



# REPORT

**“Policy Dialogue on International Law: The Increasing Role of Public and Private International Law in the 21<sup>st</sup> Century”**

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**Executive Development Institute  
National School of Public Policy  
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## Rector's Message

The National School of Public Policy is the premier national institution for training of civil servants in Pakistan. The training methodology of the School as followed by both the National Management College and the Executive Development Institute (EDI) aims at fostering an environment of intellectual freedom amongst participants for investigative analysis, a spirit of rational inquiry, and a genuine desire to seek knowledge. The overarching aim of the NSPP is to improve the quality and effectiveness of public policy, its implementation, and provision of executive education through policy dialogues and trainings.



EDI has been exhibiting a dynamic approach, which is reflected by the consistent effort for bringing the public and private sector on the same forum to exchange ideas for policy formulation. It focuses on capacity building and training of public leaders and executives of the private and public sectors to help meet pressing public policy issues of the country. Programmes at EDI aim at enhancing the understanding of the executives of the public and private sectors in the realm of policymaking and its implementation to optimize their effectiveness as leaders and to prepare them for their future responsibilities and new management roles.

In our drive to address the policy and social issues, we are making an effort through this Two Days' policy dialogue to highlight need for knowledge of International Law. The objective is to understand the relevance of international law in the modern day world. We all know that Pakistan is a signatory of a host of international treaties, conventions, agreements, and covenants, which have legal implications. Therefore, there is a need to understand our obligations and rights under the said instruments. In addition, companies and individuals invest in foreign countries, which gives rise to a certain set of legal issues, sometimes referred to as conflict of laws. Therefore, in-depth knowledge of both public and private international laws is the need of time.

In order to protect and look after Pakistan's interest, it was considered necessary that a dialogue may be held to discuss and acquaint professionals from various walks of life with many practical and theoretical aspects of subject.

In order to maximise the effectiveness of this policy dialogue, EDI has carefully designed the course outline and selected eminent speakers and domain specialists. The objective of the Institute is to discuss every important aspect of a topic to be viewed from a 360-degree angle's view. Therefore, lectures were delivered on a series of topics ranging from understanding the responsibilities of states, individuals, and businesses to defending a state at various applicable forums. This policy dialogue was designed in such a manner, so as to bring to the table some of the important aspects of international law relevant for Pakistan and discuss them with the participants. The methodology adopted was a mix of lecture and panel discussions to help discuss relevant areas of special importance in detail.

Finally, let me appreciate Dean EDI and his team for having organized this very useful policy dialogue, I hope that this report of the deliberations conducted during Two Days' policy dialogue workshop will prove useful for the many stakeholders.

**Dr. Ijaz Munir**  
National School of Public Policy

## Executive Summary

The world has become a global village, where no state can live in isolation. States need to constantly engage with each other on a host of issues. Some of them bilateral and some of them multilateral. In addition, global trade involves private companies doing business with other countries. Due to this increased interaction and inter dependence and resultant requirement of a regulatory framework as resultant in rapid expansion of international law. Public international law deals with inter-state affairs whereas private international law also sometimes referred to as conflict of laws deals with a set of rules that determine which court has jurisdiction, which law is applicable and how a foreign judgement will be enforced domestically. Both of these create binding legal rights and duties. Therefore, it is necessary that a better knowledge of the relevant legal regimes is available within the country, with a view to both better negotiate and effectively enforce the terms, if need be. With this in mind, this policy dialogue was designed in such a manner so as to sensitise the participants on various issues faced by governments and private entities regarding international law. Practitioners and experts were invited to discuss various areas of public and private international law of relevance for Pakistan. In addition, in keeping with the tradition at EDI, it was ensured that the participants were from varied backgrounds from all over the country.

This report is meant to capture the salient discussions and recommendations that came out through this workshop. Some of the main issues raised by the speakers included the need for a good knowledge of the applicable regulatory frameworks. It is imperative that in any negotiating position officers and managers have a comprehensive understanding of legal implications, complications, liabilities and obligations. Some of the speakers also highlighted the need for meticulously scrutinising any document or treaty at the time of negotiations and before signing them. In this regard, there is a need to thoroughly vet every single aspect and clause of contracts and treaties in the context of international law and regulatory frameworks. There has to be a clarity as to the purpose for which we are negotiating before starting the process of negotiations. It is important to mention here that some of the excerpts are re-phrased on some occasions for the purpose of clarity along with verbatim quotes.

Specialised legal input as well as sector specific expertise is required to assess whether the aim of entering into the legally binding instrument is being fulfilled or not, keeping in view the country's interests. The same specialized input is required to gauge and assess the effect and implications of any treaty or agreement before it is signed. It was also pointed out that as a subject, international law is not given sufficient importance therefore the law degrees should have a greater component of international law. Keeping this in view the course contents of the legal education system may be reviewed. The course should include various case laws related to public and private international law involving Pakistan. The practical aspects of law and its nuances, particularly public international and private international law need to be understood.

It is important get buy-in of all Stakeholders who need to be consulted before entering into a treaty /agreement, with their reservations and recommendations duly incorporated in the decision-making process. The stakeholder consultation must continue to enable a periodic review. Ensure that all relevant government ministries/departments and agencies have given their input before negotiating at any

international forum. It is also important that knowledge is shared and includes an understanding of the legal implications of each decision. Encourage debate prior to entering into a negotiation to clear confusion which may later subsequently lead to internal conflict or disagreement.

All treaties, covenants, declarations, MoUs which are of non-secret must be made available in the public domain. In this regard, one the speakers pointed out that the government of Pakistan through its Cabinet Secretariat used to publish a treaty series. The same may be made available publicly once again. This may be required by people in the business sector, academia and civil society. For example, businesses may need to know the exact requirements under an investment treaty.

There is a need to develop legal and research knowledge base and to engage academics and legal experts in formulating policies and approaches impinging upon international regulatory frameworks. Additionally, encourage research culture and provide research material both in the form of hard copies as well as specialized search engines, such as Lexis-Nexus and Westlaw. Maintaining a database with facility to easily retrieve specific information related to treaties as and when required. Moreover, the need to integrate research and cooperation between various stakeholders, and encourage links between government, academia, intelligentsia, and experts was stressed. It is also important to encourage cooperation and coordination amongst various policy institutes, think tanks and academics to enhance the quality and breadth of research.

The recurrent theme on leitmotif of the dialogue was, “Prepare well, Negotiate Hard!” Negotiations hold pivotal importance in international law. Any negotiation must be entered with full preparation and research into the matter and a clearly defined stance. It was stressed that *foreign policy issues cannot be made articles of faith*. In the realm of inter-state politics, you have to negotiate hard based on hard realism if a state wants to protect its interest. In this regard the *Realpolitik* nature of international relations was highlighted as expressed in the famous words of Lord Palmerston that “*states have no permanent friends and no permanent enemies, but only permanent interests*”.

One of the important aspects of negotiations is capacity building. The ability to effectively negotiate a treaty requires professional capacity building and provision of exposure to relevant experience. Only this will provide an understanding of requisite international legal frameworks and mechanisms for an inter-state level interaction by officials and legal teams. This capacity building requires a continuous commitment by the government. The capacity of government legal departments should be enhanced by ensuring that the best legal talent and expertise is available to them. Enhance the capacity of already existing legal wings in various government/ departments with regards to expertise in various aspects of International law. Make provision for competitive pay packages for such lawyers. On job continuous professional development opportunities be provided for such lawyers. Each department needs to have its own independent legal input so that a 360degree angle view of all legal questions with the government before finalizing its options. To fully utilise this legal department, it is imperative that all hiring in the legal wings is done through a rigorous process based on complete merit. Young lawyers should be encouraged to develop expertise in various sub-specialities of international law by offering incentives to do degree in international law as well as offering job opportunities both in the Public & Private sector

including academia and civil society. In this regard, setting up of Policy and Research Units can develop a knowledge base. For this, there is a need to set up Think Tanks and Policy Research Institutes all over the country including Karachi and Lahore to better tap the resources available in these larger cities to enhance research capabilities. Universities must be encouraged to set-up dedicated research and policy institutes on international private and public law especially on issues of importance for national interest, all over the country. Provisions may be made to have outside experts available when and if needed to have a greater pool of expertise available with various government departments, as is the case in many countries such as the United Kingdom.

Steps must be taken to ensure that dedicated legal resources and expertise are available in all relevant ministries. Ministries and Government Departments need to be well-staffed to deal with legal issues which may arise. Where required the divisions may be encouraged to share information so as to develop a coordinated response to better protect the national interest.

Protection of Human Rights is obligatory. Pakistan is treaty bound to fulfil the obligations it has voluntarily agreed upon with regard to the various human rights obligations. To achieve this there is a need for tweaking laws and mechanisms for their practical implementation to remove any loopholes or hurdles in their implementation. Strengthening implementation mechanism is very important to protect human rights as weak implementation defeats the purpose of law therefore, steps must be taken for effective implementation. There is a need to bring about an attitudinal shift with regard to human rights.

In recent years a new term has been point coined called Lawfare. Knowledge of the legal framework and applicable law regarding any treaty is essential for safeguarding the interest of Pakistan as of any other countries. However, it should be highlighted that developing countries can only effectively use it ‘as a shield and not as a sword’, whereas developed and powerful states can equally effectively use it as sword as well as shield. Public international law is primarily meant to bring ‘order’ in relations between states and not to do ‘justice’. Secondly, international law is based on reciprocity and mutual consent. These aspects have to be kept in mind while formulating a policy and plan of action related to public international law.

Treaties generally have a Dispute Resolution Mechanism to resolve any dispute in case of violation. Indus Water Treaty (IWT) is an example to highlight the need for an effective dispute resolution mechanism. Pakistan should learn from it with regard to any future treaty on water sharing with Afghanistan, for example.

