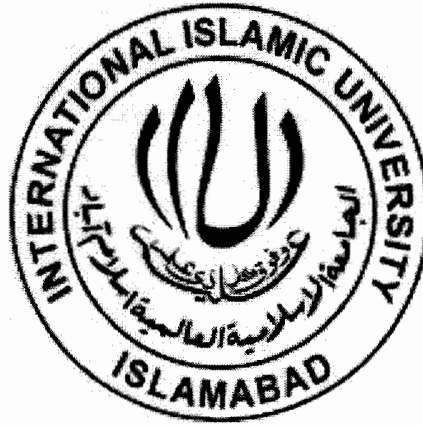


**LEGAL AND GEOPOLITICAL ASPECTS OF  
TURKUMANISTAN-AFGHANISTAN-PAKISTAN AND  
INDIA CROSS BORDER GAS TRADE**

T06614

**DATA ENTERED**



***By: Tahir Farooq Tarar  
REG.#83-FSL/LLMITL/F06  
Supervised By: Mr. Muhammad Arif***

A Thesis submitted For the Partial Fulfillment of The Requirement of the Degree of Master of Laws, Faculty of Shariah and Law, International Islamic University, Islamabad

**FACULTY OF SHARIAH & LAW  
INTERNATIONAL ISLAMIC UNIVERSITY  
ISLAMABAD**



Accession TH6614

DATA ENTERED

CE  
14/12/12

08/07/10

John W.  
m-dh

MS  
343.0772  
TAL

1-Natural gas - law and legislation

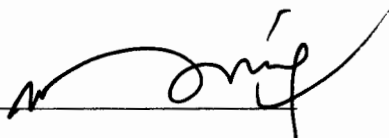
J.E.  
10  
dl.12.10

## APPROVAL SHEET


It is certified that we have read the Thesis submitted by Tahir Farooq Tarar entitled “Legal and Geo-Political Aspects of *Turkmenistan-Afghanistan-Pakistan and India Cross Border Gas Trade*” as a partial fulfillment for the award of degree of LLM (International Trade Law). We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award for degree.

Examination Committee:


Mr. Muhammad Arif  
Visiting Faculty Member  
Faculty of Shariah & Law

Supervisor: 

Mr. Abdul Basit  
Law Officer (OGRA)

(External Examiner) 

Mr. Fakhar Mahmood Makhdoom  
Assistant Professor  
Faculty of Shariah & Law

(Internal Examiner) 



## Table of Contents

<b>CHAPTER -1</b> .....	<b>1</b>
1.1 Introduction-----	1
1.2 What is Natural Gas -----	1
1.2.1 Scope of Natural Gas -----	2
1.3 Pakistan Energy Scenario-----	3
1.4 Progress on TAPI Gas pipeline-----	6
1.5 Advantages of Cross border Gas pipeline-----	8
1.6 Geo-political Threats and Problems-----	9
<b>CHAPTER -2</b> .....	<b>11</b>
<b>Geo-Political Aspects of TAPI</b>	
2.1 What is Geo-Politics? -----	11
2.2 Turkmenistan and its Historical background-----	13
2.2.1 Brief Introduction of Turkmenistan-----	14
2.3 Afghanistan and Its Historical back ground-----	19
2.3.1 Brief Introduction of Afghanistan-----	20
2.4 Historical background of Pakistan-----	25
2.4.1 Brief Introduction of Pakistan-----	27
2.4.2 Indo-Pak Relations-----	28
2.5 History of India-----	34
2.5.1 Brief Introduction of India -----	36
2.6 Introduction of Central Asia -----	41
2.6.1 Central Asia and existing pipelines-----	42
2.6.2 Central Asia and EU-----	44
2.6.3 Pakistan and Central Asia-----	45
2.6.4 Russia and Central Asia-----	46
2.6.5 USA and Central Asia-----	48
2.6.6 China and Central Asia-----	50
2.7 Conclusion-----	52
<b>CHAPTER -3</b> .....	<b>53</b>
<b>Economics Aspects</b>	
3.1 Introduction-----	53
3.2 Benefits to Contracting States -----	53
3.2.1 Turkmenistan-----	53
3.2.2 Afghanistan-----	54
3.2.3 Pakistan -----	55
3.2.4 India-----	56
3.3 Conclusion-----	56
<b>CHAPTER- 4</b> .....	<b>58</b>
<b>Barrier For Cross Border Gas Trade</b>	
4.1 Introduction-----	58
4.2 Political Situation of Contracting States-----	59
4.3 Daultabad Gas Field Risks-----	61
4.4 Lack of well Developed Local laws-----	62

4.5	Security of Supply-----	63
4.6	Construction Standards-----	65
4.7	Emergency Reaction-----	66
4.8	Lack of jurisdiction and Conflict Management-----	66
4.9	Determination of Profit and Loss-----	67
4.10	Legal and regulatory Issues-----	69
4.10.1	The Right of Way-----	69
4.10.2	Ownership of Pipeline-----	70
4.10.3	Transit Issue-----	70
4.10.4	Taxation Matter-----	71
4.10.5	Dispute Settlement and forum Selection-----	72

**CHAPTRE -5..... 74**

**Regulatory Regime of Four Countries**

5.1	Introduction-----	74
5.2	Turkmenistan Petroleum laws-----	74
5.2.1	Import and Export rule and Regulation of Turkmenistan-----	77
5.2.2	Land tenure System in Turkmenistan-----	79
5.2.3	Environmental Law of Turkmenistan-----	80
5.2.4	Labor Laws of Turkmenistan-----	81
5.3	Petroleum Law of Afghanistan-----	81
5.3.1	Import and Export Laws of Afghanistan-----	83
5.3.2	Land Acquisition Law of Afghanistan-----	84
5.3.3	Labor Law of Afghanistan -----	85
5.3.4	Environmental Law of Afghanistan -----	86
5.4	Petroleum Laws of Pakistan-----	86
5.4.1	Import and Export Laws of Pakistan-----	89
5.4.2	Land Acquisition Law of Pakistan-----	93
5.4.3	Environmental Law of Pakistan-----	94
5.4.4	Labor Laws of Pakistan-----	101
5.5	Petroleum Laws of India-----	106
5.5.1	Import and Export laws of India-----	109
5.5.2	Land Acquisition Law of India-----	112
5.5.3	Environmental Laws of India-----	113
5.5.4	Labor Laws of India-----	115
5.6	Institutional Responsibilities-----	118
5.6.1	The Role of people's Organization and informal institutions-----	119

**CHAPTER-6.....120**

**International Laws and Institutions**

6.1	Introduction-----	120
6.2	Covenant of the League of Nations, 1919-----	121
6.3	ICC (International Chamber of Commerce)-----	121
6.4	The Geneva Convention 1927-----	122
6.5	1921 Barcelona Convention and statute on Freedom of Transit-----	122
6.6	UN conventional on the Law of the Sea 1982-----	125
6.7	1947 General Agreement on Tariffs and Trade-----	125
6.8	The European Convention on International Commercial Arbitration1961-----	126
6.9	The Washington Convention 1965-----	126
6.10	UNCITRAL Rules United Nations Commission on International Trade Law-----	128

6.11	The New York Convention 1958-----	128
6.12	Energy charter Treaty: Transport and Transit-related Provisions-----	130
6.13	Inter Governmental Agreement-----	132
6.14	Host Government Agreement-----	133
6.15	The WTO Dispute Settlement Mechanism-----	134
6.16	General Agreement on Tariffs and Trade 1994-----	137
6.17	The INOGATE Agreement-----	138
6.18	EU Regulations-----	140
6.19	Agreement on Trade-Related Aspects of Intellectual Property Rights-----	142
<b>CHAPTER-7</b> .....		<b>143</b>
	<b>Conclusion</b>	
7.1	Conclusion-----	143
<b>CHAPTER-8</b> .....		<b>148</b>
	<b>Bibliography</b>	
8.1	Bibliography -----	148

## ACKNOWLEDGMENT

I would never have been able to complete this dissertation without encouragement and help from many people, I would like to formally thank by mentioning their names.

First of all, I want to express my sincerest gratitude and appreciation to my supervisor, Mr. Muhammad Arif, for his invaluable comments, sage advice, insightful criticism, patient encouragement and guidance during the entire process of my thesis. I also say thanks to Mian Tuqeer Hussain for his assistance to editing the synopsis, and his directions and advice during the preparation of synopsis of this thesis.

I would also like to thank Madam Mehernusa for guidance in research methodology, judicious criticism and assistance for the improving of thesis.

My parents and brothers, for their never ending love and support in all my efforts throughout the study period as well as giving me the foundation to be who I am.

Needless to say that I am grateful to all my class fellows of LLM class, for their friendship and support. I have also been very lucky to have friends like Tamoor Arshad, Junid Akhtar, Muhammad Numan Shahid, Inamullah and Shamshad ullah Cheema, their support was invaluable for me.

I am also very thankful to my friends especially Shafqat Abbas Tarar, Sajjad Hussain Tarar and Zubir Bashir who provided me conducive research environment.

It is impossible to numerate every body's name, so, I simply express my sincere thanks to all my dears.

## **Dedication**

This thesis is dedicated to my parents and brothers who always believed me, encouraged me and supported me all the way since the beginning of my studies. Due to their Sacrifices and prayers, I would not only be able to stay, where I am standing today, but would definitely be able to come up to their expectations in my future career.

Also, this thesis is dedicated to judicial hero of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry, who has been a great source of motivation and inspiration for freedom and independence of judiciary.



