

Snapshots of some transit agreements

AN ANALYST

IN my opinion, it would be very unwise for Bangladesh to complete the binding covenants and undertakings with regards to the transit agreement with India, specifically through Noakhali, Bangladesh to Agartala, Tripura.

Students of International Law, as it relates to transit agreements, can easily distill the key features of almost all transit agreements that have been, in the past, agreed to, refused or suspended, and the attendant consequences attached to each.

These are the common features in international precedents as they relate to transit agreements.

Transit agreements are always sought first by an economically (and in most cases militarily) stronger nation from a relatively economically (and in most cases, militarily) weaker nation. Some examples to substantiate this are:

- US over Panama. (In that case the US government actually carved out a brand new country, Panama, from what was Colombia's national territory.)
- Singapore against Indonesia;
- Ethiopia and Eritrea. As a condition of Eritrean independence, landlocked Ethiopia negotiated transit rights through the Eritrean port of Assab.

The exceptions to this rule of strong power seeking transit rights from a weaker power are Bolivia, with transit rights through Peru (but transit rights are denied Bolivia through Chile) and Paraguay through Argentina. In Africa, with the exception of Ethiopia, the landlocked countries have had their transit rights negotiated for them by their former colonial masters. In Asia, Afghanistan had its transit rights "grand-fathered," after 1947, through Pakistan and Iran, but mostly through Pakistan. Mongolia had transit rights negotiated on its behalf by Stalin's Soviet Union. In Europe, only Luxembourg and Liechtenstein are truly landlocked. Luxembourg borders on Belgium and access is through the Belgian port of Antwerp. Liechtenstein uses the Swiss highway system. Switzerland is only half landlocked. The Swiss transit rights are guaranteed through Italy and Germany. Basel, the major industrial city of Switzerland, is on the River Rhine and heavy cargo barges move straight through, via Germany, to Rotterdam, the Dutch port on the North Sea. Austria, Hungary and the former Czechoslovakia use the River Danube as their major arterial for heavy cargo. Armenia, because of hostilities between Russia and Georgia in August 2008, now uses the road link through Turkey.

The second rule of transit treaties is that once they are signed and the infrastructure is in place, transit rights can never, ever be denied. Transit treaties are "in perpetuity." There are no "sunset clauses" in the treaties. Any kind of national emergency in the transiting country or even the hint of political instability in the host country can be used by the transiting country to legally seize the transit land, rivers and port infrastructure and claim "extra-sovereign" rights to protect its rights under the transit treaty. The host country has no legal recourse, whatsoever.

The transiting country can also use the threat of "enlarging" its rights under the original transit treaty, propose lowering of future transit fees under the guise of "seeking efficiencies," "streamlining," "cutting red-tape" and so on, and seek to portray any slow down or mild resistance in the negotiating process as "malafide intent" by the host country or "negotiating in bad faith" by the same. This would, under exceptional circumstances, once again, trigger the potential seizure of transit land, rivers and port infrastructure and give rise to claims of "extra-sovereign" rights. Under international law, the host country can do very little about it. Examples to substantiate this rule abound:

- 1939: In the Port of Dantzig (now Gdansk), the capital of what was then the German province of East Prussia. Poland refused transit rights between mainland Germany and its province of East Prussia, which was surrounded on three sides by Poland. The Second World War was initiated

because of the aggressive war aims of Hitlerite Germany against Poland, but the trigger was Germany's insistence on transit rights through Polish territory;

- The Corfu Channel Incident in May and October 1946 and the judgement of the International Court of Justice;
- 1956 Suez War: Britain and France, assisted by Israel, invaded the Suez Canal zone and the Sinai peninsula because Britain insisted on continuation of its previously held transit rights subsequent to President Nasser's nationalisation of the Suez Canal;
- The June 1967 Arab Israeli War: Israel launched a pre-emptive air strike against Egypt, just 24 hours after President Nasser closed the Straits of Tiran in the Gulf of Aqaba, thereby denying transit rights to Israeli shipping from the Israeli port of Eilat;
- 1979 to today: Iranian threats to transit shipping through the Straits of Hormuz keeps the US Navy in fulltime bases in Bahrain and intensively patrolling through the entire Persian Gulf;
- December 1989 US invasion of Panama.

