

Talking for Peace – A Karl Kahane Lecture Series

The Bruno Kreisky Forum for International Dialogue in co-operation with the Karl Kahane Foundation
kindly invites to the lecture of

HINA JILANI

Lawyer of the Supreme Court of Pakistan

GUIDING DEMOCRACIES IN ISLAMIC COUNTRIES THE EXAMPLE PAKISTAN

Welcome address:

Patricia Kahane

President of the Karl Kahane Foundation, Member of the Board of the Bruno Kreisky Forum

Moderation:

Gudrun Harrer

Senior Editor "Der Standard"

Wednesday | March 3, 2010 | 7.00 p.m.

Hina Jilani, Lawyer of the Supreme Court of Pakistan

Born 1953 in Lahore, Pakistan. Hina Jilani is experienced in constitutional and human rights litigation in Pakistan. Many of the cases conducted are landmarks in setting the standard for human rights in Pakistan, especially on the rights of women. Other areas of experience include international human rights law. In 1980 Hina Jilani founded the first women law firm and legal aid center AGHS Legal Aid Cell in Pakistan. She is a founding Member of the Human Rights Commission of Pakistan, Women's Action Forum, Asia Pacific Forum for Women Law and Development, and the International Council for Human Rights Policy. She was a member of the United Nations International Fact Finding Mission on Gaza, May-August 2009, Special Representative of the United Nations Secretary General on Human Rights Defenders, 2000 – 2008, member of the International Commission of Inquiry on Darfur, appointed by the United Nations Security Council, 2004, member of the Eminent Jurists' Panel on Human Rights and Counter Terrorism, appointed by the International Commission of Jurists, 2006-2008. She also serves on the Board of several national and international NGOs, including as Chair of the International Council for Human Rights Policy and Fund for Global Human Rights. She has written extensively on human rights, democracy and women and children's rights. Publications include *Human Rights and Democratic Development in Pakistan* (1998), and *Haddoo Laws: A Divine Sanction?* (1988).

Gudrun Harrer

Senior Editor of the Austrian daily newspaper *Der Standard*. Former Special Envoy of the Austrian Presidency of the European Union to Iraq. Lecturer of Modern Arab History, Vienna University and Diplomatic Academy Vienna.

Patricia Kahane

Good evening ladies and gentlemen, as usual I will be extremely brief with my introduction. I'm happy to welcome you all to the first Karl Kahane Lecture of the year 2010. This time we are very happy and also proud to introduce to you Ms. Hina Jilani. You got most of her bio from the invitation. For me it is always very special to have women from other regions of the world who have really changed a lot of things. This is what Hina for sure did. Gudrun Harrer is going to do the Q&A thing and introduce Ms. Jilani more specifically. Thank you for coming and hope to see you again soon.

Gudrun Harrer

Good evening, distinguished guests, ladies and gentlemen. I am very happy to chair this important lecture by such a high-ranking guest. Taking it up seriously it would be a very long task to describe Dr. Hina Jilani's expertise which

she will share with us tonight. She is a lawyer of the Supreme Court of Pakistan. This means of course that she knows all about Pakistan's justice system and its struggle for independence and its different hassles with politics, an issue closely related to the question of Pakistani democracy. However, there is much more. Dr. Jilani is also an expert on human rights and as such she is and was dealing not only with internal Pakistani problems, but she works also on an international level participating in different fact finding missions, enquiry missions such as Gaza, Darfur, and others. She dealt with human rights issues also in the context of counter-terrorism. And this is indeed a very burning issue for us all. And Dr. Jilani is also a gender expert, both from a practical and theoretical point of view. In 1980 you founded the first women law firm in Pakistan. Furthermore she is member in numerous human rights and women development fora.

From human rights and women again there is a logical way to the development of democracies which leads us to the lecture of today with the title *Guiding Democracies in Islamic Countries. The Example Pakistan*. You said before in our short discussion that you don't agree completely with the terming of Islamic world, Islamic countries. We will hear about that. For Western audiences Pakistan is a kind of unknown space. We know as much as that Pakistan is going through very difficult times, an extremely difficult period with problems on every possible front. There is a war going on. It's extremely difficult for us to judge from outside how much of this war is imposed from outside, how much is rooted in internal problems, and how it can be stopped, and how can those sectors of the Pakistani society which turned against the state pacified and reintegrated. Pakistan, although it has an elected government and has gotten rid of a military ruler, is far from being a stable democracy with protagonists who adhere to all democratic rules. I fear we don't deal enough and deeply with this question in the West. I think the fact that Pakistan is a nuclear weapons state instills fears. And first of all we want Pakistan to be stable. But is stability a feature which should overrule democracy and even sovereignty? As we know US troops intervene supposedly only through airspace almost every day.

So there are questions upon questions and I'm sure you, Dr. Jilani, are the right person to address them and we will surely take advantage of having you here with us.

Hina Jilani

Thank you very much. Good evening, ladies and gentlemen. It's a pleasure to be here and a privilege to be speaking at the Kreisky Forum. I'm very honored that you have asked me to come and talk about my country today.

I was thinking how to start speaking about Pakistan and the challenges that democracy faces and confronts in a country like mine. It's very difficult where to start from. I will just tell you one of the comments I heard about Pakistan many years ago which in a way struck me and amazed me because being a Pakistani at heart the world knows about me. But when I heard a professor in a university in the United States, this is the late 1980s, saying oh, you're from Pakistan, that's in Afghanistan, isn't it, that really set me thinking that there is a tendency in the world to remember societies and states by association rather than know the country and the people. And that I think is something that we have to overcome in this globalized world where we are all affected by what we as a society do and the accuses that our states take. Now the repercussions of those actions and societal thinking go beyond our borders. It is in this context that I welcome the opportunity to speak about my country and to say I'm sure that many people in this room know a lot about Pakistan. But it is a good opportunity any way to talk about some things that people may not know about Pakistan.