## ABBREVIATIONS

FDI	Foreign Direct Investment
SCRME	State Commodity and Raw Materials Exchange
ADR	Alternate Dispute Resolution
SEZ	Special Economic Zone
EPZ	Export promotion zone
GOP	Government of Pakistan
AAA	American Arbitration Association
IPI	Iran-Pakistan-India
TAPI	Turkmenistan- Afghanistan-Pakistan-India
INOGATE	Interstate Oil and Gas Transport to Europe
CNG	Compressed Natural Gas
PSA	Production Sharing Agreement
ICA	International Court of Arbitration
OGRA	Oil and Gas Regulatory Authority
BCFD	Billion Cubic Feet Per Day
BCM	Billion Cubic Feet
UN	United Nations
WIPO	World Intellectual Property Organization
U.S.A	United States of America
EU	European Union
IEA	International Energy Agency
OECD	Organization for Economic Co-operation and Development
DSU	Dispute Settlement Understanding
GATT	General Agreement on Tariffs and Trade
IGA	Intergovernmental Agreement
HGA	Host Government Agreement
ICSID	International Centre for Settlement of Investment Disputes
ADB	Asian Development Bank
WTO	World Trade Organization
ECT	Energy Charter Treaty
UNCITRAL	United Nation Commission on International Trade Law

## Abstract

Turkmenistan, Afghanistan, Pakistan and India gas pipeline project has been based on earlier concept developed in 1990s. Due to Taliban regime international community and funding institutions were not in favor of TAPI Project. After 9/11 the international scenario was completely changed. Now the USA forces are present in Afghanistan and USA seems to be inclined towards completion of TAPI project.

To quantify the gas pipeline project, Asian Development Bank has commissioned a feasibility study on behalf of the three participating countries and India also seems to have agreed on participating in the project.

This research paper basically is sum and substance of TAPI cross border gas pipeline project, its significance and various issues involved in the formulation of certain regulations on ground. In the cross border pipeline project involves various types of issues such as political, economic, security and legal.

The thesis starts with the introduction of TAPI, its growth, advantages and importance of the cross border pipeline. The second chapter of this research study highlights the Geo-political position of the four contracting states, their history, government system, basic infrastructure and their relations with one another. The energy scenarios in current world, the major powers are involved in New Great Game and their interests in central Asia are also mentioned in it.

The third chapter deals with the economic aspects of the TAPI gas pipeline. The TAPI cross border pipeline will generate handsome number of Job opportunities, which will help to improve the poor economic situation of relevant communities. This project provides a cheaper energy to contracting states and Afghanistan-Pakistan shall also take a benefit of transit fee. Besides this project will prove a beacon of hope against the shortage of energy especially for Pakistan.

In the fourth chapter the barrier to cross border pipeline has been discussed. In this chapter political risks, security risks tariff and transit issues and Dultabad Gas Field reserves issues are highlighted. In next chapter the regulatory regime of TAPI countries are cost a glance. The laws related to pipeline especially the petroleum laws; import export laws, land acquisition laws, environmental laws and labor laws of the Turkmenistan, Afghanistan, Pakistan and India are included in it.

In the second last chapter, the numbers of international conventions and institution have been discussed. Dispute resolution is also an important issue for cross border pipeline project. A complete overview has been given with regard to commitment of Participating States to resolve disputes. In this regard the local laws as well as international laws which provide a

mechanism to resolve disputes and recognition of award pronounced by foreign court has been examined. The model agreements for the cross border pipeline IGA and HGA which are back bone of pipeline project is also the part of this study. IGA is an agreement signed between two or more host countries and HGA between host countries and Project Company. In the last chapter, the theme of the research study and mitigations measure to remove the barrier of TAPI pipeline project and future prospects are discussed.

## CHAPTER 1

### **1.1 Introduction:**

Cross Border pipelines have the most significant source of energy transit. The concept of pipelines primarily evolved in USA more than hundred years ago, later it developed in Europe, South America and Middle East. Now Pakistan also wants to enter in contract of cross border gas trade. Pakistan has three options for gas pipelines, now it depends on Pakistani Government whether it wants to achieve all of them or one of them which is more feasible. The Turkmenistan, Afghanistan, Pakistan and India's Natural Gas Pipeline Project is the one of them. This is 1700 km long pipeline which will run from Dauletabad field in Turkmenistan to Fazilka at the Pakistan-India border, passing through Herat and Kandahar in Afghanistan and Multan in Pakistan. The proposed pipeline will supply 100 million standard cubic meters per day of gas (from the Dauletabad gas field), from which India's share is likely to be 60 MMscmd through 56-inch diameter pipeline by 2015. The proposed cost of project is around \$ 7.6 billion. Asian Development Bank is major donor of the project. The project is economically feasible especially after the Indian participation where the major market exists. Natural Gas has always been regarded as a premium fuel. It is non-toxic and burns with a remarkably clean and controllable flame, so giving considerable practical and economic benefits to industrial, commercial and residential consumer alike.

### **1.2 What is Natural Gas?**

*“Natural gas is a mixture of hydrocarbon gases that occurs with petroleum deposits, principally methane together with varying quantities of ethane, propane, butane, and other gases, and is used as a fuel and in the manufacture of organic compounds.”<sup>1</sup>*

---

<sup>1</sup> Natural Gas .Org available at <http://www.naturalgas.org/index.asp>, last visited on November 2,2008

## **1.2.1 Scope of Natural Gas:**

### **Domestic production**

In Pakistan natural gas is produced in various part of the country where exploration has been conducted and which has resulted in discovery of natural gas. However, Pakistan is not rich in oil reserves and the demand for both oil and gas is increasing with every passing day. Over 80% of the oil used in this country is imported. Natural gas is the cleanest of all fossil fuels and the cheapest form of energy. We can use it for domestic and also for commercial purposes.

### **1.3 Pakistan Energy scenario**

In Pakistan consumption of petroleum products has been increasing with an average rate of 1.2 per annum since 1997, while the consumption of gas, electricity and coal have been increasing with the rate of 7.6 percent, 5.5 percent and 9.2 percent respectively per annum since 2006.<sup>2</sup>

Pakistan's domestic supply of gas figure is expected to shortfall by the year, 2010.

Pakistan is the second largest Muslim country in the world in terms of population and its population is increasing day by day but resources are not increasing with the ratio.

---

<sup>2</sup> Pakistan Economic Survey 2007-08 page 246  
Economic Advisor's Wing, Finance Division, Government of Pakistan Islamabad

## Pakistan's yearly population from 2001 to 2008

Year	Population	Absolute Increase	Percentage Increase
2001	150,399,566	3,994,652	2.73
2002	153,470,779	3,071,213	2.04
2003	156,196,488	2,725,709	1.78
2004	159,266,367	3,069,879	1.97
2005	162,490,385	3,224,018	2.02
2006	165,873,928	3,383,543	2.08
2007	169,340,538	3,466,610	2.09
2008	172,800,051	3,459,513	2.04

Source: [http://en.wikipedia.org/wiki/Demography\\_of\\_Pakistan](http://en.wikipedia.org/wiki/Demography_of_Pakistan)

During the last decade, Pakistan has achieved a growth rate of 6%. With the increase in population, the demand for resources also keeps on increasing and gas also being one of those resources.

SECTOR	NATURAL GAS PROJECTED DEMAND								
	2005	2006	2008	2010	2012	2014	2016	2018	2020
POWER	1,546	1,740	1,930	2,055	2,255	2,557	2,557	2,557	2,557
DOMESTIC	450	498	546	594	642	690	738	786	834
COMMERCIAL	66	72	78	84	90	96	102	108	114
GENERAL INDUSTRY	378	419	437	455	485	515	543	569	595
FERTILIZER	435	435	500	500	500	500	500	500	500
CEMENT	30	30	30	30	30	30	30	30	30
CAPTIVE POWER	175	225	271	315	359	403	450	500	550
TRANSPORT (CNG)	44	62	74	80	86	92	98	104	110
COMPANY USE AND UFG	190	243	238	222	206	189	170	150	128
TOTAL	3,314	3,724	4,104	4,335	4,653	5,072	5,188	5,304	5,418

Source: Ministry of Petroleum & Natural Resources

Pakistan has a number of gas resources, for example one big gas field is located in Sibi, district of Baluchistan,<sup>3</sup> at the foot hills of the Mari-Bugti range. The reservoirs cover an area of 190sq/km.

However, due to the ever increasing demand for gas and lack of commitment by the Government of Pakistan on the exploration front, wherein for the past two years no new blocks for exploration have been advertised, there is slow decision making, policies are taking time to be formalized. Keeping the entire scenario in perspective, the energy security action plan of the planning commission estimated that Pakistan would face a shortfall of gas supplies rising from 1.4 billion cubic feet (BCF) per day in 2012 to 2.7BCf in 2015 and escalating 10.3 BCF in 2025.<sup>4</sup>

#### Production of Natural Gas (mmcf)

Company	2006-07	July-March (2006-07)	July-March 2007-08)	Change (%)
BHP	305.3	310.8	359.9	15.79
ENI	384.9	389.1	378.7	-2.69
Dewan	-	-	19.7	-
MGCL	472.5	473.4	468.2	-1.10
OGDCL	849.8	834.1	909.4	9.03
OMV	535.0	539.7	520.8	-3.51
OPI	100.5	103.7	81.6	-21.27
POL	42.2	43.6	36.0	-17.34
PPL	830.3	828.6	832.8	0.5
TULLOW	3.0	2.5	17.8	617.97
PEL	31.4	31.8	30.9	-2.28
BP	229.1	229.3	224.0	-2.28
Petronas	26.6	27.1	23.5	-13.11
MOL	62.4	62.9	63.2	0.53
Total	3,872.8	3,876.4	3,965.9	2.31

Source: Ministry of Petroleum & Natural Resources

Pakistan is using the natural gas in different sectors such as for domestic, commercial, power sector, fertilization industry, cement industry and for the purpose of transportation. Now

<sup>3</sup> The Free Dictionary by Farlex available at <http://encyclopedia.farlex.com/Sibi,+Pakistan> , last visited on November,2008

<sup>4</sup> Annual Plan 2008-09, Planning Commission of Pakistan

Pakistan is first in Asia and the third biggest country in the world which is using the CNG for transportation.<sup>5</sup>

To fulfill the dire requirements of the gas, the government has to import natural gas from the neighboring countries to supplement the local supplies. The estimate capital cost for each pipeline option ranges from \$5-7 billions.<sup>5</sup> Pakistan has three options to import gas which are as follows;

- 1 Turkmenistan-Afghanistan- Pakistan- India gas pipeline (TAPI)
- 2 Iran-Pakistan-India gas pipeline (IPI).
- 3 Qatar-Pakistan (offshore gas pipeline).