Developing expertise in Arbitration is also very important. For this, ensure that the experience of previous arbitration is analysed for useful lessons. Specialized training to deal with matters of foreign and international arbitration is required. It is essential to build capacity within Government institutions and with help from legal experts on the stance pertaining to arbitration matters and Bilateral Investment Treaties. A central database for all contracts with arbitration clauses needs to be created so they can be monitored carefully. Increased Stress on Teaching of International Law including Arbitration. Legal education should have a stronger component of international law. Special courses and training should be arranged in arbitration both under the applicable national and international regimes. Government should have research conducted regularly on various areas of importance for Pakistan to have available critical

information for informed decision-making. To serve as repositories of valuable information and research when required.

During the policy dialogue issues related to compliance with various provisions of FATF were also discussed and Pakistan's efforts in this regard were appreciated. Since the Dialogue as a result of these efforts Pakistan has been taken out of the grey list.

India's violations with regard to various bilateral and multilateral treaties were also discussed: including those of the Indus Water Treaty, UN security council resolutions related to Indian Occupied Kashmir as well as various provisions of applicable International Human Rights Treaties.

The Two Days' policy dialogue workshop proved a success and was very much appreciated by the participants. The participants gave the feedback that as a result of this policy dialogue workshop they have become much more aware about the need of proper knowledge of international law and a useful set of recommendations has emerged as a result of this Dialogue.

**Mr. Ahmad Nazir Warraich**  
Dean  
Executive Development Institute  
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# The Regulatory Frameworks under Public and Private International Law: their Relevance for Pakistan

**Ahmad Nazir Warraich**  
**Dean EDI**

*Mr. Ahmad Nazir Warraich brings together a unique combination of experience of public sector, civil society, academia and the private sector. He is a former civil servant who after resignation has been continuously working in the legal field: as a practicing lawyer; a law teacher and a legal consultant and researcher amongst other things. He brings substantial practical and academic knowledge and experience to his current position as Dean of the Executive Development Institute, National School of Public Policy. He is a recipient of two prestigious scholarships; Britannia Chevening Scholarship Award as well as the Hubert Humphrey Fellowship (Fulbright) Award. He has been educated in Pakistan, England, USA as well as doing short courses from France, IMF-WB Headquarter, Washington, D.C, and University of California Los Angeles. His career also includes heading various legal departments. In addition, he has many publications to his credit.*



## Synopsis of Lecture Discussion

Mr. Warraich began his Talk by highlighting how our everyday lives are affected by international law. He explained this with the help of examples to stress how international law impacts both states and individuals. He informed that in addition to voluntarily entering into treaties, a State can be bound by UNSC Resolutions under Chapter VII powers of the UN Charter and by rules of Customary International Law. These can limit a country's sovereignty with regard to its independence of actions. He said that the world has become a Global Village due to the rapid advancement in technology which has necessitated an increase in the number of instruments regulating inter-state relations. States are more and more interacting with each other to deal with an ever increasing range of issues. Historically the primary sources of international law were customary international law and treaties. However, since the Second World War treaties have mushroomed. Treaties are now used as the main means to define mutually agreed upon legally binding duties, obligations and rights. This necessitates that like an individual a State must also look after its interests when negotiating a treaty or any binding legal instrument, by bargaining hard, negotiating well and ensuring inclusion of effective dispute resolution clauses in the treaties. This involves first of all determining a State's interest after careful consideration and meaningful internal relevant stakeholder consultation. Once this has been done then an assessment needs to be made of how best to protect those interests through various provisions of the treaty, as a State like an individual tries to maximize its

***"Treaties and agreements have to be negotiated hard, based on solid homework and stakeholders' consultation".***

benefits. He explained that while negotiating any treaty it has to be realised that the international world is based on the principles of *realpolitik*, which is based upon ruthless power politics and naked self-interest.

He highlighted that Pakistan in many cases does not seem to have done that successfully. He emphasized the need to examine the reasons for that and how to remedy the situation. He highlighted the importance of carefully evaluating the implication and effect of each and every clause of a treaty, before signing it. Otherwise, the interest of the country may be compromised. He said that treaties and agreements have to be negotiated hard, based on solid homework and stakeholder's consultation.

Most of the treaties were signed in the post Second World War period. Pakistan like most developing nations at the time, was either not involved or not yet capable of fully engaging in the *Travaux preparatoires* and related negotiations. Even later, just as most other third world countries Pakistan in spite of having a good professional diplomatic service does not always have the necessary legal and technical backup and expertise required to negotiate keenly. This, at times can compromise the interests of Pakistan. Additionally, problems can arise due to lack of properly negotiated dispute resolution clauses/mechanisms. In case of a dispute the dearth of legal experts in the said areas of international law impacts the country's ability to defend itself in the appropriate forums. In many cases, the result of unpreparedness has led to lost opportunities and sometimes becoming ensnared in costly litigation and arbitration, both in areas of public and private international law.

He informed that the challenge for a middling power like Pakistan is to artfully navigate situations to its advantage. With a dearth of the required expertise the capacity to bolster negotiating ability and optimize its position is compromised. Needless to say, the implications of such bilateral and multilateral treaties have a far-reaching impact on matters that involve national interest, be it trade, border security or human rights obligations, laws of warfare and sharing of river water, climate change, etc.

***Foreign policy issues cannot be made articles of faith.***

Mr. Warraich said that diplomacy should be based on solid legal input. This can better prepare the country to protect its interests through being able to write in provisions that protect its interests.

He highlighted that sometimes there is a tendency to confuse the reality with idealism or morality. International law is based on State practice and *opinio juris* and not necessarily on what is morally right or in other words what law should be, this is sometime referred to as; *de lega lata* and law as it is, referred to, as *de lega feranda*. Matters are seem to be made worse by the fact that sometimes those involved in the decision-making process seem not fully cognizant of this difference. In the realm of inter-state politics, you have to negotiate hard based on realism if a State wants to protect its interest. In the words of Lord Palmerston, "States have no permanent friends or enemies, they only have permanent interest". Mr. Warraich highlighted that foreign policy issues should not be made 'articles of faith', as it is then difficult to realign the State's position with changing dynamics of international relations.

He stated that international law is constantly evolving and has transitioned from maintaining order and working on the basis of reciprocity to a complex web of regulatory frameworks regulating everything from fishing rights to carbon emissions. In the current legal world, States no longer have the freedom to act as they please. More than ever before, it is the community of nations which regulates to a great degree

the actions of individual States. Nonetheless, great powers still exert considerable influence and are seen to enforce their will through covert and overt policy and regulatory tools. Mr. Warraich highlighted the fact that in essence public international law is meant to order relations between states and not to do justice. International law is based on reciprocity and mutual consent. This element has to be kept in mind while formulating a policy and plan of action regarding issues related to public international law.

In addition, Mr. Warraich said that in recent years' a new term LAWFARE has come in vogue. The term probably first came into prominent use in U.S. It is considered another method of how States settle their issues through means other than warfare. However, he stated that there is a difference in how a dominant power like the USA can use it and how a middling power like Pakistan can use it. In his words Pakistan can best use it as a '*shield but not as a sword*', whereas for a super power like the USA it is possible to use it both as a sword and a shield. He highlighted that this difference is important to understand for us in Pakistan.

While discussing the background in which multilateral treaties are signed in the 21<sup>st</sup> century he explained that there is an opinion amongst international lawyers that the post-Cold War is controlled through a complex and ever changing, framework of regional and international agreements and treaties. This is sometimes referred to as '*de-territorializing of empire*'. Some International law experts are of the view that these multilateral bodies are a form of neo-imperialism.

*Some international lawyers are of the view that these multilateral bodies are a form of neo-imperialism.*

He said that treaties are binding once entered into even if later it transpires that all of its obligations are not in favour of the State. Many of the obligations incurred under the WTO set of rules are a case in point. Therefore, a thorough understanding of regulatory frameworks through various bilateral and multilateral international treaties and the operational frameworks of public international law and private international law is essential. The challenge for policy makers and negotiators is how best a middling power like Pakistan can best defend its interest. The onus falls upon creating a holistic, multifaceted approach that incorporates collaboration between the public and private sector, stakeholders, think tanks and academics and places emphasis on empowering the accrual of well trained and well-informed expertise in order to tackle situations for the safeguard and progress of national interests.

Mr. Warraich said that the world over, developed countries have sizable legal departments in their ministries of foreign affairs. In addition, they have institutional arrangements with various universities all over the country to tap the expertise of professors of international law, as and when needed. He emphasised the need for the same in Pakistan. In this regard, he highlighted the importance of tapping into the expertise available in Lahore, Karachi and other major cities.

## Recommendations and Way Forward

- **Need for Keen Negotiation of Treaties Based on Thorough Home Work and Stakeholder Consultation**
  - Inter-State relations are based on hard political reality-realpolitik, therefore negotiations should always be keenly conducted to safeguard the interest of Pakistan.
  - It is important to conduct extensive stakeholder consultation before negotiating a treaty.
- **Institutionalise Effective and Continuous Economic and Business Stakeholders' Consultation**
  - In view of rising importance of economic diplomacy, it is important to consult business and other industries/sectors before negotiating any treaty on those subjects.
- **Realisation of the Nature of International Relations**
  - Diplomacy should be based on realistic assessment of the interests of Pakistan in the hard-nosed harsh reality of international relations and an understanding that there is a difference between issues of foreign policy and 'articles of faith'. He emphasised the words of Lord Palmerston, "States have no permanent friends or enemies they only have permanent interest".
- **Understanding the Nature of International Law**
  - Public international law is primarily meant to bring 'order' in the relations between States and not to do 'justice', per se. International law is based on reciprocity and mutual consent. This element has to be kept in mind while formulating a policy and plan of action regarding issues related to public international law.
- **Optimal use of *LAWFARE* in Public International**
  - Knowledge of the legal framework and applicable law regarding any treaty is essential for safeguarding the interest of Pakistan as of any other country. Developing nations can use law as a tool to protect their interests, sometimes referred to as lawfare, however it should be highlighted that developing countries can more effectively use it 'as a shield and not as a sword', whereas developed and powerful states can equally effectively use it both as a 'sword' as well as a 'shield'.
- **Capacity Building of the Legal Wings of the Government Ministries**
  - Enhance the already existing legal wings in various government/ departments with regards to expertise in various aspects of International law and make provision for competitive pay packages for such lawyers.
  - On job continuous professional development opportunities be provided for such lawyers.