Transit requests can be denied, if need be, in perpetuity. Canada refuses transit rights to all countries through the Canadian Arctic, but most particularly to Denmark and the US. Denmark controls Greenland as its overseas department. Recently, from 2006 to 2010, there

had invested \$100 million in upgrading the port facilities. In addition, in December 2010, there was Myanmar-India Kaladan Multimodal Transit Transport Project in Sittwe district, further upstream from the port. But these large India investments were not accompanied by a transit treaty between India and Myanmar. The Indian investments in Myanmar were classified as commercial investments, charging interest at commercial rates and scheduled to be paid back within a fixed time interval. It beggars belief as to why the Bangladeshi negotiators have to do more than the Myanmar negotiators. After all, if the aim is to secure investments for infrastructure projects, should the goal not be that of securing them at the most advantageous commercial terms and without the potential of these capital transfers triggering armed conflict between a heavily armed, nuclear tipped neighbour and Bangladesh.

There is perhaps another consideration that has not been mooted, so far, in the public discussion of the Agartala transit issue. That concern is that this transit treaty is the first stage of an eventual customs union between India and Bangladesh. It can be fairly assumed that one motivation, amongst many, for the transit treaty that is being sought by India is that it desires to avoid the extant Bangladesh customs duty charges against goods in transit from Chittagong to Agartala. That is perfectly understandable. However, the amount of money involved is not the point, nor is the comparison between the amounts received as future transit levies minus the interest charges on the capital loan versus the amount aggregated under extant customs duties. That kind of cost-benefit analysis is quite beside the point.

The key point here is that customs duties can be changed unilaterally by existing and future Bangladesh governments. However, transit levies can only be changed by mutual agreement between India and Bangladesh. Transit levies significantly lowers Bangladesh sovereignty and weakens its ability to seek future revenues. If customs union between Bangladesh and India is the eventual goal of the two governments, then it is right, proper and fair, that this be discussed openly and transparently. However, customs union achieved in a non-transparent manner through transit treaties will impose years, if not decades, of political instability in Bangladesh and, collaterally, will vitiate relations between India and Bangladesh for the same period.

There remain some obvious solutions that are available to the Bangladesh government negotiators to maximise their position vis-à-vis India. They can rule out "sole purpose" facilities, such as the proposed new bridge in Feni to connect Sabroom in south Tripura state to the Bangladesh railway grid. (Please refer to the 50 point Agreement signed

between India and Bangladesh on January 11, 2010. The foundation stone for that bridge, unfortunately, has already been laid). The sole purpose facilities will be the nodal points of sovereignty transfers in the case of Indian exercising its transit treaty rights.

Unfortunately, the Indian government has completely secured those rights in the sole purpose Akhaura junction to Agartala rail link.

The port of Chittagong will be further expanded to account for the additional cargo traffic. However, the Indian origin cargo traffic to Agartala should be "submerged" as far as possible, in the general traffic directed north from Chittagong to points in Bangladesh. It is most important that there be no "sealed trains" departing Chittagong Port for Akhaura for transit to Agartala. Container carriages, single or dual height, destined for Agartala should be mixed with other destinations to avoid unified destination trains. They can be easily separated at a railway yard in Akhaura junction. It is recommended that great care should be taken to make sure that there are no "sole purpose" facilities or real estate that can be readily identified and tagged as such. This recommendation does add to management resources at the Chittagong port terminus. However, paying for management resources is substantially less onerous than overlooking future impact on national interest.

The author is an internationally reputed expert in transit issues. (The article has been abridged due to constraints of space.)

SHIFTING IMAGES

It's all in the mind!



MILIA ALI

LIGHTS went off and murmurs ceased. Suddenly, I was surrounded by long-nosed goblins, spell-casting wizards and cackling witches. In the midst of this surreal world, emerged the lovable magical characters -- Harry Potter, Hermione Granger and Ron Weasley -- exercising their supernatural powers to stop the evil Lord Voldemort from steering the world toward a path of devastation. As Harry, with the help of his

wizard friends, hunted and destroyed Voldemort's holcruxes (objects where Voldemort stored parts of his tattered soul), the evil lord's face appeared unexpectedly -- angry and intimidating with two slits for a nose and a deadly snake trailing behind -- so close and so real that I almost darted out of the theater!

