National Assembly has been taboo and politicians have been persuaded to leave the whole subject of defence to the so called 'specialists' in uniform". Mohammad Asghar Khan, *Generals in Politics: Pakistan 1958-1982* (New Delhi, 1983), p. 183.

B. BACKGROUND

1. Enter the Military

In its first decade of independence, Pakistan was nominally a parliamentary democracy but civil bureaucrats ruled the state with the military as junior partner. No elections were held, and the head of state, the governor-general, almost always a former bureaucrat, appointed and dismissed nominated Prime Ministers and parliaments at will. Pakistan even lacked a constitution until 1956.²² The 1956 constitution was adopted only after Governor-General Iskander Mirza forced the Constituent Assembly to appoint him president. Although the 1956 constitution gave Pakistan a federal parliamentary system, the president had power to dismiss the Prime Minister and used it liberally. Mirza thereafter ruled in league with Army Chief, General Mohammad Ayub Khan.²³ Dispensing with even the pretence of democracy, Ayub ousted Mirza and imposed martial law in October 1958.

The coup was meant to forestall Pakistan's first national elections, due in February 1959. Unwilling to hand over power, the military disrupted the fledgling democratic process. To contain domestic dissent, it justified intervention on the grounds of democracy. The armed forces, said Ayub, were forced to impose military rule "with the fullest conviction that there was no alternative except the disintegration and complete ruination of the country" by corrupt and self-serving politicians. The military's only objective, he stressed, was to give the country "a sound democratic system and lay the foundations for a

stable future", words subsequently echoed by every military ruler, including Musharraf.²⁴

Having gained judicial sanction for the coup, Ayub moved against his civilian opponents.²⁵ Parties were banned and hundreds of political leaders were disqualified from elected office. The military co-opted politicians into government and created a new political clientele through a scheme of local government called Basic Democracy. Ostensibly meant to devolve power, the 80,000 Basic Democrats became Ayub's political base and his Electoral College. In 1960, the Basic Democrats "elected" Ayub president in a referendum with 95.6 per cent of the vote.²⁶ In 1965, they re-elected him, but this time in a contested election.

Ayub's coup took place when the external environment was conducive to military rule. For the U.S., in particular, the Army Chief who had engineered Pakistan's entry into SEATO and CENTO in the 1950s was a valuable Cold War ally.²⁷ U.S. political and economic support helped Ayub to consolidate the military's domestic hold. Legitimacy, however, eluded the Punjabi-dominated military government amidst demands for restoration of democracy, particularly by the majority Bengali population of East Pakistan.²⁸

To ensure regime survival, the Ayub government created a democratic façade. In 1958, the military had abrogated the 1956 parliamentary constitution. In 1962, Ayub devised his own, giving Pakistan a presidential and centralised state system. With virtually total power, the president could overrule and dismiss the legislature and provincial governments.²⁹ The Electoral College of Basic Democrats elected the president and a unicameral legislature, the National

²² Until 1956, the amended Government of India Act of 1935 served as Pakistan's provisional constitution. It provided for a federal, parliamentary structure of government, amended to increase the powers of the centre at the cost of the federal units.

²³ According to a senior army officer, "All powers in the army and indeed all those powers that a government wields over an army were in the hands of one man", General Ayub. Quoted in Lt. Gen., M. Attiqur Rehman, *Our Defence Cause: An Analysis of Pakistan's Past and Future Military Role* (London, 1976), p. 27.

²⁴ General Ayub Khan's first broadcast to the nation, 8 October 1958. Rizvi, op.cit., p. 293.

²⁵ In his judgement validating military rule and the abrogation of the 1956 constitution (State v Dosso and others: PLD 1958 SC 533), Chief Justice of the Supreme Court Munir observed: "If the revolution is victorious" then "the revolution itself becomes a law-creating fact because thereafter its legality is judged not with reference to the annulled Constitution but by reference to its success". Quoted in Dorab Patel, *Testament of a Liberal* (Karachi, 2000), p. 60.

²⁶ Noman, op.cit., p. 27.

²⁷ Mohammad Ahmad, *My Chief* (Lahore, 1960), pp. 75-76.

²⁸ Bengalis formed 56 per cent of the population.

²⁹ Ziring, op.cit., p. 206.

Assembly. The provinces of West Pakistan were merged into one unit. Bereft of political or fiscal autonomy, unrest heightened in the East wing. Ethnic minorities in West Pakistan were equally alienated by their forcible inclusion into a centralised power structure. The military's rejection of federalism and refusal to share power with the political elite ultimately proved its undoing.

By 1968, anti-Ayub demonstrations gained momentum in both East and West. Fearing that the armed forces would themselves become the object of attack, the corps commanders withdrew their support from Ayub, replacing him with Army Chief General Yahya Khan on 25 March 1969. Yahya's was the shortest-lived of Pakistani military governments. To palliate domestic dissent, the government abrogated the 1962 constitution, issuing a Legal Framework Order on 30 March 1970 to restore the federal, parliamentary system. In December 1970, General Yahya held Pakistan's first national elections on the basis of adult franchise.

The military government did this in the belief no party would gain a majority.³⁰ Its calculations were incorrect as Sheikh Mujibur Rehman's Awami League swept the polls in the East, gaining a parliamentary majority and hence the right to form a government. The military refused to honour the results since an Awami League government would have effectively ended the West Pakistani military's political dominance.³¹ When the military subsequently used force against Bengali dissidents, a civil war ensued in which India's intervention led to Bangladesh's formation and Pakistan's dismemberment in December 1971.³²

2. Military Rule with a Vengeance

In 1971, the military handed a dismembered country over to the political elite. Six years later, in July 1977, it ousted the elected government. The military's resumption of power owed as much to

the circumstances of its defeat as to failure of the political leadership to deliver good governance. Fearing that its defeat would translate into popular demands for accountability, the high command quickly transferred power to Zulfikar Ali Bhutto, whose Pakistan People's Party (PPP) had won a majority of votes in the West wing. The military's defeat in the 1971 war with India had, however, been limited to East Pakistan. Despite 93,000 prisoners of war in India, its infrastructure in the West was untouched. Military leaders quickly recouped losses and closed ranks against perceived civilian threats to their personal and institutional interests.

At first, the political elite was united in determination to curb the military's political ambitions by institutionalising democratic governance. In 1973, all major parties agreed upon a new constitution, based on federalism and parliamentary democracy. Article 245 of this consensus document, which remains the lodestone of regime legitimacy in Pakistan, places command and control of the armed forces under the federal government. The constitution also restricts the military to external defence, limiting its internal role to assisting the civil administration when called upon.³³ Article 244 enjoins military personnel to take an oath to uphold the constitution and refrain from political activities.³⁴ Any attempt to subvert the constitution, according to Article Six, is an act of treason, punishable by life imprisonment or death.³⁵

These curbs were insufficient to keep the military at bay. Prime Minister Bhutto's failure to strengthen democratic institutions and respect democratic norms undermined his domestic support. While he attacked

³⁰ Shahid Javid Burki, *State and Society in Pakistan 1971-1977* (London, 1980), p. 55.

³¹ The Awami League's Six-Point program would have restricted the federal government's powers to defence and foreign affairs.

³² Estimates of Bengali lives lost range from hundreds of thousands to several million. Ziring, op.cit., p. 360.

³³ Article 245 states that the function of the military is to "defend Pakistan against external aggression or threat of war and, subject to law, act in aid of civil power when called upon to do so" by the federal government.

³⁴ The oath under the Third Schedule of the constitution reads: "I . . . solemnly swear that I bear true faith and allegiance to Pakistan and uphold the constitution of the Islamic Republic of Pakistan, which embodies the will of the people, that I will not engage myself in any political activities whatsoever, and that I will honestly and faithfully serve Pakistan in the Pakistan Army (Navy or Air Force) as required by and under the law. (May Allah Almighty help and guide me)".

³⁵ According to Article 6 (1), "Any person who abrogates or attempts to abrogate or conspires to abrogate, subverts, or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason".

the military for interventionist behaviour,³⁶ he was not averse to using it and its intelligence agencies against his political opponents, even setting up an “internal security” wing of the Inter-Services Intelligence Directorate (ISI). As Bhutto’s credibility declined, a revitalised military leadership became increasingly ambitious and impatient.

Relying on tried and trusted divide-and-rule tactics, Army Chief General Zia ul-Haq joined with Bhutto’s political opponents, the Pakistan National Alliance, an alliance of right wing and religious parties, that had launched a campaign to oust the prime minister after rigged national elections in March 1977. Bhutto and his opposition were on the verge of reaching an accord on reviving the democratic transition when Zia imposed military rule on 5 July 1977, imprisoned Bhutto, dissolved the legislature, and suspended the constitution.³⁷

Having ousted an elected government and imprisoned the prime minister, Zia’s need for legitimacy was even more pressing than that of his military predecessors. Justifying the takeover on reforms, accusing the elected government of disregarding democratic governance and undermining national security, Zia pledged to restore democracy and to hold elections within the constitutional timeframe of 90 days.³⁸ Unwilling to transfer power, the coup makers went back on their word, seeking ways of consolidating their control. Zia’s personal stakes were high since the charge of subverting the 1973 constitution was hanging over his head. In September 1978, Zia appointed himself president, and a year later had Bhutto executed on a trumped up murder charge.

The military government then postponed elections indefinitely, imprisoned its political opponents, and used brute force to quell the resultant civilian

unrest. Coercion on its own was, however, insufficient. Although the judiciary had condoned the takeover under the “doctrine of necessity” and even given Zia the right to amend the constitution, legitimacy eluded the military rulers.³⁹ They, therefore, constructed an elaborate democratic façade to institutionalise military rule.

Political activities were banned but chosen civilian partners were co-opted into the central and provincial governments. Bhutto’s opponents were more than willing to join the military government in return for the spoils of office. Using religion as a legitimising factor, Zia also embarked on a process of “Islamising” the polity, inducting religious parties into government, and creating a parallel Islamic legal system.⁴⁰ When appeals to Islam failed to broaden the government’s base beyond its military constituency, Zia followed Ayub’s example and created nominal local governments in September 1979, whose officials formed the civilian base of his military government, supporting it in return for political and economic benefits.⁴¹

In 1984, Zia had his tenure as president extended, through a rigged referendum, for another five years. A rubber stamp parliament, the *Majlis-i-Shura*, drastically amended the 1973 constitution. The Eighth Amendment to that document validated all laws, acts and orders of the military government. The president was given the right to dissolve the National Assembly and to appoint service chiefs, judges of the superior courts, and provincial governors, who would in turn appoint provincial chief ministers.⁴² The prime minister and the judiciary became subservient to the president while the legislature “was reduced to an advisory body”.⁴³ Following passage of the Eighth Amendment in October 1985, Zia, who retained his

³⁶ In March 1972, after removing his Chiefs of the Army and Air Force, Bhutto stressed, “Some professional generals turned to politics not as profession but to plunder. . . . These Bonapartist influences must be rooted out in the interests of the Armed Forces and the people of Pakistan”. Hussain and Hussain, op.cit., p. 91. See also Maleeha Lodhi, *Pakistan’s Encounter with Democracy* (Lahore, 1994), p. 136.

³⁷ The military had begun to plot to overthrow Bhutto as early as December 1976. Ziring, op.cit., p. 420.

³⁸ Rizvi, op.cit., p. 240.

³⁹ In the Nusrat Bhutto case, challenging her husband’s detention, the Supreme Court ruled that the Zia ul-Haq government represented “a phase of constitutional deviation dictated by necessity”. Zulfikar Khalid Maluka, *The Myth of Constitutionalism in Pakistan* (Karachi, 1995), p. 259. The judiciary has used the “doctrine of necessity” to validate all subsequent military interventions.

⁴⁰ Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford, 2001), pp. 627-628, 640-641.

⁴¹ Zia’s local bodies consisted of union and district councils and municipal committees and corporations.

⁴² Khan, op.cit., pp. 674-679.

⁴³ Ziring, op.cit., p. 479.

title of Army Chief, claimed that he had restored democracy.

To reassure military personnel that they would not be held accountable for their excesses, the Eighth Amendment indemnified all their acts of omission and commission. The officer corps, in any case, solidly backed Zia since the military was the main beneficiary of a policy of alignment with the U.S. in the Soviet Afghan war. As billions of dollars of U.S. economic and military assistance poured into Pakistan, the military establishment expanded. Although the military government was more than capable of forcibly resisting civilian dissent, however, it failed to gain popular acceptance of its democratic façade.

Zia's divide-and-rule strategies prolonged military power by weakening the civilian opposition. The military's political manipulation, however, also widened internal divisions along ethnic, regional, and sectarian lines. Military rule and centralised control had alienated ethnic minorities, particularly in Sindh since a Sindhi prime minister had been executed by a Punjabi-dominated military. The military's use of Islam empowered the religious right while easy access to arms from Afghanistan promoted sectarian and ethnic violence. The proceeds of the Afghan drug trade also penetrated and criminalised the Pakistani economy and polity.⁴⁴ Zia's sudden death in August 1988 ended his political order, raising hopes that democratic governance would pull the country back from the abyss.

3. Indirect Rule

In December 1988, the military restored power to civilian hands only to intervene again in October 1999. Pakistan's democratic transition was marred from the very start by the legacy of military rule. This legacy included the "deliberate destruction of political institutions that sustain or promote democracy, a culture of conformity, political intolerance, erosion of the rule of law and a pervasive culture of political immorality and

illegality".⁴⁵ Instead of discarding this legacy, elected governments and their political opposition refused to reach consensus in parliament on democratic reform, abandoned electoral promises for short-term political goals, and misused authority for personal benefit. As a result, the democratic transition faltered. The military, however, was equally culpable, distorting the democratic process until it became unsustainable.

Zia's death came at a time of increased domestic unrest and demands for restoration of democracy.⁴⁶ The external climate was also less conducive to military rule since the U.S. and its Western allies supported, at least in rhetoric, democratic transitions in countries such as Pakistan as the Cold War wound down. Fearing that direct control would undermine the corporate interests of the armed forces, Army Chief General Mirza Aslam Beg decided to transfer power to civilian hands but in such a way as to ensure the military's continued dominance.

Although Beg advocated democratic governance and held national elections, the military left nothing to chance. In the November 1988 elections, the ISI helped to forge an anti-PPP electoral alliance, the *Islami Jamoori Ittehad* (IJI), a political alliance, headed by Nawaz Sharif, to prevent the PPP from gaining an absolute majority.⁴⁷ Having ensured that the PPP would be counterbalanced by a strong IJI presence in the National Assembly and in the Punjab, Beg refused to transfer power to Benazir Bhutto, the daughter of the earlier prime minister, until she agreed to a power-sharing arrangement.

Under this implicit pact, Bhutto would not restructure civil-military relations and accepted the military's control over internal security and foreign policy. Her desire to gain power at all costs proved her downfall.⁴⁸ Unable, for instance, to shift expenditure from defence to development, the elected government

⁴⁴ Gowher Rizvi, "Riding the Tiger: Institutionalising the Military Regimes in Pakistan and Bangladesh", Christopher Clapham and George Philip (eds.), *The Political Dilemmas of Military Regimes* (London, 1985), pp. 222-223.