Here we only discuss the proposed TAPI gas pipeline.

#### **1.4 Progress on the TAPI project;**

Turkmenistan-Afghanistan and Pakistan have agreed to build a pipeline that would deliver the natural gas from Turkmenistan to Pakistan. There are a number of problems being faced by these countries, which are proving detrimental to the start of this project such as, India and Pakistan hostile relations, Turkmenistan's fresh revised agreement with Russia, political instability and security condition in Afghanistan as well as the strong hostile ethnic groups in pipeline route of Pakistan.

This gas project might be completed because motive behind the TAPI gas pipeline is USA foreign policy towards future energy needs.

USA is not accepting the economic progress of Iran and the proposed IPI gas pipeline can play a vital role in economic stability of Iran. Due to USA's pressure and future needs of energy, Indian federal cabinet in its meeting on 19<sup>th</sup> May, 2006, has given its formal approval

---

<sup>5</sup> Published in DAWN, 9th June 2007



for India to join pipeline project.<sup>6</sup> After Indian participation the TAP converts into TAPI project.

**There were two route's options in starting, the southern route and northern route.<sup>7</sup>**

- 1- In the Southern route option pipeline will pass via Dauletabad to Afghanistan via Kandahar, in Pakistan via Quetta to Multan and in India via Fazilka.
- 2- In the Northern route option pipeline will pass via Dauletabd to east, and go by close to Mazar Sharif, Kabul, Jalalabad, and the route in Pakistan it will pass through Peshawar, Rawalpindi and Lahore to terminate at Amritsar in India.

The engineering point of view and capital cost criteria was in favor of northern route but at ministerial meeting of the representative countries in Turkmenistan in June 2003, it was decided that the southern route would be better for further development. Because during the course of the feasibility and environmental studies the southern route has been selected because it avoids high value land, it will not damage the fertile agricultural land; it will not pass through the highly populated areas. In this route security situation is better than northern route.

The overall length of the southern route is of 1700 km according to feasibility report of British company Penspen. In 2002 the estimated cost of the project was 3.2 billion dollars but due to unnecessary delay the current project cost estimated 7.6 billion dollars.<sup>8</sup>

The pipeline design implies a 56<sup>9</sup> diameter steel grade x70 pipeline of nominal wall thickness 20.6mn. Design pressure will be 100barg with normal operating pressure of 95barg. Six compressor stations of 3 x 30mw capacities are needed to transfer the 33 bcm /y of gas the system would transport to theoretical endpoint of Fazilka in India.

---

<sup>6</sup> Alexander's Oil & Gas Connections Available at <http://www.gasandoil.com/goc/news/ntc65139.htm>  
Visited on November 10,2008

<sup>7</sup> Pakistan Institute For Peace Studies Article Available at <http://san-pips.com/PIPS-R&D-%20Files/Reports/R&D-Report-Article16/R&D-Report-A16-D.asp>, last visited on 11 November,2008

<sup>8</sup> Work on four-nation project to start from 2010, The News Friday, April 25, 2008

<sup>9</sup> Ibids

According to the feasibility study of TAPI designed by the British company Penspen the verification of Dauletabad gas resources is pivotal of the pipeline because this project would be feasible only if Turkmenistan submits a solid report for the supply of 30 billion cubic meters (BCM) of gas annually.<sup>10</sup> The independent third party audit of the gas reserves for Dauletabad filed is required by Pakistan and India for further development.

The gas reserves are so important because Turkmenistan is already supplying gas to Gazprom and the contract is valid until 2028 .Therefore, whether it would be possible for Turkmenistan to fulfill the requirement of both contraction parties is a big question mark.

On 25 April, 2008, Pakistan, India and Afghanistan signed a framework agreement to buy natural gas from Turkmenistan. The representatives of four contracting states committed to launch construction in 2008 supplying gas by 2015.

### **1.5 ADVANTAGES OF THE CROSS BORDER PIPELINE:**

The stated benefits of cross border gas pipeline.

- 1- There is no better alternative to gas pipeline. Pipeline gas can be transported with present technology up to 6000km or even beyond.
- 2- Natural Gas is the fuel of the 21<sup>st</sup> century. It satisfies the global need for an environment friendly energy source.
- 3- Pipeline gas provides the best opportunity for the development of economy due to its competitive price, stable and long-term supply.
- 4- The volume of gas which is supplied can be easily increased.
- 5- The security and quality of supply is guaranteed by long-term contracts on take or pay principle.
- 6- The demand will be continue to grow and triple by 2030.

---

<sup>10</sup> IPI or TAP Pakistan needs Early Materialization of a Gas Line written by Safdar Sial in Journal of Pakistan , Institute of Peace Studies Islamabad page 3 published on 29-3-2008.

- 7- Regional security will be gained through joint project ownership.
- 8- Economy will be developed that can be used for developing social sectors.
- 9- Cheaper and clean energy to consumers provided.
- 10- Gas pipeline will also create job opportunities for the people of contracting states.

### **1.6 Geopolitical threats and problems:**

These are the major issues which are creating hurdles in the completion of TAPI project:

- 1- The adverse situation among the contracting state especially the India –Pakistan hostile relations.
- 2- The USA direct attacks in Pakistan territory create difficulty for TAPI because PAK-USA friendly relations are the key of success for this project.
- 3- Turkmenistan's fresh revised agreement with Russia is also important factor which can destroy the dream of TAPI. Because Guarantee and report of gas reserves and its verification is the key of further steps for operational plan which Turkmenistan still cannot submit.
- 4- Political instability and security conditions in Afghanistan. Taliban are still major threat for Gas pipeline.
- 5- Lack of constant polices is also another factor, current government agrees but it is a possibility the next government may not approve the project. Kala Bagh Dam is the appalling illustration of Pakistani government. Kala Bagh Dam was included in the seven point agenda of President Mushraff but the PPP,s government cancel the mega project.
- 6- Strong ethnic groups exist in pipeline area of Pakistan which is the serious threat to pipeline especially in Balochistan. These groups have exploited the local gas pipeline many times.

In addition to the above mentioned, in the second chapter ,the study would further provide a overview of four contracting countries, their relation and the Geopolitics for oil and gas in Central Asia. In further chapters, certain other possible obstructions such as the lack of profit and rent sharing mechanism as well as legal and regularity regime would also be discussed. Another integral part of the research will comprise the matters related with four contracting countries laws in this gas pipeline project. There is a definite involvement of petroleum, environmental, tax, land and labor laws, in the discussion of the cross border gas pipelines. Moreover, the international treaties are also supposed to be kept in mind in the same context. Finally, keeping in view the above discussion the best regulatory regime with particular emphasis on the legal aspects as well as economic, political and social aspects will have to be taken into consideration in order to come up with tangible conceptions in this regard.

## CHAPTER 2

### GEOPOLITICAL ANALYSIS OF TAPI:

#### 2.1 What is Geopolitics?

Geopolitics is the equivalent of German Geopolitike whose central assumption is that geographical factors <sup>11</sup>determine the strategy of state. It is the applied science of political geography that is used for strategic planning and territorial expansion. <sup>12</sup>

Originally it was an essentially deterministic concept, suggesting that the developments of international politics were largely determined by geographical factors such as land and resource distribution, sea and waterways and so on. <sup>13</sup>

Geopolitics conceives geographical location as an important and perhaps major determinant of political identity, political thought and political action, and which sees nations as organism struggling with each other for the occupancy of space. <sup>14</sup>

Geopolitics is the study of a given area in the game of international politics, in the light of geographical factors. It is study of the effect of location upon popular attitudes of the people in or surrounding the area under study. It is especially the diplomatic action of a state in or around the area or even far-away states whose interests are involved.

Geopolitics has come to contribute in diplomatic action and the formulation of national policies by providing a means of evaluating national strength. It offers the reality of a geographic basis to political action. In practical application, national power, accessibility, location and environmental condition in the context of conflicting national interests and

---

<sup>12</sup> Dictionary of politics by M .Mahmood A.P.H Publishing Corporation 5,Ansari Road, Darya Ganj New Delhi-110002 page no 68

<sup>13</sup> A Dictionary of Modern Politics by David Robertson, third edition, Europa Publications London and New York Page no 206

<sup>14</sup> A Dictionary of Political Thought by The British Council Macmillan Press London, page no 187

objectives are analyzed in geopolitics. Geopolitics is utilizing geography in the formulation of policy. It is the common meeting ground of military geography, strategy and diplomacy.

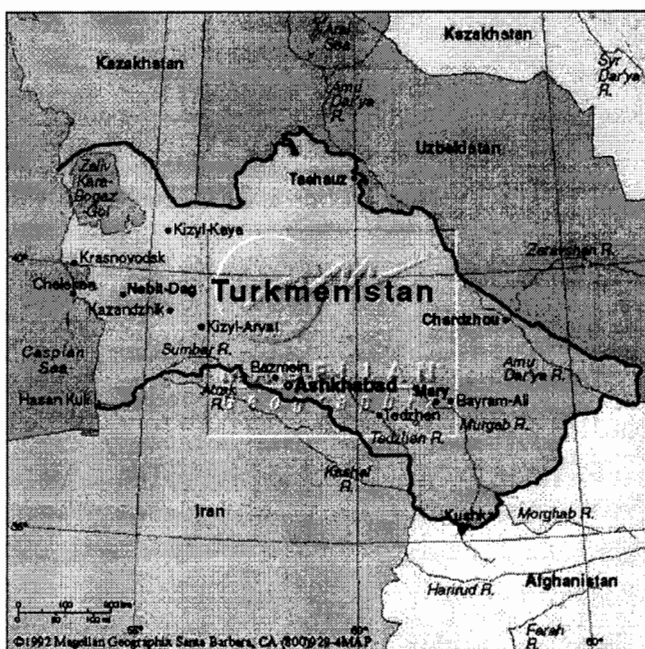
The input power in geopolitical system may be expressed in terms of resources and economic potential. It can largely be construed as an expression of human resources in all ramifications such as religion, social structure, will to survive and fight, and an expression of availability of resources and the capability of resources development of geopolitics involves the concept of relative strength of a state, which defines its ability to achieve national objectives. However, it may be noted that national power varies accessibility to power centers. The strength of a state determines the degree to which issues can be forced by diplomacy.

