**The limits of sovereignty**

BY A M B E R D A R R 2021-08-13

AUG 11, 1947, was a day of great promise.  
  
Pakistan was merely three days away from being born as an independent nation-state; a Constituent Assembly, tasked with drafting the country`s constitution and serving as its legislature, had been recently appointed; and the assembly had just elected Mr Mohammad Ali Jinnah shortly to be officially declared `Quaid-i-Azam` as its president. Most importantly, however, it was on this day that Quaid-i-Azam had first outlined his vision of the core responsibilities of the sovereign state of Pakistan.  
  
As Pakistan approaches yet another birthday, it is interesting not only to revisit the Quaid`s vision as enunciated on that day but also to understand whether there are factors beyond the oft-cited constitutional uncertainty, tense civil-military relations, and threats of foreign invasion that have prevented Pakistan from fully realising the promise of that glorious day.  
  
Rereading the Quaid`s speech of Aug 11 suggests that at that time he was particularly conscious of the unique and wonderful opportunity before him, to develop a system of governance founded on the finest principles of social justice, individual freedom, and respect for all, regardless of their colour, caste, or creed. To this end, he emphasised that the government of the newly created country do everything possible `to maintain law and order, so that the life, property, and religious beliefs of its subjects remained fully protected`; take necessary steps to eradicate `bribery and corruption`, `black-marketing`, and `nepotism and jobbery`; and adopt the `guiding principles of justice and complete impartiality` in securing the well-being of all people, `especially of the masses and the poor`.  
  
Whilst Pakistan was celebrating its hard-won independence and grappling with the pressing domestic concerns of the newly established state, the world around it was rapidly changing. In faraway Europe, the horrors of World War II and the imminent end of the empire had given rise to the need to develop an international order whichwould not only safeguard the rights of people but also ensure the peaceful coexistence and interaction of nations. These concerns led to the establishment of the United Nations and the adoption of the Universal Declaration of Human Rights (UDHR) on the one hand, and, on the other, of the creation of a set of institutions for governing global economic relations: the IMF to manage the world`s money; the World Bank for supporting reconstruction and development, and the International Trade Organisation (ITO) to oversee international trade.  
  
The newly born Pakistan was soon swept up in the euphoria of these international developments: within a month of coming into existence, it had joined the UN, a year later it had become one of the original signatories of the UDHR, which in any event echoed the priorities of the Quaid, and by 1950 it had become a member of the IMF and the World Bank.  
  
The influence of these international institutions on Pakistan`s thinking is reflected in its constitutions: they not only echoed the language of the UDHR in the fundamental rights they provided to the citizens but also affirmed the country`s commitment to free trade and to safeguarding private property, in accordance with the values of the global economy espoused by the World Bank and the IMF. However, Pakistan did not join the ITO because it was rejected wholesale by the countries of the Global South for being designed to undermine their political sovereignty and the well-being of their citizens for the economic benefit of the Global North.  
  
Unfortunately, however, Pakistan`s balanced approach towards securing the rights of its citizens, as envisioned by the Quaid, and achieving economic development ended abruptly with two decisions taken by Gen Ayub immediately after his 1958 takeover: the first was the decision to abrogate the 1956 constitution, and thereby to suspend the fundamental rights of Pakistani citizens, and the second was to negotiate a trade deal with Germany which would not only reverse the very position that the Global South had adopted only adecade ago towards the ITO, but also cause Pakistan to halt industrialisation and to focus exclusively on food export. These negotiations culminated in 1959 in the signing of the first-ever bilateral investment treaty (BIT) between any two countries in the world in terms of which foreign corporate interests could invest in the country while enjoying immunity from its court system.  
  
Since 1959, Pakistan has entered 53 BITs with 48 dif ferent countries .32 of which are in force today in the hope of attracting foreign investment.  
  
Whilst the extent of foreign investment generated by these BITs and its contribution to economic development in the country remains unknown, it is known that Pakistan has been a party to at least five BIT-related arbitrations, with companies from Switzerland, Turkey and Italy. At least three of these arbitrations have resulted in heavy losses to the Pakist ani government the most recent example being the Reko Dig arbitration in which Pakistan was fined $6 billion, a sum equal in quantum to the IMF aid package approved for the country in a contractual dispute with the BITprotected investment by Australia`s Tethyan Copper Company.  
  
At the time of writing this, the Pakistani government has announced its decision to terminate 23 BITs. It claims that doing so will not only protect it from further financial exposure in case of disputes with BIT-protected companies but will also allow it to reclaim space for the public interest. Important as this step is, it does not change the fact that Pakistan is deeply entwined in and bound by the rules of the global economic order due to its dependence on the IMF and the World Bank and since 1995, its membership of the WTO which works with IMF and the World Bank to determine its economic policy. While these relationships remain, they will continue to require successive Pakistani governments, regardless of their ideology or affiliations to prioritise economic efficiency over social justice and the rights of citizens. The wnter is a barrister and an academic