



# PAK – IRAN BILATERAL EXISTING BINDING TREATY RELATIONS – A LEGAL COMPULSION TO COOPERATE



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## ABSTRACT

Pakistan and Iran are undergoing a period of economic contraction. Economies of both countries need measures which boost economic growth and provide opportunities of employment. Pakistan has been Iran's eighth-largest trading partner. According to an estimate by Trade Development Authority of Pakistan, trade between Pakistan and Iran fell to \$432 million in 2010-11 from \$1.32 billion in 2008-09, after western-powers imposed sanctions on Tehran aimed at halting a nuclear program they suspected was aimed at developing a nuclear bomb. The potential for trade between the two countries, however, is estimated to be well beyond the current levels. Efforts should be made by both countries to optimize their economic and trade relations. Mention has been made of a number of important agreements, treaties and MoUs that relate to cooperation in economic, trade and commerce fields. These legal instruments provide the requisite framework needed to expand mutual cooperation.

**Keywords:** Pakistan, Iran, Economy, Trade, Bilateral, Treaties, MoUs, Legal Instruments, Sanctions and Mutual Cooperation.



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Pakistan and Iran, both, as presently exist, are part of ancient civilizations dating back to thousands of years. Iran's history dates back to the formation of the Elamite kingdoms in the fourth millennium BCE, while Pakistan has been part of Indus Valley civilization which dates back also to 4th millennium BCE. The present day Iran consolidated its boundaries in the 19th century while Pakistan obtained independence in 1947 as a result of withdrawal by the British.

Iran was one of the very first countries recognizing the sovereign state of Pakistan. Shah Mohammad Reza Pahlavi, the then Monarch of Iran, was the first head of state to visit Pakistan officially in February 1950. Immediately after the visit of Mohammad Reza Pahlavi, the relations between Pakistan and Iran were further cemented by an Agreement of Friendship executed between the two countries in May 1950. Pakistan and Iran share strong historical, religious, cultural, and linguistic bonds. The people to people contact between the Pakistani and Iranian community is unique. Religion, Sufism, and Persian language all have a deep imprint on both sides of the borders.

### Historical Overview of Relations

During the cold war era, Pakistan and Iran were natural allies as both of them were part of the arrangements forged by SEATO and CENTO treaty arrangements. It was during the cold war era that Organization for Regional Cooperation and Development (RCD), a multi governmental organization, comprising Iran, Pakistan and Turkey, was established in 1964 to allow socio-economic development of the member states. In 1979, this organization was dissolved. It was replaced by Economic Cooperation Organization (ECO) in 1985, which is operational since then.

Iran played an important role in the Indo-Pakistani War of 1965, providing Pakistan with nurses, medical supplies, and a gift of 5,000 tons of petroleum. Iran also indicated that it was considering an embargo on oil supplies to India for the duration of the armed conflict. After the suspension of American military aid to Pakistan during the war, Iran was reported to have purchased F-86 Sabrejet fighter planes from West

Germany, and subsequently delivered them to Pakistan. Iran again played a vital role for Pakistan in the Indo-Pakistani War of 1971, this time supplying military equipment as well as diplomatic support against India. The Shah of Iran described the Indian attack as blatant aggression and interference in Pakistan's internal affairs.<sup>1</sup>

The relations established during cold war era were disrupted when government of Raza Shah Pahlvi was overthrown during an Islamic revolution in 1979 and a Shia government was established which was staunchly Anti-American. Though in 1979, Pakistan was one of the first countries in the world to recognize the new revolutionary regime in Iran, nonetheless, relations between Pakistan and Iran deteriorated after 1979 during the Afghan resistance against the Soviet occupying forces and then during Taliban led battles to form a government in Afghanistan after departure of UN forces.<sup>2</sup> However, both countries continued to cooperate wherever possible and formed alliances in a number of areas of mutual interest.