Your guess is right. I was watching "Harry Potter And The Deathly Hallows, Part 2" in 3 D. The final and eighth film of one of the most popular iconic phenomena of this day and age: The Harry Potter series, masterfully crafted by author J. K. Rowling. A story of the eternal battle between good and evil, right and wrong, depicted brilliantly with the help of adventure, drama and magic.

At the conclusion of the movie (directed by David Yates), I glanced around me at the motley crowd of children and young and older adults, and wondered: "What is it about Harry Potter that can hold the attention of such a varied audience?" Is it just the charm of watching a contemporary magical superhero, who assumes the near impossible task of rescuing the world from apocalyptic disaster? Or, like many of us older fans, is it nostalgia for the childhood days of fairy tales when good fairies battled ogres and witches and ultimately all was well with the world?

One never knows why tales of fantasy appeal to the imagination of some, while they fail to excite others. It's one of those intangibles that are hard to explain with an air-tight theory. Like everything else, there are sceptics who find the Harry Potter fad a little over the top. As my down-to-earth friend Mala remarked: "If you want to be transported to a world of fantasy for two hours, go watch the movie. But to read a 759 page book (Deathly Hallows, which is one of eight)? Honestly, I don't have that kind of time. The fact is we live in a real world with real problems. Spells and sorceries cannot help 'good' win over 'evil' -- get real."

Mala's cynical comment dampened my enthusiasm, since, I must confess, I am one of those naïve people who have been indoctrinated into Rowling's magical world. But rationally speak-

Is Rowling's world of wizards and witches and its underlying struggle between good and evil a mere fabrication of her imagination, or are there parallels in real life? The answer is provided by the wise magician Albus Dumbledore when he assures Harry: "Of course, it is happening in your head, Harry, but why on earth should that mean that it is not real?"

ing, I cannot discount the criticism of the "dark tone" of her novels, given that they belong to the genre of fantasy literature, written primarily for children. From what I have observed, two groups of people detest the Harry Potter fictions -- those who dislike the concept of a supernatural cult and those who consider old-fashioned notions of good and evil to be bourgeois. Of course, we also have people like Mala and my husband who find the idea of winged horses and fire-spewing dragons simply ridiculous!

But then, what is it that makes millions gravitate toward Rowling's controversial chronicles? Not being a literary critic, I am reluctant to write a comprehensive analysis of her novels. I can only speak of my feelings. For me, the Harry Potter stories are tales of loyalty, friendship, courage and sacrifice. Sentiments which many of us have opted to conceal in some remote corner of our inner chambers because we find them too challenging to live up to, or we have become too accepting of the existing "state of affairs" and would much rather flow with the tide. I tend to believe that many people are attracted to the Harry Potter stories for their social and moral messages. For instance, Harry's guardian Sirius Black's statement: "If you want to know what a man's like, take a good look at how he treats his inferiors, not his equals." And, don't many of us encounter situations when we realise: "Soon we must all face the choice between what is right and what is easy?"

It's true that in the real world good doesn't often triumph over evil. However, Rowling reminds us that "good" just doesn't happen. Harry and his dedicated friends have to make tremendous efforts to fight the forces of evil. Harry's final sacrifice is walking into death willingly, to ensure that the part of wicked Voldemort's soul that dwells within him is destroyed! Beneath the façade of miracles and magic, the author also conveys a powerful message: that love can conquer all. It's Harry's mother's love (who sacrifices her life to save him as an infant) that is his talisman against Voldemort's repeated attempts to kill him!

As the curtain closes on the Harry Potter saga, a question keeps arising in my mind. Is Rowling's world of wizards and witches and its underlying struggle between good and evil a mere fabrication of her imagination, or are there parallels in real life? The answer is provided by the wise magician Albus Dumbledore when he assures Harry: "Of course, it is happening in your head, Harry, but why on earth should that mean that it is not real?"

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