- Each department needs to have its own independent legal input so that the Government has available the input from all relevant ministries so as to have a 360-degree angle view of all legal questions with the government before finalizing its options, for this it is necessary that the requisite legal advice comes from different law experts.
- **Develop Policy and Research Centres Amongst Universities and Think Tanks all over the Country including Lahore, Karachi.**
  - Karachi and Lahore are large metropolises with thriving academic and intellectual activities taking place in these two cities. Top educational institutes are based in these two cities. Government of Pakistan is unable to tap into this vast and useful resource of experts. Therefore, it is needed to have government supported think tanks and research centres all across the country. In comparison New Dehli, the Indian Capital is a large metropolis of around 11700000, and can therefore tap into a much larger number of resident experts, then it is possible in a mid-sized city like Islamabad.
  - Provisions may be made to have outside experts including professors of International Law based in universities, all over the country available when and if needed to have a greater pool of expertise available with various government ministries particularly Foreign Office, as is the case in many countries such as the United Kingdom.
- **Availability of Research Based Data**
  - Government should have research conducted regularly on various areas of importance for Pakistan so as to have available critical information for informed decision-making.
  - To serve as repositories of valuable information and research as and when required.
- **Public Availability of all Treaties/Declaration/MoUs**
  - The Cabinet Division of the government of Pakistan publishes a series of treaties which contain all treaties and agreements signed by the government of Pakistan. This may be periodically published and made readily available for those interested.
- **Dispute Resolution Mechanism**
  - There is a need to have effective dispute resolution mechanisms available in all treaties to avoid any loss to the interests of the country.
- **Any Future Water Sharing Agreements with Afghanistan**
  - Any future water sharing treaty with Afghanistan should be signed based on the lessons learnt from IWT (Indus Water Treaty).

# The Legal Lens of any Border and Water Sharing Dispute with Afghanistan

## Ambassador Mansoor Ahmad Khan

*At the time of the Policy Dialogue, Ambassador Mansoor Ahmad Khan was serving as Pakistan's Ambassador to the Islamic Republic of Afghanistan in Kabul. Prior to this, he had held various assignments in Pakistan and in various Missions abroad including Harare, Geneva and New Delhi. He holds a Master's Degree in Diplomatic Studies.*

### Synopsis of Lecture Discussion

**A**mbassador Mansoor Ahmad Khan started his lecture by highlighting the importance of relations between the two brotherly countries. He said that Pakistan has an interest in working for peace and stability in Afghanistan. Peace in Afghanistan will ensure peace in Pakistan and in the broader region.

He said that there is a potential for mutual cooperation in a number of fields and both the countries are already working together on many issues. He mentioned that as neighbours we share a long border of 2611 kilometres. Due to unfortunate circumstances, the focus of relationship has been on cross border terror in recent years. However, there is a potential for diversifying and enhancing the areas that the two countries can work upon, such as trade. Estimates put the potential of Pak-Afghan trade between USD10 to USD 15 billion annually, tapping into that will foster closer, more productive ties, but would require careful and extensive negotiations and requisite policy incentives.

*In 1949, an Afghan Loya Jirga unilaterally announced cancellation of all treaties signed by the former Afghan government. However, the international community did not acknowledge this announcement*

He said that as the topic of the Dialogue is not the relations between the two countries but any issue related to the Durand Line Border and any potential water sharing issue in the future between the two countries. Pakistan and Afghanistan share a long internationally accepted border across a harsh and rugged terrain known as the Durand Line. The Ambassador said that as far as Pakistan is concerned the border is a settled international matter. On the side of Afghanistan perhaps the aspect that needs to be kept in mind is that it is more a matter of their internal politics rather than legal in nature. He went on to state that the Border fencing issue is in some ways more urgent, in view of some minor incidents as well as significant due to the current situation within Afghanistan.

He informed that the Durand Line is the internationally accepted border between both countries, and has been recognized as such since Amir Abdul Rehman, ruler of Afghanistan signed a border agreement with British India on 12th November 1893. As per the Vienna Convention on Succession of States, the successor State retains the same obligations and responsibilities of borders as the predecessor State, which includes mutual borders.

He said that therefore the issue has political rather than legal dimensions. He went on to state that even though there is a security situation in the region, allowing undocumented free movement across the border

is not in Pakistan's best interests, In spite of this, Pakistan still has put in place a facilitative visa regime. Some local tribes have also been granted some flexibility for movement without visa.

With reference to some border incidents, he suggested that part of the solution to these issues lie in the acknowledgement that the issue is exacerbated due to Afghanistan's internal politics and media hype. The way forward is to harness the cultural, ethnic and religious ties that are common to both, and use those in tandem with effective government to government consultations, agreements and commitments to resolve these issues. There is an understanding that facilitation of cross-border movement is essential for soothing tensions and enhancement of regional trade, and connectivity and infrastructure is essential for enduring peace and calm.

*There is a need for multi-level institutional engagement between both countries on the political as well as development front to proceed towards a suitable water sharing solution*

A question was raised as to the possibility of opening up a trade route to Central Asia through the narrow Wakhan Corridor connecting through Tajikistan, as that is a peaceful region. In response the Ambassador said that this issue has not been discussed with the Afghan government. On the question of river water sharing, he informed that the water sharing situation is also an important issue but of a slightly different nature and does not have immediate implications.

However, he said that as both Afghanistan and Pakistan are water stressed therefore it can be an issue in future and it would be good to discuss. Whenever river waters are shared between upper riparian with lower riparian countries it is best to have them regulated through mutually agreed upon formal mechanisms. Till now, in spite of Pakistan's request the Afghan government has not yet discussed the issue of water distribution. He said that the matter was taken up on the request of WAPDA.

He suggested that there is a need for multi-level institutional engagement between both countries on the political as well as development front to proceed towards a suitable water sharing solution. However, the government of Afghanistan is currently dealing with a humanitarian, financial and diplomatic crisis, making it difficult to engage with them on this issue. Formal negotiations have yet to take place since the Afghan government is yet to formulate its water policy and strategy. In response to whether the government of Pakistan is doing any background research with regard to assessing any shortcoming in the Indus Water Treaty for protection of Pakistan's interest and for identifying any shortcoming with regard to dispute resolution provisions on Indus Water Treaty, as it is important for guidance with regard to any future negotiations with Afghanistan on the issue of river water sharing, the Ambassador said that Ministry of Water and Power has also approached them in this regard. Resultantly, he said that our Mission had approached the Afghan foreign office, for sharing any plans that the Afghan government has regarding building of dams on the Kabul river. So far the Afghan government has not shared any plans with Pakistan. The Afghan Government says that the dams are in feasibility stage and once the feasibility will be done only then they will share plans with the Government of Pakistan.

The Ambassador said that he does not foresee the same level of problems with the Afghan government as Pakistan is facing with India. The reason being our relations are much better with the Afghan government and do not suffer from the same lack of mistrust that exists vis-a-vis India. Afghanistan's water is sourced from 5 river basins, of which the Kabul River basin holds most importance for Pakistan. The countries collectively share a total of 9 rivers with an annual flow of 18.3 million-acre feet from Afghanistan to Pakistan, of which Kabul River makes up the lion's share with 16 to 17 million-acre feet. At the moment, Afghanistan's share of the water usage is not that great, lying at 2 to 3 million acre feet, but that is bound to go up in the future. However, the Ambassador appreciated that Pakistan must be prepared and should do its homework and be prepared, if and when any such treaty needs to be negotiated.

*At the moment Afghanistan's share of water usage is not great... but it is bound to go up in future.*

He informed that whenever Afghanistan is ready, Pakistan would wish to engage in a comprehensive dialogue based on reliable data on the basis of joint surveys of the land. It can assist Afghanistan in installing water-measuring devices in its waterways and tributaries, which will provide accurate and precise data useful for planning and policy formulation. Irrigation, water supply and power generation are the key topics to be addressed at that Dialogue in which relevant institutions of both countries shall assess the value and efficacy of terms and conditions of any water sharing accord at the bilateral or international level.

## Recommendations and Way Forward

- There is a need to build upon the existing brotherly relations to further improve the ties between the two countries.
- Constant Government-to-Government involvement is necessary to deal with various issues such as fencing of the borders, etc.
- There is a need to continue the consultative engagement to evolve a workable and acceptable solution to all outstanding issues of disagreement.
- The importance of exploring various areas of mutual benefit between Pakistan and Afghanistan, such as improving trade and ensuring stability and peace is necessary.