⁴⁵ Rasul Bakhsh Rais, "Benazir's Return to Power, 1992-1994", Kennedy and Rais, op.cit., p. 13.

⁴⁶ The seeds of revolt were evident even within Zia's nominal parliament, forcing the military ruler to dismiss Prime Minister Mohammad Khan Junejo's government in May 1988.

⁴⁷ Heading the Muslim League, Nawaz Sharif had been Zia's former Finance Minister and Chief Minister of the Punjab.

⁴⁸ Bhutto admitted that her government's autonomy was restricted "institutionally, economically, politically and structurally" by the military. Quoted in Hasan Askari Rizvi, "The Military and Politics in Pakistan", Charles H. Kennedy and David Loucher (eds.), *Civil-Military Interaction in Asia and Africa* (Leiden, 1991), p. 38.

could not satisfy its constituents.⁴⁹ By accepting the military's internal autonomy, the PPP government failed to restructure civil-military relations. Her legitimacy weakened by allegations of corruption and misgovernance, her authority undermined by the military's tacit support for her political opposition, Bhutto could not resist military intervention. In 1990, President Ghulam Ishaq Khan used his powers under the Eighth Amendment to dismiss her government at the military's urging.⁵⁰

Thereafter, the democratic transition continued to falter as successive elected governments entered into untenable power-sharing arrangements with the military. "The inherent weaknesses of such a political process allowed little contribution by political parties toward stabilising democracy. On the other hand, corruption and their inability to resolve political tensions and economic crises" resulted in "political governments losing credibility".⁵¹ As domestic support eroded, government after elected government was dismissed by the military before it had finished its term of office.

Bhutto's government was dismissed in August 1990, Nawaz Sharif's in April 1993 and Bhutto's once again in November 1996. The judiciary legalised all but one dismissal, Sharif's in 1993, after which Army Chief Abdul Waheed Kakar forced the prime minister to resign. After each dismissal, shadow military governments supported the military's political allies and worked against its political opponents in the elections that followed.⁵²

While top generals continued to opt for indirect control, perceived as most conducive to their personal and institutional interests, civilian leaders willingly entered into implicit pacts with them for the crumbs of power. Having formed government, elected leaders were tempted to assert their authority, resulting in a military backlash. Contemptuous of politicians, military leaders soon lost patience with elected governments. Successfully exploiting tensions within the political elite, the military ran the country from behind the scenes.⁵³

In 1990, Sharif had helped the military to oust Benazir Bhutto. Sharif also willingly accepted the military's autonomy and its domestic and external missions and roles. When he attempted to transgress the terms of that pact by appointing his own nominee as chief of army staff in 1993, the military sacked him with PPP help. In 1996, when Bhutto transgressed her powersharing pact, the military first destabilised her government with the Muslim League's help, then engineered her dismissal.⁵⁴

In 1997, however, the tables appeared to turn. Having gained a two-thirds majority in parliament, Sharif moved against Zia's Eighth Amendment with the support of all major political parties. On 1 April, the National Assembly and the Senate unanimously passed the Thirteenth Amendment, depriving the president of his powers to dismiss the government and dissolve the National Assembly. Parliament was thus made sovereign and the military deprived of any constitutional sanction for intervention.⁵⁵

Had Sharif governed democratically, the military would have been deprived of either the opportunity or the justification to intervene. Instead, he placed his

⁴⁹ According to official assessments, in fiscal year 1989-90, 6.8 per cent of the GDP was allocated for defence and 0.9 per cent for health. Defence expenditure is hidden under several heads and is near impossible to calculate. Ayesha Siddiqi-Agha, *Pakistan's Arms Procurement and Military Buildup, 1979-99: In Search of a Policy* (Basington, Hampshire, 2001), p.88.

⁵⁰ Bhutto's National Security and Foreign Affairs Advisor, Ambassador Iqbal Akhund, discloses that the decision to dismiss the prime minister was taken at a corps commanders' meeting in Rawalpindi on 21 July 1990. Iqbal Akhund, *Trial and Error: The Advent and Eclipse of Benazir Bhutto* (Oxford, 2000), 305.

⁵¹ Gillani, op.cit., p. 59.

⁵² In 1997, a case was registered in the Supreme Court by former air chief Asghar Khan accusing the ISI of distributing funds to Bhutto's opposition during the 1990 elections. The July 1993 and February 1997 elections were

held under the supervision of the army. Sajjad Ali Shah, Chief Justice of the Supreme Court of Pakistan, *Law Courts in a Glass House: An Autobiography* (Karachi, 2001), pp. 422-423.

⁵³ Sattar, op.cit., p. 400.

⁵⁴ Robert LaPorte Jr., "Pakistan in 1996: Starting Once Again", *Asian Survey*, Vol. 37, N°2, February 1997, p. 118.

⁵⁵ The Thirteenth Amendment removed Article 58 (2) (b), depriving the President of the right to dismiss the National Assembly and Article 112 (2) (b), removing the powers of Governors to dismiss provincial assemblies. It also modified Articles 101 and 234 (9) (b), making the advice of the Prime Minister binding on the President in the appointment of Governors and service chiefs. Mohammad Waseem, "Pakistan Elections 1997: One Step Forward?", Craig Baxter and Charles H. Kennedy (eds.), *Pakistan: 1997* (New Delhi, 1998), pp. 2, 14.

personal interests over democratic reform, targeted the opposition leader (Bhutto) and attempted to undermine judicial independence. Sharif also angered the military when he forced Army Chief Jehangir Karamat to resign after Karamat demanded a constitutionally sanctioned political role for the military.⁵⁶ Bent on removing Sharif, the military high command was given the opportunity in October 1999.

C. THE FAILED DEMOCRATIC TRANSITION

1. Civilian Folly

On 12 October 1999, General Pervez Musharraf substituted direct military rule for covert military intervention. Musharraf and his corps commanders abandoned the military's decade-old strategy of sharing power with elected governments because they believed that the coup would best serve their personal interests and the corporate interests of the armed forces. Although Sharif's attempt to replace Musharraf with an Army Chief of his choice was the immediate triggering factor, the stage for the military takeover had been prepared much earlier.

Sharif's disregard for democratic norms and his attacks on legislative and judicial autonomy had eroded his domestic legitimacy. The more threatened he felt, the more drastic the measures his government took against its perceived foes. Concerned about challenges from within his own party, Sharif used his two-thirds majority in parliament to pass the Fourteenth Amendment, giving the head of a political party power to dismiss parliamentarians for flouting party directives.⁵⁷ Irked by the government's intrusions into judicial autonomy, Chief Justice of the Supreme Court Sajjad Ali Shah suspended the Fourteenth Amendment on the grounds that it

undermined parliamentary sovereignty. Muslim League politicians raided the Supreme Court, and Sharif dismissed Shah with the support of pliant judges.⁵⁸

Having borne the brunt of the military's ambitions in the past, Sharif was far more concerned about another military intervention than about democratic governance. He initially tried to retain military approval through incentives. The defence budget remained a one-line item in parliament, and the military was inducted into every sphere of governmental activity, from overseeing the census to monitoring the education ministry.⁵⁹ Instead of strengthening democratic institutions and thus raising the costs of military intervention, the Muslim League government also tried to forcibly suppress political dissent. Flouting the rule of law, Sharif gave paramilitary troops a free hand, for instance, to suppress ethnic violence in Sindh.

Increased military encroachment in civil affairs had two consequences. The more officers were exposed to the civilian sector, the greater their contempt became for inept and corrupt officials. The involvement of officers in the running of state enterprises also enhanced their belief that they could do a far better job than civilians in running the country. As an isolated government became increasingly dependent on the military to restrain its political opposition, generals became more impatient. When Sharif finally tried to rein in an increasingly ambitious military establishment, it was too late to undo the damage.

2. Consequences of Peace and War

After dismissing General Karamat, Sharif passed over a number of senior officers to appoint Musharraf as the new army chief. If Sharif had intended his political appointee to run the army on his behalf, his hopes proved unfounded. Heading an army that resented Sharif's intrusion into its internal affairs and anxious to prove his loyalties to his parent organisation, General Musharraf proved even more willing than Karamat to challenge civilian authority. Sharif's peace overtures to India provided Musharraf

⁵⁶ In his annual address to the Pakistan Navy War College in October 1998, General Karamat proposed the formation of a National Security Council, composed of military and civilian officials, to deal with issues of internal as well as external security.

⁵⁷ Anwar H. Syed, "Pakistan in 1997: Nawaz Sharif's Second Chance to Govern", *Asian Survey*, Vol. 38, N°2, February 1998, p. 119.

⁵⁸ For a detailed account of the raid on the Supreme Court, see Shah, *op.cit.*

⁵⁹ Zahid Hussain and Amir Mir, "Army to the Rescue", *Newsline* (Karachi), May 1998, p. 21.

the perfect opportunity to prove his fealty to the military's anti-Indian policy.

India's nuclear tests in 1998 had reinforced the Pakistan military's distrust of the Hindu nationalist BJP government, and it pressured their reluctant prime minister to hold retaliatory tests.⁶⁰ When international economic sanctions derailed Pakistan's ailing economy, and domestic and internal investment ground to a halt, Prime Minister Sharif reacted positively to peace overtures from Indian Prime Minister Atal Bihari Vajpayee. In May 1999, he hosted Vajpayee in Lahore. The Pakistani military high command made its displeasure known by resuming artillery exchanges along the Line of Control in Kashmir.

While Vajpayee and Sharif signed confidence building measures, General Musharraf dispatched militants, backed by regular troops, into the Kargil and Drass sectors of Indian controlled Kashmir in May 1999.⁶¹ As Indian military casualties mounted in the initial stages, the BJP government massed troops in forward positions along the Line of Control (LOC) and the international border, threatening to fight an all-out war unless Pakistan withdrew its regular forces and militants. When it suffered massive reverses in Kargil and faced war with a militarily superior foe, Pakistan backed down. Sharif rushed to Washington, where President Clinton helped to mediate a truce, based on unconditional Pakistani withdrawal, in July 1999.⁶²

Sharif's government became a casualty of the Kargil debacle. Pakistan's state controlled media had depicted the fighting in Kargil as a major victory. A domestic backlash occurred when the military withdrew unconditionally. Discontent was also rife within the military because of the high casualties. Hoping to divert domestic attention, Sharif pinned the blame on Musharraf, implying that the army chief had not kept him fully

informed.⁶³ Angered by Sharif's attack and concerned about unrest within the ranks, the high command decided to oust Sharif. All that was left was to decide when and how.

3. The Coup d'État

General Musharraf had openly defied his prime minister by aborting his peace bid with India and embarking on the military adventure in Kashmir. Musharraf's aggressive posture reflected the high command's impatience with civilian rule and disregard for democratic norms. Confident that the military could run the country more efficiently, alienated by the prime minister's disrespect for the military's internal autonomy and his attack on their institution, Musharraf and his colleagues decided to overthrow the Sharif government.

The decision to oust Sharif and impose military rule was a calculated risk. Sharif's opponents were up in arms because of his authoritarian style. A number of ruling party leaders and parliamentarians were also estranged by Sharif's propensity to rule through a kitchen cabinet. His political isolation assured the high command that his removal would not trigger domestic unrest. Internal misgivings about military rule could be mollified through promises of democratic reform. Angered by executive intervention, an alienated judiciary could also be counted upon to legitimise military rule. Finally, the high command hoped to gain international, in particular U.S., acceptance by justifying the coup as a drastic but unavoidable measure to end corrupt, inefficient, and authoritarian civilian rule.

The Kargil debacle had resulted in questioning, within and without parliament, of the military's internal and external roles as well as Sharif's actions. The beginnings of a parliamentary revolt against executive fiat and the military's performance boded well for the democratic transition but posed a threat to the military's corporate interests. As relations with the government deteriorated, military leaders decided to act. Well aware of their ambitions and growing resentment, Sharif made a futile bid to ward off a coup d'état. While Musharraf was abroad, Sharif dismissed

⁶⁰ Interviews with army officers, Islamabad, June 1988.

⁶¹ A few militants and several hundred Northern Light Infantry troops occupied positions on the Indian side of the LOC between March and May. Brian Cloughley, *A History of the Pakistan Army: Wars and Insurrections* (Oxford, 2001), pp. 376-377.

⁶² Hasan Ali Shahzeb, "Much Ado about Nothing", *Newsline* (July 1999), p. 24.

⁶³ In June 2000, Sharif disclosed: "This ill-planned and ill-conceived operation was kept so secret that besides the prime minister, some corps commanders and the chiefs of navy and air force were also kept in the dark". Rifaqat Ali, "Army Kept Government in Dark: Nawaz", *Dawn*, 13 June 2000.

him and appointed General Khawaja Ziauddin in his stead.⁶⁴

Prepared for such an exigency, the corps commanders moved on 12 October. The head of the Rawalpindi corps, General Mahmood Ahmad, seized the federal capital. Troops surrounded the prime minister's residence, imprisoning Sharif and his cabinet ministers. Musharraf returned from Sri Lanka and oversaw the coup even while airborne.⁶⁵ On his arrival in Karachi, the Army Chief dismissed the prime minister and his cabinet, dissolved the legislature, and suspended the constitution. The man on horseback had returned.

III. RETURN OF THE MAN ON HORSEBACK

A. REGIME SURVIVAL

Heading the military government, General Musharraf accused Sharif of corruption, interference with the judiciary, and attempting to destabilise the armed forces. Sharif, said Musharraf, had tried "to politicise the army, to destabilise it, and to create dissension within its ranks".⁶⁶ The military had, therefore, intervened to perform its primary mission, to protect Pakistan's national security. Denying that the military had political ambitions, Musharraf claimed, "It(s) not by design that the army steps in. (It) is because of the government's misdoing", adding that the military is the "only organised, credible force to stabilise the situation".⁶⁷ But the military had overthrown the Muslim League government not "because it was bad at governance, or corrupt, or were bad economic managers, or had politicised the bureaucracy and attacked the Supreme Court. It was overthrown because it had repeatedly interfered with both operational and policymaking issues that the military viewed as its exclusive business".⁶⁸

There was initially no resistance to military rule because Sharif's style had antagonised the very political forces that would have been expected to oppose the coup. Regime survival was, however, far from assured. Public apathy demonstrated discontent with inept and corrupt civilian governments but did not translate into popular support for authoritarian rule. The failures of civilian leaders had, in fact, reinforced aspirations for democracy.⁶⁹ Despite discredited leaders and organisational weaknesses, political parties had also retained domestic support during the democratic transition. If the past were a

⁶⁴ According to Sharif, Musharraf was dismissed because he was "acting unconstitutionally, was involved in bugging the Prime Minister's house and it had become his routine to create instability in the country". Quoted in Massoud Ansari, "Nawaz Sharif—'It is probably a joke that Musharraf is not a vindictive man'", *Newsline* (April 2002), p. 27.