I will start where you gave me a kind of lead. Is Pakistan an Islamic country and is that the only context in which democracy will develop or not take roots in a country like Pakistan? I think not. I think Pakistan is a country with several interests being represented and competed for because it is a country that is constituted of several different identities. And I would start this discussion on identity with another story, a very interesting one.

There was a question that was put to one of our very well known leaders from the Pashtun area which is the north-west frontier province where all the trouble is these days. He was a social democrat, Khan Abdul Wali Khan. His father was known as the Gandhi of Pakistan. And somebody asked him, who are you Wali Khan? And he said I am a 2.000 year old Pashtun, a 1.400 year old Muslim, and only a 50 year old Pakistani. But then I am a male within the Pakistani society. So there are several identities that I have. And within me the priorities given certain issues on how I think about those issues the priorities will be determined by my different identities. What is my priority today as a Pashtun? What is my priority today as a Muslim? What is my priority as a Pakistani? And they don't necessarily mean the same thing. I think this is true of all of us. It is certainly true of the way that I have grown up and the way that I have been able to think of and find the capacity to understand a complex situation that I'm confronting every day.

Pakistan is a 90% Muslim majority country. So there are Muslims living in Pakistan. Whether it should be an Islamic state is a question that we are still discussing. Whether it came into existence to become an Islamic state is also a question which we are still discussing. If we look at the thoughts put forward by the founder of the nation, Muhammad Ali Jinnah, his first public address to the constituent assembly on 11th of August 1948 which is almost a year after the country was founded he said from today we cease to be Muslims, Hindus, Christians, or any other religion not in the religious sense and not in the private sense, but as Pakistanis. We have now a common identity. Go to your mosques, and go to your temples, and go to your churches, but at the same time remember that we have a nation to build. This is exactly what we have not been able to do.

A centralized state will be the biggest challenge to democracy everywhere in the world. Imposition of false homogeneity will always be a challenge for democracy because it excludes pluralism, it becomes more difficult to accommodate pluralistic identities. And that is really a way of ignoring what the reality is. Pakistan today is a conglomerate of different nations. In 1947 we did find some commonality of interest to convince us that we should come together as a state. Whether we were able to retain that commonality of interest is at question today. Pakistan is a federation and yet the constitution of Pakistan when it says we the people of Pakistan, doesn't talk about we the people as Pashtuns, or Punjabis, or Hindis, or Baluchis. It talks about Islam. The presumption was that we are all brothers in Islam and that will be the common bond for us. Unfortunately very soon we discovered it was not. If it was we would not have had Bangladesh today. So while the reality also is that it is a 90% Muslim majority country the reality also is that our needs are not those only of religion. We have several needs that are political, social, and economic, that go much beyond a religion.

I will not go into history, I will try and tell you what the reality is in Pakistan today. If we talk about nation building one of the most difficult things that Pakistan experienced was in the initial years. It was nine years before Pakistan came up with a constitution. India had a constitution within a few months of independence. It was August 1947 when the country was independent, January 26 they had a constitution. We did not have the same luck. We were unfortunate maybe in our leadership. For nine long years we were trying to grapple with this identity issue. What were we? What are we? And how do we constitute ourselves into a nation? And just as we had found the answer, in 1956 we had a constitution. Just before that constitution could be enforced, in 1958 there was a military coup and that ended any discussion or debate about what Pakistan was going to look like for its people.

I was too young to remember but this is something that I inherit from my parents and from people who I listened to as a young person. The debate totally changed after that. There was much more emphasis on religion, much more of an effort to impose that homogeneity because of the fact that Pakistan had two different wings of the country. One was East Pakistan and the other was West Pakistan. And the West being the more military dominated part of Pakistan did not want to relinquish any power to the Eastern part of the country which was more in terms of population. There were more Pakistanis in East Pakistan than in West Pakistan. But they had very little participation in the military of the country. And that's why there was this emphasis that no, it's not population, it's not a question of how many you are there and how many of us are here, we have to impose certain values and certain norms on us. I remember, my father was a Member of the Parliament saying many years later to me that in those days when we had the Bengali members in the parliament, the Parliament that was arbitrarily constituted by the military dictator. The compensatory feature in that parliament always was the Bengali members who insisted on politics, who insisted on a joint constitution which had fundamental freedoms in it, which had a more equitable distribution of power and resources of the country. I'm just telling you this story in order to understand how this whole emphasis on Islam has come about.

But even then, I remember growing up in an environment where we had several issues coming up. As a young person in college there were many issues that we were discussing, many political issues that we were discussing and they were always on freedoms. We were engaged in several movements against the military dictatorship in the 1960s. It was not an Islamic movement, it was a very political movement based on our awareness of what we as human beings should have in terms of freedoms. Our right to participate in governance, our right to freedom of expression, our right to freedom of movement, and above all our right to freedom to protest.

What happened in the 1980s or by the end of the 1970s that drastically changed the way Pakistan not only saw itself but how others started seeing Pakistan?

You remember that there was a Soviet occupation of Afghanistan in 1979. There was a concerted effort not only by our own military, but at their instigation by several Western powers to create an extremist ideology in that region in order to create a fanatical force to fight the Soviets in Afghanistan. That is a very good example for people who are studying history, or politics, or international relations to see how not to try and solve international issues. At that

time the very people who are today targets of these very forces who sponsored them, who promoted them, who fed them, who financed them now try and point out to us that these are forces which are dangerous for us. I must say even a stupid person like me knew even at that time that these are dangerous elements for us. While this dangerous and this risky business was going on there was something like a single light in every cloud. Some good things happened in Pakistan. Because of this resistance to this fanatical, extremist ideology that was being imposed on us - and I say imposed on us because Pakistan even today is still not what people think is an extremist Islamic state, it's not, the population is not, but the state is. And there is a difference. The state deliberately constructed a foreign and defence policy that was based on the use of religious extremism. That state and the supporters of that policy have brought us to a situation today where very carefully constructed and deliberate actions of the state have themselves resulted in a situation where the integrity of the state is now threatened, where not only the external security of the state of Pakistan but the internal security of the people of Pakistan is seriously threatened.

