**China or the US?**

BY A H M E R B I L A L S O O F I 2023-05-06

WHILE day-to-day decisions made regarding Pakistan`s foreign policy relations invariably lie in the government domain, strategically important and long-term choices, such as whether Pakistan should move closer to the US in relation to China, or vice versa, should be decided by parliament, which represents the collective will of the people.  
  
This must be done with caution and take into account Pakistan`s commitments under international law and its bilateral or multilateral frameworks. These are obligations which one cannot escape as they are, more often than not, irreversible in nature.  
  
From a purely legal perspective, Pakistan`s foreign policy option to choose one state over the other hardly exists per se, given that we have engaged in bilateral treaties with both these powers. As a result, we are bound to continue our engagement with both the US and China.  
  
For example, Pakistan and the US have at least 48 bilateral treaties which have been reproduced in the Pakistan Treaty Series (published by the Ministry of Foreign Affairs) which has documented as of 2009, all the bilateral treaties that Pakistan has entered into with the US. These treaties, from 1950 onwards, include agreements on technical cooperation, economic assistance, agricultural commodities, investment guarantees, civilian atomic energy, tribal area development, project agreements, balance-of-payment support and mutual assistance agreements.  
  
Additionally, there are agreements between the defence ministries, and agreements on economic and commercial cooperation. There are even more unpublished agreements that the US and Pakistan entered into since 2009, some of which are in the public domain, whereas others are in the respective records of the US State Department and Pakistan`s foreign ministry.  
  
Similarly, by virtue of the same Pakistan Treaty Series, we can see that Pakistan and China have 145 bilateral agreements effectively triple the number that Pakistan has with the US.  
  
They include trade agreements, boundary agreements, air transport agreements, boundary demarcation protocols, economic and technical cooperation agreements, maritime transport agreements, selling and purchasing ships agreements, reciprocal investment protection agreements and road construction machinery agreements.  
  
China also has agreements with provinces suchas Punjab. Pakistan and China, together with Kyrgyzstan and Kazakhstan, have entered into an agreement on transit traffic. Besides, we find aircraft development agreements, oil pipeline facilitation agreements, tourism cooperation agreements, railways coaches agreements, financing arrangements for Gwadar, concessional loan agreements, mining agreements, locomotives agreements, signalling system agreements, preferential buyers credit agreements and agreements on the export of mangoes, goats, sheep and rice.  
  
There are also friendship and cooperation treaties, free trade agreements, defence cooperationagreements, energy cooperation agreements, agreements to improve the Karakoram Highway from Raikot to Khunjerab, agreements for space sciences, sports cooperation agreements and a `friendship province` agreement.  
  
Some agreements in the public domain after 2009 include agreements for radio and media collaboration and the upgradation of the Karakoram Highway on a concessional loan from 2015, an MoU relating to the Silk Road economic belt initiated in 2017, an agreement for the upgradation of ML-1 and the Havelian dry port (2017) and an MoU on marine research cooperation (2019).  
  
Then there is the Rashakai economic zone agreement of 2019, a product standardisation agreement (2022), an agreement to prevent theft and the clandestine excavation of cultural property (2022), Nadra`s MoU with its Chinese counterpart (2022) and a framework agreement for industrial cooperation (2022).  
  
There are numerous lesser known supplementary `G` to `B` agreements that Pakistani companies have with Chinese entities that have their own business momentum.  
  
All this brings up an interesting point, which is that the US-Pakistani relationship has been conducted mostly on administratively or informally agreed executive arrangements, instead of beingbased on formally signed treaties.  
  
On the other hand, China seems to prefer a formal legal course by incorporating their executive or political understanding into executable binding legal commitments that last far longer than the life of one government or a single political leader. This is certainly a far more secure way of managing foreign policy, as evident even from the mere itinerary of the mentioned treaties that the two countries have been entering into since the 1950s.  
  
Without any noise, it remains well-disclosed involving an across-the-counter state practice. We know that no country including Pakistan can be asked to be dismissive about legal commitments as under the Vienna Convention on the Law of Treaties we are bound by the principle of pacta sunt servanda under which agreements entered into are to be kept.  
  
Pakistan is bound by this principle in our commitments with the US as well even though our bilateral treaties are fewer than with China, they are still quite extensive. Also, our legally identified `field of engagement` with the US is further expanded on account of the UN`s binding resolutions relating to terrorism and Al Qaeda. The US and Pakistan have partnered even bilaterally in the Afghanistan theatre of war to rid the international community of the menace of terrorism. That cooperation has its operational highs and lows, but Pakistan`s principled legal stance on terrorism has remained aligned with the US position for the last two decades. Under this alignment, Pakistan has constantly upgraded its criminal justice system and border controls and has also revised dozens of federal, provincial and regulatory laws as per the advice of US law enforcement experts in the FATF.  
  
Pakistan has not been obstructive at all towards any investments from the American business community. Yet little has arrived over the years. Even today, despite the absence of treaties, US companies are more than welcome to invest in acquiring concessions, form joint ventures and bid under public-private partnership under federal and provincial laws or even under local government laws.  
  
Despite this welcoming environment, few have approached the Securities Exchange Commission of Pakistan for registration and even fewer have explored investment opportunities under our provin cial laws.  The wnter is a former caretaker federal law minister.  
  
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