⁶⁵ Sharif had ordered that Musharraf's plane not be allowed to land in Karachi. Informed that the plane was short on fuel, the government made arrangements to have the plane diverted to a nearby airfield in Nawabshah, a city in interior Sindh, where the police were instructed to arrest Musharraf on arrival. The Army Chief refused to divert the plane, instructing the pilot to land in Karachi after his troops had seized the airport. Staff Reporter, "Whereabouts of Arrested Director Generals Police Not Known", *Dawn*, 14 October 1999.

⁶⁶ Text of Musharraf's first address to the nation on 13 October 1999, *Dawn*, 30 May 2000.

⁶⁷ Quoted in Zahid Hussain and Farah Durrani, interview with General Musharraf, *Newsline*, November 1999, p. 26.

⁶⁸ Sattar, *op.cit.*, p. 405.

⁶⁹ Aware that public acceptance of the coup "was not directed against the parliamentary system of government but rather at the government in office", the military rulers emphasised that they had not imposed martial law and that while the constitution was suspended, constitutional freedoms of speech and association would be respected. S.M. Zafar, "Constitutional Development, 1997-99" in Craig Baxter and Charles H. Kennedy (eds.), *Pakistan 2000* (Oxford, 2000), p. 1.

guide, it was only a matter of time before the political elite and their supporters would oppose military rule.

Hence the most pressing task for the new military rulers was regime survival. Like Zia ul-Haq, Musharraf and his colleagues had laid themselves open to charges of treason for suspending the constitution. Because the consequences of failure were dire, the government could not take the judiciary's acquiescence for granted. To counter potential threats and to advance their personal and institutional interests, Musharraf and his corps commanders embarked on a well-trodden path.

1. Legal Sanction

On 14 October, General Musharraf issued Provisional Constitutional Order (PCO), No. I of 1999. Henceforth, presidential orders and ordinances would override all other legislation, including the suspended constitution, and the actions of the military government could not be challenged in court.⁷⁰ Although the government insisted that martial law had not been promulgated, the PCO became the basic law of the land. Using it as legal cover, the government suspended the basic rights and freedoms in the constitution and amended the constitution itself.

After the October coup, Musharraf had assumed the title of "Chief Executive", creative wordplay on the term prime minister. President Rafique Tarrar was initially retained but was dismissed after Musharraf dissolved parliament, the president's electoral college by Chief Executive Order No. 2, and appointed himself president by Chief Executive Order No. 3 in the "supreme national interest".⁷¹ Since his tenure as Army Chief would expire in October 2001, Musharraf also extended that term indefinitely. The extra-constitutional means through which Musharraf consolidated his personal standing did not bestow legality on his actions. Musharraf, like his

predecessors, therefore, faced a basic dilemma. He possessed absolute power but his government lacked legal and constitutional sanction.

2. Restraining the Judiciary

Musharraf had singled out the Muslim League government's encroachment on the judiciary's autonomy, including interference in judicial appointments, in his justifications for the coup. The Army chief's agenda for democratic reform had also included a pledge to deliver justice. While judicial independence is an essential prerequisite for the delivery of justice, it conflicted with the demands of regime survival. The military government had to be sure that judges would provide legal sanction for its acts of omission and commission. "The first step after a military takeover", says the President of Pakistan's Supreme Court Bar Association, "is to weaken the judiciary, to weed out strong judges and then to form a partnership with the judiciary to gain legitimacy."⁷²

Soon after the coup, Muslim League parliamentarian Syed Zafar Ali Shah challenged its legality in the Supreme Court. When that body, under Chief Justice Siddiqui, accepted the petition, the military government followed in General Zia's footsteps and required High Court and Supreme Court judges to swear an oath to uphold the PCO.⁷³ Superseding their oath to the 1973 constitution, and depriving them of the right to question any act of the military government, the Oath of Judges Order 2000 of 25 January 2000 divided the judiciary.⁷⁴ The Chief Justice and five other members of the Supreme Court, almost half its strength, defied the military and resigned. A number of judges of the High Court followed suit. Others were not allowed to take the

⁷² ICG Interview with Hamid Khan, Islamabad, July 2002.

⁷³ In January 1981, Zia deprived the judiciary of the right to review the acts of his government and forced judges of the superior courts to swear allegiance to his Provisional Constitution Order. The Chief Justice and three justices of the Supreme Court and several justices of the Lahore High Court refused. Others were not even asked to take the oath and were arbitrarily retired.

⁷⁴ The Order stated that any person who has taken the oath "shall be bound by the provisions of this Order, the proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitutional Order N°1 of 1999" and "notwithstanding any judgement of any Court, shall not call in question or permit to be called in question the validity of any of the provisions thereof". Text of Oath of Office (Judges) Order, 2000, *Dawn*, 30 May 2000.

⁷⁰ The order stated: "No judgement, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the Chief Executive or any authority designated by the Chief Executive." Text of Provisional Constitutional Order N°1 of 1999, *The Nation* (Lahore), 15 October 1999.

⁷¹ Intashamul Haque, "Takeover in 'National Interest'", *Dawn*, 21 June 2001.

oath and removed. The remaining judges accepted the new rules and swore allegiance to the military government on 26 January 2000.⁷⁵

The Supreme Court judges who had sworn an oath of allegiance to the PCO validated Musharraf's coup in their judgement on the Zafar Ali Shah case on 30 May 2000. The court, headed by the new Chief Justice, Irshad Hasan Khan, based its decision on the doctrine of "state necessity" but it made the legality of military rule conditional on national elections being held within three years from 12 October, 1999. The Court also granted Musharraf the right to amend the 1973 constitution but only within the constitution's federal, democratic, and parliamentary framework.⁷⁶

The judiciary's legitimacy was damaged by the decision to accept the PCO over the constitution they had sworn to defend and protect. Although the government's legitimacy was also marred by the resignations of senior judges, the oath of allegiance of other judges and the Supreme Court ruling gave Musharraf the sanction he needed for regime survival. A more formidable challenge lay ahead, however – regime consolidation. Three years into military rule, the Musharraf government is still searching for the most effective ways of consolidating its power. Its strategies resemble those of the Ayub, Yahya, and Zia governments, somewhat modified to meet changed domestic and external imperatives.

B. CONSOLIDATING POWER

1. Accountability

The ten-year democratic transition had resulted in a two-party system. Perceiving Benazir Bhutto's Pakistan People's Party and Nawaz Sharif's

Muslim League (PML-N) as threats, the government has focused on containing both parties.⁷⁷ Understandably, its first target was Nawaz Sharif. Charged and convicted of hijacking Musharraf's aeroplane and attempted murder, he was sentenced to life imprisonment. In December 2000, the government pardoned him and exiled him and twenty family members to Saudi Arabia.⁷⁸ The quid pro quo of this unusual agreement, the first time that a convict has been pardoned and exiled in Pakistan's legal history, is Sharif's withdrawal from politics for ten years.⁷⁹

Having eliminated Sharif, the military government moved to undermine the PPP. Headed by an army general, the National Accountability Bureau has instituted cases against and sentenced scores of politicians through special courts. Currently in self-imposed exile in Dubai, Bhutto faces charges of corruption in a number of such courts.

The accountability process has, however, failed to weaken the support base of the major political parties because its own legitimacy is in doubt. NAB purview excludes serving military personnel and the judiciary on the grounds that both institutions already have effective internal accountability procedures.⁸⁰ The military and the judiciary are hardly corruption-free but, as a former army officer states, "the military doesn't believe in its own accountability".⁸¹ The

⁷⁵ Explaining his refusal to take the fresh oath under the PCO, Supreme Chief Justice, Siddiqui said: "To me it's like breaking the oath we took under the 1973 constitution", adding "we ourselves (the judiciary) are the creatures of the constitution". Nasir Iqbal, "Former CJ call PCO 'constitutional deviation'", *The News*, 27 January 2002.

⁷⁶ In its ruling, the Supreme Court said, "No amendment shall be made in the salient features of the constitution, i.e. independence of judiciary, federalism, parliamentary form of government blended with Islamic provisions". Text of the judgement of the Supreme Court in *Dawn*, 30 May 2000.

⁷⁷ In the 1990 elections, PPP and PML-led alliances won almost 73.5 per cent of votes. In the 1993 elections, the two parties garnered 90 per cent of the national vote. In the 1997 election, their combined vote was 68 per cent. William L. Richter, "The 1990 Elections in Pakistan" in Charles H. Kennedy, ed., *Pakistan 1992* (Boulder, 1993), p. 37; Waseem, "Pakistan Elections 1997", op.cit., p. 10; Rais, "Benazir's Return to Power", op.cit, p. 3, 9.

⁷⁸ Sharif's brother, former Chief Minister of the Punjab Shabaz Sharif, accompanied him into exile.

⁷⁹ According to Musharraf's spokesperson, Major General Rashid Qureshi, no member of the exiled Sharif family (including his wife Kulsoom Nawaz and brother Shabaz Sharif) who had signed the deal with the government can contest the October polls or even return to Pakistan before the ten-year period expires. Staff Reporter, "No Sharif Family Member can Contest Polls: Rashid", *Dawn*, 9 July 2002.

⁸⁰ "There is a very strong accountability system...at every stage, at every rank in the Army there is a system of accountability, checks and balances all along, up to the topmost tier", says Musharraf. "Democracy Will Work Well in Country, says CE", *The News*, 8 April 2001.

⁸¹ In June 2002, for instance, former Chief of General Staff, corps commander, Military Intelligence chief-turned industrialist, Lt. General Ali Quli Khan drew the attention of

government's opponents also argue that civil and criminal procedures exist to tackle cases of political corruption, and hence there is no need for a special accountability process or courts.

Although a few retired military officers have been charged and tried, official figures show that only 1.47 per cent of NAB's cases are against former army officers while 27.72 per cent are against politicians.⁸² Almost all convicted officers have been released after plea bargain agreements to reimburse some proceeds of corruption. The government, however, refuses to reach similar agreements with its political opponents or release them on bail.⁸³ Politicians who have joined pro-government political parties such as the Pakistan Muslim League (*Quaid-i-Azam*, PML-Q), a splinter group of Sharif's party, have, however, been released on bail or had charges dropped altogether, raising suspicions that their original imprisonment was only meant to pressure them to defect from their parent party.

2. Divide and Rule

The military government's divide-and-rule tactics are motivated partly by desire to curb political opponents but Musharraf's legitimacy also depends on expanding his support base. Since the PPP remains united behind Benazir Bhutto, the military has concentrated on exploiting resentment within the PML-N against Sharif. Some PML-N leaders have willingly supported the government either because of their hostility toward Sharif or in hopes of political rewards.

Vice Chief of General Staff General Mohammad Yusuf to the army's decision to award a contract for trucks to a rival company that would cost the national exchequer "approximately double" the price. This and dozens of similar controversies will not be examined by NAB accountability courts. Kamran Khan, "Army's Rs. 2. 4 Billion Truck Deal Triggers Questions", *The News*, 28 July 2002. ICG Interview, July 2002.

⁸² *The News*, 23 March 2002; Javed Rana, "NAB Probe Against Army Officials 1.47 per cent of Total Cases", *The Nation* (Lahore), 19 May 2002.

⁸³ Former speaker of the National Assembly Yusuf Raza Gillani has, for instance, been convicted and sentenced to five years rigorous imprisonment for minor charges such as the misuse of official transport and telephones, abuses that apply to almost all senior and even middle level civil and military bureaucrats.

Others have been pressured to switch sides by threats of being held to account for past abuses.

Soon after the military coup, Sharif's Muslim League split into two factions. Mian Azhar, governor of the Punjab under Sharif, heads the splinter group, the Pakistan Muslim League (*Quaid-i-Azam*). Dissidents from a number of parties, including some from the PPP, have joined the PML-Q. Although the military government has also helped marginal parties to forge political alliances such as the Pakistan Democratic Alliance and the Sindh Democratic Alliance, the PML-Q is its closest civilian partner.⁸⁴

The military government's tactics are, however, hampered by refusal to share power with a major political party. Musharraf has not learnt from the mistakes of his predecessors. In the initial years of military rule, General Ayub Khan also eliminated a whole generation of political leaders, disqualifying them from public office under an anti-corruption law.⁸⁵ Ayub then created his own party, the Convention Muslim League, a breakaway faction of the Muslim League. It was perceived as a mere appendage of the military, and the government was destabilised by the very political forces it had hoped to eliminate.

General Zia ul-Haq also disqualified politicians from political office through presidential orders and brought Bhutto's foes, including the Muslim League and the religious right, into his government and, at a later stage, into parliament. The Muslim League's support paid temporary dividends by giving a civilian cover but Zia's refusal to share power with his allies triggered an in-house revolt, forcing him to dismantle his own political order.

The Musharraf government has adopted a confrontational attitude toward all major political parties and opted to patronise marginal parties and politicians dependent on it for survival. As a result, the major parties, including the PPP and the PML-N, have joined hands, rejecting the government's policies and contesting its legitimacy in umbrella

⁸⁴ The National Alliance includes Bhutto's former President Farooq Leghari's Millat party. The Sindh National Alliance is an amalgamation of a number of small anti-PPP parties in Bhutto's home province of Sindh.

⁸⁵ More than 7,000 politicians were disqualified from public office for seven years under Ayub's Elective Bodies (Disqualification) Order, 1959.

groups such as the Alliance for the Restoration of Democracy (ARD).⁸⁶ The military hopes, however, that with official help its allies, particularly PML (Q), will erode the major parties' support. The government has also created a new class of politicians to bolster its civilian base.

3. Devolving Power

Musharraf's October 1999 pledges included to rebuild a national consensus by decentralising power and authority. Over-centralised state structures have been the bane of a country that is divided along overlapping linguistic, ethnic, and regional lines. Although the federal principle is incorporated in the 1956, 1962, and 1973 constitutions, military governments have resisted devolving power and resources lest this undermine corporate military interests. The military, by its nature, prefers unity of command.⁸⁷ Consequently, every military government has used the rhetoric of democratic pluralism to extend the centre's reach.