## Kashmir Issue in the Perspective of International Law: UNSC Resolutions, International Humanitarian Law and International Human Rights

### Ambassador (R) Muhammad Nafees Zakaria

*Ambassador (R) Nafees Zakaria served as an Aeronautical Engineer in the Air Force prior to joining the Foreign Service of Pakistan. Over the course of his career, he held a multitude of prestigious and diverse postings across the globe. He has served as Alternate Permanent Representative of Pakistan to the UN Economic and Social Commission for Asia and the Pacific. He has also successfully represented Pakistan in a number of challenging international diplomatic missions.*

### Mr. Saroop Ijaz

*A lawyer, legal expert and a human rights defender. Mr. Saroop Ijaz is a keen observer of the human rights situation, with particular reference to Asia. He has written extensively on the topic in major publications in the country. He is deeply committed to the protection of human rights. He is currently working as Senior Counsel for the Human Rights Watch (HRW) and teaching at LUMS.*

### Synopsis of Panel Discussion

### Ambassador (R) Muhammad Nafees Zakaria

**A**mbassador (R) Muhammad Nafees Zakaria said that today's Kashmir tragedy is a living outcome of connivance, conspiracy, deceit and dishonesty. It is important to note that every UNSC (United Nations Security Council) resolution on the matter confirms Kashmir as a disputed matter and reminds that the Kashmiri people through a UN supervised plebiscite would decide its accession to any of the two parties of the dispute. Resolution 47 and the resolutions of 13 August 1948 and 5 January 1949 remain at the heart of UNSC considerations of finding a solution to this dispute. They are still valid and cannot be challenged except with new UN resolutions regarding the matter. It lies on the UNSC agenda under the title, the India-Pakistan Question.

*Today's Kashmir tragedy is a living outcome of connivance, conspiracy, deceit and dishonesty.*

To date, there have been 13 UNSC resolutions on the dispute which seek the solution of this long-standing dispute amicably, and pertain to matters ranging from the holding of the plebiscite to the permissible size and allowable behaviour of the armed forces stationed there.

He said that it is an abject failure of the international community and organizations like the UN that India has consistently and persistently flouted all such resolutions and maintains a vice like grip on the land and on its people. It is also important to understand that this is a dynamic situation rather than static one, and unfortunately, the violence and atrocities against the people of Kashmir have been escalating, hitting new highs following the events of August 5, 2019 as India revoked Kashmir's special status,

transgressing from occupation to attempted annexation. There has been a brazen and insidious effort to bring about a demographic shift in Kashmir, with a 79% Muslim population at 1947 reduced to 68% in 2011 – all the more astonishing considering the region's abysmal human development, barebone economy and barring of Indians from purchase of property till 2019.

He said that the people of Kashmir have been held hostage under brutal military occupation for over seven decades now, and the vibrant potential of the people has been squashed, leading to the lowest quality of life in the region. Countless lives have been lost, destroyed and upended. India holds the record for the greatest number of internet blackouts in the world for 2021, the worst of which was turning off all wireless internet in the region for months on end: an extremely worrying sign as communications blackouts are usually the first step in the preparation for planned genocidal violence.

He informed that according to the UN Charter, a member that is in constant violation of the UN Charter must be expelled. The OIC has also not followed its own rules in addressing these issues. In this way, the UN and the international community stand to lose their credibility by refusing to take action on these matters. Not a single occasion has been spared to raise this issue on the relevant international platforms in a multitude of occasions. It is not so much as a loss of interest as it is a matter of not resonating well with the international media. Notwithstanding, the Kashmir issue still needs more dedicated effort on the part of the government, NGOs, civil society and the Kashmiri and Pakistani community.

He suggested that a concentrated and well-strategized effort is needed for desirable outcomes. If the matter reaches the ICJ (International Court of Justice) or the ICC (International Criminal Court), India would not have the grounds to defend itself. However, the international community lacks the willpower and great powers have strategic interests that lie with India and hesitate to take the action due in that aspect.

## Mr. Saroop Ijaz

**M**r. Saroop Ijaz while discussing India's violations of its various international obligations, said that International Humanitarian Law is the Law of Warfare and International Human Rights Law refer to the rights of people during peace time. He said that both laws are being violated in Jammu and Kashmir by the BJP-led Indian regime. He said that the shocking turn of events which started with the clamp down on 15 August 2019 now further clarifies that India is an occupation force. He said that there have been reports of "a systematic implementation of military-inflicted violence and torture upon unarmed civilians" that has remained unchallenged by the international community thus far. Mr. Ijaz said that India maintains the untenable position that the Kashmir issue is not subject to the Law of War (International Humanitarian Law). In his opinion however this is not the case, as per applicable Geneva Conventions, which state that an occupation army is bound by the Laws of Warfare, and the presence of the Indian army in overwhelming numbers fulfills the very definition of an occupying force.

He informed that the Indian government imposed a communication blackout, which can be categorised as the Siege of Kashmir since all the conditions to classify it as such are fulfilled. In addition to internet and communication blackouts, the siege also led to denial of humanitarian aid to the region during Covid. He went on to state that it is critical to highlight that the first step towards a massive, unrestrained exercise of violence is the cutting off access and communication which has been evident in the policy towards occupied Kashmir.

*"Denying the right to self-determination and the use of violence is a violation of international law."*

According to Mr. Saroop Ijaz, India has refused to engage with UN observers mandated to observe at the Line of Control. Unfortunately, the global community's response has been inadequate. In addition, denying the right to self-determination and the use of violence is a violation of International Law. He opined that the use of armed forces makes it a Non-International Armed Conflict, and therefore, the actions perpetrated by India also make it a violation of International Humanitarian Law. He therefore concluded that with multiple UN resolutions on the matter, any claims to treat this as a bilateral issue are null and void.

## Recommendations and Way Forward

### Mr. Nafees Zakria

- **Dissemination of the Scale and Extent of Human Rights' Violations**
  - The information machinery needs to reflect the scale and unprecedented extent to which human rights are being violated.
- **Recommended action by International Organizations on Kashmir Issue**
  - UN should voice concern in the light of UN Charter to expel the members for not adhering to the applicable International Laws. Similarly, OIC should also try to address the issue.
- **More efforts should be made to get the issue recognition at international level**
  - Issue has not been able to get due support from international community.

### Mr. Saroop Ijaz

- **Role of International Organizations in Settlement of Disputes**
  - India should allow UN observers, under UNMOGIP
  - In an international context, global community should respond to the issue in such a manner to draw attention towards this issue. Currently, the response from international community is not enough to highlight the importance of dispute.
  - In the presence of relevant UN resolutions, the issue pertains to an international issue that demands resolution in an international context instead of claiming it as a bilateral issue.

## Water Scarcity and the Options under the Indus Water Treaty

### Mr. Ashfaq Mahmood

*A water and energy expert, Mr Ashfaq has also served at top posts in several ministries including Planning and Development, Water and Power, Information Technology and Telecommunication, and others. He was responsible for addressing trans-boundary waters issues, and has been responsible for several policies as well as involved in several high-level negotiations. He has also authored a book on Hydro Diplomacy, titled “Preventing Water War Between Nuclear-Armed Pakistan and India”. He holds an MS degree in Electrical Engineering from the USA.*

### Barrister Nudra B. Majeed

*With qualifications from top global institutes such as the (University of London and the London School of Economics Barrister Nudra is counted among the most talented legal minds of the country. She takes time out from dealing with high stakes commercial, civil and criminal law litigation to impart her knowledge and experience through teaching and academic work. She is also devoted to philanthropic work and founded the Alam-al-Khayal Charitable foundation for social development of underprivileged children.*

#### Synopsis of Panel Discussion

### Mr. Ashfaq Mahmood

**M**r. Ashfaq Mahmood said that the ground reality today is that Pakistan is an agrarian nation and is considered water scarce. However, at the time of independence Pakistan was receiving water from 6 rivers from the Eastern side and Kabul River from the West i.e. Afghanistan.

He informed that water crossing the Eastern border accounts for 47% of the total supply and from the Western border tantamount to 12%, totalling 59%.

*“Pakistan should consider bolstering its negotiating ability. ‘The good should not be a victim of the best’.”*

He said that Pakistan is lower riparian whereas India is upper riparian, which made it convenient for India to control water flow. In 1948, India abruptly stopped water flowing into Pakistan that placed the nascent nation at the precipice of a humanitarian catastrophe. In this regard, bilateral efforts to come to a solution were unable to provide relief. Then, the World Bank intervened in 1959 and negotiations and deliberations led to the signing of the Indus Water Treaty in 1960.

He briefed that under the Treaty, three rivers i.e. the Ravi, Sutlej and Bias were given to India whereas, Chenab, Jhelum and Indus were allocated to each country. With the allocation of water resources and the assistance of the World Bank and international donors, Pakistan built 9 link canals, 6 barrages and 3 storages, including Mangla, Chashma and Tarbela.

He said that even then, Pakistan obtained access to 77.25% and India 22.75% respectively of the share of the waters from 6 rivers (excluding the Kabul River).

According to him despite its immediate benefits, the Treaty suffers from some shortcomings. The calculations indicate suboptimal usage of water and does not fully take into account issues like flood and environmental flows, sharing of shortages, seasonal flow management and prospects of power generation. Moreover, at the time of its Agreement, there had been no consideration of any future environmental impact or climate change.

He informed that one of the most critical features of the IWT was the assurance of non-interference, control or storage of the water of the rivers allocated to the respective countries barring a few exceptions. The exceptions included domestic use, non-consumptive use, agricultural use, run of river hydropower projects (which would have to meet strict design and operational criteria), and storage works. The timing of the agreement was critical in evaluating its long-term efficacy. It is important to highlight that when Pakistan was facing a dire shortage of water, the Treaty was negotiated under a high level of pressure, leaving clauses that would be easy to exploit without having proper interpretation. It is therefore, essentially a surface waters treaty as important issues like ground water, pollution, inter basin and intra basin factors and sharing of shortages have not been addressed.

He told that the situation has been changed drastically since the period of signing treaty as the both nations are having exceptionally high population rates, therefore, the demand for water usage including its wastage has risen exponentially. In addition, the Treaty does not have a well thought out Dispute Resolution process. Its clauses are complex with overlaps between provisions for neutral experts and resort to the Court of Arbitration. Resultantly, the weakness and ambiguity of the arbitration clause allows India to circumnavigate loopholes and get away with exploiting the situation against Pakistan, which left the country with limited options due to the aforementioned reasons and the bilateral nature of the Treaty. He suggested that a possible solution in the short-term would be to have just one forum - the Court of Arbitration for addressing issues. He stated that no progress could be made now without discussions on the impact of climate change as well as degradation of natural assets as the situation has altered since the advent of the treaty.

