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Ahmer Bilal Soofi | Published May 25, 2014

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THE Supreme Court and the other courts are free in the state but not free from the state. This means that from the perspective of international law, courts in Pakistan, including the Supreme Court, are viewed as subsets of

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The judgements and orders passed by the judicial organ of the state have repercussions under international law — both positive and negative. Court judgements become an indication of the international position of the executive arm of government on a certain issue.

For example, the Supreme Court judgement in the Zewar Khan case, reaffirming the status of the Durand Line as the Pak-Afghan international border, is a judicial reflection of the position taken by the state itself before international forums. Pakistan refers to this case whenever doubts are raised about the sanctity of the Durand Line.

Another case decided by the Azad Jammu & Kashmir Supreme Court makes some significant comments about the legal linkage of the Northern Areas (now Gilgit-Baltistan) with the remaining territories of Pakistan. This case has important legal implications in the context of the Kashmir issue for Pakistan.

Court verdicts are often viewed as the state's position.

The Dalmia Cement international arbitration determined that the 1965 conflict/war between India and Pakistan did not qualify to be legally referred to as a 'war' as all bilateral treaties and diplomatic ties between the two states remained intact. It concluded

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The judgements of superior courts also have effect under private international law. For example, the Hubco case related to international arbitration, decided by the Supreme Court, became a somewhat embarrassing case study in international commercial circles. More recently, the Reko Diq case decided by the Supreme Court became supportive of Pakistan's position before the International Chambers of Commerce and that is how it is being pleaded. In another commercial dispute by a foreign investor, a judgement by the Supreme Court in the Karkey matter (in which a Turkish vessel was detained pursuant to court orders) has been challenged before the ICSID, that settles investment disputes. The Supreme Court has been extensively criticised by the claimant.

In security matters, the context of international law is even more important. It is now maintained by various academics that intervention can be made in another state if the said state is unable or unwilling to control terrorism or prevent human rights abuses or fails to check the threat of proliferation of WMDs. This means that for a case to be made on this account, judicial decisions handed down by the courts regarding various conflict zones in Pakistan will have serious repercussions.

One approach that the courts can adopt to balance accountability with national security interest is to hold

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Some academics view events in Fata/Pata as a non-international armed conflict — a position being contested by the Foreign Office. The orders of the high courts and the Supreme Court as a result of these petitions filed internally and pertaining to these conflict zones, will have international legal implications in this context as well. Without realising, the court may end up determining the legal character of the conflict that may well be contradicting the diplomatic positions taken by Pakistan.

As stated at the outset, the courts are indeed free inside the state but internationally, their verdicts, orders and observations are viewed as acts of the state since they are an integral arm of the state. Under the international law of state responsibility, present and future governments need to bear the burden of such orders and judgements.

It is also in this context that although the courts may be right in acquitting terrorists on account of lack of evidence, the fact remains that in doing so they inadvertently document the state's inability to bring to justice those who attack it.

Thus each acquittal order becomes an indictment of the weak criminal justice system. The government and judiciary need to recognise this. If relief is granted by the court to any person who is linked with any of the

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viewed as failing to perform its obligations under international law to counter terrorism.

It is, therefore, in the fitness of things for the federal government to render appropriate assistance to the judiciary on the international legal implications of its judgements and observations.

The writer was formerly federal law minister in the 2013 caretaker set-up.

ahmersoofi@hotmail.com

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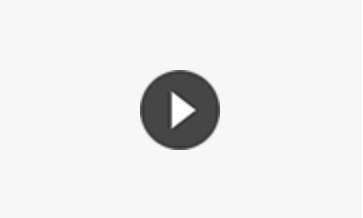
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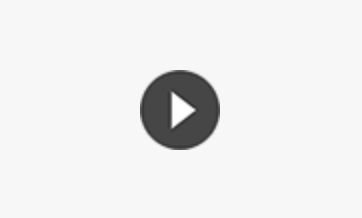
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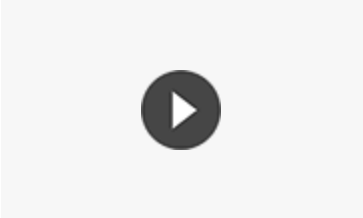
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