Ayub's 1962 constitution formally accepted the federal principal but imposed the West wing's control over the East. Ayub's scheme of local government, the Basic Democracies, was also used to centralise power, thus contributing to East Pakistan's secession in 1971. The 1973 constitution provided a strong centre but Baluchistan, the Northwest Frontier Province, Punjab and Sindh, were granted considerable autonomy. A bicameral legislature also gave the smaller provinces a role and a stake in the state.⁸⁸ Although Zulfikar Ali Bhutto was predisposed to centralised rule, federalism and parliamentary democracy provided avenues of participation and representation that softened political dissent. However, ethno-regional alienation reached new heights under Zia, whose devolution plan, the

Local Bodies scheme, was merely a device to create a pliable civilian clientele.⁸⁹

Musharraf's devolution plan was devised by his think-tank, the National Reconstruction Bureau (NRB). The Local Government Plan 2000 has three levels, district, tehsil (a pre-independence term for a sub-district) and union. It states that local governments "will create an enabling environment in which people can start participating in community welfare and be the masters of their own destiny". Local officials would be more responsive to the needs of their constituents and more accountable for their actions.⁹⁰

It has been criticised by all major political parties and segments of civil society, including lawyers, human rights groups and journalists. Political parties believe it undermines federalism by eroding provincial autonomy. The independent Human Rights Commission of Pakistan (HRCPP) says that the purpose "seems to be to depoliticise governance and to earn a lease of life for the military government behind a sort of democratic façade".⁹¹

In August 2001, the government held elections for district officials on a non-party basis. Political parties, however, put up candidates to gain a voice. PPP candidates won a large number of seats at the union and tehsil levels. Political parties believe that the government then selectively rigged elections for the posts of Nazims and Naib Nazims (mayors and deputy mayors), at the apex of the scheme.⁹²

Although the government has yet to devolve substantial political and fiscal powers to local officials, it has used the new political elite to further

⁸⁶ The PPP and the PML-N are the two largest parties in the sixteen-party alliance, formed in December 2000.

⁸⁷ The concept of "unity of command is irresponsibly applied to civilian politics", says a former Defence Secretary. ICG Interview, Islamabad, July 2002.

⁸⁸ The directly elected Lower House is called the National Assembly and the indirectly elected Upper House, the Senate.

⁸⁹ Robert LaPorte Jr., "Administrative restructuring during the Zia Period", in Shahid Javid Burki and Craig Baxter (eds.), *Pakistan under the Military: Eleven Years of Zia ul-Haq* (Boulder, 1991), pp. 125-126.

⁹⁰ *Local Government Plan 2000: Final Shape*. Text in *Dawn*, 16 August 2000.

⁹¹ Staff Reporter, "Devolution of Power Scheme in Conflict with Federal System", *Dawn*, 4 December 1999; Staff Reporter, "PONAM Opposes District Government Plan", *Dawn*, 29 March 2000; and Amir Mir, "Power to the People?", *Newsline*, (April 2000), pp. 54-55.

⁹² Political parties allege, for instance, that army officers from Ten Corps were directly involved in the rigging of the election for Nazim, Rawalpindi, the seat of the GHQ, forcing opposition candidates to withdraw from the contest against Tariq Niazi. ICG interview, Islamabad, May 2002.

its political goals.⁹³ During Musharraf's 30 April 2002 presidential referendum, Nazims and Naib Nazims were pressured and persuaded to mobilise voters in their districts. Government officials offered them rewards such as development funds and threatened them with fiscal prosecutions if they failed to do the government's bidding.⁹⁴

Although the centre's intrusion negates the very concept of devolution, the scheme was lauded by international organisations, including the World Bank, the Asian Development Bank and the United Nations Development Fund, as a step toward participatory democracy. This recognition has given at least a modicum of legitimacy. On the eve of the October elections, the military government is hopeful that external approval, in particular U.S. support, will legitimise its more ambitious political and constitutional reforms.

IV. EXTERNAL IMPERATIVES, MILITARY RULE, AND DEMOCRACY

A. ALLIANCES, EXPEDIENCY, AND DEMOCRACY

The U.S. and its Western allies have been influential in shaping civil-military relations and the course of democracy in Pakistan. During the height of the Cold War, U.S. policymakers forged partnerships with authoritarians and democrats alike. In the post-Cold War period, the U.S. opposed military interventions but tailored policies toward authoritarian regimes in countries such as Pakistan to promote its perceived security interests. Western allies followed the U.S. lead. Since the Pakistani military's internal policies are based, in part, on an assessment of external diplomatic and financial costs and benefits, Western alliances of expediency have encouraged it to retain power. Western diplomatic and economic support also strengthens the military against its civilian contenders, helping military governments to consolidate their hold.

During the 1950s, Ayub was instrumental in forging military alliances between Pakistan and the "free world". Joining the Central Treaty Organisation and the Southeast Asian Treaty Organisation, Pakistan provided the U.S. with military bases and intelligence facilities to monitor the Soviet Union. In return, the military received considerable assistance that helped Ayub to expand his parent institution.⁹⁵ As the military establishment grew, so did its political ambitions. In October 1958, Ayub and his commanders supplanted the political leadership and took direct control of the state.

Relations between the U.S. and Pakistan's first military government remained cordial. Pakistani officers were trained at U.S. military installations, and the Pakistan military purchased almost all of its weaponry from Washington.⁹⁶ In 1965, the U.S. imposed an arms embargo on Pakistan after it used American weapons in war with India. By then, U.S.

⁹³ Nazims affiliated to the PPP, in particular, criticise the government for failing to give them either political or economic autonomy. ICG interviews with Nazims, Karachi, March 2002.

⁹⁴ ICG interview, May 2002.

⁹⁵ Rizvi, *The Military and Politics in Pakistan 1947-1997*, op.cit., p. 270.

⁹⁶ Addressing the U.S. Congress in 1961, Ayub said, "Pakistan today is the most allied ally of the United States". Quoted in Hussain and Hussain, op.cit., p. 35.

interest in Pakistan was diminishing due to the beginnings of détente.

After Ayub's replacement by General Yahya Khan, U.S. global interests supported Pakistan's second military government. Rejecting the results of the 1970 elections, the Yahya government brutally repressed Bengali dissent, triggering a civil war, and giving India an excuse to intervene. Despite international condemnation of Pakistani military action, Washington maintained cordial ties since the Yahya government had helped facilitate its opening to China.⁹⁷ To this day, India criticises the despatch of the aircraft carrier *Enterprise* to the Bay of Bengal in 1971, a U.S. warning to India to refrain from extending the war from East to West Pakistan.

When General Zia ul-Haq took power in 1977, bilateral relations were tense over Pakistan's nuclear weapons program. The Carter administration's displeasure transformed into support for Pakistan's third military government after Soviet troops invaded Afghanistan in 1979. The Pakistan military benefited once again from new U.S. regional and global priorities. The Reagan administration and its allies gave billions of dollars in military and economic assistance to Zia's government in return for support of the U.S.-sponsored Afghan jihad.⁹⁸ This helped Zia consolidate his power and rule until his death in a mid-air explosion in 1988.⁹⁹

B. MUSHARRAF AND THE WAR AGAINST TERRORISM

In 1988, the U.S. supported the transition to democracy in Pakistan. Despite the troubled nature of that transition, marred by civilian corruption and ineptitude, the U.S., the EU, Japan, and the Commonwealth condemned Musharraf's coup in October 1999. Imposing mandatory sanctions, the Clinton administration called upon the military to

restore democracy.¹⁰⁰ It took another U.S.-led war in Afghanistan to transform the political fortunes of Pakistan's fourth military government.

The coup occurred when Pakistan's relations with Washington were strained over a number of issues. The U.S. was antagonised by Pakistan's backing of the Taliban in Afghanistan, which harboured Osama bin Laden and his al-Qaeda network, and by Pakistani support for Islamic extremists in Indian Kashmir. After 11 September, however, the U.S. led in rehabilitating the military government, showering it with political and economic rewards.

Confronted with an ultimatum to side with the U.S. or face its wrath, General Musharraf reversed course, abandoning his Taliban allies. In fact, 11 September proved a boon for the Pakistani military. The war against terrorism gave the Musharraf government an opportunity to re-establish a strategic relationship with the U.S. To reward Musharraf for his cooperation, Washington waived sanctions and resumed bilateral aid. Following the U.S., the EU, Canada, Japan and the international financial institutions extended grants and loans and entered into debt-rescheduling agreements with the Musharraf government. In September 2001, Pakistan's foreign exchange reserves were around U.S.\$700 million. By August 2002, they were U.S.\$7 billion.

Assured of external financial support, Musharraf has rewarded his domestic constituency, the armed forces, by constant increases in defence expenditure. External support has also strengthened the military government against its civilian opponents. Lacking domestic legitimacy and facing international economic and diplomatic pressure in October 1999, Musharraf had pledged to restore democracy and to hand over power to an elected government. These pledges have been incrementally watered down after 11 September 2001. A year later, the military appears to have abandoned its commitment to restore power to civil hands, with Musharraf "using good relations with the United States for domestic purposes, to retain power".¹⁰¹

⁹⁷ Cloughley, *op.cit.*, p. 147, 237.

⁹⁸ Apart from U.S.\$3.2 billion in military and economic assistance, the U.S. also supported the rescheduling of Pakistan's debt by the international financial institutions. Omar, *op.cit.*, p. 121.

⁹⁹ Rizvi, *The Military and Politics in Pakistan 1947-1997*, *op.cit.*, p. 270.

¹⁰⁰ Mandatory sanctions were imposed under section 508 of the Foreign Operations Appropriations Act. Pakistan was suspended from the Commonwealth, and the European Union imposed sanctions.

¹⁰¹ ICG interview with a former colleague of President Musharraf. ICG interview, July 2002.

The Bush administration is unwilling to pressure its ally to revive the democratic transition because of the Pakistani military's utility for U.S. regional strategic objectives. Support for Musharraf is also based on the belief that the military alone can keep Islamic militancy at bay in a troubled region. Although the United States is pressuring Pakistan to end its policy of using Islamic extremists in Indian Kashmir, the administration is reluctant to criticise the military's political manoeuvres. For instance, it refrained from commenting on Musharraf's April 2002 presidential referendum. Assistant Secretary of State Christina Rocca said: "It is up to Pakistani institutions to determine what is constitutional and legal".¹⁰² The signal has encouraged Musharraf to backtrack on his promise to withdraw the military to the barracks. On the contrary, the military is busy at work, preparing the ground for a protracted stay.

C. REGIONAL REPERCUSSIONS

The military's decision to retain power could have dire consequences for regional stability. Since the October 1999 coup, relations with India have steadily deteriorated. In May 2002, the two states were on the brink of a war that could have become nuclear.¹⁰³ Tensions were defused through U.S. intervention but the potential has not receded and is likely to increase if the military refuses to hand power to civilians after October.

The current impasse is largely of the military's making. In May 1999, Chief of Army Staff General Musharraf had violated the Simla agreement by sending Pakistani troops and jihadis across the Line of Control into Indian Kashmir. In April 2002, hundreds of jihadis crossed the Line of Control, either at the military's bidding or with its tacit approval.

The military's support for the jihadis is motivated by desire to undermine the security of India, which it perceives as both threat and regional rival. As a result, military leaders have consistently derailed attempts by civilian

governments to normalise relations during Pakistan's short democratic interludes. Bhutto's bid to normalise relations was disrupted in 1989. In 1999 Musharraf personally oversaw the military operation in Kargil that torpedoed Prime Minister Sharif's peace overtures to Vajpayee.¹⁰⁴

Not surprisingly, Musharraf's assumption of power increased tensions. These assumed new heights after the terrorist attack on the Indian parliament in December 2001. India withdrew its ambassador and moved its troops into forward positions along the Pakistan border and the LOC, resulting in a reactive Pakistani deployment. There they stay to this day.

India has conditioned withdrawal of its forces on an end to the infiltration of and Pakistani support for Islamic extremists responsible for much of the violence in Indian Kashmir. Although Musharraf vows that he has ended cross-border incursions, the Indians and even his U.S. allies have doubts. So long as Indian and Pakistani troops remain eyeball to eyeball, the potential for war between the two nuclear-armed adversaries cannot be ruled out.

The impasse could be broken if there is a meaningful democratic transition in Pakistan. However, if Musharraf continues to rule under a civilian guise, at best he would remain an irritant in relations. Given their deep hostility toward India, if Pakistan's military leaders remain in the driver's seat, they would be tempted to resume adventurism in Kashmir once international attention shifted. Moreover, should Musharraf keep power after the October polls, civilian leaders will have no choice but to accept military dictates in all spheres of policy, including Kashmir. As a result, South Asia will remain precariously poised between a cold peace and a hot war.

¹⁰² Quoted in Farhan Bokhari, "The Dangers of Miscalculation?", *The News*, 11 April 2002.

¹⁰³ Mayed Ali, "Tactical N-Warheads Moved to Border", *The News*, 28 May 2002.

¹⁰⁴ Hasan Ali Shahzeb, "Much Ado About Nothing", *Newsline* (July 1999), p. 24.

V. MILITARY MANOEUVERS

A. PREPARING THE GROUND

In April 2002, General Musharraf made a formal bid to retain power by holding a referendum to extend his presidential term for five years. He justified this on the basis of a constitutional clause permitting referendums to obtain public opinion on issues of national importance.¹⁰⁵ The 1973 constitution, however, lays down a specific procedure for presidential elections. As a symbol of the federation, the president is indirectly elected by parliament. The Senate, the National Assembly, and all four provincial assemblies jointly comprise the Electoral College for presidential elections.¹⁰⁶

Bypassing parliament to extend his self-assumed post of president for five years beyond October 2002, Musharraf has followed the example of other military rulers. In 1960, Ayub Khan held a referendum to assume the presidency. In December 1984, Zia ul-Haq extended his self-proclaimed presidency by five years in a rigged referendum, which equated support for Islamisation with an extension of Zia's term.¹⁰⁷ Official results in that referendum put turnout at 62 per cent, with 97.71 per cent approval. Independent observers estimated the turnout at less than 10 per cent.¹⁰⁸

Justifying his presidential referendum in the "supreme national interest",¹⁰⁹ Musharraf says, "I

am neither Ayub nor Zia and I follow my own line".¹¹⁰ But his referendum is no less controversial. Although political rallies have been banned since the 1999 coup, Musharraf held more than 30 public meetings, accompanied by corps commanders and other officials, at public expense of more than Rs.3 billion.¹¹¹

When the results were announced, Musharraf had outdone even Zia's victory. Chief Election Commissioner (CEC) Irshad Hasan Khan announced that he had obtained 97.5 per cent out of a total of 43.39 million votes cast, a turnout of 71 per cent.¹¹² Opposition and independent observers estimated that the referendum, which was boycotted by all major political parties, drew no more than 10 per cent of voters.¹¹³ In a televised address to the nation, Musharraf admitted that some over-enthusiastic voters had committed "certain irregularities" but promised "the nation with full honesty that (national) elections would be free and transparent and no official interference would be allowed in the process".¹¹⁴ The damage has, however, been done.

If the referendum was to enhance Musharraf's legitimacy, it only revealed his lack of support and the government's willingness to resort to any means to attain its ends.¹¹⁵ The referendum also exposed the

his "reforms and the reconstruction of institutions of state for the establishment of genuine and sustainable democracy, including the entrenchment of the local government systems, to ensure continued good governance for the welfare of the people, and to combat extremism and sectarianism". Text of Chief Executive's Order N°12 of 2002 in *The Nation*, 10 April, 2002.

¹¹⁰ Intikhab Hanif, "Campaign Launched from Lahore: Musharraf terms Referendum Constitutional", *Dawn*, 10 April 2002.

¹¹¹ On 1 October 2002, one Pakistani rupee equalled approximately 1.8 U.S. cents. Lahore Mayor Mian Amer Mahmood admits that his district government had funded Musharraf's 9 April rally. "Referendum Spending", *The Nation*, 11 May 2002.