Although Pakistan initially negotiated from a position of weakness when the Treaty was first signed, it is nevertheless not a good idea to reopen the terms of the Treaty, as India still holds the upper hand with powerful benefactors. A new Treaty would still be tricky to negotiate. However, Pakistan should consider bolstering its negotiating ability and standing and seek to come to new treaties to address existing issues and upcoming ones.

## Barrister Nudra B. Majeed

Barrister Nudra B. Majeed said that water is sometimes a weapon, sometimes a trigger and sometimes a casualty. According to experts, Pakistan is only 3 years away from transitioning from being water stressed to water scarce. A water stressed country is defined as using 25% of its renewable freshwater resources. At the moment, Pakistan is using at least 75% of its renewable water resources. According to the Council of Research and Water Resources, Pakistan will be water scarced by 2025. Therefore, there is an urgent need to look at the bigger picture. Treaties such as the IWT only deal with surface water at the moment.

*“Pakistan should utilize 'hydro diplomacy' and eke out usable, beneficial, and future solutions before serious issues crop up and desperation dictates decision making.”*

She said that the rapid and massive increase of population has seen a corresponding rise in the usage of water whereas poor management has seen the utilization and management worsen. It is a key to understand that such a combination does not bode well for the future, as humanity will be confronted by ‘water violence,’ - and armed conflict for water and accessibility to water. She further said it is already being witnessed internationally and in Pakistan as well, in the case of Balochistan and Karachi, where farmers and city dwellers have been seen to be embroiled in tiffs over water.

She highlighted that the lack of planning and foresight as well as poor infrastructure have worsened the intensity of problems being faced. The scale of the issue is also considerably varied as it contains multifaceted geopolitical factors.

She opined that the pivotal role of Kashmir is most critically felt in the water management policy of Pakistan. Pakistan’s water is sourced from different origins but most of it enters Pakistan through Kashmir. The Ravi and Bias are sourced from Himachal Pradesh but come through Kashmir, Sutlej originates from Tibet, but comes through Kashmir. The 3 western rivers allocated to Pakistan - Indus, Chenab and Jhelum - pass through Kashmir. In this scenario, the Indian occupation of Kashmir leads to strategic concern for control over Pakistan’s water resources. By occupying Kashmir, India holds a sizable portion of Pakistan’s water resources.

Regarding the Indus Water Treaty, she said that probably a reason for why it has persisted for so long might be attributed to it favouring India in critical matters as to how India manages to circumvent it. Pakistan adheres to the procedures outlined in the Treaty, whereas India is moving forward with its planning regardless of Pakistan’s objections.

She said that India has a large number of people and immense resource allocated for this critical issue, whereas Pakistan does not have resources. India has already initiated construction of cluster of dams. In her opinion therefore IWT is a treaty of a bygone era limited in scope, containing lopsided clauses, and ambiguous interpretations, which have been and are open to exploitation. Real issues are now arising and the UN has new frameworks to deal with these as they take into account aspects beyond just surface water, but also for hygiene, sanitation, groundwater, freshwater resources. Armed with the knowledge from this experience, Pakistan should utilize ‘hydro diplomacy’ with neighbouring countries to eke out

usable, beneficial, and future facing solutions before serious issues crop up and desperation dictates decision making.

## Recommendations and Way Forward

### **Mr. Ashfaq Mahmood**

- **Address Water Security as a Critical Issue**
  - Serious efforts across multiple fronts need to be mobilized to tackle climate change and water scarcity.
- **Approach and Utilize International Platforms for Dispute Resolution**
  - Pakistan should engage relevant bodies to address water issues with India, as there are more options and frameworks available now which had not been available at the time of IWT.
- **Strengthening of Negotiations Ability**
  - Pakistan should work on bolstering the negotiations ability in order to sign and evaluate future treaties and agreements.

### **Barrister Nudra B. Majeed**

- **Sign New Treaties Based on Recent Understanding of Ground Realities**
  - There is a need for a robust water usage and storage policy, for this, research should be carried out to devise a sound strategy for managing water resources.
  - Effective arbitration is really important to settle disputes.
- **Utilize Hydro Diplomacy**
  - It is important to be engaged with Afghanistan for a mutually beneficial agreement that taps into the potential for shared water usage in future, which can be utilized for power generation and agriculture.

# The Legal Framework of the WTO: The Making and Breaking of Trade Rules - A Political Economy Perspective

## Dr. Muhammad Mujtaba Piracha

*A PhD in International Development and Graduate of the London School of Economics, Dr. Piracha has over 24 years of experience in public service, including serving as Commissioner of Lahore Division. He also has vast experience of managing donor-funded development projects with international aid agencies in the social sector. He is currently Ambassador of Pakistan at the World Trade Organization.*

## Dr. Muhammad Irfan

*Dr. Muhammad Irfan is a civil servant with more than 20 years of experience in the area of international trade and development. He has served in the Ministry of Commerce on various assignments including trade policy and negotiations on international trade agreements. He is currently posted as a Counsellor at the Permanent Mission of Pakistan to the WTO in Geneva. He holds a PhD in Political Economy of Development from the University of Cambridge, and graduate degrees in Development Economics from Cambridge and Tokyo.*

### Synopsis of Panel Discussion

Dr. Muhammad Mujtaba Piracha said that according to one perspective, the current global order originated as there was a need following World War II to continue the colonial mission. Neo-liberal institutions were set up to continue the colonial process of exploitation and wealth extraction without direct colonization.

He said that the goal of reconstructing Europe was also tied to the aforementioned goals, and the

Bretton-Woods agreement led to the creation of the two main global financial institutions of the World Bank and the International Monetary Fund. The General Agreement on Tariffs and Trade in 1947 eventually gave way to the WTO, and is the main global party which governs trade relations among contracting parties.

He informed that the WTO is a large, member-driven body with 164 members, with the overarching construct being a ministers' body that **Defend Hard – Bargain Hard** ministerial body which has a trade meets every 2 years, and where actual decisions are made. The main functions are rule making, dispute settlement, and trade policy review of member countries. It adheres to a consensus-based decision-making system, which means that even a single nation's objection can prevent a ruling or decision going through. In theory, this puts smaller nations on equal footing with larger ones, but big countries can and do pressurize smaller developing

*“Developing countries such as Pakistan need to place strong emphasis on research and data collection and stakeholder consultation, making that the foundation for decision making and policy discussions.”*

nations within their sphere of influence to project their demands. 'Single Undertaking' in negotiations means that nothing is agreed until everything is agreed. This means there is a lot of give and take and back and forth, such as in the case of tax-based negotiations.

He highlighted that the Principle of Non-Discrimination addresses the concept of Most Favoured Nation(MFN). It basically means that the same treatment has to be given to everybody and also dictates that no discrimination in treatment be given to domestic goods over foreign goods. An interesting point to be noted is that it usually works in derogation (exception from the law) rather than upon it. For developing countries and least developed countries, a Special and Differential Treatment (SDT) mechanism exists, which allows for time- and situation bound flexibilities to some rules and regulations granted to developing and LDC (Least Developed Countries) members to assist them.

He briefed that the whole trend is towards openness of one's market, protection of intellectual property rights of foreign companies, removal of non-tariff barriers, and elimination of quantitative restrictions. Prohibiting support to local agriculture and industry is a huge issue as developed Western nations already have had subsidies in place before entering the WTO. Membership of the WTO prohibits developing countries from subsidizing their agriculture.

He stated that looking beyond the rhetoric, the status quo is more interested in opening markets rather than development, with the WTO mainly acting as an instrument of neo-liberalism, which has hijacked the IMF, World Bank and the WTO. After fortifying their own advantageous positions, developed nations aim to maintain their superiority and benefit by keeping lesser developed nations in a dependent position.

He told that one success story of a developing nation bucking the trend is China. The rise of China is an interesting phenomenon as it was allowed into the WTO with the intention of exploiting and controlling its trajectory, but instead had come prepared and managed to turn the situation around to its advantage. China entered the WTO in 2001 holding the developing country status. It had intricately mapped out its strategy and created a strong industrial foundation. Due to its developing country status, it skirted all manner of control measures and ended using them to its advantage.

He suggested that the important takeaways for Pakistan are to understand that WTO is where the tangible rule making is done through negotiations, as they are binding and remain place for eternity unless changed or challenged. There is a critical need for extreme scrutiny and care in signing and agreeing to any rule, especially if Pakistan is to avoid what happened on the agriculture front as the developed countries locked in their subsidies beforehand. WTO also has an enforcement and compliance mechanism in contrast to other global bodies.

He briefed that an extremely important situation is the Agreement on Trade-Related Aspects of Intellectual Property Rights waiver. With the COVID-19 pandemic wreaking havoc around the world and developed nations hoarding more vaccines than they have needed, the vaccine production capacity has maxed out leaving the rest of the world effectively without access to vaccines.

He said that it is pertinent to mention that Pakistan, South Africa and Egypt with 64 other developing countries raised the issue against the TRIPS agreement for allowing developing countries the permission to produce vaccines for their own needs in these dire circumstances. Designed for protection of

intellectual property, including pharmaceutical intellectual property, the TRIPS agreement however, creates a monopoly on life saving drugs. The WTO response has been problematic, as its first instinct has been to protect trade interests. In response, Pakistan and developing countries have raised the issue of a serious problem if countries cannot get concessions even during a full-fledged pandemic.

He suggested that developing nations should make it a priority to reach out and build interest-based and issue-based coalitions & alliances in order to stave off imposition of exploitative measures.