Iran's stance on the position taken by Pakistan on the issue of the state of Jammu and Kashmir has mostly been cooperative and positive, and Iran has expressed its sympathy for the right of self-determination for the peoples of Jammu and Kashmir.<sup>3</sup> Iran has also unequivocally supported the human rights of the Kashmiri people after annexation of IIOJK by India in 2019. On its part, Pakistan has supported Iran's viewpoint on the issue of its nuclear energy program, maintaining that Iran had the right to develop its nuclear energy program within the ambit of NPT.<sup>4</sup> In March 2020, Prime Minister Imran Khan called on the international community to remove sanctions on Iran, enabling it to better deal with the novel coronavirus crisis.





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A critical threat to Pak-Iran relations is the insurgency and cross border criminal activities of local elements in their respective regions of Balochistan-Sistan. The avowed aim of the Baloch insurgency against the central governments in Iran and Pakistan is to obtain more regional autonomy and ultimately to break away from the central governments and unify the Baloch territories now divided between two countries.<sup>5</sup> The management of this problem by central governments of Iran and Pakistan has created various problems including cross border terrorism and crimes. Most militant groups in Balochistan are based on tribal connections. These tribes have tribal patterns of authority and obligations and a tradition of helping and harboring members of allied tribes. The two countries have a shared interest in quelling Baloch secessionist aspirations but if Pakistan and Iran fail to reach understandings and effective cooperation their relationship could end up in crisis.

Pakistan has been Iran's eighth-largest trading partner and major exports of Pakistan to Iran have included rice, meat, fruits, textiles, and paper. Whereas, Iran's major exports to Pakistan have included oil, minerals, steel, organic chemicals, and plastic. According to an estimate by Trade Development Authority of Pakistan, trade between Pakistan and Iran fell to \$432 million in 2010-11 from \$1.32 billion in 2008-09, after western powers imposed sanctions on Tehran aimed at halting a nuclear program they suspected was aimed at developing a nuclear bomb.

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Bilateral trade volume between the two countries stood at \$369 million as of 2018. The potential for trade between the two countries, however, is estimated at \$10 billion. Iran sells 1,000 megawatts of electricity to Pakistan and plans to increase this up to 3,000 megawatts to cover some 4,000 megawatts of a shortfall in the country. Due to the outbreak of the corona virus in Iran, trade activities between Islamabad and Tehran had been temporarily suspended in February, 2020 because of the border closure.

It will be evident from above that Iran and Pakistan's relations had their high and low periods due mainly to the changing geo-political circumstances and alliances. However, there still remain a number of areas where the prospects of cooperation are yet to be optimized.

#### **Available Avenues of Relationship**

It is opined that three avenues of mutual cooperation and joint collaboration deserve a closer look.

#### **Implementation of Treaties, Agreements & Binding International Legal Instruments**

Pakistan and Iran during the course of last seventy years have entered into scores of treaties, agreements and MoUs to promote defense, economic and cultural relations. Out of the aforesaid pacts, several have now only historical importance yet the remaining others offer great scope for strengthening the ties between the two countries. Some of the recent pacts may be mentioned as below:

- Pakistan signed a Preferential Trade Agreement with Islamic Republic of Iran on 4 March 2004. As mutually agreed, the agreement became operational from 1 September 2006. Under the Agreement, Pakistan offered concessions to Iran on 338 tariff lines, whereas, Iran gave concessions on 309 tariff lines.
- Customs Mutual Assistance Agreement was signed between the Government of the Islamic Republic of Iran and the Islamic Republic of Pakistan on 4 March 2004. Under the said Agreement, it was decided to finalize the MOU on Electronic Data Exchange between Pakistan Customs and Iran Customs. It was also