¹¹² Javed Rana, "97.5 per cent say 'yes' to Musharraf", *The Nation*, 2 May 2002.

¹¹³ The Human Rights Commission of Pakistan said that most voters fell in the category of "captive voters", prisoners, factory workers, and state and local body employees. *Referendum 2002: Interim Report*, Human Rights Commission of Pakistan, 30 April 2002.

¹¹⁴ Text of Musharraf's address, 26 May 2002 in *The Nation*, 28 May 2002.

¹¹⁵ Multiple votes, incorrect voting lists, imperfect voter identification, ballot stuffing and forced voting were among

¹⁰⁵ Article 48 (6) says: "If, at any time, the President, in his discretion, or on the advise of the Prime Minister, considers that it is desirable that any matter of national importance should be referred to a referendum, the President may cause the matter to be referred to a referendum in a form of a question that is capable of being answered either by 'Yes' or 'No'".

¹⁰⁶ On 16 April 2002, Justice Tariq Mehmood of the Baluchistan High Court resigned from the Election Commission to protest against the unconstitutionality of the referendum. The justice declared: "I cannot sit on a judge's chair while lying". Saleem Shahid, "Justice Tariq of BHC Resigns", *Dawn*, 17 April 2002.

¹⁰⁷ Referendum Order, 1984 (Islamabad: Ministry of Law and Parliamentary Affairs, Government of Pakistan, 12 December 1984), p. 2.

¹⁰⁸ Zaffar Abbas, "Games Dictators Play", *Herald* (Karachi), April 2002, p. 30.

¹⁰⁹ The referendum asked voters to elect Musharraf as President for a five-year term, to enable him to consolidate

weakness of the military's civilian clients since pro-government parties and elected district officials failed to deliver the voters they were to mobilise. If the referendum has undermined Musharraf's legitimacy, their successful boycott has galvanised the PPP and the PML-N. Its legitimacy marred, no longer confidant of popular support, the Musharraf government is even more wary of a democratic transition that could bring back its civilian foes.

B. CONSTITUTIONAL ENGINEERING

On 26 July 2002, the National Reconstruction Bureau issued the first of two proposed packages of constitutional reforms to reshape Pakistan's political system. President Musharraf says the amendments are meant to protect and advance democratic governance, instead of the "sham" democracy of past civilian governments.¹¹⁶ However, he also says he will retain power after the October elections: "Unless there is unity of command, unless there is only one man in charge on top, it (the system) will never function".¹¹⁷ Musharraf has made his intention of keeping that unity of command clear.

Through the Legal Framework Order (LFO) of 21 August 2002, Musharraf has validated all acts and decrees of his government, including a five-year extension of his presidential term and position as Chief of Army Staff. He has also given himself power to dismiss the National Assembly, appoint service chiefs, approve appointments of justices of the superior courts, and establish a National Security Council that will legalise the military's political role. Declaring that the Supreme Court has given him the authority to amend the constitution, Musharraf states: "These steps are essential to introduce real democracy in Pakistan" which is moving "from democratic dictatorship to elected essence of democracy".¹¹⁸

In its March 2000 judgement validating the coup, the Supreme Court had granted Musharraf the right to amend the 1973 constitution but not to alter its basic character, more specifically, the federal structure of the state, the parliamentary form of government, and judicial independence. By amending 29 articles, the LFO has distorted the constitution. According to the political opposition:

[The] constitution will be neither presidential nor parliamentary nor federal. Not presidential because there will be no checks on the president's authority, not parliamentary because the parliament will not be independent, and not federal because the president will dictate terms to the provinces.¹¹⁹

This criticism has substance since the new dispensation creates a political order in which civil authority remains subordinate to the military after the formal restoration of democracy.

1. President versus Prime Minister

Musharraf's constitutional amendments tilt the balance of power in a parliamentary democracy. According to the 1973 constitution, executive authority is vested in the prime minister, not in the president, the titular head of state.¹²⁰ Zia's Eighth Amendment had distorted the constitution by granting the president the power to dismiss government. During the failed democratic transition (1989-99), presidents had used the amendment three times, at military behest, to remove elected governments, until deprived of this power by the Thirteenth Amendment.

The Legal Framework Order has revived the president's powers to dissolve the National Assembly. The president can thereafter appoint a caretaker cabinet at his discretion. Musharraf has also restored the president's power to appoint the chairman of the Joints Chief of Staff and the three service chiefs, restricting the prime minister's ability to restructure civil-military relations. Because the

some of the "irregularities" witnessed during the polling. ICG interviews and personal observation, Islamabad, April-May 2002.

¹¹⁶ Ihtashamul Haque, "PM will Enjoy Full Power", *Dawn*, 7 July 2002.

¹¹⁷ Musharraf's interview with BBC. "Musharraf Defends Power to Sack Government", *The News*, 23 June 2002.

¹¹⁸ "58-(2) b Back, NSC Formed", *The Nation*, 22 August 2002.

¹¹⁹ ICG Interview with ARD President, Nawabzada Nasrullah Khan, July 2002.

¹²⁰ According to Article 41, the President "represents the unity of the Republic". Article 48 states that the "President shall act on and in accordance with the advice of the Prime Minister and such advice will be binding on him" unconditionally. Moreover, "the orders of the President would require for their validity the counter-signature of the Prime Minister".

president can also veto the prime minister's appointments of judges to the High Courts and Supreme Court, the prime minister's chances of judicial redress are minimal. Clarifying the future relationship between prime minister and president, Musharraf earlier said, "What we are aiming at is not a balance of power" but "checks on exercise of [the prime minister's] authority".¹²¹

The checks have been formalised by his LFO, which gives an all-powerful president power to dismiss the government in consultation with a military-dominated National Security Council. As a result, the prime minister will have little power or responsibility and will be accountable to the military, not parliament. The president will answer only to the armed forces. "He is neither accountable to the National Security Council, nor to the Prime Minister or the cabinet or either house of parliament", says a critic.¹²² The "main power tussle", stresses a former army officer, "will be between the military and civil authority. The President will only act as the military's front man".¹²³

2. President Versus the Legislature

By granting the President the right to dissolve parliament, the LFO undermines the concept of parliamentary sovereignty that underpins the 1973 constitution. Musharraf's constitutional amendments themselves constitute an attack on parliament. By the 1973 constitution, only parliament can amend the constitution, and then by two-thirds majority. Declaring that the Supreme Court has given him this authority, Musharraf rejects the parliament's right to ratify his LFO. "I am hereby making it [the LFO] a part of the constitution", said Musharraf. "There is no need to get it validated or ratified from parliament".¹²⁴ The LFO even impinges on parliament's authority by

validating Musharraf's presidential appointment since Parliament alone has the right to choose the head of state. Musharraf cannot even stand for the Presidency without a constitutional amendment passed by parliament. As a serving public official, he is disqualified from elected office until two years after retirement.¹²⁵

While the LFO undermines parliament's authority, the military-dominated National Security Council reduces parliament to a subordinate body, dependent for its policies and even existence on the military. An editorial in a leading Pakistani newspaper stated:

Democracy stipulates the rule of law through the people's will. In specific terms, this means that law making and the people's representatives do governance. What the NSC proposes to do, however, is to subordinate Pakistan's elected leaders to a cabal of Bonapartists in disguise. This is hardly the road to take the nation to "real democracy".¹²⁶

Declaring that his constitutional amendments, including the NSC, have become the law of the land, Musharraf says that parliament can reject them by a two-thirds majority. However, he warns, if it tries, either "they will have to quit or I will quit".¹²⁷ This disregard for parliamentary supremacy bodes ill for the democratic transition and for the stability of the post-October political order.

3. Restricting Federalism

If the president's constitutional amendments render the prime minister powerless and reduce parliament to a rubber stamp, they also centralise power and authority in the federation. By the 1973 constitution, the prime minister's advice on the appointment of provincial governors binds the president.¹²⁸ Musharraf's constitutional changes have transferred that power to the president. Provincial governors have, in turn, been given the power to dismiss their

¹²¹ Tariq Butt, "Amendments Seek Checks on Authority, says Musharraf", *The News*, 4 July 2002. Musharraf, says an army officer, "doesn't understand the difference between checks and balances". ICG interview, July 2002.

¹²² ICG interview, Islamabad, August 2002.

¹²³ ICG interview, July 2002.

¹²⁴ Shakil Sheikh, "President Validates All His Actions; Final Amendments Announced: Article 58 (2) B Restored", *The News*, 22 August 2002; "Musharraf to Remain President, COAS for Five Years: 58-(2) B Back, NSC Formed", *The Nation*, 22 August 2002.

¹²⁵ Article 41 (2) of the constitution states that a presidential candidate should be qualified to stand for parliament, while Article 63 (k) disqualifies a government official from standing for the National Assembly "unless a period of two years has elapsed since he has ceased to be in office".

¹²⁶ "Defending the 'package'", *Dawn*, 14 July 2002.

¹²⁷ Faraz Hashmi, "Amendments Irreversible: Musharraf", *Dawn*, 22 August 2002.

¹²⁸ Article 101 (1) of the 1973 constitution.

assemblies on presidential advice. Hence the president will control the provinces through his appointee, the governor.

Musharraf's decision to create a National Security Council also violates the principles of federalism. Dominated by the president and his military and political appointees, the NSC will advise the president on all vital issues, including dissolution of provincial assemblies. As a result, provincial governments will become hostage to military dictates. Voicing the concerns of the smaller provinces, an Awami National Party leader stresses that the military is "reintroducing a unitary system. We will never accept this change".¹²⁹

4. National Security Council and Military Supremacy

Among the many controversial constitutional amendments, Musharraf's National Security Council is the most controversial. By strange logic, he justifies a formal political role for the military as a deterrent to military intervention: "If you want to keep the military out, you have to get them in".¹³⁰ The NSC, he says, would also strengthen democracy by placing checks and balances on the main power brokers, the president, the prime minister, and the chief of army staff. "I only want checks and balances to avoid, once and for all, the imposition of martial law", Musharraf says, but makes his intentions clearer when he adds: "if the prime minister does not behave then there will be malfunctioning and that is why I say that the creation of the NSC is necessary".¹³¹

Military interventions have always been challenged in court. By giving constitutional cover to a military-dominated NSC, the military hopes to attain the legality that has thus far eluded military rule and rulers. Chaffing at constitutional restrictions on the military's political role, Zia also tried to create a military-dominated NSC. But even his rubber stamp parliament refused to accept the proposal in the bargaining that led to the passage of the Eighth Amendment. In 1998, Chief of Army

Staff Jehangir Karamat raised the issue of the NSC, only to be dismissed by Prime Minister Sharif.

Establishing it through his LFO, Musharraf has given the body constitutional status. Chaired by the president, the NSC will include the chairman of the Joint Chiefs of Staff Committee (JCSC), the three service chiefs, the prime minister, the leader of the opposition in and the speaker of the National Assembly, and the chairman of the Senate. Wearing the dual hats of president and army chief with the backing of his military appointees, Musharraf will dominate the civilians.¹³² A prime minister who tried to assert authority could be in a minority of one since parliamentarians would have the presidential sword of dismissal hanging over their heads.

Musharraf says that the NSC will only be consultative but its mandate gives sufficient cause for concern. According to the LFO, it covers "strategic matters pertaining to the sovereignty, integrity and security of the state; and matters relating to democracy, governance, and inter-provincial harmony".¹³³ Thus, the forum will have the right to monitor all institutions of democracy – parliament, judiciary, and free press. The NSC, says a political leader, will "give the military the perfect means to exercise authority without responsibility", while the "blame for errors of judgement is passed on to elected governments".¹³⁴

5. Judicial Independence

Musharraf says that those who dispute his authority to amend the constitution can go to court. But his government has little to fear from the judiciary. The Supreme Court has ruled in favour of the military government in every case of consequence, from the Zafar Ali Shah case on the legality of the coup to the ruling on Musharraf's referendum. It has also heeded the military government's advice on more minor matters, such as the appeal against the educational requirements for parliamentary candidates.¹³⁵ The judiciary has even accepted appointments of junior

¹²⁹ ICG interview, Peshawar, July 2002.

¹³⁰ "Musharraf to Remain President", op.cit.

¹³¹ Ihtashamul Haque, "PM to Enjoy Full Power", *Dawn*, 13 July 2002.

¹³² Declaring that he has no intention of giving up the post of Army chief after the October polls, Musharraf says, "You know the importance of uniform, therefore I would not remove it". Staff Reporter, "No power sharing with PM: Musharraf says Risk Calculated", *Dawn*, 7 April 2002.

¹³³ Legal Framework Order, 2002.

¹³⁴ ICG Interview with PPP leader, Farhatullah Babar, July 2002.

¹³⁵ ICG interview, July 2002.

judges to the High and Supreme Courts in violation of an established rule of seniority.¹³⁶ Because their only oath of allegiance is to the PCO, these new appointees could conceivably be even more willing to cooperate with Musharraf.

The judiciary has thus far refrained from granting constitutional sanction to the military government's acts and decrees, however. Ruling on Musharraf's referendum, for instance, the Supreme Court dismissed appeals but categorically stated that a "proper forum" would judge the referendum's constitutionality.¹³⁷ This does not necessarily translate into judicial independence. Senior judges admit that the government has undermined this. Outgoing Justice Mian Nazir Akhtar of the Lahore High Court said that the judiciary is "passing through a very crucial juncture as the government is trying its hardest" to get the "maximum out of the judiciary".¹³⁸

The major political parties are sceptical that the Supreme Court will rule in favour of challenges to Musharraf's amendments. According to PML-N Chairman Raja Zafarul Haq, the judges are unlikely to question the "government's directives".¹³⁹ Criticising the Supreme Court's record for upholding "inherent unconstitutional acts of the government", representatives of Bar Associations say, "The judiciary is not independent", and "it is of no use to take any controversial constitutional case before them".¹⁴⁰

C. RULE BY EXECUTIVE FIAT

1. Confronting Adversaries

All major political parties and alliances including the three largest parties, the PPP, the PML-N and the Sindh-based Muttahida Quami Movement, as well as almost all regional parties in the NWFP and Baluchistan have rejected the military's self-assumed right to change the Pakistani polity.¹⁴¹ Denouncing creation of the NSC, a political leader points out that the "mechanisms for consultations" between political and military leaders already exist in the Defence Committee of the Cabinet, the Ministry of Defence, the Joint Chiefs of Staff Committee and, on certain issues, the ISI. "But what the generals want is to keep on driving from the backseat".¹⁴² Political leaders also believe that the president's *carte blanche* to dismiss elected governments will destabilise the democratic transition.