The beginning of the 1980s it was not just the question of getting together a force to fight inside Afghanistan. An environment had to be created in Pakistan to accept what was being done in order to fight the Soviets in Afghanistan. So a wave of Islamization was imposed. I would like people to note that nowhere in our history and certainly not the period immediately preceding this Islamization process was there ever a public demand. There still isn't. But I'm just telling you this was the edict of a military government, a very repressive martial law government, that had a particular agenda which it shared with others and because of the geopolitical situation of Pakistan at that time felt that they could take advantage of that position in order to create a significance for themselves in the world in the global context. That significance was not ever meant to be for the betterment of the people of Pakistan, but it was certainly meant for the betterment of the state of Pakistan as conceptualized and controlled by the military of Pakistan. Let me say, and I say this all the time, that starting from that day there is certainly a contradiction and a conflict of interest between the people of Pakistan, the interest of the people of Pakistan, and the state of Pakistan or the military of Pakistan which today epitomizes what the state looks like. So this is what we have right now.

What is the position of Islam in reality? Many thought that once this military government of Zia ul-Haq goes away the Islamization which has been so superficially imposed will evaporate and we will return to the same situation that we were in the 1970s with very serious problems as a nation but at the same time less complicated by ideological foundations and thinking. That didn't happen and would not have happened, could not have happened. 25 years later we see that there was a fallout, there was a social consequence, there was a political consequence of these policies. And there is definitely an economic consequence of these policies even today.

As a resistance to what was happening there was a very strong and a women's rights movement that developed in Pakistan. Over the years not just these two movements, but civil society movements have gathered maturity. So the civil society is today a very positive element that you see in the Pakistan society. Yes, Pakistan is known as a state where there are military coups, it's known as a state which is beset by terrorism and violence. But seldom do people understand that this is also a state where there is a very vibrant, a very strong civil society, a human rights movement which is not only coherent but does enjoy public confidence and public credibility, much more than any government has enjoyed so far. These are some of the elements that are keeping the more harmful results of what we have been doing to ourselves at bay. But their power or their ability to control the damage is miniscule, is still not enough to be able to save us from going over the edge where we are standing right now.

When you talk to young people today it's very easy to see what is taking them into this discourse on religion. Why do we return to religion again and again? Although on a practical level to translate people's aspirations, their real aspirations of where do they want to go it's not religion that is answering for it. There are several other reasons. There are very practical and pragmatic issues before us which we have to resolve to be able to get what we have expressed as our aspirations.

Over the years and especially in the past two and a half decades the state of Pakistan has very deliberately given significance to elements that are infiltrating all our institutions. These are religious political groups or even religious groups, not just necessarily religious political groups, who get to say what happens in my country, who get to dictate the discourse not because they have a mass popularity. And the evidence of that is, Pakistan even though it's a state which can't retain democracy has had more than its share of elections.

And here I will deviate for a minute just to draw your attention to another truth. If elections were the measure of measuring democracy Pakistan would have been the most democratic state today. For every one term we've had two elections. But that has made for our weakness rather than for any strengthening of democracy. Because what happens is, if you don't have periodical and regular elections but you have ad-hoc elections there is a reason for it. Somebody is making an intervention at the wrong time. So while people have the opportunity to elect people who

they want to represent them they have no power to pick them out five years later. The military will kick them out and then you will get another opportunity of getting somebody else. This is just theoretical and hypothetical because the elections are never fair so it doesn't necessarily result in bringing in people who the people have voted for. But that's it. This is also one of the issues of the democratic process.

On the one hand political significance has been given to certain elements who have tried to win the population time and again. They have contested every election. They have never been returned to power. People have never voted for them. This then meant that either they find a way of working democracy, working within the democratic system, that will help them, or they start thinking of another alternative to democracy. I think they took the other part. That didn't suit them, so the military interventions were very suitable for them because every time there was a military intervention the partnership that the military looked for was not the politicians or the political forces but the religious forces.

You will see that in the 1980s. It was the religious parties who went and sat with the military dictator, stayed with him for eleven years. They were deliberately infiltrated into the education system of the country, to the justice system of the country, into the bureaucracy at all levels. Why I'm telling you all is that is how they dictate the discourse. Universities, the academic environment, are totally infiltrated by these people. So that's how at one level it seems as if everything is centered around Islam. At the other level there are things which people find absolutely important to conduct the affairs of their everyday life. And that goes on happening. At the same time there are challenges that this environment poses to democracy on the one hand, on the other hand it's not just a challenge. It's in many ways a message saying we are unique, we are an Islamic country, the universal and core values don't apply to us, and therefore what people see as democracy is not for us, we construct our own democracy and our democracy means that one particular group gets to say how the people live.

Now, as I said, there is a civil society that challenges this every day. They challenge it, especially women. The women's movement started with a lot of effort to open the doors to what an open ear hears, to what the religious elements were saying, try and understand whether there is any scope for us to argue what is in accordance with Islam and what is not in accordance with Islam. After two or three years of doing that the movement made two very significant decisions. Number one, this was not our point of reference. We respect people's right to religion, to profess their religion because that's a human right and we subscribe to the universal values of human rights. The second decision was the women's rights movement will never prosper in isolation. We are not an a-political movement, we are a very political movement, and we are not defensive about it. We come into the political arena not as a politically partisan movement but as a movement that is aware of the context in which we have to achieve certain objectives. We know that democracy in itself will not remove the problems of inequality and disempowerment. Democracy has to be sensitized to the issues of gender. This is only one of the movements that made its place in the political arena. But there were others. There were other very political and social movements that were doing the same, challenging the monopoly of the space to talk by Islamic preferences.