After this general dissertation on geopolitics, reverting to the subject, the geopolitical realities of TAPI will be discussed. It is also important to discuss the international geopolitical situation, and the role it plays in TAPI project.

## TURKMENISTAN

### 2.2 Historical background of country:

Turkmenistan was established on 27<sup>th</sup> October 1924, on the map of the world. Before this, in 1917 the central Russia was divided politically into the khanate of khiva, the emirate of bokhara and the governor Generalship of Turkistan. In 1920 the khan of Khiva was deposed and people's "Soviet Republic" was established. In 1924



the soviets of the Turkistan, Bokhara and Khiva Republics decided to redistribute their territories on nationality basis. After the distribution, Turkmenistan was accepted in USSR as union Republics like other distributed states such as Uzbekistan and Tadjikistan etc. In Russia -Afghan war, Russia was destroyed economically and politically. In the referendum of Oct.1990 the 94.1% population cast their votes in the favor of independence freedom of the country.<sup>15</sup> After the break up of the Soviet Union, Turkmenistan declared independence unilaterally in Oct.1991 Saparmurad Niyazov was elected President of Turkmenistan in 1992. He was also the Premier and the supreme commander of the armed forces.<sup>5</sup> In the referendum 1994, he was elected as a President for next five years tenure by 99.9% majority votes. In the 1999 election, the government party won the election. In 1999 Niyazov was

<sup>15</sup> Sources and issues of Muslim world by Zahid Hussain Anjum page 94 Ever New Book Palace Publisher Urdu Bazar, Lahore.

elected as the President for life by constitutional amendment. He held the official title of “Turkmenbashi” leader of all Turkmen. He died of a heart attack in Dec.2006.

### **2.2.1 Brief Introduction of Turkmenistan**

#### **OFFICIAL NAME OF THE COUNTRY:**

The official name of country is Republic Turkmenistan

#### **Capital**

The capital of the country is Ashgabat (formerly Ashkhabad).

#### **Head of the state**

After the death of Niyzov, Gurganbuly Berdymukhammedov came in to power in 2006. Though initially he was not eligible for Presidency, but due to criminal charge against constitutional successor of Niyazov ,Ovezgeldi Atayev could not become the President. Gurganbuly became acting President due to ineligibility of Ovezgeldi. He won the Presidential election in Feb 2007 and became elected president of Turkmenistan.<sup>6</sup> President of Turkmenistan enjoys the both powers, the head of state and the head of government.

#### **Constitution and Government**

A new constitution was adopted on 18 May 1992. Presidential system is working in the country. The 50-members of Majlis (Assembly) serve as the main legislative body. The 2507 members of Khalk Maslakhaty (people’s council) is the highest representative body.<sup>16</sup>

#### **National Anthem**

“Turkmenbasyan guran beyik binasy” The country which has Turkmenbashi has built, composed by Veli Muhatov.

---

<sup>16</sup> Turkmenistan Political Available Article at, <http://countryturkmenistan.tripod.com/index.blog/1248999/agenda-issued-for-peoples-council-meeting-in-turkmenistan/>, lastast visited on November 10,2008



## **Languages**

In Turkmenistan different languages are spoken. People who speak Turkmen are 72%, Uzbek, 9%: Russian, 12 %: others 7%.<sup>17</sup>

## **Religion**

Turkmenistan has no official religion<sup>18</sup>. Although the 87% of the population is Muslim and belong to Sunni Fiqh. Eastern orthodox Christian is 9% of the population. Other Minorities are also living in the country. Constitution of Turkmenistan provides them the religious freedom.

## **Currency**

The unit of currency is the Manta of 100 tenesi. The manta was devalued in 1994.

## **Geographical Features**

### **General location and borders**

The Republic of Turkmenistan is located in Central Asia, bordering with Iran in the South east, with Uzbekistan in the north. The Caspian Sea forms a natural border in the west. Turkmenistan is the second largest country in the central Asian region. The total land area of the country is 488,100 square kilometers.

### **Population of the Country and Major Cities**

The population of the Turkmenistan is estimated 5,180,000 in 2008.<sup>19</sup> In 2003, 54.6% of the population lived in rural areas. In the country 85% of the population is Turkmen, 7% Russians, 5% Uzbek and 3% other. Russian who is living in Turkmenistan has dual nationality. The united nation gives a projected population for 2010 of 5.16m. Ashgabat (capital), Turkmenabat, Mary, Balkanabad and Dashoguz are the major cities of Turkmenistan.

---

<sup>17</sup> History of Turkmenistan Available at <http://www.infoplease.com/ipa/A0108058.html>, last visited on November ,2008

<sup>18</sup> Turkmenistan Country Overview Available at, <http://www.britannica.com/EBchecked/topic/610152/Turkmenistan>, last visited on November 16,2008

<sup>19</sup> ibid

## **International Relations**

Turkmenistan is the member of United Nations, OSCE, CIS, Islamic Development Bank, The NATO Partnership for Peace, OIC, Asian Development Bank and ECO.

## **Energy Resources and Natural Resources**

- **Electricity**

Installed Capacity in 2002 was 3.9m.kw. Production was 11.20bn. KWH in 2002, with the consumption per capita 2,126KWh.

- **Oil and Gas**

Turkmenistan possesses the world's fifth largest reserves of natural gas and oil resources, natural gas reserves of approximately 101 trillion cubic feet Turkmenistan has some of the world's largest deposits of natural gas, Turkmenistan has some of the world's largest deposits of natural gas, with proven natural gas reserves of approximately 101 trillion cubic feet (TCF).<sup>20</sup>

- **Minerals**

There are reserves of coal, sulphur, magnesium, potassium, lead, barites, viterite, bromine, iodine and salt.

## **Transportation & Communications System of Turkmenistan**

- **Roads**

The length of roads 24,000 km; paved: 19,488 km; unpaved: 4,512 km (1999 est).

- **Rail**

Length of railway road in 2000, 2440km of 1520mm gauge. A rail links to Iran was opened in May 1996, and there are plans to build a further 2000 km of rail network which is still pending.

---

<sup>20</sup> Republic of Turkmenistan Available at <http://www.unece.org/operact/opera/sppled/tur.htm> Last Visited on November 16, 2008

- **Civil Aviation**

Aiva company Turkmenistan started flights from Ashgabat to Abu Dhabi, Almaty, Amristar, Bangkok, Brimingham, Delhi ,Dubi, Frakfurt,Istanbul,Kiyiv, London, Moscow and Tashkent.

- **Shipping**

In 2002 Sea going shipping totaled 46000 GRT<sup>21</sup> (including oil tankers, 6000GRT).

- **Telecommunications**

In Turkmenistan both land line and cellular facilities are available. Internet facility is also available.

**Postal Services**

Most of the people use the postal service for communication. There are 195 post offices.

**Foreign Policy of the Country**

Turkmenistan is a Muslim country and its relations with neighboring countries are cooperative. Except some disputes related to natural resources with Russia, these disputed issues are solved by negotiations. Turkmenistan wants to set up peaceful relation with all countries. Turkmenistan also institutes Strong and stable multilateral relations with Muslim countries. It is not hostile country and its relations with developed countries are well-built.

**Imports and Exports**

Main imports manufactured goods are processed food, metalwork, machinery and parts. Main exports: gas, oil, and cotton. The main import suppliers in 1998 were Ukraine, Turkey, Russia, Germany and the USA. The principal export countries are Iran, Turkey, Azerbaijan, UK and Russia.

---

<sup>21</sup> A measure of volume answers.yahoo.com/question/index?qid=20070321125051AArbRkR - 69k

## **Industry**

The main industries of the country are gas extraction, chemicals, oil refining, and make up of machinery, fertilizers, textiles and clothing.<sup>22</sup>

## **Internal Situation of the Country**

It is peaceful country and no freedom fighter movements exist. In December 2000, government announced to provide the free electricity, water and gas to their citizens.<sup>23</sup> Now they are enjoying these facilities. The problem of unemployment in Turkmenistan has become a national problem. It is difficult to estimate the number of people who are unemployed but not counted in the official statistics. Lot of educated people who were unemployed started an agitation against government in 1995, and 27 were killed in capital by law enforcement agencies.

---

<sup>22</sup> The Stateman's Year Book 2007-08. The Politics, culture and Economics of the World, by Bary Turner (Palgrahe Macmillan).

<sup>23</sup> Sources and issues of Muslim world by Zahid Hussain Anjum page 94 ,Ever New Book Palace Publisher Urdu Bazar, Lahore.