While the political elite reject the legality of the LFO on the grounds that parliament alone can amend the constitution, lawyers associations are even more critical of the judicial deformation. "No military can decide what is the basic law of the land", says Supreme Court Bar Association President Hamid Khan. "The Supreme Court cannot authorise the military to make constitutional amendments. This right is denied to the judiciary itself by the 1973 Constitution".¹⁴³

Musharraf can pressure parliament to accept his LFO by threatening members with dismissal. Offers of governmental positions or the sword of accountability can also be used to prevent parliamentarians from rejecting the LFO, and thus denying Musharraf his presidency. Given the defiant mood of the major political parties, for this strategy to work, the government needs a weak parliament in which no party has a decisive majority. "The PCO's authority will no longer be there when the National Assembly meets", says an ARD leader, "parliament will then be the body which will validate or reject the orders of the government".¹⁴⁴

¹³⁶ In March 2002, the Pakistan Bar Association criticised the Supreme Court for accepting the appointment of three of its justices, who had been elevated from the Lahore High Court against the principle of seniority.

¹³⁷ Saying that the legal status of the referendum was based on the Proclamation of Emergency of 14 October 1999 and the Provisional Constitutional Order, N°1 of 1999, the Court said it would leave the questions of its constitutionality "to be determined at a proper forum at the appropriate time". Text of Supreme Court's Short Order validating the Referendum in *Dawn*, 28 April 2002.

¹³⁸ Correspondent, "Government Getting Maximum out of Judiciary: Judge", *The News*, 6 August 2002.

¹³⁹ ICG Interview, Islamabad, June 2002.

¹⁴⁰ ICG interviews, July 2002.

¹⁴¹ ICG Interviews, Islamabad, Karachi, and Peshawar, July-August 2002.

¹⁴² ICG interview with a PPP leader, Islamabad, August 2002.

¹⁴³ ICG Interview, July 2002.

¹⁴⁴ ICG interview, Islamabad, September 2002.

Since Musharraf's personal interests and the military's continued dominance depend on parliamentary assent, the government has taken a number of measures to even the political odds. Many former parliamentarians and potential opponents have been barred from the election through executive orders. Validated by the LFO, these include the Conduct of General Elections (Amendment) Order 2002 that disqualifies candidates from holding parliamentary office unless they possess the equivalent of a graduate degree.¹⁴⁵ This alone ruled out almost half the National and Provincial Assemblies dissolved after the October coup.¹⁴⁶ Other executive orders are more specifically aimed at eliminating former Prime Ministers Bhutto and Sharif from the electoral process.

On 6 July 2002, Musharraf issued Chief Executive Order No.19, the "Qualification to Hold Public Offices Order, 2002", disqualifying anyone who has served for two terms as Prime Minister from holding the post again. This decree affects both Bhutto and Sharif.¹⁴⁷ Another executive order, the Political Parties Order 2002, is Bhutto-specific. It amends Article 63 that debars persons convicted of corruption or other crimes from running for parliament¹⁴⁸ to include persons who have failed to appear before courts, i.e. "absconders".¹⁴⁹ These are also debarred from standing for party posts. Bhutto has, therefore, been disqualified twice over, from standing for election or heading her political party.¹⁵⁰ The military government is also cobbling

together political and electoral alliances to counter the PPP and the PML-N in the national elections.

2. Empowering Allies

The government has helped to bring political leaders and parties into electoral alliances, including the Sindh Democratic Alliance and the Pakistan National Alliance. Because the parties in both have limited popular support, the government's attention is focused on its key civilian partner, the Muslim League.¹⁵¹

The Alliance for the Restoration of Democracy accuses the military government of pre-poll gerrymandering of constituencies to assist its PML-Q, SDA, and National Alliance allies.¹⁵² The government, say ARD leaders, is also using administrative and fiscal resources to assist its civilian partners, including large-scale postings and transfers of bureaucrats in sensitive constituencies.¹⁵³ According to the opposition, rigging also includes inducements and pressure by senior government officials, intelligence agencies, and district Nazims on PPP and PML-N politicians as well as independent candidates to switch their loyalties, in particular to the PML-Q. "The agencies, ISI, Military Intelligence are all involved in pre-poll rigging as are corps commanders and administrative officials", says a political leader.¹⁵⁴

Although the government denies these allegations, it makes no secret of its preference for PML-Q and other pro-government candidates or its opposition to the PPP and PML-N. State-controlled media is used to discredit PPP and PML-N politicians. Weeks before the elections, the government brought anti-PPP ministers from the Sindh Democratic Alliance

¹⁴⁵ Only Indonesia, Uganda and Rwanda have similar rules. None of these countries are a great model of democracy.

¹⁴⁶ Over 100 former legislators, including 79 former members of the National Assembly and 22 former Senators have been disqualified. Ashraf Mumtaz, "Graduation: Record Number of Politicians Out", *Dawn*, 19 July 2002.

¹⁴⁷ Text of Chief Executive's Order, N°19 of 2002 in *Dawn*, 7 July 2002.

¹⁴⁸ Text of Chief Executive's Order, N°18 of 2002 in *The Nation*, 30 June 2002.

¹⁴⁹ Earlier the National Accountability Bureau had issued an ordinance under 31-A, giving accountability judges the power to convict persons for not appearing before the court. This law was then used to convict Bhutto for not appearing before accountability courts on corruption charges. Abrar Saeed, "Benazir Gets 3 Year RI In Absentia", *The Nation*, 10 July 2002.

¹⁵⁰ To avert disqualification, the PPP has created a separate wing, the PPP Parliamentarians (PPPP), to contest the polls.

¹⁵¹ PML-Q President Mian Azhar supports the formation of the NSC, backs the president's right to curb the prime minister's authority, and lauds Musharraf's efforts to rid the country of Sharif and Benazir Bhutto. "There should be a balance of power in the positions of the president and the prime minister", he says. Correspondent, "Azhar Accepts '91 Water Accord", *Dawn*, 1 March 2002.

¹⁵² The delimitation of constituencies is necessitated by the increase in population and the increase in parliamentary seats.

¹⁵³ Interview with ARD President Nawabzada Nasrullah Khan and PML-N Chairperson, Raja Zafrul Haq, Islamabad, July 2002.

¹⁵⁴ Parliamentary candidates say that government officials, including intelligence agency personnel have told them to shift their political loyalties from the PPP and the PML-N to the PML-Q. ICG interviews, July-August 2002.

into the Sindh provincial cabinet.¹⁵⁵ According to some sources, it is also attempting to win over the *Muttahida Majlis-i-Amal* (United Action Council, MMA), an alliance of six Islamic parties, to counter the PPP and PML-N in the Northwest Frontier Province.¹⁵⁶ However, the Punjab, Pakistan's largest province, will determine the composition of parliament and government.¹⁵⁷

Having brought the SDA, PNA, and PML-Q under one umbrella, the Grand National Alliance, in July 2002, opposition candidates say the government is trying to use the collective strength of pro-Musharraf parties against PPP candidates in southern, and PML-N candidates in central, Punjab.¹⁵⁸ Governor and General Maqbool openly canvasses for PML-Q and other pro-government parties. The "government has decided to extend support to these parties for cleansing the system", he says. "There is nothing wrong with that".¹⁵⁹ The Punjab Chief Secretary, Home Secretary and Inspector-General Police tour districts, asking officials and Nazims to mobilise support for pro-government candidates.¹⁶⁰

Noting ARD allegations, the chief election commissioner, Justice Irshad Hasan Khan, has banned transfers of government officials until after the poll. He has also directed the government to give candidates equal time in the state-controlled broadcast media, regardless of political affiliation. Justice Irshad stresses that his commission has authority to enforce its writ.¹⁶¹

¹⁵⁵ "5 New Ministers Inducted, 2 Quit Sindh Cabinet", *The News*, 2 July 2002.

¹⁵⁶ Despite their stated opposition to Musharraf's constitutional amendments, MMA leaders stress that they have no differences with the military government. The real problem, says Maulana Saimul Haq of the Jamiat Ulema Islam, is "a system of parliamentary democracy, inherited from the British. After independence, the system should have been changed to meet Pakistani conditions". ICG interview, Akora Khattak, July 2002.

¹⁵⁷ Punjab has 148 out of a total of 272 general seats in the National Assembly.

¹⁵⁸ ICG interviews, August 2002.

¹⁵⁹ Staff reporter, "Government to Back Pro-reform Parties, says Maqbool", *Dawn*, 21 July 2002.

¹⁶⁰ ICG interviews with parliamentary candidates, August 2002.

¹⁶¹ The "Election Commission", states Justice Irshad Hassan Khan, "is an independent constitutional body and is duty bound to keep in mind the interests" of the "entire

Although the commission admits it faces formidable hurdles in ensuring a free and fair vote,¹⁶² he denies allegations that government agencies such as the National Reconstruction Bureau are involved in the electoral process, including gerrymandering constituencies.¹⁶³

Opposition politicians and civic groups, including lawyers associations, however, question the commissioner's neutrality and independence. The Pakistan Bar Council criticised Irshad's appointment after his retirement as Chief Justice of the Supreme Court that validated Musharraf's rule. In a resolution, it charged that he "has been rewarded for his support rendered to military rule".¹⁶⁴ Citing failure to prevent rigging in the April referendum as evidence of pro-government bias, the ARD and Bar councils have called for his replacement.¹⁶⁵

The government has repeatedly defied the Election Commission's instructions. Transfers of officials are continuing, and senior officials are using their fiscal and administrative resources to assist pro-government parties and candidates. Other candidates are being pressured to switch political loyalty to the PML-Q or even to withdraw altogether. Some have succumbed to pressures from senior government officials, and threats from intelligence agencies and the National Accountability Bureau.¹⁶⁶

While the Election Commission's displeasure is not likely to matter, the government is concerned about international opinion, particularly that of influential actors such as the EU and the U.S. This explains its unease with the EU electoral observers. Although

population of Pakistan and particularly the eligible voters while making arrangements for holding free and fair elections". Shakil Shaikh, "CEC Rules Out Interference in Polls", *The News*, 14 March 2002.

¹⁶² The Election Commission has, for instance, admitted that it does not have the means to verify the new category of voters on the electoral rolls after the government lowered the voting age from 21 to eighteen.

¹⁶³ "The NRB has neither approached me nor am I going to tolerate any inference whatsoever", says the Election Commissioner. Rana Qaiser, "Interference in EC Work not to be Tolerated, says CEC", *The Nation*, 10 March 2002.

¹⁶⁴ This was the first time that a former Chief Justice of Pakistan was appointed to head the Election Commission, another constitutional post. Razaqat Ali, "Irshad Appointed CEC for Backing Army Rule: PBC", *Dawn*, 29 January 2001.

¹⁶⁵ ICG interviews, July-August 2002.

¹⁶⁶ ICG interviews, August 2002.

external observers also monitored other Pakistani elections, including in 1997, they tended to come in only days before and base their verdicts on little knowledge or exposure. The EU has, however, sent one of its largest teams in time to follow pre-poll developments as well as the voting exercise itself.¹⁶⁷ The EU team will base its report to the European Parliament on an assessment of the constitutional and legal frameworks shaping the transition to democracy as well as the election itself.¹⁶⁸

The military government's discomfort with this mandate is evident. Senior officials have accused the team of interfering in Pakistan's internal affairs. Hoping to dissuade it from performing its mandate, the government also says its security cannot be guaranteed. Reiterating the mission's determination to carry out its task, team leader, European Parliament Member John Cushnahan emphasises that a successful democratic transition is "essential not only for the long term stability of Pakistan but also for the wider stability of the region".¹⁶⁹ The Pakistan government and the international community should heed his words. If the government undermines the democratic transition through its constitutional and electoral engineering, the façade it creates will collapse under its own contradictions, with dire consequences for the stability of a fragile state in a volatile region.

VI. STATE OF THE POLITICAL PARTIES

A. THE ACTORS

Eighty-three political parties are participating in the October polls as well as two electoral alliances. However, many smaller parties will have little or no impact. Polls for the national and provincial legislatures are likely to be dominated by the larger parties, including the Pakistan People's Party, the Muslim League (Nawaz), the Muttahida Qaumi Movement (MQM) and the Muslim League (*Quaid-i-Azam*). While the MQM's base is limited to the Muhajir-dominated urban areas of Sindh, PPP, PML-N and PML-Q have a presence in all four provinces.¹⁷⁰

The National Alliance, a group of six small parties, has very little popular support.¹⁷¹ The popular electoral alliance of the six religious parties, the *Muttahida Majlis-i-Amal*, is restricted mainly to pockets in Baluchistan and the Northwest Frontier Province.¹⁷² A number of parties in those two provinces have a strong regional presence but little support outside their home area. The major regional parties in the Northwest Frontier Province include the Awami National Party and the Pakhtunkhwa Qaumi Party. Baluch regional parties include the Baluchistan National Party, the Pakhtunkhwa Milli Awami Party, the Baluchistan National Party, and the Jamhoori Watan Party.

The performance of the main actors, PPP, PML-N, PML-Q, MQM and the regional parties depends on the fairness of the polls. Earlier sections of the report have discussed, in detail, the factors constraining the performance of the anti-government parties, in particular the PPP and PML-N. The advantages that the PML-Q enjoys have also been highlighted, including the support of government functionaries and elected local officials and pressures on their political foes by intelligence agencies and the administration.

¹⁶⁷ The mission, which will remain in Pakistan until one day after the October polls, includes 164 observers from all fifteen European Union member states.

¹⁶⁸ ICG interview with a EU diplomat, Islamabad, August 2002.

¹⁶⁹ Staff Reporter, "EU to Speak Out if Polls Process Flawed", *Dawn*, 8 August 2002.

¹⁷⁰ Muhajirs are Urdu-speaking migrants and their descendents from India.

¹⁷¹ The National Alliance includes the Millat Party, headed by former President Farooq Leghari, Baluchistan National Party, National Awami Party Pakistan, National People's Party, Sindh Democratic Alliance and the Sindh National Front.

¹⁷² The MMA (United Council of Action) includes the Jamaat-i-Islami, Jamiat Ulema-e-Pakistan (Noorani), Jamiat Ulema-e-Islam (Fazlur Rehman), Jamiat Ulema-e-Islam (Samiul Haq), Islami Tehreek-e-Pakistan and the Markazi Jamiat Al-Hadith (Sajid Mir group).

The military government has imposed curbs on political parties since the October 1999 coup. Many of these restrictions remain in place, including a bar on public meetings without official permission. Selective in its imposition of restrictions on freedom of association and speech, the government hopes to undermine the electoral base and hence performance of the major parties.¹⁷³ Ignoring Election Commission directives, the government-run media, including Pakistan Television and Radio Pakistan have denied equal time, favouring pro-government parties, in particular the PML-Q over government opponents. The official media also carries on a sustained campaign to discredit the PPP and PML-N leaderships.

1. Pakistan Muslim League (*Quaid-i-Azam*)

Headed by Mian Azhar, Punjab Governor under the last Sharif government, the PML-Q was founded in March 2001 by prominent anti-Nawaz leaders within the Muslim League. They first called themselves the Muslim League (Like-minded Group), then set up a separate party, the PML-Q. Aside from Muslim League dissidents such as Chaudhry Pervez Elahi, Chaudhry Shujaat Hussain and former Chairman of the Senate Waseem Sajjad, the PML-Q includes defectors from other parties such as Iftikhar Gillani, Benazir Bhutto's former Law Minister.