So that's where we are today. We are in a situation where after repeated military interventions we are once again back. Democracy bounces back. This shows you the resilience of the people and their faith in democracy however strict a martial law it may have been, however strong and vociferous that military regime has been against the political process, undermining it, undermining credibility of politicians, undermining the whole process of democratization. Even then people come back, democracy bounces back. And that's what's happened again in 2008. The difference this time, of course, is that Pakistan is under a great deal of pressure and a great deal of stress not only because of other problems that we have to grapple with. Coupled to that or in addition to that is this whole question of security and an economic crisis. Both are undermining our ability to reconstruct ourselves as a nation, to give strength to our institutions which are absolutely essential and critical for upholding democracy, the judiciary, the parliament, and other representative bodies.

There is much more freedom of expression today. There is a very free media and a very active media in Pakistan. And although this terrible dictator that we had, the last one, Parviz Musharraf, he kept claiming that he is a big democrat and out of this basket of apples oranges will sprout and he will bring democracy, and claimed that he is the reason for media freedom. That's not really true. He certainly used the promotion of different television channels as a part of his communication policy because of a lot of money that was going to come in in licensee, and that was a good way of making money and also having power over media houses. What he didn't cater for was again the very innovative environment that he media has. Freedom of expression and the struggle of the media to gain that freedom of expression have been going on for a long, long time. What they go eventually, because the channels once they were there, they went their own road. And because they were now talking to the people directly it was very difficult for any dictator to intervene. If you remember during the lawyers' movement, that you perhaps

are all familiar with, there was one issue that was also closing down of certain media houses. And this whole movement became even more kind of excited and insistent that these media outlets not be repressed. And that became a part of the movement also, freedom of the press. So it was almost impossible for the dictator to do anything. And media freedom is today despite the government rather than because of it. That is one of the positives. The other positive I said is a civil society.

The second positive, and you may find it a bit surprising coming from a human rights defender like myself, is a civilian government. Why is it positive? These governments or these political parties had been tried and tested by us. We have been disillusioned by them time and again. We know that they are corrupt. We know that they are incompetent. In that sphere their corruption and their incompetence, I don't think that there is any government in the world that can boast to do the best. But the situation is really complex and everybody's competence is tested. But what is important for me as a weakness of these governments is they don't have the backbone to fight the military. If Benazir Bhutto had lived maybe it would have been different. But despite all that in November 2007 when the military dictator imposed another emergency and tried to oust all political elements we stood up with them. Why? Our interest is in the continuation of a political process. We have a structural problem. We cannot hope to continue that political process without political parties. We can't import political parties. That's a special idea of the US. They like to bring in political elements from outside in countries they have a control over. And the disaster that occurs because of that is obvious to everyone.

The point is there are two main political parties in Pakistan. There are several smaller ones and regional ones. But these are still political parties who carry on the political process. Our interest is that we sustain and carry the political process for long enough for the scum to be cleared. Scum will always stand when the waters are still. Move the waters, create an environment in which new leadership will emerge, and that 's our only hope. We will probably get better leadership. That's what's happened in many parts of the world and that's how democracy gathers strength and gathers energy. And that is the reason why we feel that in many countries like mine we have to be patient. We have to very critical, very watchful while these rogues are in power and try and control the damage as best as we can, and sometimes we do. But at the same time there is no hope that if that process is stopped any better leadership will ever emerge from the wrecking that we experience. Many countries are in similar situations. We have to accept and tolerate these rogues. So there is no benefit in anybody outside of Pakistan. Many people have said to me, but you know, your politicians are really corrupt. Well, yes, that's true. But our military dictators are even more corrupt. But that's not the point. The point is in addition to being corrupt they foul the atmosphere and the environment for the growth and development of democracy. They make for more divisions in the nation than for any communality to emerge.

We have a province today, Baluchistan, where there is a very strong secessionist movement going on. They have nothing against me as a fellow Pakistani. But their sense of deprivation comes from the fact that the military controls not just their territory but also their natural resources. And they are really rich in natural resources. Many years ago natural gas was discovered in this province. I live in Punjab which is the dominant province from where the majority of the military comes. I got gas in my house very soon after it was discovered. Quetta which is where the gas was discovered didn't get it for 25 years. So these are some of the issues that are the real issues.

Discussions on Islam are a red herring and a deflection from the real issues which makes for the frustration that leads the youth to think about Islam. Also let me tell you that they will never have enough of Islam, these Islamic groups. It's not the first time that they are asking for another Islamic experiment. We've had it time and again and it has never been the answer for us.

Our objective now - how far we succeed in it is another question - is to ensure that the political process goes on for long enough to get us better and wiser leadership, to give a strong message to the military that this is a much more aware population. And let me also say that for the first time in Pakistan, even in the Punjab which has always been a very poor military province, there is now no appetite for the military coming back into government. So it will not be an easy coming in for the military if they try to be adventurous again. But one important thing is to do that. Secondly, you don't fight Islam by repressing. You marginalize those issues. You bring in issues that are of real interest and of real benefit to the people. Find the solutions and slowly marginalize those forces - I'm not saying marginalize Islam - who want to play Islam, who want to play politics with people's religious feelings.

This is a serious time not only for Pakistan. But an unstable Pakistan will lead to serious trouble globally. People have to invest today, not just ourselves as Pakistanis, of course it's our primary responsibility and we will do it. But at the same time others have to understand my country enough so that what they do doesn't prevent what we do from achieving results. At the moment there is a confusion here. In the counter-terrorism policies I see a problem

which has become very counterproductive. And I am certainly not talking about root causes of terrorism because I don't agree with those who think that poverty and economic deprivation is the root cause of terrorism. In my country those who control terrorism are very well to do people. They are very well financed. They don't come from the poor and the deprived. They are very well educated. There are doctors, there are other professionals, there are bankers who are the brains of this movement. So I don't go along with that. But at the same time I do believe that allowing a public perception to develop where people perceive terrorists as victims of injustice make it difficult for people like me as human rights activists to build a public opinion where we are trying to show how these trends and this violence are serious violations of very precious rights, the right to life, the right to peace, and most of all the right to dignity of women, of those who are our fellow citizens but who do not share the fate with us, the minorities, which is not a good word. I never liked to say minority or majority based on religion. They are Pakistanis just as much as I am. But these are the people who suffer because the space for tolerance is reducing with the activities of these terrorist groups.