## AFGHANISTAN

### 2.3 Historical Back Ground of Afghanistan

Afghanistan is located in central Asia. It has long history, many invaders have come here. Many external forces and local entities struggled a lot in order to set power and authority to conquer it till 18<sup>th</sup> century. In 1747 Afghanistan became an autonomous state. In Nov, 1933 Zahir shah became the king and ruler for 40 years. In 17<sup>th</sup> July 1973 a military coup declared it



a republic. In 1978 the supporters of USSR came to rule during a bloody coup /redline. The communist leader signed on economical and military agreement with USSR, due to this USSR brought its army in Afghanistan. In 14<sup>th</sup> Sep 1979, Noor Muhammad Tarki was beheaded and Hazeez Ullah became new President, later on he was also over thrown on 27<sup>th</sup> December 1979. After this, USSR prevailed all over Afghanistan.<sup>24</sup> Taliban started a war against USSR with the help of Pakistan, Iran, Saudi Arabia and America, the war continued for many years. In 1988 according to Geneva Convention agreement USSR withdrew the troops in 1979 a civil war started in Afghanistan, the Taliban stood against the government. In 1994 Taliban started invading on major parts of the Afghanistan, especially Kabul and established an interim government. Muhammad Rabbani became the premier. During this

<sup>24</sup> Afghanistan under Soviet domination 1964-1991, 3<sup>rd</sup> edition London,1992,Hyman,A

period Afghanistan was declared an Islamic state. UNO did not accept the Taliban government and imposed many economic restrictions on Taliban as well as it was declared that all the training institutions should be closed and assets of Al-Quida should be frozen. Afghanistan was blamed for terrorist attacks on the world trade center and pentagon on 11<sup>th</sup> September 2001.<sup>11</sup> Further more the responsibility of the attack was thrown on the shoulders of Osama Bin Laden. USA demanded to handover Osama but in vain. At last in 2001 USA launched air strikes on Afghanistan. In 13<sup>th</sup> Nov 2001, Northern alliance have occupied on Kabul. Hamid Karazi took office in Kabul on 22 December 2001. During the air strikes Afghanistan had to see destruction of many buildings which were dashed to the ground. But situation is not stable yet due to suicide attacks on security forces. Now the United States is providing the funds for rehabilitation and reconstruction of Afghanistan.

### **2.3.1 Brief Introduction of Afghanistan**

#### **Name of the country**

The official name of the country is Islamic republic of Afghanistan.

#### **Capital**

The capital of the country is Kabul.

#### **Geographical features of the country**

Afghanistan is located in Asia and the sub region is central Asia. Its important links with neighboring countries are religious, ethno-linguistic, and geographic. Afghanistan is bounded in the south and east by Pakistan which is the longest border known as Durand line. Durand line is 2430 km long, north by Turkmenistan (744 km), Uzbekistan (137 km) and Tajikistan (1206). It has further 76 km border east by china and 936 km west by Iran.

## **Afghanistan and Pakistan relation**

Afghan –Pak relations are not friendly since 1947. The major bone of contention between the countries is Durand Line. Afghan government does not accept the Durand Line as international border which was drawn up by British Government in 1893.<sup>25</sup> The Durand Line is a sensitive issue for Pakistan, which has seen many attempts by both Pushtun secessionists and Afghan irredentists to carve away the chunks of frontier. A major reason for the continuation of this conflict is the ignorance and unawareness of some leaders as well as the masses of both countries about the general aspect of the original Durand Line agreement.

The second important reason of clash is the Afghans support for the “Pakhtoonistan’ movement” in Pakistan North West Frontier Province (NWFP).<sup>26</sup> Third important hurdle in peace relationship is the lack of trust from the both sides. Afghanistan laid the blame on Pakistan, for providing havens for Taliban. In January 2007, Afghanistan produced a video of captured Taliban, in which spokesmen alleging that the group leader, Mulla Umer was under Pakistani protection in Quetta. Pakistan rejected the claim. Another major factor is the India’s deep interest in Afghanistan internal affairs, India wants to destabilize the Pakistan through Afghanistan and therefore Afghanistan official declaration is always against the Pakistan government.<sup>27</sup>

Now due to the existence of American army and the Karzi government policies, instability is prevailing over Pakistan. It is for the first time in Pakistan, that attacks has been launched on army units by suicide bombers. Pakistani nation, the security forces, the law enforcement

---

<sup>25</sup> Political Science by Ahsan-ul-Allah Saqib, Dogar publisher Urdu Bazar Lahore

<sup>26</sup> Pak-Afghan relations: The Durand line issue by Ahmad Shyeq Qassem; Institute of Policy Studies vol, 5, No 2 April 2008.

<sup>27</sup> Delhi-Kabul ties: implications for the region by Humrar Iqbal; vol xxvii No.6 June 2008; Institute of Regional Studies. Islamabad.

agencies had to pay the price as result of the shameful act of terrorism. It is time for both the countries to solve their issues through conciliation. USA seems be playing major role in for improving the law & order situation in Afghanistan and Pakistan .A stable Afghanistan would not only help in keeping away the menaces of refugees, drugs, weapons etc rather it would also help in doing trade with central Asia and in construction of TAPI gas pipeline from Gwader through Afghanistan.

### **Head of the state**

The current head of the state is Hamid Karazi. He was sworn as chairman of the interim government in 2001, taking the title of President in 2002. In his maiden speech as a president, he vowed of resignation if failed to introduce the forceful Islamic government. He escaped in hair breadth assassination attempt in Kandahar but after two months Vice President Haji Abdul Qadir had been assassinated by two terrorists. The current two Vice Presidents are Hamid Zia Masood and Karim Khalili. In October 2004, Karazi won outright the country's first ever democratic election with 55.4% of votes cast.

### **Constitution and Government**

The loya Jirga established the transitional Islamic State of Afghanistan. A constitutional commission was established with UN assistance to help the constitutional loya jirga draft a new constitution. A draft constitution was produced for open discussion in Nov, 2003 .It was approved by Afghanistan's loya jirgaon in Jan, 2004. Under the new constitution a strong presidential system was introduced. President is the head of the state and also the head of government who is assisted by the two Vice Presidents. The parliament is bicameral which has an upper house and lower house. The upper house is called house of elders (Meshrano Jirga) which has of 102 members and the lower house is called house of people(Wolesi Jirga) which's has 249 members directly elected for five years terms.<sup>28</sup>

---

<sup>28</sup> The Statesman, Year Book 2007-08.The Politics, Culture and Economics of the World, by Bary Turner (Palgrahe Macmillan)



## **National Anthem**

'Daa watan Afghanistan di' (This land is Afghanistan): words by Abdul Bari Jhani' tuned by Babrak Wasa.

- **Languages**

The official languages are Dari (Persian) and Pashto.

- **Religion**

Afghanistan is an Islamic state. Majority of the population is Muslim. Approximately 86% of the population is sunni Muslims, and 9% Shias. In the Taliban regime it was compulsory for minorities in Afghanistan to wear a yellow identification badges.

- **Currency**

A new currency was introduced in Oct 2000, called Afghani.

## **Population of the country and major cities**

The estimated population in 2005 was 29.9m but in 2007 it reached to 31, 88,923. In July 2008 estimate of total Afghan population was 32,738,376. According to UN projected population estimate, the population of Afghanistan may cross the figure of 35.64m in 2010. Majority of the population is living in rural areas. According to non governmental humanitarian organizations there were almost 1.2m persons were displaced in Afghanistan. An Estimated 4m. persons have sought asylum in neighboring countries. The major cities in the country are, according to population size, Kabul, Kandhar, Harat, Maza-e Sharif, Jalalabad, Ghazni and Kunduz.<sup>29</sup>

## **International Relations**

Only three countries recognized the Taliban government and established a diplomatic relation. Those countries were Pakistan, Saudi Arabia and the UAE. UN sanctions were imposed in 1999 but were withdrawn after the collapse of the Taliban regime. Now Afghanistan is a member of the United Nations, IOM, Islamic Development Bank, OIC,

---

<sup>29</sup> Afghanistan History and Politics Available at <http://en.wikipedia.org/wiki/Afghanistans> Last Visited on November 16,2008

Asian Development Bank,, Colombo plan and ECO. In 2003, Afghan government submitted the application for membership of WTO which is still pending for negotiations.

### **Energy and natural resources**

- **Electricity**

In 2000 there were six generating plants, four of which were hydro electric. Installed capacity was 0.7m.kw in 2002.production was estimated 567m.kwh.

- **Oil and Gas**

Natural gas reserves were 99bn.cu.metres in 2002, production in 1998 was 137m.cu.metres

- **Minerals**

The minerals are copper, coal, uranium, gold, silver, chromites, tale, barites, sulfur, lead, iron ore, salt, precious and semiprecious stones.

### **Transportation & communication system of Turkmenistan**

- **Roads**

There were 20,720 km of roads in 2001, of which 3,120 km were paved. Majority of the roads are in poor condition and destroyed due to military action.

- **Rail**

In Afghanistan no established network of railway. A trans-afghan railway was proposed in an afghan –Pakistan-Turkmen agreement of 1994.

- **Civil Aviation**

There is an international airport at Kabul: name of airport is Khwaja Rawsh

- **Shipping**

There are practically no navigable rivers.

- **Telecommunications**

Both land line and cellular phone facilities are available.

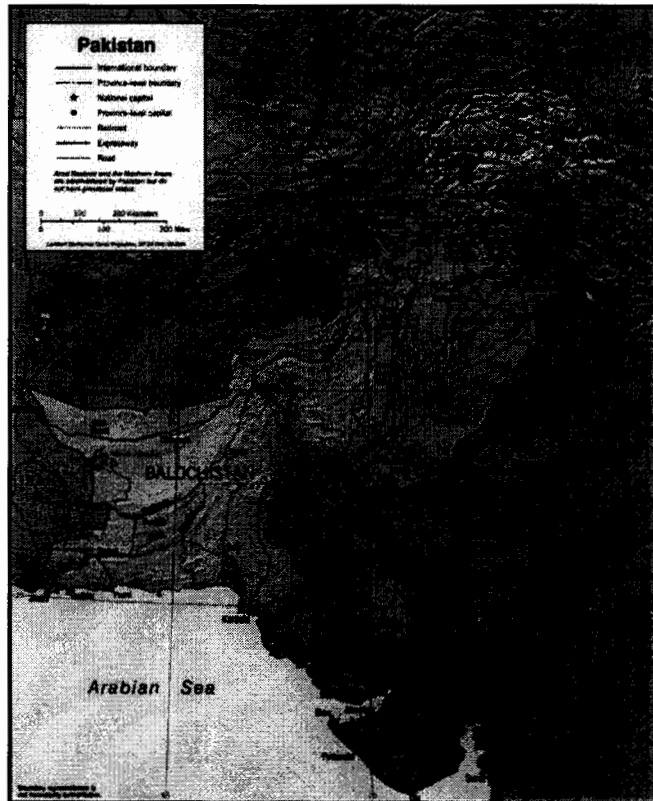
- **Postal services**

In 2003 there were 313 post offices.