Without government support, the PML-Q would not pose a serious challenge to its parent party, the Nawaz Muslim League, or the PPP. The popular base of its leaders is restricted to the Punjab, and the party is internally divided, with little sense of common identity and purpose.¹⁷⁴ However, that purpose and direction is provided from outside, by the military government.¹⁷⁵

¹⁷³ The military's political allies, in particular the PML-Q and even the alliance of religious parties, the Muttahida Majlis-i-Amal, have been allowed to hold public meetings. Requests by the anti-government Alliance for the Restoration of Democracy (ARD) for permission to hold public rallies have been repeatedly denied.

¹⁷⁴ In August 2002, General Zia's son, Ejazul Haq, defected from the PML-Q to set up his own party, the Muslim League (Ziaul Haq).

¹⁷⁵ It is with good reason that the PML-Q is known as the "King's Party" in Pakistan. Government officials, including provincial governors and chief secretaries, are responsible for overseeing important internal decisions,

Government officials are actively campaigning for it and to undermine the electoral chances of its opponents. With this patronage, the PML-Q may win sufficient seats to form the national government and governments in Punjab and Sindh provinces. Nevertheless, the absence of a common political agenda suggests that the party's internal divisions are likely to grow worse since every senior PML-Q leader wants to be prime minister.¹⁷⁶

2. Pakistan People's Party (PPP)

Founded on 30 November-1 December 1967 by Zulfikar Ali Bhutto, the first prime minister of truncated Pakistan and now headed by his daughter and two-time Prime Minister, Benazir Bhutto, the PPP is one of the very few Pakistani political parties that has remained united. General Zia ul-Haq failed to engineer a split.¹⁷⁷ Musharraf's divide-and-rule policies and political engineering have also failed thus far to splinter the centre-left party.

Despite Benazir Bhutto's exclusion from the electoral process, the PPP remains united. She continues as Chairperson while Makdoo Amin Faheem heads its electoral body, the PPP Parliamentarians, nomenclature adopted to prevent the military government from disqualifying the party from the October polls.¹⁷⁸ Other prominent PPP leaders include Secretary General Raza Rabbani and former Law Minister Aitzaz Ehsan. In regular contact with party officials at the local, regional and national levels, Bhutto has managed to hold her party together from exile.¹⁷⁹ In fact, the PPP has regained some ground it had lost to its main political rival, Nawaz Sharif's centre-right Muslim League, particularly in the crucial province of the Punjab.¹⁸⁰

including the vetting and final selection of party candidates for the October elections. ICG interviews, August, 2002.

¹⁷⁶ ICG interviews, August, September 2002.

¹⁷⁷ General Zia imprisoned thousands of party workers, sentencing some to death, during the PPP-led agitation against the military government in the 1980s.

¹⁷⁸ Amin Yasin, "PPP Forms New Entity to Contest Polls", *The News*, 6 August 2002.

¹⁷⁹ Bhutto is in regular e-mail and telephonic contact with party officials throughout Pakistan. ICG interview, July 2002.

¹⁸⁰ In the 1970 elections, the PPP won 81 of the 138 seats allocated to West Pakistan, emerging as the largest party there. In 1988, the party once again emerged as the single largest party in the National Assembly with 82 of 207 seats

Although the PPP has extensive local and regional networks, including separate women, youth, labour and lawyers' wings, the absence of internal democracy has eroded its traditional support. Internal elections are unknown. The central leadership often makes party appointments as well as election nominations against the preference of party workers.¹⁸¹ This absence of internal democracy has several consequences. It undermines the capacity of reformers to implement the party's pledges of distributive justice and the ability of workers to replace party officials who fail to meet their expectations. The resultant internal apathy weakens the PPP's capacity to mobilise against military government. Moreover, the leadership's failures in government and allegations of corruption have undermined its standing with the middle class and even with traditional supporters in the urban centres of the Punjab.

Growing dissatisfaction with the Musharraf government's performance and unease about the military's intentions have helped the PPP to regain some of its lost support and credibility. But the government's concerted attack, including pressures, threats, and inducements to its candidates to defect could affect its performance in the October polls.

3. Pakistan Muslim League (Nawaz)

Nawaz Sharif's deal with Musharraf, leading to his release from jail and exile in Saudi Arabia, has adversely affected party moral and cohesion. The Pakistan Muslim League (Nawaz) is also in disarray because of the defection of the Pakistan Muslim League (*Quaid-i-Azam*), Musharraf's key political ally. Internal divisions within the Muslim League have a long history. Although the Muslim League was responsible for creating Pakistan, the party's leaders were mostly migrants from India. Lacking a popular base in the regions that constituted Pakistan, they relied on the civil and military bureaucracies to sustain their governments.

As the state apparatus gained power, the Muslim League became vulnerable to its intervention.

Every military ruler has created his own faction of the Muslim League or favoured one faction over the other. In the 1960s, Ayub carved out his own party, the Convention Muslim League. Nawaz Sharif's Muslim League came into being in the mid-1980s. A creation of Zia's puppet parliament, the *Majlis-i-Shoora*, headed by his Prime Minister Mohammad Khan Junejo, the Muslim League splintered into two wings.¹⁸² The larger of the two, Pakistan Muslim League (Nawaz) came into its own during the failed democratic transition of the 1990s.

The party has acquired an impressive support base, particularly in Sharif's home province of the Punjab. The PML-N also has considerable support in the Northwest Frontier Province, particularly in non-Pashtun speaking areas. It has, however, failed to make inroads into the PPP's constituency in Sindh and has a limited presence in Baluchistan.

Rightly perceiving the PPP as its most formidable political rival during the 1990s, the PML-N initially worked with military leaders against their common foe. In fact, the propensity of both political parties to work with the military against each other was a major factor for the 1999 coup. However, internal PML-N weaknesses also contributed.

The PML-N, like the PPP, possesses impressive local and regional networks, including women's wings, throughout Pakistan. Like Bhutto, however, Sharif and his top-tier party leaders have been averse to internal dissent and democracy. Instead of elections for party offices at the local, regional and national levels, the Sharifs, Nawaz and his brother Shahbaz, have handpicked their favourites, ignoring the wishes of party workers. Like Bhutto, Sharif also bypassed parliament, imposing his will on the party's parliamentary wing. Internal dissent weakened the party, encouraging influential leaders to back the Musharraf government, ultimately setting up the PML-Q with the military's support.

Although the PML-N has lost considerable ground to the PML-Q, Sharif has managed to undo some of the damage with the help of party leaders, many of whom have resisted government pressures and inducements

but failed to win a majority in the Punjab where the Sharif-led alliance, the Islami Jamhoori Ittihad, made inroads at PPP expense with the ISI's backing.

¹⁸¹ ICG interview with a PPP dissident party leader, Islamabad, March 2002.

¹⁸² Sharif, who gained prominence in the Muslim League after General Zia dismissed Prime Minister Junejo's government in May 1988, headed the new faction of the party in 1993. Ashraf Mumtaz, "Pakistan Muslim League", A.B.S. Jafri (ed.), *The Political Parties of Pakistan* (Karachi, 2002), pp. 88-89.

to defect to the PML-Q.¹⁸³ They include Raja Zafarul Haq and Ahsen Iqbal. The brothers Sharif, like Benazir Bhutto, however, retain control over party policymaking from exile. In the absence of governmental interference, the PML-N could recoup some of its electoral losses, particularly in the urban centres of its home base of the Punjab.¹⁸⁴

4. Muttahida Qaumi Movement

Headed by Altaf Hussain, the Muttahida Qaumi Movement is Sindh-based. Founded in March 1984 out of a Muhajir student party, the All Pakistan Students Organisation, and originally named the *Muhajir Qaumi Mahaz* (Muhajir National Movement), the MQM's support base is restricted to the Muhajirs of urban Sindh. Voting as a united block, the Muhajirs made their party into the third largest in parliament.¹⁸⁵

Although the MQM's largely urban and educated constituency is extremely well-organised, the party has had a chequered political history. During the 1990s, MQM extremists controlled the cities of Sindh, including Karachi, Pakistan's largest and richest industrial city. Collaborating with the military, the MQM initially joined and then destabilised the first PPP government in Sindh in 1990.

Its relationship with the military is equally chequered. Once an ally, the MQM has become a target of military operations. The first of many such against the MQM was launched in 1992. Party founder and leader, Altaf Hussain is in self-exile in London while the party has split into two factions. Altaf's supporters accuse the military of creating and supporting the Haqiqi faction.¹⁸⁶

Despite ups and downs, the MQM support base remains intact in urban Sindh. While Altaf Hussain guides policy from London, his loyal lieutenants run the party on the ground in Pakistan. Although the lack of internal democracy is of concern to some MQM activists, the party's support base remains intact because it is seen as the only organisation that promotes the Muhajir cause. During the election campaign, party leader Altaf Hussain pledged reconciliation with his erstwhile Sindh-dominated PPP foes, easing tensions between Sindh's Muhajir and Sindh populations. In the event of a free and fair election, the MQM would emerge as a formidable presence in Sindh and be wooed by parties hoping to form a central government.

B. POLITICAL PARTIES, POLLS, AND DEMOCRACY

The following discussion of possible party results is predicated on the absence of governmental intervention and pressure. In free and fair elections the PPP and the PML-N stand a good chance of obtaining sufficient seats in parliament to form a government, at best with a simple majority but most likely in coalition with like-minded parties. This assessment is shared by many Pakistani political observers and analysts¹⁸⁷ The PPP would gain at least a simple majority in Sindh since the party holds sway over the rural areas and Sindh-dominated cities. With its revived electoral support in rural as well as urban Punjab, in particular southern regions of the province, the PPP could also gain at least a simple majority in a free and fair election in the Punjab.¹⁸⁸ As in the past, a free and fair election would result in post-electoral

¹⁸³ Interviews with PML-N leaders, Islamabad, July-August 2002.

¹⁸⁴ "As things stand", says a political analyst, "the vote bank is with the PML-N although a majority of leaders have changed their loyalties and joined the PML-Q". Ashraf, op.cit., 92.

¹⁸⁵ The MQM gained thirteen national and 26 provincial assembly seats in Sindh in the 1988 elections, gaining 27 National Assembly seats in 1990. In 1993, the MQM boycotted the National Assembly elections but gained 27 Sindh provincial assembly seats. In 1997, it improved even further on its presence in the Sindh assembly although its presence in the National Assembly declined to twelve seats.

¹⁸⁶ The MQM Haqiqi group emerged in 1992, the same year the first military operation was launched against the

party. Shamim-ur-Rahman, "Muttahida Qaumi Movement", in A.B.S. Jafri, op.cit, 63.

¹⁸⁷ According to one of Musharraf's former ministers, Shafqat Mahmood, "Over all, nationally, the PPP will emerge as the single largest party", while the editor of *Dawn*, M. Ziauddin, concludes that if the PPP manages to bring its voters the polls, "the chances of the PPP sweeping the polls would become very bright, unless, of course, there is blatant and open rigging in favour of the King's party (PML-Q) and government sponsored alliances". See Shafqat Mahmood, "Dull Campaign, Unpredictable Election", *The News*, 20 September 2002; Onlooker, "Rule of Thumb Poll Projections", *Dawn*, 23 September 2002. See also Zahid Hussain, "How to Steal an Election", *Newsline* (September 2002), p. 22.

¹⁸⁸ ICG interviews, Multan, September 2002.

alliances between regional and national parties in Baluchistan and the Northwest Frontier Province.¹⁸⁹

Because the PPP and the PML-N pose the greatest threats to its political dominance, the military government could be tempted to rig the elections to ensure that its PML-Q allies obtain at least a simple majority. Pre-election rigging, including pressures and inducements, have already made inroads into PPP and PML-N electoral bases but the military is uncertain if these measures will be sufficient to stem a tide against the PML-Q on election day. Since the PPP and the PML-N still are credible threats, the government could also be tempted to resort to selective election day rigging to gain at least a simple majority in parliament for the PML-Q. However, PML-Q victory would raise doubts about the poll's fairness, thus marring the entire exercise's legitimacy.¹⁹⁰

The PPP and the PML-N have remained viable, their organisational capabilities intact, after the removal by the military of their chiefs, former Prime Ministers Bhutto and Sharif, and the elimination of many of their top and second tier leaders. This clearly demonstrates that they are not solely, as some external observers believe mere instruments to promote the personal interests of their leaders.¹⁹¹

The existence of viable political parties and a vibrant civil society bodes well for the revival of the democratic transition. While political parties have survived concerted state persecution because of centralised control and powerful leadership, the consolidation of the democratic transition requires realisation, within their senior leadership, of the need for internal democracy. Acceptance of internal dissent, devolution of power and authority and institutionalisation of internal elections would enhance the legitimacy of and support for political parties. Internal democracy would promote democratic norms and democratic functioning. As a result, political parties would be less vulnerable to military manipulation and intervention.

Some observers believe that democratically elected civilian governments are likely to repeat

their mistakes. Political leaders will once again bypass parliament, undermine judicial independence, and resort to the pillage of the past.¹⁹² Political leaders admit that these mistakes, including disregard for internal democracy and the rule of law, have rendered them vulnerable to military intervention.¹⁹³

All major political parties, with the exception of the pro-Musharraf PML-Q, have pledged to work together and within parliament toward democratic reform. It would serve their interests to cooperate at this crucial juncture. Should they agree, for instance, to jointly monitor the elections and present their findings to parliament, they could potentially deter the military government and its allies from manipulating the polls. They would also have a means of influencing the reaction of powerful external actors.

The political parties should also agree to issue a joint public declaration that they will invalidate any constitutional amendment that distorts the parliamentary, federal and democratic structure of government contained in the 1973 constitution. Such a public pledge would enhance their legitimacy as advocates of a democratic order. It would also prevent political leaders from backsliding and cooperating with the military in the wheeling and dealing that will follow the October polls, particularly if no party gains sufficient votes to form a government on its own. Should the major political parties also make good on their pledges of internal democracy by agreeing in parliament to institutionalise internal elections, it would strengthen their domestic support base and serve their short and long-term goals.¹⁹⁴

However, it still remains to be seen whether the political elite will demonstrate in practice its remorse at past misdeeds and shortcomings. As Pakistan stands poised between continued military rule and a democratic transition, all concerned actors, internal and external, should understand the importance of giving the Pakistani people a voice and a stake in their state.

¹⁸⁹ Hussain, "How to Steal and Election", op.cit.

¹⁹⁰ Mazhar Abbas, "Return of the Prodigal", *Newsline* (September 2002), p.29.

¹⁹¹ ICG interviews with European and U.S. diplomats in Islamabad, July-August 2002.

¹⁹² Ibid.

¹⁹³ ICG interviews with PPP and PML-N leaders, June-August 2002.