But when there is more and more space being given to those who want to use this as platform for disinformation, as a platform for propaganda, our task becomes more challenging and more difficult. On the other hand or in addition to that I also believe that threat is real. I am coming from Pakistan. I will not say or try and understate the problem of terrorism, not just in my own country, but the global threats of terrorism. At the same time I believe very firmly that security imperatives have to be met within the framework of the rule of law and human rights. If you do not do that it will become counterproductive, strategies will remain weak, and will not achieve what we set out to do. You don't counter terrorism by disappearing people. You don't counter terrorism by torturing people. You don't counter terrorism by creating legal loopholes and legal black holes.

I'm totally against the war paradigm that has been adopted since the counter-terrorism came into existence for very legal reasons but also for very practical reasons. As I said it is absolutely important to remove misguided perceptions about terrorism. That is the only way of seriously refuting attempts to glorify terrorism because these terrorists have a habit of hiding behind the cause. Criminal trials for me - and this is something that I have been saying in Washington and in Pakistan -, this must be an era of prosecution and not of disappearances and collusion between intelligence agencies of different countries to commit irregularities and defeat the object of the rule of law. This must be an era of prosecution. What does it do? It is a very practical and pragmatic approach. When you put people on trial you expose the criminality of their acts. That does not allow them to hide behind a vaguely defined cause. Secondly, you make the victims visible. It is very important now to make people know, to show them the face of these victims, civilians, children, women, men, innocent people, who are the targets of these terrorist acts.

In Pakistan it is already happening. It is not happening because we or the state employ the best strategies or tactics that were possible. It is these terrorists. When they increased their militancy and their brutality it came home to the people that this is not somebody else's war, it is our war.

You spoke about sovereignty. And that brings to another very negative trend. I have everything against the United States and sometimes against other powers which have a hand or a responsibility in constructing the policy in Afghanistan. Yet, I think anti-Americanism is one of the most negative trends in my country. Why? I have no sympathy for the US. It can deal with the environment it creates for themselves in the aftermath of their mistakes. But for me it is negative because it prevents my people from looking inside for the solution to their problems and the reasons for their weaknesses. The external factors perhapsacerbate our problems. But the problem really lies within. It is from weaknesses within us that today we are seeing the face of a state which many people are saying is a failed state. It is not a failed state by any means. But it is a weak state that is neither able to fulfill its responsibility to protect its people nor is it able to fulfill its responsibilities as a part of the community of nations. And that, I think, is the reason why I believe that anti-Americanism has to be very firmly and very convincingly dealt with, not allowing the mistakes to be understood as the right thing, but insisting that we have a stronger responsibility to look inside ourselves, to see where the problems are, look for national reconciliation, look for a communality of interest, and to be able to construct a state which can protect the people, which can encourage and promote the positive social trends and eliminate and discourage the negative ones.

I started talking about sovereignty in the context of anti-Americanism. One thing that really irritates me, and perhaps not many Pakistanis share this with me, is when people keep saying the United States is injuring our sovereignty by these drone attacks. Yes, it is. But I feel as strongly that when foreign elements, including Afghans, come into my country, take control of territory and interfere in the right of the state in those territories, take up arms against my security apparatus, kill my people, I think this is a more serious infringement of my sovereignty. And that is what the people of Pakistan also need to understand. Thank you very much.

Gudrun Harrer

Thank you very much, Dr. Jilani, for this really impressive lecture. I made so many notes of possible questions we would sit here until midnight if I would have the chance. It was clearly a dark picture you painted, but with some very distinctive bright spots, media you mentioned. By the way, if you are telling us that these channels created by Musharraf then went all of a sudden their own way they are doing better than for example Berlusconi's channels in Italy. So media, civil society, women, and also very interestingly even with all its flaws the civilian governments. I wrote down this sentence of discussions on Islam are a red herring and the idea of marginalizing it, of just refusing to make it a point of reference because it's useless. I have to admit, I think we in Western countries sometimes are working in a counterproductive way because we use it as your point of reference unfortunately. We spoke about it, it happened yesterday that there was this Fatwa by Mohammed Tahil Hadri which on 600 pages issued a verdict against terrorism, very clearly. I didn't read it. But it's supposed to be without ifs and buts and so on. We did it in the newspaper, they asked me to do it. My feeling is we are overdoing it. My question to you, yes, marginalizing. But do you think really that my marginalizing there will be a roll-back of this trend? Mr. Hadri's opinion comes perhaps to the help of the society. Can you really say no, he says the right things, we don't want to listen to him, he should just shut up?

Hina Jilani

What the society needs to do actually is more than being told by Mr. Tahil Hadri that killing civilians in the brutal way that they have been doing is absolutely unacceptable. I think more and more people are not listening to Fatwas. They are seeing what is happening. They see human limbs flying and human body parts flying in the areas that are targeted. And that has changed the perception. It was not Fatwa that changed the perception of the people, the lessening of the ability of these people to glorify acts of terrorism in the name of Islam. It's not possible now to excite anybody in Pakistan saying these are people who are going to paradise, they are the martyrs. Nobody understands that anymore in Pakistan. And let me make that very clear. There are still people who talk about religious extremism and Jihad in a very theoretical way, but cannot ever say publicly that acts of terrorism are a part of what they are still propagating as Jihad because the public knows that these are acts of brutality.

You remember this footage that was shown on Pakistani media and the international media about a woman being flogged by the Taliban. Believe me, that was the turning point. The kind of horror people experienced with what they saw was also reflective of why even though these Islamic punishments were imposed 25 years ago, not a single such punishment has been ever executed by the Pakistani state. Yes, some non-state actors have whipped people or cut somebody's head in rare incidents. We have stoning to death as a punishment, we have amputation of hands and feet as a punishment, we have public whipping as a punishment. Not one such punishment has ever been executed in Pakistan. And why? Because those who had this idea of creating a state with an environment of fear, this is the Zia ul Haq dictatorship, where one of their weapons and tools for control was this fear of brutal punishments. They couldn't do it because somewhere at the back of their minds and at the back of our justice system is that there is acceptability. People have not acceptability for this and no tolerance for this.