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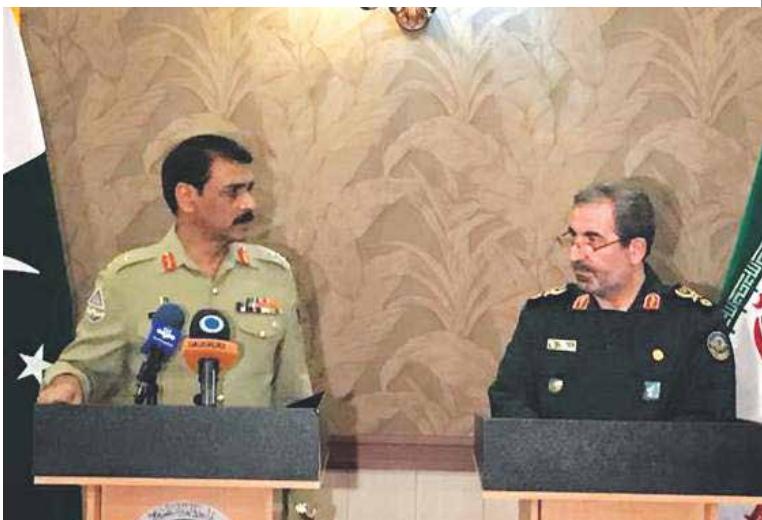
emphasized to exchange values/documents on real time basis in case of the goods to be imported/exported and to roll-out a fully automated clearance system, having advance information, about goods/passengers at Taftan-Mirjaveh Border stations and at other border stations in a phased manner. Pursuant to the Customs Mutual Assistance Agreement, Pakistan and Iran in February 2020 signed a Memorandum of Understanding (MoU) for electronic data exchange between the customs authorities of the two countries on real time basis to control under and over-invoicing of goods.

- In 2016, following MoUs were signed:-
  - MoU to enhance cooperation between Pakistan's Foreign Service Academy and Iran's School of International Relations.
  - MoU for cooperation and information exchange between the Securities and Exchange Commission of Pakistan and the Central Insurance of Iran.
  - MoU on Five Year Strategic Trade Cooperation Plan: This is the key agreement among the 6 MoUs signed. It sets an ambitious target of 5 billion US dollars per annum bilateral trade in 5 years from the current 250 million US dollars.
  - MoU for cooperation on health research, training, medicine and medical technology.
  - MoU on extending cooperation between the Federation of Pakistan Chambers of Commerce and Industry and the Chamber of Commerce, Industries, Mines and Agriculture of Iran.
  - MoU on cooperation between the Institute for Political and International Studies of Iran and Karachi Council on Foreign Relations (KCFR) of Pakistan.
- The two sides signed a Memorandum of Understanding on 27 December 2018 for International transport and transit between Iran and Pakistan which can connect East Asia to Europe via roads. Tehran and Islamabad agreed to increase transportation between the two countries in a bid to boost bilateral trade.

- In September 2020, the government of Pakistan decided to establish 18 markets along Pak-Afghan and Pak-Iran borders with a view to boosting trade with the two countries and curbing the menace of smuggling.

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- UNSC 1373/2001 which was unanimously passed on 28 September 2001 under Chapter VII of the UN Charter, is a counter terrorism measure obliging all member countries to take certain actions against terrorists. The resolution aims to hinder terrorist groups in various ways. It recalls provisions from resolutions 1189 (1998), 1269 (1999) and 1368 (2001) concerning terrorism. UN member states are encouraged to share their intelligence on terrorist groups in order to assist in combating international terrorism. The resolution also calls on all states to adjust their national laws so that they can ratify all of the existing international conventions on terrorism. It states that all states "should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served." The resolution establishes the Security Council's Counter Terrorism Committee to monitor state compliance with its provisions. It also aims at restricting immigration law, stating that "before granting refugee status, all states should take appropriate measures to ensure that the asylum seekers had not planned, facilitated or participated in terrorist acts".
- UNSC 1540/2004 which is also dubbed as "Non-Proliferation" resolution was passed under Chapter VII of the UN Charter and concerns





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obligation of the members to make all out efforts to take legal and regulatory measures against proliferation of Weapons of Mass Destruction (WMD) which include chemical, biological and nuclear weapons. The three main obligations created by the resolution are: (1) To "refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery" (Article 1). (2) To "adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery" (Article 2). (3) To "take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery" (Article 3). The resolution emphasizes the continuing importance of non-proliferation and disarmament agreements, and provides for the creation of a committee (the 1540 Committee) to oversee the implementation of the resolution. States are called upon to provide reports to the 1540 Committee on their current situation and future plans vis-à-vis the obligations laid out in the resolution within six months of the adoption of the resolution. Articles 8 and 9 of the resolution call upon all members to cooperate with each other in order to implement the aims of the resolution.