¹⁹⁴ In a study conducted by a Pakistani think-tank, twenty political parties, including all the major political actors, agreed that inter-party democracy (elected office bearers) should be a precondition for contesting national elections. Zafarullah Khan, *Struggling for Survival: State of Political Parties in Pakistan* (Islamabad, 2002), p.15.

VII. CONCLUSION

After three years of military rule, Pakistan is even more unstable than it was under the corrupt and inefficient civilian governments of its stalled democratic transition. The economy stagnates as investors, domestic and foreign, shy away because of political instability. Corruption remains endemic in the absence of rule of law.¹⁹⁵ Inter-ethnic and ethnic-state tensions are rising.¹⁹⁶ Security is elusive because the military has yet to abandon support for jihadis in Kashmir.¹⁹⁷

Emboldened by government inaction, Islamic extremists attack Western targets at will.¹⁹⁸ Although the military government has yet to roll up Islamic extremist networks, it remains the recipient of U.S. diplomatic and economic support.¹⁹⁹ The U.S. has urged Musharraf to restore democracy but the democratic transition appears far less important to it than the military's continued cooperation in the war against terrorism. Commenting on Musharraf's drastic constitutional amendments, President Bush said: "my reaction about Musharraf, he's still tight with us on the war

¹⁹⁵ In its 2002 report, Transparency International gives Pakistan a score of 2.6 on a scale of 10 (highly clean) and 0 (highly corrupt). Transparency International Corruption's Perceptions Index 2002 (Berlin, 28 August 2002). Pakistan has moved up a notch in the chart on categories of states. But, as a Transparency International Vice President states, it remains very near the bottom of the ladder in terms of the actual score on corruption. ICG interview, September 2002. See findings of the report at http://www.transparency.org/pressreleases_archives/2002/2002.08.28.cpi.en.html.

¹⁹⁶ The government's decision, for instance, to disqualify Bhutto from the electoral contest led to demonstrations in her home province, Sindh, in September 2002 amid renewed Sindhi pledges to confront the Punjabi-dominated military government.

¹⁹⁷ In his Independence Day address on 14 August 2002, Musharraf reiterated Pakistan's support for the "struggle for self-determination of our Kashmiri brothers", which he said "was a sacred trust that can never be compromised". *Dawn*, 16 August 2002.

¹⁹⁸ Wall Street journalist Daniel Pearl was murdered in February 2002; two Americans were killed in the bombing of a church in Islamabad's Diplomatic Enclave in March; eleven French nationals were killed in Karachi in May; and the U.S. Consulate was attacked in Karachi in June.

¹⁹⁹ ICG Asia Report N°35, *Kashmir: Confrontation and Miscalculation*, 11 July 2002.

against terror, and that's what I appreciate.... he understands that we've got to keep al-Qaeda on the run", adding almost as an afterthought, "Obviously to the extent our friends promote democracy, it's important".²⁰⁰

The U.S. could once again waive sanctions unconditionally should the Bush administration prefer political continuity to the restoration of democracy in Pakistan. The U.S. stance will importantly influence the response of its European allies.

A number of U.S. officials and their European counterparts believe there is no viable alternative to Musharraf. If power were transferred to a weak and corrupt civilian government, they fear, it would fail to deliver good governance or tackle the scourge of Islamic extremism in Pakistan.²⁰¹ It is this misguided belief, say Musharraf's civilian opponents, that could result in a tacit U.S. acceptance of military rule under civilian guise after the October elections.²⁰² It also ignores the fact that while Musharraf did indeed end Pakistani support for the Taliban, he has been much more hesitant in tackling extremism in Pakistan, and many of the measures taken by his government have been purely cosmetic.

U.S. and European policymakers should press the military to withdraw from power. Pakistan's political history proves that the only viable alternative to military rule or military domination is a political order that is perceived as legitimate by the Pakistani people. The restoration of democracy will promote both Pakistani and U.S. interests. If a free and fair election is held in October, the victors will be the major, moderate parties who are sympathetic to U.S. goals in the region, and who have their own reasons to normalise relations with India and to curb the power and influence of extremist groups in Pakistan.²⁰³ An unhampered democratic transition would marginalise Islamic extremists, who have thrived in the absence of a meaningful political alternative. If, on the other hand, the Bush administration and its European allies

²⁰⁰ "Democracy as an Afterthought", *The Washington Post*, 25 August 2002.

²⁰¹ ICG interviews with U.S. and European officials, April-August 2002.

²⁰² ICG interviews, July-August 2002.

²⁰³ "The political parties have no differences with Musharraf's pro-U.S. policy. They are pro-U.S. themselves, both the PPP and the PML-N", says PML-N leader Raja Zafrul Haq. ICG Interview, July 2002.

decide that the military remains their best bet in post-October Pakistan, the costs could be exorbitantly high and the benefits fleeting at best.²⁰⁴

The government's constitutional and political reforms will have a far-reaching impact on the Pakistani polity. The prime minister will have little or no say in determining external or domestic priorities or in restructuring civil-military relations. Tensions with India will remain high, increasing risk of war. Indeed, if the military retains power after October, it would undermine its internal credibility and hence the interests of the institution and its leaders.

Should the military succeed, through its constitutional and political engineering, in diluting the authority of the prime minister and parliament, the post-October political order will have little or no domestic legitimacy. If, on the other hand, elections are relatively free and fair, Musharraf and his military colleagues could soon find themselves confronting a hostile parliament that questions their right to rule. Even in the event of a weak parliament, as in the Zia years, at best the military could only cajole and coerce parliament to accept the changed rules of the political game while the legitimacy needed for regime consolidation would remain elusive.

“One cannot legalise what is illegal”, warns a former Chief Justice of the Supreme Court of Pakistan, “One may allow violation of the Constitution as a deviation or departure and justify it. But for how long will this continue? There is no substitute for the supremacy of the Constitution and the rule of law”.²⁰⁵ After 55 years of political experimentation, often with disastrous consequences, the Pakistani military would do well to respect the constitution, accept the rule of law and return to the barracks after transferring power to a civilian government. “If political polarisation is seen to bring the army into disrepute”, warns an army officer, “then the corps

commanders will not stay united. Musharraf will have to resign”,²⁰⁶ exacerbating the state's crisis.

With international pressure and support, Pakistan's stalled democratic transition could be put back on track as the military adopts an exit strategy to restore power to an elected government. However, Pakistan's political leaders will also have to rethink their political priorities and transform their behaviour. Political leaders and elected governments were as responsible as an interventionist military for the failed democratic transition of the 1990s. Instead of working for the public good, both PPP and PML-N governments were guilty of corruption, misconduct, and political intolerance. Democratic institutions were sidelined and democratic norms flouted, and politicians were more than willing to side with the military against their opponents. Admitting his government's errors, PPP Secretary General Raza Rabbani says, “The 1973 constitution provides for a division of power, shared between the executive, the legislature, and the judiciary. Unfortunately past governments, including our own, never implemented the constitution in its true essence and spirit”.²⁰⁷

The answer to Pakistan's flawed democratic transition does not lie in military intervention or a military-dominated political order. Corruption and other political ills cannot be effectively tackled in the absence of the rule of law and representative government. If political governments are allowed to complete their terms of office, democratic institutions will mature, and the electorate could eliminate undesirable politicians via the ballot box.

If the political parties are to consolidate a new democratic transition, they will have to learn to work together, within and outside parliament, in a democratic manner, promote internal democracy within their parties, tolerate political dissent, and resist military intervention.²⁰⁸ They will have to empower

²⁰⁴ In a scathing criticism of “Washington's tepid response”, to Musharraf's “power grab”, *The New York Times* commented, “What is needed is strong and specific criticism of measures that eliminate any chance for a peaceful transition to democracy”. “Power Grab in Pakistan”, *The New York Times*, 23 August 2002.

²⁰⁵ Sajjad Ali Shah, “How to Restore Rule of Law”, *Dawn*, 27 July 2002.

²⁰⁶ ICG Interview, Islamabad, July 2002.

²⁰⁷ ICG interview, Islamabad, 8 August 2002.

²⁰⁸ In August 2002, the government reportedly attempted to create a rift between the PPP and the PML-N, offering to rehabilitate the Sharif brothers if they united the Muslim League factions against the PPP. In September, the authorities accepted nomination papers for a National Assembly seat, filed by Shahbaz Sharif, who has replaced Nawaz as PML-N President. Bhutto's were rejected. Correspondent, “Talks with Sharifs in Jeddah on Musharraf's Desire: Nizami”, *The Nation*,

democratic institutions, legislate through parliament, respect judicial independence, subordinate the military to civil authority, and above all, accept the democratic right of elected governments to rule without interruption.

Political leaders from the PPP, PML-N and other moderate parties say that they will not repeat their mistakes and will work together for the common good. “There is a clear realisation”, says a political leader, “that there has to be a culture of political tolerance, an appreciation of the fact that we have to let governments and parliaments complete their tenure”. There is also “a realisation that at one stage or another every political party has allowed itself to be used by the establishment against the other, to further the military’s agenda”.²⁰⁹

All the major political parties and bar associations have pledged to undo any constitutional amendments “imposed by General Musharraf”, to “restore the sanctity of the constitution”, and to ensure the sovereignty of parliament.²¹⁰ Political leaders have made a start by working together to pressure the military government to revive the democratic transition. It still remains to be seen if they will translate their words into deeds. Only then will Pakistan finally embark on a successful democratic transition.

Islamabad/Brussels, 3 October 2002

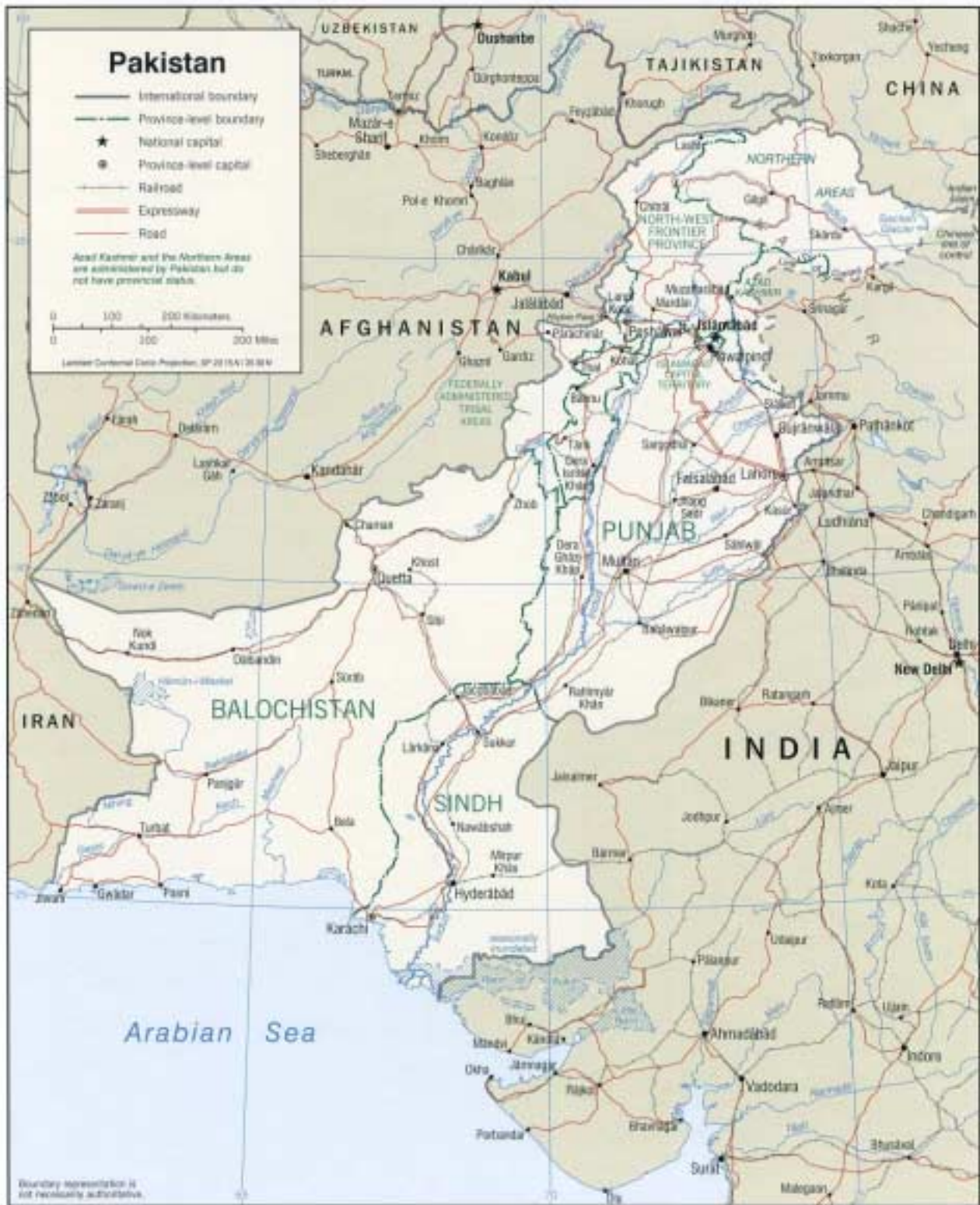
10 August 2002; “Musharraf Trying to Make a Deal: PML”, *The Nation*, 3 September 2002.

²⁰⁹ ICG interview, July 2002.

²¹⁰ Joint declaration signed by all the major political parties and bar associations, Sajid Zia, “Parties, Lawyers Join Hands Against Amendments”, *The Nation*, 18 August 2002.

APPENDIX A

MAP OF PAKISTAN



Courtesy of The General Libraries, The University of Texas at Austin

APPENDIX B

GLOSSARY OF ACRONYMS

ARD	Alliance for the Restoration of Democracy	MQM	Mutahidda Qaumi Movement (United National Movement)
ANP	Awami National Party	MMA	Muttahida Majlis-i-Amal (United Council of Action)
BJP	Bharatiya Janata Party	NAB	National Accountability Bureau
CE	Chief Executive	NRB	National Reconstruction Bureau
CEC	Chief Election Commissioner	NSC	National Security Council
CENTO	Central Treaty Organisation	NWFP	Northwest Frontier Province
COAS	Chief of Army Staff	PCO	Provisional Constitutional Order
EC	Election Commission	PPP	Pakistan People's Party
EU	European Union	PML-N	Pakistan Muslim League (Nawaz)
CJCS	Chairman, Joint Chiefs of Staff	PML-Q	Pakistan Muslim League (<i>Quaid-i-Azam</i>)
GHQ	General Headquarters	PNA	Pakistan National Alliance
HRCP	Human Rights Commission of Pakistan	SEATO	Southeast Asia Treaty Organisation
ISI	Inter-Services Intelligence Directorate	SDA	Sindh Democratic Alliance
LFO	Legal Framework Order		
LOC	Line of Control		

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is a private, multinational organisation, with over 80 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York and Paris and a media liaison office in

London. The organisation currently operates eleven field offices with analysts working in nearly 30 crisis-affected countries and territories across four continents.

In *Africa*, those locations include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

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October 2002

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APPENDIX D

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