That's what I'm saying, that we have to understand that these Maulvis and these Fatwas are not the thing that will turn people's mindset. It is the reality when they see it. And that's why it's so important that we have a free media that is able to cover it. Pakistani in government reacted very strongly to the media covering these incidents of terrorism. They said, don't show it, don't show it. I think that was either because they are not smart enough or it's because they want to hide it so that there is not that kind of public reaction. And there was a very strong public reaction that came from what they saw.

Question

About a week ago there was in the Austrian media, in Ö1, a long discussion or a whole feature about the Islamic schools in Pakistan and it was highly praising the schools. So I would like to have your opinion on that.

Hina Jilani

These schools have been a source of concern for many years for people in Pakistan who have anything to do with human rights, who have any ambitions for their country to be free of violent extremism. Let me also tell you a truth today. Who do you think funds them? Saudi Arabia, the Americans, a lot of the CIA secret funds went into these Madrassas in the 1980s. The hatred of these elements towards the United States is not because of anything that the United States is doing against the interest of Pakistan which may be another issue. They hate the United States because it did not fund them enough. These are the very elements which are very happy to sit arm in arm with the United States when they were doing mischief in Afghanistan and creating these elements. So these are funded by all these people, even today. You would be surprised that instead of allowing us to get a policy to do away with these Madrassas many of our so-called friends are still funding these Madrassas. The other day I was there with

somebody who was talking to me about the computers that the US has given to these Madrassas in their effort to make them modern. They use the computers very well to create more networks of terrorism. I would just like to tell you that they are very dangerous institutions. They still remain in Pakistan. They still enjoy the sponsorship and support of not just the military in Pakistan but also the intelligence structures in our country. The problem is exacerbated by countries like Saudi Arabia because of their own agenda to create a wider Wahabi Sunni community and the Americans.

Question

I want to comment to what the lady before said. I know the person who made this radio feature, it's Mr. Christian Prüser. He is an expert on India and also Pakistan. What he did is he gave the ideology of these Madrassas against the reality. He didn't give his own comments more or less. The pupils said, we will become Jihadis and we will go to paradise. In fact he said they really wouldn't do it. So it was not so positive. But it sounded rather ...

What I wanted to ask you is comparing India and Pakistan. In Pakistan there have been four military coups whereas there was none in India, while one can say the military comes from the same source. What is the reason for this? I've been asking this also Indian friends and they said to my surprise, it's because there are so many different religions in India. That's why they have to be more unified. In Pakistan it's more or less one religion, different ethnics. What is your opinion?

Hina Jilani

That is absolutely not what I think and I don't think that makes much sense. The reasons are several. I think that it will be not easy for me to give each and every fact that has created that difference between Pakistan and India. But two things are important. Number one, India's leadership survived, the initial founding leadership, for many years after independence. People who had created the state of Pakistan and who perhaps were the only ones who had a formula to see how the state gets constructed and constituted died very early. And there was a lot of adventurism on the basis of which leadership developed in this country. I'm just giving you very, very marginal views on it. There are deeper issues here of how internationally the military of Pakistan was strengthened for whatever reasons, international pacts like Sato and Seto were entered into. There were several things that happened. The result was that what was happening between 1950 and 1958 really created a state where there was no other way in which this country could go. The politicians were continuously squabbling. But that happens in many countries of the world. Politicians are meant to squabble. I still don't think that that was a reason for the military to interfere. The military not only interfered because they felt because it was in their interest to interfere, it was also a kind of support from the outside powers. The US, for instance, has never had a relationship with any civilian or political power in Pakistan. It has always had a relationship with the military. It is always easier to have a relationship with the military and put your energy and your stakes in the military which is going to be a constant rather than in a changing political leadership.

These were the years of the Cold War. India and Pakistan were on two sides of the border. India had a pro-Soviet stance, so Pakistan had to rig up to be a thorn in India's side. We couldn't be more than that, we were too small. But that thorn had to be somehow manipulated and it was not possible to do that through a configuration where the political governments were coming in periodically through some kind of democratic process. So this is one of the reasons.

I remember, I was telling this story to somebody. Indira Gandhi in 1973 imposed emergency in India which was very unpopular. And somebody brought to her a piece of information saying the military is very unhappy and we should see what happened in our neighboring state and be very careful. And she said, I will take my shoe to any military person who ever dares to say that they will intervene. That was the kind of environment in India where a prime minister can say this even it was not publicly but before her cabinet. In my country they are so scared of the military. I can say it, and I say it every day on television. But my prime minister dares not say it. My judiciary chief justices dares not say it. He has set a case for corruption against the president of Pakistan, but he can't say anything to the chief of the army. This is the difference between India and Pakistan.

Gudrun Harrer

A historical question because I was surprised when you said that one of the early mistakes was the long making of a constitution. Why do you think so? I was reminded of the Iraqi case where a constitution was rushed and imposed, also the results were catastrophic. It's a struggle to have a constitution.

Hina Jilani

Precisely for the reason that I said that our basis for communality was not Islam. Our basis for communality was competing interests of the different provinces in Pakistan. Why do you think constitution making was difficult?

Because this was a new state altogether. There is a difference. In India there was a continuity also. So there was not that critical a problem. These were totally new states which had just become independent from the colonial power, but also now were new states. There are competing interests. There was the Bengali leadership who wanted certain things, there was a Baluchi leadership that wanted other things. But the point is that they should have taken as long as they liked and would have come to a solution. And we did. In 1956 despite all the differences they did come up with a constitution which was of course abolished by the military government.

In 1973 they again came up with a consensus constitution. The political elements did. This was not a military dictator's constitution, the 1973 constitution. The military dictators have progressively amended that constitution. It doesn't look like anything what it was originally. Of course, this was a compromise, but it was working. We have held two elections under the 1973 constitution as it was originally and almost six elections subsequently under that constitution. I'm just saying that while it is a mistake to squabble all the time and take too much time and allow other forces to intervene and find that space, but the point is in a country like Pakistan which has just come into existence there are several interests that have to be negotiated and several things that have to be done. There will be squabbles, there will be more time taken.