## PAKISTAN

### 2.4 Historical Back Ground of Pakistan

Pakistan was founded because most of the inhabitants were Muslims. They wished to live according to their own beliefs, which enjoin them to believe in Allah, creator of the whole universe and accept Hazarat Muhammad (PBUH) as His last Prophet, Pakistan came into being on 14<sup>th</sup> August 1947. Before this India and Pakistan were ruled by British Govt. After partition Quid-e-Azam Muhammad Ali Jinnah became the first Governor General. In 1948 the first war broke out between India and Pakistan over dispute of Kashmir territory. Liaqat Ali Khan was assassinated in 1951. Many times Pakistan's assemblies have been dissolved and martial law has been imposed. In October 1954

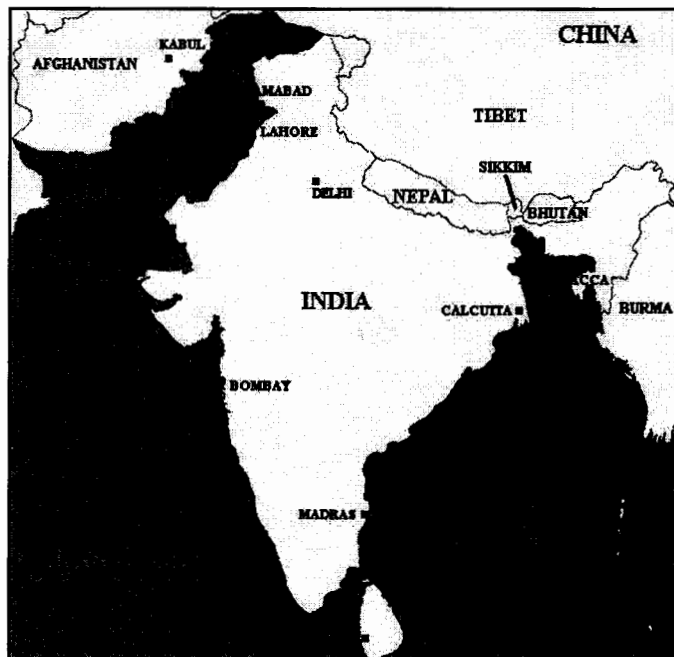


Governor General Ghulam Muhammad dissolved the 1<sup>st</sup> constitutional assembly and established a new constitutional in lieu of this. In 1958 President Sakindar Mirza imposed a martial law and referred power to General Ayub Khan and declared him self martial law administrator. In 1962 General Ayub Khan gave new constitution to the Pakistani nation and abolished the martial law in 1965. Presidential election was conducted and Ayub Khan was elected as President by basic democracy system. In 1965 a war broke out between Pakistan & India. In 1966 Tasqand treaty was signed by both the countries in order to call back their

armed forces. The foreign Minister of Pakistan Z.A Bhutto opposed the treaty and resigned the ministry. He established the new political party under the name of Pakistan Peoples Party. Bhutto got popularity during this period. Chaotic & muddled state prevailed over Pakistan due to this General Yahya Khan imposed martial law in 1969.

In 1971 third war broke out between Pakistan and India,<sup>30</sup> in which Pakistan was defeated. In 1971 East Pakistan was also separated and became independent state under the name of Bangla Dash.<sup>31</sup> Another important factor of the independence of East Pakistan was the hegemony of successive military rulers from the West Pakistan who refused to accept their popular mandate. People raised slogan against Yahya Khan in result of this he had to resign, after this Z.A Bhutto became first civil martial law administrator, he introduced many reforms. In 1973, new constitution was passed by the parliament. Zia ul Haq was appointed as Chief of Army Staff by Z.A Bhutto. Chief of army staff imposed the martial in the country and elected premier was arrested. An important event happened in that regime was the regicide of Bhutto .It is also known in a history as judicial murder. In 1985, general election

was held in martial law regime on non party basis. Pakistan people's party not participated in election. Muhammad Khan Janjo was elected as Prime Minister by parliament. On 17<sup>th</sup> August 1988 Zia-ul-Haq died in air crash, due to that tragedy Ghulam Ishaq became President in lieu of Zia-ul-Haq. He conducted election and daughter of Bhutto



came into power as first lady Prime Minister of the country and Muslim world but the

<sup>30</sup> [Alexander's Gas and Oil Connections 2000](#)

<sup>31</sup> <http://en.wikipedia.org/wiki/Pakistan>

government of PPP could not complete constitutional tenure and in 1990 president Ghulam Ishaq dissolved the national assembly due to corruption and serious misconducts. In next election Nawaz Sharif party came into power but this assembly was also dissolved by President Ghulam Ishaq Khan in 1993. In 1993 PPP came into power again but their elected President dissolved the assembly due to heinous corruption. In 1996 Nawaz Sharif became Premier again and party had 2/3 majority in National Assembly. Pakistan Muslim League attacked on Supreme Court of Pakistan which was serious misconduct by government party. Nawz Shariff government could not sustain longer and in October 1999 General Pervez Mushraff declared emergency in the country and became chief executive, after that became President of Pakistan. He remained in power till 2008.<sup>32</sup> In February 2008, in general election PPP came into power without its Chairperson who was assassinated in Rawalpindi during election campaign. Yousaf Raza Gulani is Prime Minister and after the resignation of general Pervaiz Mushraff Co-chair man of PPP Asif Ali Zardri became President. This Government is also not stable due to judicial crises, energy crises, water crises and the economic crises. Corrupt people who are the production of National Reconciliation Ordinance are executive of the state.

#### **2.4.1 Brief Introduction of Pakistan**

##### **Name of the country**

Name of the country is Islamic republic of Pakistan.

##### **Capital**

Capital of the country is Islamabad.

---

<sup>32</sup> Pakistani President Musharraf Resigns Amid Impeachment Threat Avail at, <http://www.foxnews.com/story/0,2933,405221,00.html>, last visited on November 27, 2008

---

## Geo-graphical feature of the country

Pakistan is located in south Asia and borders central Asia and the Middle East. Pakistan is bounded in the west by Iran, east by India, North West by Afghanistan, north by China and south by Arabian Sea. The area (excluding the disputed area of Kashmir) is 796,096sq.km.

## Founder of Pakistan

Quaid .e.Azam Muhammad Ali Jinnah the founder of Pakistan was born in Karachi in 1876. For the study of law Muhammad Ali got admission in “Lincoln’s Inn”. He became a Barrister at the age 20. Mr. Jinnah was interested in Politics rather than practice as a lawyer. In starting Mr. Jinnah made all possible efforts to keep the Hindu Muslim Unity. The nation gave him the title of Quaid-e-Azam which means the great leader. Due to great leadership of Mr. Jinnah on August 1947, the Indian Subcontinent was divided .Quaid-e-Azam was the first Governor General of Pakistan. Quaid-e-Azam was at Ziarat near Quetta when his health completely broke down. He was flown to Karachi on 11<sup>th</sup> of September 1948 and the same night he died.<sup>33</sup>

### 2.4.2 India Pakistan Relation

Both India and Pakistan want that Kashmir become part of their countries. Pakistan claims for Kashmir, because the partition of subcontinent was based upon the principal of religious community. Therefore the majority of the population is Muslim and they want to join Pakistan. Indian claims for Kashmir because on the



Hindu Ruler of the Kashmir signed a Treaty to join India at the time of independence 1947. According to India Kashmir is not a territorial dispute, Kashmir legally belongs to India since

<sup>33</sup> Quaid –E-Azam Muhammad Ali Jinnah Article Available at <http://www.zahid13.20m.com/QUAID.htm>, last visited on November 28,2008

its accession in 1947. Pakistan wants to plebiscite in Kashmir according to the UN Resolution but India refused. Three wars have been fought between Pakistan and India due to Kashmir issue. Four other major crises have happened between the countries after major wars. First is the Brasstack crisis of 1986-87, launched in November 1986, Brasstack, was a year-long Indian military exercise that had spared a serious three-month crisis. Although, war was somehow overlaid. Second is the compound crises of 1990. Only three years after Brasstack, India and Pakistan had again locked horns with each other. India accused Pakistan of supporting the Kashmir militant separatist groups; while Pakistan criticizes India for the crackdown in India administered Kashmir and called for a plebiscite there. Third with regard to the out break of the kargil conflicts, we learn from the narrative that three month after the Lahore summit of February 1999, the armed forces of India and Pakistan clashed along the line of control in the kargil Dras region of the state Jammu and Kashmir. It was small war but it had resulted in numerous casualties and had generated global interest in its outcome. Fourth conflicts was deals with border confrontation 2001-02. The point to be noted in this context is that on December 13, 2001, Indian parliament was attacked by some unknown terrorist groups resulting in many casualties. India concludes the Pakistan based terrorist groups were responsible but Pakistan had refused to take action against Indian mentioned groups without authentic evidence.<sup>34</sup>

There are many other issues such as Siachen, Sir Creek, Baglihar, Wullar Barrage and Kishenganga projects. The nuclear issue remains unresolved.

Now their have been dialogue under way on the matter of peace and security, including confidence building measures and Jamun & Kashmir. CBM's such as cease fire on line of

---

<sup>34</sup> Four Crises and Peace Process by P.R Chari, Dr Pervaiz Iqbal Cheema and Stephan P.Cohen Washington DC. Brooking Institute Press, 2007 page 252

control opening of Line of Control, Sirinager, Muzzafarabad and Poonch ...Rawalakot bus services for trade on Srinagar.....Muzzafarabad rout has been put in place.