He further said that the Afghan Transit Trade is also an interesting issue. Pak-Afghan trade was governed by the Afghanistan Pakistan Transit Trade Agreement (APTTA) since 1965, superseded by the 2010 agreement. In that aspect, access from Afghanistan to India is the main bone of contention. In 2016, Afghanistan acceded to the WTO after 12 years of negotiations. Pakistan seeks to negotiate bilateral trade agreements directly, without WTO clauses which would complicate matters on a number of fronts, as Afghanistan would be in a position to challenge Pakistan on some matters which would also involve India due to the freedom of transit trade clause.

He suggested that developing countries such as Pakistan need to place strong emphasis on research and data collection and stakeholder consultation, making that the foundation for decision making and policy discussions. India has an entire institute for dealing with the WTO. Many developing countries often do not take serious interest in the complexities of these matters, much to the detriment of their national interest in the future. Entering into agreements without giving due consideration to long term implications and based on a lack of research or understanding of desired goals leads to undesirable and often regrettable outcomes. Pakistan needs to be proactive as the system is lopsided and entrenched, and not always in the interest of developing countries.

He said that the onus is on Pakistan to look out for its interests better. It needs to address any issue or case by first understanding its needs, preparing itself, and then approaching the situation with an informed research and well-defined approach.

## Recommendations and Way Forward

- **National Interest is Supreme**
  - It is vital to understand that derogations can be defended when necessary, and are the norm rather than the exception especially by developed countries.
- **Safeguard What is Good and Available**
  - Advantage should not be ceded unless absolutely unavoidable
  - No ground should be given in negotiations unless there is no choice
- **Defend Hard – Bargain Hard**
  - Negotiations are the best option for nations to pursue their goals, as the alternatives are always more unpleasant options.

There is no need to shy away from tough negotiations, even against friendly

  - countries.
- **Research & Political Support Must Bolster Negotiations**
  - Build connections, alliances and blocs to negotiate for shared interests
  - Have a strong support base from home country
- **Avoid Reliance on Donor Funded and Aid Projects**
  - They may have clauses which are not in the best interests of the country
  - They might entail caveats and financial constraints that might be more damaging than the apparent benefit.
- **Be objective in negotiations**
  - Countries should be mutually supportive: it is possible to take a stand against friendly countries
  - Giving concessions in the name of friendships may not be a universal policy

## Pakistan's Obligations under Human Rights Treaties

### Dr. Ali Qizlbash

*Dr. Ali Qizlbash has served as the Dean, School of Law, Lahore University of Management sciences. He is a human rights activist and a seasoned academic.*

### Ms. Farah Zia

*Ms. Farah Zia is Director of The Human Rights Commission of Pakistan. She has a long and illustrious career in the field of human rights legislation and implementation.*

#### Synopsis of Panel Discussion

#### Dr. Ali Qizlbash

**D**r. Ali Qizlbash said that there is a direct link between the concept of human rights and law. Pakistan has signed and ratified several human rights treaties which once ratified are binding on us.

He stated that a distinguished scholar when asked to offer a simple definition of human rights succinctly answered: **'Human rights are human rights'**. They are indivisible rights belonging to humans not merely because they are the subject of a particular State, but because they are humans. He stressed the importance of the universality of human rights.

*"Human rights are holistic, interdependent and central to human well-being".*

He said that human rights are holistic, interdependent and central to human well-being. He also stressed interdependence of all human rights. Human development is not just seen as the creation of economic opportunities but also the creation and protection of human well-being. The Constitution of Pakistan 1973 also enshrines these rights and are categorized as Fundamental Rights. Violation of these rights are seen not just as a matter of national but also of international concern. Human rights abuses are a violation of International Human Rights Law. They weaken the fabric of society and the legitimacy of the State. He informed that the obligations of signatories include seeing human rights as the minimum acceptable standard. He said that there is no 'Asian' or 'Western' concept of human rights. They are not alien to this region and apply to all human beings. Human rights have been central to many movements originating within the region.

He stated that the Courts of Pakistan have been receptive to cases of human rights. Article 11 of the Constitution of Pakistan, 1973 prohibits all slave trade including bonded labour. In the landmark case of Iqbal Masih, the Honourable Supreme Court took notice on the basis of a single telegram and took prompt action on the matter.

He further stated that there is also a notion of ‘generation’ of human rights, as in the first generation, second generation and so on. This is a problematic notion, as human rights are interdependent, indivisible and inalienable and there is no concept of hierarchy of human rights. They are all part of a complementary framework. Human rights are indivisible.

He informed that by ratifying these covenants, Pakistan has not only affirmed their universality, but also needs to hold itself accountable for implementing them and gauge how it is performing on those indicators. He said that on the issue of ratification, it is important to pinpoint that ratifying a Treaty with reservations is a violation of the Vienna Convention 1993 on the Law of Treaties.

He said that Pakistan has made noticeable progress in the struggle for the guarantee of rights particularly regarding minorities, women and children, and in this regard quoted some recent legislative initiatives, such as the Juvenile Justice System Act (2018) and Transgender Persons Act (2018).

## Ms. Farah Zia

**M**s. Farah Zia recalled that one of the most iconic human rights defender and journalist I.A. Rehman once said, that our association with human rights goes a long way back. She informed that human rights have also been a part of the conversation in Pakistan throughout history going back to pre-partition times. Upon independence, a Committee was set up pertaining to human rights, which Quaid-e-Azam himself chaired. However, the human rights situation, even from a legal standpoint has not been consistent within the nation. In 1950, all types of torture were banned. An equal pay was guaranteed however, both of these advancements were removed in 1956. Then, the Human Rights Council replaced the Human Rights Commission (HRC). It is an intergovernmental body with 47 members that addresses human rights violations and it also serves as a forum for human rights dialogue.

She said that the framework that surrounds human rights records and implementations alongside the body of treaties is the Universal Periodic Review and Special Procedures (UPR). In the UPR, each State's human rights' record is reviewed in a 4-to-5-year period. Each country is treated equally. Each State is allowed to declare what they have done to ensure observation of human rights. The review presented is based on three sources: national information from UN experts and data from stakeholders such as NGOs (Non-Governmental Organization) & national human rights institutions. After every cycle, the HRC issues a report with recommendations for the State concerned.

*"Human rights are indivisible and unbiased".*

UPR is more detailed and accurate presenting a more complete picture of the human rights situation within the country. The UPR tools are a matrix of recommendations enclosed with a letter from the High Commission of Human Rights to the Minister of Foreign Affairs. The mechanism involves consultation with stakeholders followed with a national mechanism for reporting and follow-up.

She said that the second procedure consists of special experts with titles such as special rapporteur, independent experts and working groups. A group of independent experts follow their own mandates. For instance, Ms. Asma Jehangir was a special rapporteur for human rights in Iran. There is an expert for all kinds of sectors. Monitoring of human rights is done at multiple levels. They reflect a need for freedom of movement, freedom of inquiry and private communication. There are also pre-emptive and preventive measures that can be taken. Ordinary citizens can also approach the offices with complaints and provide evidence and information.

*Steps need to be taken to ensure oversight, identification and quick action against human rights abuses. Human rights should not be treated as a foreign entity but rather as a universal right of every human being.*

She stated that human rights are indivisible and unbiased. Unfortunately, States seem to be in a constant adversarial relationship with their own citizens by backtracking or going soft on their agreements which needs to be tackled with resolve and informed legal insight. Weak implementation defeats

the purpose of law and must be strengthened. Steps need to be taken to ensure oversight, identification and quick action against human rights abuses. Human rights should not be treated as a foreign entity but rather as a universal right of every human being. At times, it is the lack of awareness that is also a leading cause for human rights violations to go unaddressed.

## Recommendations and Way Forward

### Dr. Ali Qizlbash

- Pakistan must fulfil the obligations it has voluntarily agreed upon with regard to the various human rights of its citizens.
- **Refining laws and measures**
  - There is a need for tweaking laws and mechanisms for their practical implementation to remove any loopholes or hurdles in their implementation.
  - Streamlining of some regulations should also be done to ensure that they can be implemented smoothly.
- **State must Protect Human Rights**
  - Human rights' abuses are a violation of human law. They weaken the fabric of society and the legitimacy of the State. Therefore, state must protect human rights for protecting people as well as society.
- **Strengthen Implementation Mechanisms**
  - Weak implementation defeats the purpose of law and must be strengthened with strong implementation mechanism.
  - Steps need to be taken to ensure oversight, identification and quick action against human rights abuses.

### Ms. Farah Zia

- **Human Rights is not a Corporate Construct**
  - Human rights are not dependent on business development but often lead to exploitation. Business and human rights should not be intermixed to provide leverage of any group of people.
- **Need for an Attitudinal Shift**
  - Human rights should not be treated as a foreign entity but rather as a universal right of every human being.
  - Lack of awareness is also a cause for human rights violations to go unaddressed. We need to spread awareness among people what their rights are and how can they protect their rights.

## Arbitration Under ICSID: Pakistan's Perspective and Experience

### Barrister Taimur Malik

*A lifelong student of law, Barrister Taimur Malik has earned advanced degrees from the world's top institutions such as Cambridge, Oxford, LSE and others. One of the top legal minds working in the field today, Mr. Taimur is currently partner at Clyde and Co LLP and is based in the Middle East where he oversees a broad variety of legal operations for State level organizations and multinational concerns.*

### Engr. Sohail Lashari

*A veteran entrepreneur and businessman, Engr. Sohail Lashari is a Mechanical Engineer with a broad range of business interests ranging from the recreational to the renewable energy. He is a leader of the business community and well-versed in the business environment and dynamics of business and trade in Pakistan.*

### Synopsis of Panel Discussion

### Barrister Taimur Malik

**B**arrister Taimur Malik stated that as the speed and complexity of business sped up, international business communities felt the need for speedy dispute resolution mechanisms. The Courts are often quite slow, impeding rather than facilitating resolution. A novel mechanism arose in the form of the alternate dispute resolution system.