Question

I am Alisa Sultan from Pakistan, I'm doing my Ph.D. here. I would first like to appreciate the nice talk that you have given. It was very informative and balanced. But I want to comment on one of the points. I understood that you want to say we should be not anti-American but also anti-Afghan because the Afghans are coming in our country and are doing this Jihad stuff. But I think it's actually the reciprocation of what Pakistanis had been doing in Afghanistan. So we can't take Afghanistan in comparison to America like that because what we were doing in Afghanistan years ago was because of America. Afghans are now reciprocating as far as I think. And America, they are doing the drone attacks after even our so-called sovereign parliament has passed a resolution that they should not be happening anymore. But the drone attacks have consistently increased. Please correct me if I understood wrong.

Hina Jilani

You didn't understand what I am saying. What I am said was very much in the context of sovereignty. Yes, we safeguard our sovereignty against anybody including the United States. But that should also be the reason for our not accepting so tamely the fact that our sovereignty is under threat by people who have control of our territory and who are not Pakistanis. I do believe that that is an issue of sovereignty that must also be of concern to us. I'm not anti-Afghans, I'm not anti-anyone. But at the same time I do believe that people have to look at the issues of sovereignty in some perspective and with some consistency and not be selective about their feeling of sovereignty. That's the reason why I said what I did.

On anti-Americanism, I thought I made it very clear. I think anti-Americanism is perhaps justified on many grounds, but it has become a negative trend for us because it has now become something which allows you not to look inside. And it is very easy for everybody to say this America's fault and Americans are to be blamed for many things. They may be. But at the same time, whatever the Americans do is taking advantage of our weaknesses. And that is why I am saying that it becomes negative to do that all the time. You have to look inside for your weaknesses. For as long as you delay it the more you are putting yourself at risk and in danger. That's what I'm saying, and I hope that's more clear to you now.

Question

Harald Fiegl. Could you explain about the role of Pakistan in the Human Rights Council in the United Nations where Islam should be protected from any discussion, no criticism on Islam. And Pakistan to my understanding has a leading role.

Hina Jilani

I don't think it's a question of criticism of Islam. The Organization of Islamic countries has a particular grouping within the Human Rights Council in Geneva. They have an interest in preventing debate on certain subjects, and they are very selective about it. I don't know why they choose a particular issue to say this is absolutely red line for us because this is un-Islamic. But most of these issues are related to sexual orientation. And this is not just Pakistan, Egypt is just as vociferous about it. I know that I have been attacked several times although that's not the major concern under my mandate. There are issues regarding the whole question of the death penalty. There are issues regarding the mandate on freedom of religion that they have watched very carefully, and they have created a lot of problems there. I really find the role that my country plays a little difficult to understand. Inside the country there is much more debate on these issues and much more freedom to talk about them. At the international forum,

at the multilateral forum like the UN I think Pakistan likes to be seen as a leader of the Islamic group and therefore has this tendency to be seen more fanatical than it really is. Yes, it is sometimes a negative attitude. Nevertheless I have my own views about groupings within the United Nations. I think this is not the only problem at the group. There are others. And I think these regional groupings have been very difficult for us. For instance in my work on counter-terrorism I had found the Western group very resistant to criticism of the policies that are taking place.

What is the United Nations? Unfortunately in fact the human rights system of the United Nations is even more strange because this is a strange animal. You are talking about the shortcomings of governments to governments and expecting them to overcome. Yet, it is the least that we need. It is a multilateral system which is absolutely important for us. But how does this machinery work? Strangely it does. It doesn't have brilliant impact, but it has an impact because the fact is that no single power or country in the world has credibility today. If there is any little credibility left amongst the world population it is of the United Nations. So it's neither the US nor the EU nor the Organization of Islamic countries or any other grouping that enjoys any kind of credibility. But the fact is you have to understand the animal to know what to expect of it. So yes, I think that groupings are having terribly negative impact on the promotion and protection of human rights through the United Nations, and this includes all groupings, believe me.

Question

I have a lot of question but will focus on three different issues. One of them is, you talk a lot about Pakistan and its problems. Were Hina Jilani to become prime minister how would you tackle the terrorism problem today? What are your proposals?

Hina Jilani

Please pray to God that Hina Jilani doesn't become your prime minister. I'm not good prime minister material. I think this should be something that should be very clearly understood that not everybody can do everything. Many years ago somebody was talking about a sportsman who had become very popular in the West and was being promoted as the next prime minister of Pakistan and they said, why do you disagree with the idea? He is a very good man, he is a very good cricketer. And I said, my gardener is a very good man and a very good gardener, but that doesn't make him prime minister material. So it's the same with me.

But as a human rights person I think that I would deal with terrorism as a phenomenon that requires the proper implementation and respect for the rule of law. And I think I gave enough details and examples of how I think things can be better done. I'm not saying anybody has the right answers. If we had we probably had been able to get rid of it. But one way of going about it is to ensure that no sense of injustice is associated with those who are committing acts of terrorism against these people. Not only because of the principle involved, but also as bad policy. It's bad policy. There is a principle, of course. Everybody is entitled to be dealt with in accordance with law. I'm a lawyer. I go everyday to court even if the client that I am representing is a suspected terrorist. But if there is a principle involved I go there. I want the rule of law enforced. But at the same I think it is bad policy also on the part of governments when people are being looked at as victims of injustice. They should not be on the one hand and on the other hand they should not also feed a wrong public perception.

Question

My second question is very quick. Why has nobody so far ever sued the military dictators according to the 1973 constitution? Treason is a capital offense, punished with the death penalty. As you mentioned even the prime minister today cannot confront himself with the military guys. Will that not be a possibility for a human rights group like yours to sue the three dictators?