- UNSC 2462/2019 is a comprehensive resolution which was passed unanimously under Chapter VII of the UN Charter and concerns obligation of the members to combat and criminalize financing of terrorists and their activities. It can be enforced through UN sanctions. It refers to and reaffirms earlier passed resolution 1373/2001 and vide paragraphs 28 and 29 of the resolution, urges member states to cooperate with each other for the implementation of the measures prescribed by the resolution. The resolution urges all countries to implement the FATF recommendations, including the standards to assess the specific terrorist financing risks they face.



- UNSC 2482/2019 was unanimously adopted by the UN Security Council in July 2019, once again highlighting vital connection between transnational organized crime and terrorism activities/financing. This topic has been debated regularly in the UNSC since the resolution 1373/2001, passed a month after 9/11, that recognized a 'close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials'. Clause 1 of the resolution calls upon Member States to enhance coordination of efforts at all levels in order to strengthen a global response to linkages between international terrorism and organized crime, whether domestic or transnational, which constitute a serious challenge and a threat to international security. Clause 4 of the resolution calls upon Member States to strengthen their efforts as well as international and regional cooperation to counter the threat to the international community posed by the illicit cultivation, production, trafficking, and consumption of narcotic drugs and psychotropic substances, which can significantly contribute to the financial resources of terrorist groups, and to act in accordance with the principle of common and shared responsibility in addressing and countering the world drug problem, including through cooperation against the trafficking in illicit drugs and precursor chemicals, also underlining the importance of border management cooperation. Clause 7 of the resolution calls upon Member States to investigate, disrupt and dismantle organized criminal networks involved in trafficking of persons in accordance with national legislation, including anti-money-laundering, anti-corruption and anti-bribery laws and, where appropriate, counter-terrorism laws.



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### **Effect of US Sanctions on Iran and the Way Out**

The history of US sanctions against Iran dates as far back as 1979, when hostages were held at the US Embassy in Tehran. Over the years, the US government has approved other sanctions. In addition to the US government, United Nations and European Union have also applied some sanctions against Iran, however, the fact remains that most unprecedented and extensive sanctions have been imposed by the US which include sanctions on all those countries which enter into trade relations with Iran in specified areas. US sanctions inter alia are imposed under the Iran Sanctions Act of 1996 (as amended from time to time) and Countering America's Adversaries through Sanctions Act of 2017. These sanctions have adversely impacted Iran-Pakistan gas pipeline project and other trade relations.

Iran filed a legal action before the Hague-based ICJ against the United States, on 16 July 2018, mainly based on the 1955 Treaty of Amity signed between the two sides. Iranian officials said that, US re-imposition of the nuclear sanctions was a violation of the treaty. Iran also argued that the US had violated the terms of the nuclear accord (Iran and the P5+1— United States, United Kingdom, France, Russia, China, and Germany—signed the Joint Comprehensive Plan of Action (JCPOA) in 2015, which came into effect in 2016. Under the deal, Iran agreed to take steps to curb its

nuclear program in return for a significant easing of US, UN, and EU sanctions), endorsed by a UN Security Council resolution, by unilaterally pulling itself out of that agreement. It was urged on Iran's behalf that the IAEA had verified 12 times that Iran had abided by the terms of that agreement. At the court hearing it was also stressed that the US sanctions were blanket measures that had strangled the Iranian economy, affecting ordinary citizens in all aspects of their lives.

On 3 October 2018, the International Court of Justice issued an interim order directing as under:-

- That US in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations and Consular Rights, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of Islamic Republic of Iran of (i) medicines and medical devices; (ii) foodstuffs and agricultural commodities; and (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation
- That the United States of America must ensure that licenses and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (i)

There are exceptions recognized by US itself to the regime of sanctions. Article 7 of the Iran Sanctions Act 1996 provides that "The Secretary of State may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this Act. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, will not be made subject to such sanctions on account of such activity."