*“Pakistan did not agree to permit any territory under its control to be used to support terrorism at any cost while India agreed to peace full settlement of Kashmir issue to the satisfaction of both sides. Iran-Pakistan-India Gas Pipe Line and Turkmenistan Afghanistan, Pakistan India Gas pipe line will also helpful for peace in the region”.*<sup>35</sup>

Following the attacks on Indian hotels in Bombay on November 27, 2008, which too was blamed on Pakistan. This is fifth major crises and situation is still tense between the countries.

### **Head of the State**

Asif Ali Zardari was elected as President of Pakistan by landslide majority. He was also Co-Chairman of PPP. During the government of late Premier Banezir Bhutto, he was minister in BIBI cabinet.<sup>36</sup>

### **Constitution and Governments**

The constitution of 1973 is working in the country. Duration for elected Government is five years. Head of the state is also elected for five years term by a colleague of parliamentary deputies, senators and members of the provincial assemblies. Parliament is bicameral which is consisting of senate (upper house) and national assembly (lower house). Senate is permanent institution and members of Senate are 100. Members of National Assembly are 342 who are elected for five years. Prime Minister is the head of Government and also the leader of the Parliament.<sup>37</sup>

### **National Anthem**

Pak Sarzamin Shadbad, (blessed be the sacred land) words by Abu Asr Hafeez Jaulandri, tune by Ahmad G.Chaagla.

<sup>35</sup> Conflict Transformation Approach To Indo-Pakistan conflict By Syed Imran Sardar. Vol xxvii Nos.8-9 August –September 2008. Institute of Regional Studies Islamabad

<sup>36</sup> President Islamic Republic of Pakistan Article Available at <http://www.presidentofpakistan.gov.pk/> Last Visited on December 2,2008

<sup>37</sup> <http://www.pakistani.org/pakistan/constitution/preamble.html>

TH 6614



## **Languages**

Official language under the constitution is Urdu. Languages which are recognized are English, Balochi, Pashto, Punjabi, Sindhi and Saraiki.

## **Religion of the country**

Pakistan was created as Muslim state. The Muslims are mainly Sunni, with an admixture of 15-20% Shia. Muslims 93%, Christian 2%, Hindus, Parsees, Buddhists, Qadians and others.

## **Currency**

The name of currency is Pakistan rupee (PKR) of 100 paisas.

## **Population of the country and the major cities**

Pakistan is a densely inhabited country and has become the second largest Muslim country with respect to population in the world after Indonesia. In 2008 the estimated population was 172,800,000. The major cities of Pakistan according to population are Karachi, Lahore, Faislabad, Islamabad, Peshawar, Multan, Quetta.<sup>38</sup>

## **International Relations**

Pakistan is the member of united nations, world trade organization, international Atomic Energy Agency, the commonwealth, IOM, inter parliamentary union, Islamic Development Bank, OIC, Asian development , the Colombo plan, Economic co-operation organization and SAARC.

## **Energy and Natural Resources**

- **Electricity**

Install capacity in 2002 was 17.46m.kw, of which 4.83m.kw was hydro-electric, 12.17m.kw was thermal and 0.46m.kw was nuclear.

- **Oil and Gas**

The French oil company total agreed a US\$3bn.deal with the government in July 2003 for exploration in Arabian Sea. Crude oil production during 2007-08 has been about

---

<sup>38</sup> Major Cities of Pakistan Available at <http://pakistan.saarctourism.org/cities-of-pakistan.html> Last Visited on December 2, 2008

70165 barrels per day and gas production of about 3965MMCFD. A total of 75 wells both in public and private sectors have been drilled during the 2007-08 which of 27 exploratory and 48 development / appraisal wells. In 2009 natural gas reserves are estimated 29.67 Trillion Cubic Feet.<sup>39</sup> The petroleum policy has been revised to accelerate the exploration and production activities by encouraging the foreign investment.

- **Minerals**

These are the minerals in Pakistan Rock salt, gypsum, china clay, fire clay, chromites, barites, fullers' earth, bauxite, magnetite, phosphate rock, silica sand and soapstone, Coal, limestone.

## **Transportation and Communication system of Pakistan**

### **Roads**

In 2001 there was 249,972 km of roads. There are ten motorways providing link among Pakistan's major cities. These include the M-1 from Islamabad to Peshawar, the M-2 from Islamabad to Lahore, the M-4 from Islamabad to Multan and the M-9 from Karachi to Hyderabad.

### **Rail**

In 2000 Pakistan Railway had a route length of 7,791 km mainly on 1,676 mm gauge, with meter gauge line.

### **Civil Aviation**

There are international airport at Karachi, Islamabad, Lahore, Peshawar and Quetta. National Air line of Pakistan is Pakistan international airline. Private airlines are also operating in Pakistan.

---

<sup>39</sup> Daily Jang April 15, 2009 Report by Shaheen Hasan

### **Telecommunications**

Both land line and cellular phone companies are working in the country. Now both land line and cell phone companies are not owned by government. These are multinational companies which are providing telecommunication services. Telecommunication services are cheaper as compare to other countries. Now cellular companies are providing GSM service more spectrum is not available for GSM. Now under the new telecommunication policy government is bidding the 3G-generation.

### **Postal services**

In Pakistan 12,343 post offices exist.<sup>40</sup>

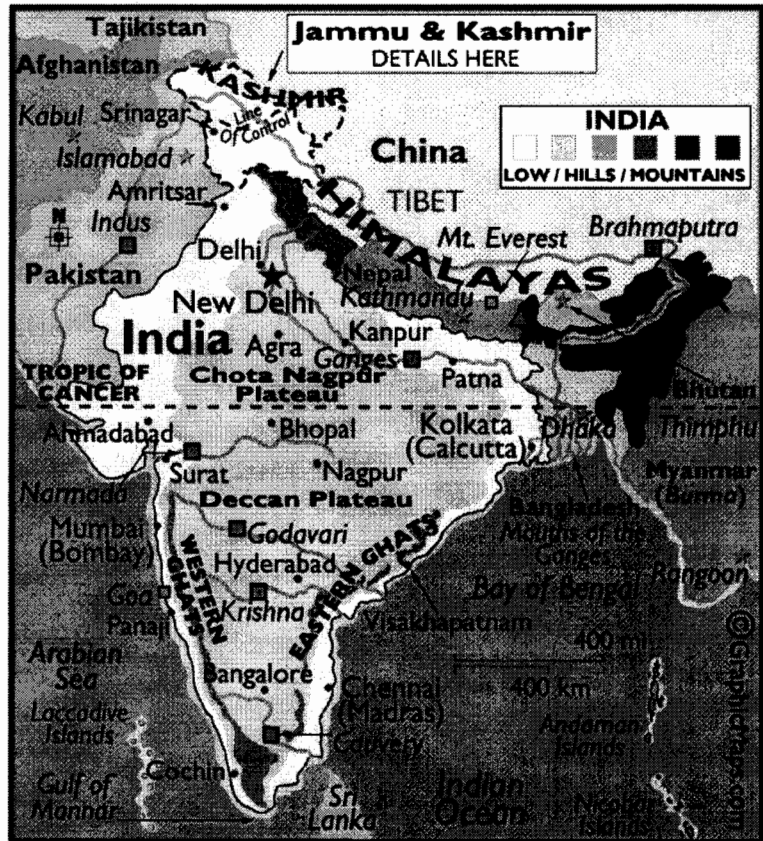
---

<sup>40</sup> Pakistan Economic Survey 2008-09 page 224

## INDIA

### 2.5 Historical Background of India

The British came in Subcontinent in early 17<sup>th</sup> Century as traders and eventually became ruler of India. They took the region of Government by overthrowing the Muslim rulers who had ruled Subcontinent for 650 years. In the courts of Islamic History, only 9 large and small empires had ruled in Subcontinent. Of these merely four (The Mauryan, Tughluk, Mughal and British) ruled vast areas. In order to understand the creation of Pakistan, a glimpse into the history of Subcontinent seems necessary.



India came into being on 15 August 1947, before the partition, Pakistan and India was combined and it was called Subcontinent. The British were ruling on Subcontinent, Hindus and Muslims were the inhabitants of Subcontinent, they were two different nations, having different religion, economic system and social customs. It was difficult for the British to yoke these two contrary nations together. The British rulers were reluctant to quit the powers, due to this declaration India came into existence and Jwahr Lal Nehru became its first Prime Minister. He remained Premier from 1947 to 1964. After Lal Nehru, Bahadur Shastri became

the Prim Minister. Indra Ghandi, who was the daughter of Nehru, became Premier in 1996. Mrs. Ghandi Government abolished the titles and pensions which were granted to Indian princes, at the time of independence in order to compensation for merging their states Hindu India. A communal unrest prevailed over India, on this critical and unstable situation emergency was imposed by Mrs. Ghandi from 1975 to 1977. In 1977 election held, in which Moraji Deasi won, he made collation with some other parties which was seen shattered. In 1980 Mrs. Ghandi came into power again but unfortunately she was assassinated by Sikh extremists due to Golden Temple issue, after the assassination her son Rijiv was chosen by the Congress in order to take the place of Indran Ghandi. Rijiv Government was brought down in 1989 by allegations of corruption and he was followed by V.P.Sing.

In election of 1989, Rijiv Ghandi won more seats but remained unable to form a government but on the other hand Janato Dal formed a Government with the coalition of Hindu Nationalist Bhartiya Janata Party. The coalition collapsed in 1990 and Janato Dal controled the country for a short time. Rijiv Ghandi was assassinated in 1991. In next election Congress got majority and formed a Government with help of P.V. Narasimha. This Government completed five years tenure. The Hindu Nationalist Bhartiya Janata Party won with the majority in 1996 election. B.J.P formed a Government with coalition that lasted for 13 days. After this, 14 Party Coalition came into being in ordered to form new Government which was called United Front.