He apprised that the International Centre for Settlement of Investment Disputes (ICSID) is one of the most well-known institution today that offers the prospects of arbitration on commercial disputes. It was set up as part of the rules of the World Bank. In any arbitration involving States, it is a State entity that is involved in that arbitration. The subject matter often involves bilateral treaties, and usually revolve around trade. Often the arbitration is done in confidentiality and the decisions are not part of the public domain. For instance, IPP (Independent Power Producer) arbitration has also been held under confidentiality.

*“Those directly dealing on the behalf of the State should be well-informed, up-to-date and should come fully prepared”.*

He said that Dispute Resolution Clauses and Arbitration Clauses are usually found in contracts and BITs (Bilateral Investment Treaties), and many involve state-level liability.

He briefed that ICSID has also incurred its fair share of criticism. Some States have reported to have suffered heavy losses from arbitration. This has led to some level of growing resentment within developing countries as they have been awarded heavy losses in arbitration courts due to a number of reasons. Inherent bias is also possible, as international institutions tend to incline towards their benefactors.

He informed that Pakistan became a party to ICSID in 1966. Since then 850 cases have been deliberated in this forum. Debate continues within Pakistan whether it should remain a member or not as developing countries like itself and others like Venezuela and Bolivia have faced decisions against them when they wished to exit controversial contracts undertaken in dubious circumstances. It is important to highlight that India has refrained from joining the ICSID Convention ever since its inception.

He highlighted that Pakistan's record of ICSID arbitrations illustrates some important landmarks. The first pertains to *Karkey Rental Power vs the State of Pakistan* wherein the Tribunal decided in favour of the investor. Of the USD 2 billion award requested by the claimant, USD 490.4 million was granted. The investor claimed unlawful detention of power generation ships and unpaid dues.

He said that this case has opened up questions regarding decisions taken by Pakistan's Courts to annul the contract in 2012. It is also worth enquiring whether the Court was aware of the arbitration clause in the contract when the decision was made to annul it.

He further stated that the second case is of *Reko Diq (Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan)* which is another a landmark arbitration case that has been ongoing for a decade. It is a legal tale illustrative of every conceivable misstep, showing how ill-planned, reckless and uninformed actions of a few can cause catastrophic damage to the State at an unprecedented scale. In this situation the Government of Balochistan and the Supreme Court alleged corruption and bribery in the signing of the agreement and reneged on the agreement. Since the TCC is an Australian company the cancellation came up against the Bilateral Investment Treaty signed by Pakistan and Australia. The award against Pakistan has been among the largest against any country in history, being 629 pages long. The legal fees alone amounts to USD 50 million thus far.

He suggested that it is critical for Pakistan to understand the seriousness and binding nature of arbitration clauses and avoid getting ensnared in costly and expensive litigation with unmanageable losses. There is an urgent need to build capacity within government institutions and state bodies as well as law firms to be a part of these arbitration matters and negotiate any bilateral investment treaty with extreme caution.

He recommended that in a case where Pakistan alleges corruption, it should promptly follow up on any investigations and do due diligence in providing concrete proof. It is imperative that the judiciary does not interfere in these matters as it discourages investors and creates problems. A central database should be created and made accessible which lists all contracts with arbitration clauses so that they may be followed carefully. Those directly dealing on behalf of the State should be well-informed, up-to-date and should come fully prepared. They must have the confidence of the State in their ability to make sound decisions.

Mr. Sohail Lashari said that regarding arbitration, the perspective from the business community views it from a different angle. Economic modernity has had a massive impact on human society and the very fabric of society has irrevocably altered. Following the onset of globalization, immense and rapid wealth creation has occurred as new markets around the world have been interlinked. This also led to a flurry of contracts and treaties being drawn up and signed.

He said that an entire contract cannot be classified as good or bad, but must be seen as a composite of clauses. Some may be favourable, others not so much. It is through negotiation that the maximization of the mutual benefit is sought. Unfortunately, Pakistan's negotiating ability has been extremely lacklustre from the start, for which there are a number of factors. One core reason for this is the lack of awareness of the negotiators about their bargaining power and position. This occurs because the most basic step has been skipped, which is of stakeholder consultation.

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He informed that many a time Pakistan has entered and exited negotiations - signing treaties and agreements in a state of utter cluelessness as to what they entail and what they stand to gain or lose from agreeing to a particular arrangement.

*Pakistan has entered and exited negotiations - signing treaties and agreements in a state of utter cluelessness as to what they entail and what they stand to gain or lose from agreeing to a particular arrangement.*

*"Stakeholder consultation is critical to accurately ascertain ground realities, gauge the leverage available and assess what needs to be accomplished."*

He quoted that an excellent example is that of CPEC (the China Pakistan Economic Corridor). Hailed as a 'game changer' by successive governments, it is a massive undertaking to the tune of over US \$65 billion that seeks to completely revamp and overhaul Pakistan's economy, infrastructure and development. A hastily signed FTA (Free Trade Agreement) is also part of the agreement. This has proved to be a game-changer for the local industry and manufacturing sector but in a disastrous way.

He said that already reeling from an unmitigated power crisis and an artificially propped up currency that had adversely affected exports, The FTA with China inundated the market with cheap goods. This policy in fact proved to be a nail in the economic coffin, virtually decimating the local industrial and manufacturing sector. Thankfully, a few years down the line, realization dawned on the adverse impact and another FTA was signed that rectified some of the major drawbacks of the first one.

The above-mentioned example clearly illustrates, it is important for Pakistan to make preparations before getting into negotiations, and signing of international contracts and agreements. In addition, stakeholder consultation is critical in the initial phases of the process to accurately ascertain ground realities, gauge the leverage available and assess what needs to be accomplished. It is necessary to be clear about the negotiating targets therefore, emphasis should be placed upon stakeholder consultation and data acquisition before heading to the negotiating table.

## Recommendations and Way Forward

### **Barrister Taimur Malik**

- **Building Legal Capacity**
  - It is essential to build capacity within Government institutions and with help from legal experts on the stance pertaining to arbitration matters and Bilateral Investment Treaties.
- **Evidence must be Concrete**
  - Allegations must be with concrete evidence to prevent shaking of investor confidence and losses.
  - The Courts should not interfere in economic matters being covered under international arbitration.
- **Maintenance of Database**
  - A central database for all contracts with arbitration clauses needs to be created so they can be monitored carefully.
- **Informed Arbitration**
  - Any negotiation must be entered with full preparation and research into the matter and a clearly defined stance.
- **Confidence in Decisions Taken**
  - Civil servants should be empowered to take decisions confidently. There is a crisis of decision making due to haphazard implementation of accountability mechanisms.
  - It is important to understand seriousness & binding nature of arbitration clauses.

### **Engr. Sohail Lashari**

- **Stakeholder Consultation & Involvement**
  - Stakeholders' consultation is important and should be carried out before taking any important decision.
  - Stakeholders need to be aware of decisions that may impact their business so that they may prepare accordingly.
  - Extensive consultation with stakeholders needs to be carried out in large projects at every level before making decisions.
- **Clear Negotiations Targets**
  - It is important to have clear negotiation targets before getting into it.

## FATF and its Implications: A Case Study

### Khawaja Adnan Zahir

*Khawaja Adnan Zahir is currently (DG FATF MoF). He possesses nearly four decades of a high-profile experience in taxation, finance, corporate audit governance in policy making and dispute resolution assignments. Mr. Adnan Zahir is an experienced bureaucrat who has successfully dealt with complex issues involving multi stakeholder coordination such as the FATF. Note: at the time of the Policy Dialogue Pakistan has not been taken out from the grey list).*

#### Synopsis of Lecture Discussion

**K**hawaja Adnan Zahir started his lecture by saying that in 1989, the G-7 countries formed a body named 'Financial Action Task Force' (FATF) to develop a coordinated approach to tackle global money laundering and terrorist financing. The FATF is an Inter-Governmental body comprising 37 Members; 23 Observer Organizations and 09 Associate Members known as Regional Bodies. FATF Standards are applied in 180 countries around the globe.

He informed that Pakistan had been placed on the enhanced monitoring list of FATF (grey list) since 2018 and given a 27-point Action Plan (mainly focused on terrorism financing). Pakistan was nominated to that list by the UK, France, US and Germany.

*"Cooperation between departments should be the norm rather than the exception."*

He said that previously, Pakistan kept falling short of compliance requirements and it took unwavering efforts over two years to bring compliance level with 90% of recommendations mentioned in the MER (Mutual Evaluation Report). Currently, Pakistan is fulfilling compliance requirements for another action plan to be completed by 2023. In this regard, performance has been exceptional as Pakistan has fulfilled 26 of 27 requirements, with the remainder to be cleared in the near future. Upon completion, this would put Pakistan among the most compliant nations in the world.

He told that this journey from being stuck in the grey list and moving to the highest level of compliance within the span of just a couple of years would not have been possible without the combined strategy and concerted efforts of legislators, ministries, regulators, the private sector, law enforcement and intelligence agencies of Pakistan. Over 15 legislations were enacted to bring about this promising turn of events.

He highlighted that a considerable number of structural changes, nuanced strategy and uncompromising approach was taken to address the issues. For instance, money laundering has been classified as a predicate offence, allowing law enforcement to tackle it in a multifaceted manner. Some traditional ways and means of business may have been disrupted and some may feel that small investment may suffer, but

these are temporary issues that will be resolved soon. He said that not only were these measures a necessity, but the substantial benefits will far outweigh minor conveniences.