Hina Jilani

It is a possibility not necessarily for the human rights groups whose priorities are different, but it is a possibility. But look at the situation where you have a court which after so much of the efforts by the lawyers is now said to be very independent. How much independent action has the chief justice taken against the military dictator so far? He was very enthusiastic in a recent judgment saying that even the president of Pakistan should not have any kind of immunity which the constitution says he has since that time as he holds that post. The same chief justice doesn't know article 6 of the constitution? That surprises me.

Question

The very last question is, you mentioned the emerging new leadership. Do you have any hope that in the next ten years there will be some leaders who come and lead the country?

Hina Jilani

Not only do I have hope, I hope that you have, too.

Question

I have the hope. But do you?

Hina Jilani

Frankly, I do. I have lived through at least martial laws in my life. I still think what we have today is much better than what we had in the 1960s. My father had to fight for many things which now, today, despite all the difficulties that I have told you I take them for granted. In the 1962 constitution there was no chapter on fundamental rights, absolutely none. Today we have a constitution which has not only fundamental rights, but as a lawyer I know that even though this is only a minor fact in our life we have been able to enforce fundamental rights in many places and prevented torture, prevented people from being tortured or kept in arbitrary detention. We still need to go a long way. I don't think it will happen in my lifetime. But I still have hope that we will go that way.

Question

At the beginning of your lecture you elaborated on the search for identity of the civil society. I would say at least for some part of the security apparatus the conflict with India is also part of their identity. And that could give some reasons why they interfered so much in Afghanistan. Do you think they are ready to try to close that Pandora's box and all the backlash to Pakistan? If you see the change in the Islamic self-understanding from people living in non-100% Islamic society to the imported Saudi Arabian Wahabi traditions, do you think it's possible to close that development? Or is Pakistan going to a split country with some major cities being more liberal and other parts of the countries with a strong Wahabi Islamic tradition?

Hina Jilani

I am afraid that I probably will not answer the second question to your satisfaction because that's not my field and that's not my concern. But the first one is a very apt question. If you think that our security apparatus because of a conflict of identity suddenly got this urge to construct an Afghan policy the way it was constructed I think that's absolutely not the truth. There was a very precise security policy and a foreign policy that was constructed for the reason that our military believed that in order to retain our strength on the eastern border with India we need a friendly presence in Afghanistan. When the Soviet forces left Afghanistan there were multiple forces that were competing for power there. Why did Pakistan choose the Taliban? These Taliban are no other than the same people who were accommodated in our Madrassas with American money, with Saudi money, with Pakistani trainers. The investment of Pakistan was more in training and in building them into forces. Weaponry was supplied by the Western powers. So they thought this was a good idea, have the Taliban take over in Afghanistan. It was not their Pashtun identity or their Muslim identity that was confusing them. This was a very clear policy. And it was a policy that was constructed not just keeping Afghanistan in mind, but more precisely the situation the eastern borders. Then there was this whole question. There was one thing about Taliban, there was another thing about creating a Jihadi culture. The Jihadi culture answered to their problems of fighting wars with India. Jihadi culture allowed them to infiltrate Kashmir and to create a different kind of warfare with India. Good or bad, I'm not criticizing this policy vis-à-vis how to deal with India, but I'm criticizing it how the Jihadi culture affected us. So please, you have to understand that this was a very security driven issue. It was a very political, very security driven issue. It had nothing to do with culture, with our identities, with our Muslim or our Pashtun identity, because we shared the two things with Afghanistan. You remember. everybody in Afghanistan is a Muslim. There are more Pashtuns than just the Taliban. So if it was a question of Muslims or Pashtun there are other actors who would have been chosen.

Question

Do you think the Pakistani military is having a positive or a negative influence on arriving at a peaceful resolution of the situation in Afghanistan?

Hina Jilani

I think they have more intentions of a war to go on in Afghanistan. They are very keen on a time when the Americans can leave Afghanistan. I think like everybody else they understand how that is making the environment more and more difficult. Yet, the way that they have chosen to conduct and to advise the Americans I don't think that's the road that things will happen. That's not the road that's leading to peace. Pakistan has not abandoned its search for strategic depth in Pakistan. It has certainly not abandoned some of the assets that it created. It has taken a long time, a lot of energy, and a lot of money to create. Of course, there is a lack of transparency. And I'm not that smart that I can exactly say what the Pakistani military and the security apparatus are doing. The only thing I can say for the present in the absence of more accurate information that is coming out of the warzone that we have in

the northern tribal areas, I'm very uncomfortable with what is the end to this. My young friend, the lady here, was talking about the drones. And she probably thought that I am advocating that the drones should not be a part of our sovereignty issue, it is. But so is the fact that there are people there for whom the drones are being used. So we are being played by both. Let us not forget that. No benefit is coming to us from across the border from Afghanistan or from people who they imported and then they exported to Pakistan which is people from all over the world, from many other countries of the world who are sitting in our territories. They control those territories, very much so. The state of Pakistan has no right there and no way of protecting its own population.

Gudrun Harrer

How do you see the Western worries regarding the safety, the security of the Pakistani nuclear weapons? It's an internal Pakistani question, of course.

Hina Jilani

I don't know, I don't want to comment it except to say that I am a pacifist. I oppose any state that has a nuclear weapon. I opposed my government feeling so glorious about the nuclear weapon. I abhor the fact and deplore the fact that India has one. I deplore the fact that the United States has it, that Israel has it, that Russia has it. I hope that instead of being worried about Pakistan's nuclear weapon these states will start worrying about de-nuclearization of the world. Pakistan's nuclear weapon will have the same effect that the United States' nuclear weapon had in Nagasaki and in Hiroshima. I think these are dangerous weapons of mass destruction. Nobody should have them.

Gudrun Harrer

Ladies and Gentlemen, I think we have exhausted the questions and I think it was also quite a good last word about a world free of nuclear weapons. Of course, there are some news and some tendencies, but we are ages away from realizing this wish. I thank you very much for this lecture and for this really thrilling and informing discussion. I gave us the chance to pester you with question and I think we learned very much. Thank you.