It is therefore proposed that in the areas where sanctions imposed on Iran are not operational, Pakistan and Iran can work together for economic and





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#### **Cooperation in the Area of EEZ and Territorial Waters**

Section 8 of Pakistan's Territorial Waters and Maritime Zones Act, 1976, provides that:-

- Notwithstanding anything contained in any other provision of this Act:
  - The delimitation of the territorial waters between Pakistan and any other State whose coast is opposite or adjacent to that of Pakistan shall be determined by agreement between Pakistan and such State and pending such agreement and, unless any other provisional arrangements are agreed to between them, the boundary with regard to the territorial waters between Pakistan and such State shall not extend beyond the line every point of which is equidistant from the baseline from which the breadth of the territorial waters of Pakistan and of such State is measured; and the delimitation of the Contiguous Zone, the Continental Shelf, the Exclusive Economic Zone and other maritime zones between Pakistan and any other State whose coast is opposite or adjacent to that of Pakistan shall be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances, and pending such agreement or a settlement, Pakistan and such State shall make provisional arrangements taking into account the said principles for delimitation of the Contiguous Zone, the Continental

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Shelf, the Exclusive Economic Zone and other maritime zones.

- Pakistan – Iran maritime boundary line dividing internal waters, Territorial Seas, Contiguous Zones and Exclusive Economic Zones of the Islamic Republic of Pakistan and the Islamic Republic of Iran is delimited in an agreement between the two governments signed in Tehran on 16 June 1997, which entered into force in accordance with Article 7 of the agreement on 26 July 1999. It is suggested that further cooperation in this regard in relation to issues arising from time to time must continue.

#### **Conclusion**

- China is investing an extraordinary amount of \$400 billion in Iran under Chinese Belt and Road Initiative. This deal is China's biggest commitment to any nation in the Middle East or the world. The improving relations between Tehran and Beijing have the same compulsions as between Pakistan and China. Tehran has been facing grave economic challenges due to long-term sanctions from Western powers. Iran has also expressed an interest in joining the China-Pakistan Economic Corridor as part of the larger Chinese Belt and Road Initiative. China and Iran are wary of the hegemonic policies that US is increasingly employing against both China and Iran. In the unfolding regional and strategic scenario, Iran, Pakistan and China can establish strong defense and economic ties. On its part, in February 2020, Iran has informally proposed that countries like Iran, Pakistan, Turkey, Russia and China have the potential to form a new alliance for better future of the region.



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- Both Pakistan and Iran are undergoing a period of economic contraction. Economies of both countries need measures which boost economic growth and provide opportunities of employment. In order to get the desired results, both countries need to cooperate with each other on urgent and regular basis. Practically speaking, currently economic cooperation and volume of trade has fallen to a minimum. Efforts should be made by both countries to optimize their economic and trade relations. Mention has been made above of a number of important agreements, treaties and MoUs that relate to cooperation in economic, trade and commerce fields. These legal instruments provide the requisite framework needed to expand mutual cooperation.
- Iran and Pakistan are members of the United Nations and as such as responsible countries need to coordinate their efforts in order to deliver the needful as required by the UNSC resolutions passed under Chapter VII of the UN Charter (some of the resolutions mentioned above). Terrorism, nuclear proliferation, terrorist financing, transnational organized crime and other related matters which form the subject matter of the UNSC resolutions under Chapter VII of the UN Charter are issues that are grave threats to the stability, friendly relations and economic growth of both countries. In this view, both countries

should mobilize their utmost efforts to combat the menaces of terrorism, nuclear proliferation, terrorist financing and transnational organized crime. In this regard, the respective institutions of both countries such as intelligence agencies, law enforcement bodies and border commissions can share information with each other. Meeting on official basis should be conducted by both countries to monitor the level and effectiveness of cooperation and further avenues of cooperation must be explored.

*Barrister Ahmer Bilal Soofi is a former Federal Law Minister, Advocate Supreme Court of Pakistan and President Research Society of International Law, Pakistan*

### NOTES

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