He said that this has also pushed the outdated banking and financial sector to become more streamlined and integrated. This emphasizes the fact that with the correct mindset, political willpower, clearly defined goals, joint effort and commitment to the task, structural changes and positive outcomes are attainable.

He stated that progress on the FATF recommendations was not possible without political willpower which needed to take some tough decisions. At the end, saner minds prevailed and some difficult measures were taken to ensure success. It took the concerted efforts of a broad range of law enforcement agencies, the FBR (Federal Bureau of Revenue), and multitude of other departments to bring about compliance with the stringent set of requirements. This cooperation should be the norm rather than the exception. There is no doubt that there was disruption in the way business was carried out due to changes in regulation, but that was unavoidable to bring about structural changes needed for compliance.

He informed that Pakistan has made appreciable progress but reforms are still ongoing. The banking and finance sector are further streamlining operations. The mechanism developed and measures undertaken will surely ensure benefits across the board by creating stability and safety in financial undertakings and investment.

## Recommendations and Way Forward

- **Need for Political willpower**
  - Progress on the FATF recommendations was not possible without political willpower that is needed to take some tough decisions. Difficult measures have to be taken to ensure success.
- **The Importance of Joint Efforts**
  - This cooperation should be the norm rather than the exception.
  - It took the concerted efforts of a broad range of law enforcement agencies, the FBR, and multitude of other departments to bring about compliance with the stringent set of requirements.
- **Short Term Difficulty for Long-Term gain**
  - Structural changes are difficult but needed for compliance, The banking and finance sectors need to continue their pace of streamlining of their operations.

## How to better negotiate multilateral and bilateral Treaties with a view to furthering Pakistan's position and how to improve legal capacity to better defend Pakistan's interests

### Amb (R) Aizaz Ahmad Chaudhry

*Mr. Aizaz Ahmad Chaudhry is DG ISSI (Institute of Strategic Studies) and a former Foreign Secretary. He has an illustrious career spanning over 37 years in the Foreign Service of Pakistan where he has served in important missions such as Ambassador of Pakistan to the USA and with tenures in Pakistan Embassies in Washington, Doha, the Hague and Cairo. He has also authored a book and has extensive experience in high level foreign policy discussions.*

### Justice (R) Mamoon Rashid Sheikh

*Mr. Justice (R) Mamoon Rashid Sheikh served as the 49<sup>th</sup> Chief Justice of the Lahore High Court in addition to extensively practicing law and founding his own law firm. He is currently Chairman of the Competition Appellate Tribunal and has dealt extensively with civil, constitutional, criminal and commercial/corporate cases/matters. He delivers lectures at the Pakistan Judicial Academy.*

### Synopsis of Panel Discussion

#### Ambassador Aizaz Ahmad Chaudhry

Ambassador Aizaz Ahmad Chaudhry said that 'Negotiation' is a method to settle differences and to reach compromises to avoid confrontation and conflicts. He said that according to the literature there are two approaches to negotiations, which are based on Hard Negotiations and Flexible Negotiations. Then there is an alternative approach which emphasizes a win-win notion. This approach also focusses on negotiating interests instead of positions based on an objective criterion where both parties can gain from agreements. Michael Wheeler, professor of Harvard University, wrote a book "Art of Negotiations" focussing on how to improvise negotiations in a chaotic world. He emphasised that the negotiations should be dynamic based on three factors: i) Trust, ii) Preparation, and iii) Mutuality of Benefits.

Amb (R) Chaudhry said that in inter-governmental negotiations these three factors are essential in all types of negotiations whether bilateral, regional or multilateral.

Bilateral negotiations are most often used. He said that in negotiations trust is the foremost element in bilateral negotiations. He explained this with examples of China and India. He said that Pakistan has been successful while negotiating with China due to the high trust level. However, negotiations with India on the other hand have not been as successful as with China due to a low level of trust.

*Do not negotiate positions but\_ Interests. Make a criterion where, both parties gain and come to the win-win situation.*

He informed that preparations are the second most important element in negotiations. In the past, Pakistan could have achieved a lot more with good preparations. He stated that Free Trade Agreement (FTA-1) with China was signed in 2006 without negotiating well as not enough stakeholders' consultation was done. Resultantly, the Pakistani businessmen suffered. As Chinese were producing and using economies of scale although trade at that time shot up to 18 billion dollars, but China's share was 16 billion and only 2 billion was Pakistan's share. FTA -2 was then signed to compensate for some of the earlier lapses.

Amb (R) Chaudhry said that reciprocity and mutuality of interest is the third important factor in negotiations. He explained his viewpoint with the example of China Pakistan Economic Corridor (CPEC). He said that due to terrorism, other countries were not investing in Pakistan's security, at the time China was welcomed for bringing in investment. This represents a case of win-win where both countries have an element of reciprocity and mutuality of benefits.

He informed that multilateral negotiations take place through groups of States (blocs) and for a developing country like Pakistan the group consists of 133 members which is called Non-Aligned Movement group (NAM). Sometimes, the group is so large that it cannot have a solid position because there are so many stakeholders, therefore, the least common denominator is agreed upon, whereas European Union (EU) negotiates as a bloc. This implies that for multilateral negotiations, Pakistan has to be part of a group. This approach has advantages as well as disadvantages. The advantage is someone else is negotiating so we would be supported. The disadvantage is delegates sometimes do not prepare, thinking that somebody else is negotiating on their behalf. He further explained that negotiations takes place at two levels: i) plenary, where formal position is announced in a form of a statement, ii) and committees and sub-committees, where hard negotiations take place. Delegates of Pakistan are usually able to get our view into the final document.

In the Regional context, the same three elements of trust, preparation, and reciprocity are required for successful agreements and negotiations. The European Union (EU) and ASEAN (Association of South East Asian Nations) are very good successful examples of successful regional cooperation. In the regional context, mutuality of benefit is the important factor, even if you don't trust each other. He said that unfortunately, this kind of trust could never be achieved in the South Asian context.

Plurilateral negotiations take place between parties that are not geographically contiguous, but they have shared interests, and these days it's very popular.

## Justice (R) Mamnoon Rashid Sheikh

The learned speaker and the Chief Guest of the day, Mr. Justice (R.) Mamnoon Rashid Sheikh said that there seems to be a lack of adequate training and exposure in legal education in institutions for dealing with complex matters of arbitration. This has led to a serious shortage of expertise and experts capable of handling complex and nuanced matters in the field.

He said that there needs to be a serious effort dedicated to teaching and training in matters of arbitration with particular reference to international arbitration of law students. The system is flawed in the sense that through rote learning it is fairly easy for many without a sound theoretical and practical knowledge of law to enter the legal field. In some jurisdictions judges are given prior training specific to the field that they are to deal with. He said that this is the case in UK which allows judges to obtain special, update information pertaining to new laws and laws specific to the field they are dealing with.

He highlighted that on the policy front, in some cases lack of vision, political will, and policy shortcomings had prevented Treaties from being incorporated into municipal law, which has later caused problems. He also agreed that lack of trust led SAARC (South Asian Association for Regional Cooperation) to be stillborn with nothing of its true potential being capable of materialising.

He stated that the intervention of the Courts sometimes does not take into account the fact that some of the Treaties already have arbitration clauses and judicial interference is an exercise in futility, with the damage already having been done upon signing of the Treaty. The data available regarding the Treaties signed by Pakistan is not easily available, and so the lawyers and community at large are unaware of important details. It is important that information and access to information are made fully available.

In an answer to a question he informed that in the case of Rann of Kutch dispute, India came well prepared with maps, data and historical records to back their argument, and even the best legal minds of the time were unable to get the upper hand due to lack of adequate preparation.

He suggested that Pakistan should not shy away from negotiations. He quoted Eqbal Ahmad, a renowned Pakistani political scientist, writer, and academician who said, “Unless you do not negotiate, they will never know your viewpoint, so do negotiate”. He highlighted that negotiations must be done from a position of strength and the best possible preparation. That preparation begins from a proper legal education, which must have a strong component to tackle arbitration. The capacity of government departments should be built up as a matter of policy. There must be a strong emphasis on accurate and comprehensive data availability.

He said that it was not uncommon to see government’s legal representatives in Court without the full set of documents, whereas the opposing legal teams come with their dossiers prepared. A robust system of protecting information and documents from tampering also needs to be robust. It is not uncommon to observe the tendency whereby critical information on documents may be altered for small bribes, which eventually weakens the premise of the case. In short, an attitudinal shift is required to ensure serious respect for the law, treaties, legal education, and access to information.

## Recommendations and Way Forward

### **Ambassador Aizaz Ahmad Chaudhry**

- **Art of Negotiations**
  - Learning the art of negotiations is imperative. Negotiations should be based on non-confrontational approach.
  - Do not negotiate positions but interests. Make a criterion where, both parties gain and come to the win-win situation.
  - A flexible and dynamic approach should be employed in negotiation.
  - Negotiations should be based on solid preparation so as to seize more benefit for the country.
  - Bilateral negotiations should follow up on some informal dialogue.
  
- **Regional Cooperation**
  - He stressed the need for regional cooperation to enhance trade.

### **Justice (R) Mamoon Rashid Sheikh**

- **Build Capacity and Knowledge**
  - It is important to enhance capability of legal institutions to deal with cases requiring in-depth background knowledge.
- **Availability of Data or Missing Records**
  - There is need to put in place checks to ensure data integrity
    - ✦ Ease in accessing data and information
    - ✦ Missing records create great problems for court decisions
- **Consistency of Policy is Crucial**
  - A clearly defined and consistent policy is essential for heading into negotiations
- **Digitalization of Data and Records**
  - Digitize data and make it easily accessible for public as well as for government.
- **Dedicated Arbitration Training**
  - Understand international arbitration procedures and gather a deep understanding of the mechanisms and frameworks that guide their development.