The Congress withdrew Support for the united front in November 1997. Next time the election held in 1998, in which B.J.P got more seats but no one could form Government without the coalition of Vajpayee. In 1999 the first B.J.P led coalition Government fell apart. After this Election held in September, National Democratic Alliance a new coalition led by the B.J.P seined a majority to formed a Government in October 1999. Vajpayee was elected as Prime Minister of India by the Parliament. His Government was successful in reforming the economy and improving the relations with Pakistan. Unexpectedly the BJP could not win

in election of 2004. On the other hand Indian National Congress under Sonia Gandhi came in to power. Manmohan Singh was elected as Premier of India. Head of the state in that tenure was Abdul Kalam.<sup>41</sup>

### **2.5.1 Brief Introduction of India**

#### **The Founder of India**

Mohan Dass Karam Chand Gandhi was the founder of India. He was a recognized leader of the Hindus. He induced them to face hardships. The Hindus gave him the title of "Mahatma", the great soul, His full name was Mohan Dass Karam Chand Gandhi. He was born in Bharat. Young Gandhi went to England for higher education. He came back in India as a Barrister. He started practice, but he did not become a good lawyer. After some time he went to South Africa, where he found thousands Hindustani settlers but they did not enjoy the social and political right. After the struggle of Gandhi, South African Government agreed to give some rights to them. He made great efforts in order to bring about the unity between Hindus and Muslims but his efforts did not bear fruit due to other Hindu leaders. In January 1948, while he was addressing a prayer meeting in Delhi, was shot dead by a fanatic Hindu.<sup>42</sup>

#### **Name of the country**

Official name the country is Bharat (republic of India).

#### **Capital**

The capital of the country is New Delhi.

#### **Geo-Graphical feature of the country**

India is big democratic country in the world. India is bordered on northwest by Pakistan which was also a part of India before partition of 1947, north by China, Bhutan, Nepal, south and south west by Indian Ocean and east by Myanmar.

---

<sup>41</sup> Article on Abdul Kalam Avail at [http://en.wikipedia.org/wiki/Abdul\\_Kalam](http://en.wikipedia.org/wiki/Abdul_Kalam)

<sup>43</sup> People fighting for independence Written by Heens Putz Available at <http://dmt.fhjoanneum.at/projects/jg02/nmt1/PutzHa1/docu.doc>, last visited on December 7, 2008

## **Head of the State**

Smt. Pratibha Devisingh Patil was born in December 19, 1934 at Nadgaon village of Jalgaon District, Maharashtra.

Smt. Patil assumed office as the 12th President of India on July 25, 2007. She is the first woman who has been elected as a president of India.

Immediately prior to election as the President of India, Smt. Patil was the Governor of Rajasthan from November 8, 2004 till June 21, 2007.<sup>43</sup>

## **Constitution and Government**

At the time of independence, Indian Government was run through the Government of India Act with necessary amendments. The current constitution of India was passed by the Parliament on 26 Nov, 1949 and came into force on 26 Jan, 1950. The constitution of India is not rigid therefore it has been amended 93 times.

India is a Republican country and Parliament form of Government is working. Head of the State is President and head of the Government is Prime Minister. India consists of a union of 28 States and seven Union Territories. Head of the each province is Governor who is appointed by the President for the tenure of five years. The head of the Government in province is Chief Minister who is elected by Provincial Assembly. The Parliament consists of the President, the Council of the States (Rajiya Sabha) and the House of the People (Lok Sabha). The upper house is called Council of States and lower house is called House of People. The members of the Council of States are elected by indirect method and all elected members of the legislative assembly of the States of India are Electoral College for Upper House election. Upper House is permanent body not liable to dissolution but one-third of the members retire every two years. The members of House of People are elected for the term of five years.

---

<sup>43</sup> Profile of Smt. Pratibha Devisingh Patil Indian President Available at <http://presidentofindia.nic.in/profile.html> Last Visited on December 10, 2008

### **National Anthem**

Jana-gana-mana (thou art the ruler of the minds of all people): words and tuned by Rabindranath Tagore.

### **Languages**

The constitution declares that the official language of the Union is Hindi. The English is also the official language of India. According to the Official Languages Rules 1976, an employee may present record in Hindi or English without being required to furnish a translation. The following 18 languages are protected under the Eight Schedule to the constitution, Assamese, Bengali, Gujarati, Hindi, Kannada, Kishmiri, Konkani, Hindi, Kannada, Konkani, Malayam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindi, Tamil, Telugu, Urdu.

### **Religions**

India is a secular state, worship is permitted of any kind and there is no national religion of the state according to the constitution but the practical situation is quite different because minorities are not secure from Indian terrorist organization. The Hindus are in majority and they can not afford other religions, the demolition of Babri Mosque and burnt of church are examples of their thoughts. Lot of Muslims were killed in Gujarat by Hindus

India is third major country where Muslims are living after Indonesia and Pakistan. Other religions are Christians, Sikh, Buddhists and Jains.

### **Currency**

The name of currency is Indian Rupee of 100 Paisas.

### **Population of the country and Major Cities**

The Indian population in 2001 was 1,028,610,328 but in 2005 estimated population was 1,103.37 million. The United Nation gives a projected population for 2010 of 1,183.29 million. By 2025 India is expected to have a population of 1,591.15 million, it is projected to overtake China as the world's most populous country around 2030. Therefore its energy demands also increase according to population.



## **Energy Resources and Natural Resources**

Production of electricity in 2001 was 533.3bn.kwh, of which approximately 81.7% came from thermal station, 3.4% from nuclear station and 14.5% from hydro-electric station. In 2003 there were 14 nuclear reactors in use. On 2nd March, 2006 India and US signed the Indo-US Nuclear Pact on co-operation in civilian nuclear field. On its part, India would separate its civilian and military nuclear programs, and the civilian programs would be brought under the safeguards of IAEA. The United States would sell to India the reactor technologies and the nuclear fuel for setting up and upgrading its civilian nuclear program. Majority of the Indian villages still have no electricity. India aims to have electricity in every household by 2012 and now it is possible for India to supply electricity according to demands due to civilian nuclear deal.

## **Oil and Gas**

The main fields of oil and gas are in Assam and in Gujarat and offshore in the Gulf of Bombay high field. The Oil and Natural Gas Corporation Ltd and Oil India Ltd are the only producers of crude oil. India imports 70% of oil for its requirement. The production of gas comes from the Western offshore area. The on-shore fields in Assam, Andhra Pradesh and Gujarat States are other major producers of gas. The smaller quantities of gas are also produced in Tripura, Tamil Nadu and Rajasthan States. The gas produced by ONGC and a part of gas produced by the JV consortiums is marketed by the GAIL (India) Ltd. Gas produced by Cairn Energy from Lakshmi fields and Gujarat State Petroleum Corporation Ltd. (GSPCL) from Hazira fields is being sold directly by them at market determined prices.

## **Minerals**

India is producing these minerals, coal, lignite, salt, chromites, manganese ore, aluminum, silver, Gold, lead, zinc, limestone, apatite, phosphorus, dolomite, magnetite and uranium.

## **Transportation and Communication system of India**

### **Roads**

There are six main classes of roads in India national high ways, state high ways, other public works department roads, panchayati raj roads, urban roads and projects roads. National high ways is the main source of road transportation among the Capitals of the Indian states. It also connects with the major ports of the country and foreign high ways. The states high ways are the main trunk roads. A ten-year highway plan is currently under way that aims to have India's main cities, ports and regions linked by more 13,000km of highways by the end of 2009.

### **Rail**

The total length of Indian railways network is 63,000km, with the Northern zone having the longest network of 11,040km. Indian railway system is government-owned under the management of Railway Board.

### **Civil Aviation**

The main international airports are at Bombay, Calcutta, Delhi, Madras and Thiruvananthapuram. The main Air Corporations are Air India, Indian Airlines and Jet Airways.

### **Telecommunication**

Both land lines and cellular services are available in India. Internet facilities are also available in India. The telecommunication system is in the hands of telecommunications department. Some public sector cellular companies are also serving in the country.

### **Postal Services**

India has more post offices than any other country. There were 155,618 post offices.<sup>44</sup>

---

<sup>44</sup> The Stateman's Year Book 2007-08. The Politics, Culture and Economics of the World, by Bary Turner (palgrahe Macmillan)

## 2.6 Introduction of Central Asia

With the sudden and dramatic collapse of Communism in 1991, and the break up of the Soviet Empire, there sprang up five new countries. In the beginning world found it difficult to familiarize them with this new geographical and political jigsaw puzzle. Following Moscow's abrupt exit, Western embassies began to open up in the brand new cities. For it was no secret that in Central Asia lay some of the fabulous oil and gas reserves, rich hoards of gold, silver, copper, zinc, lead and iron ore.

Central Asia consists of five independent Republics, Kazakhstan, Uzbekistan, Turkmenistan and Tajikistan. It covers an area of 3,994,300 Square kilometers which includes some of the most populated regions in the world. It is also covered with wide deserts and some of the

highest mountain range in the world. Its population is 51 million, which has more than 100 ethnic groups from German and Austrians to Tibetans and Koreans. Central Asia is locked between Russia in the North, China in the east, Afghanistan, Pakistan and India to the south and Turkey and Iran to the west.



It has become a game board on which the great powers move to secure their interests. The main purpose of the other great powers is to get control over Central Asian pipelines; it means control over the entire region and to secure supply of energy for future. Oil and gas from Central Asia have been channeled into Russian network of pipelines. Russia wants to extend existing pipeline routes and develop new links with Central Asia. China and India, two of the most populous nations are also showing their keen interests in central Asian

resources to support their growing energy demand. Pakistan has also utmost interest in lines, but it is doubtful whether India would tolerate a pipeline running through Pakistan with the prevailing situation in Kashmir and the constant threat of nuclear conflict. In short Central Asia has got much importance in the world with respect of natural gas resources, therefore all great powers are struggling to establish cordial relation with Central Asian states.

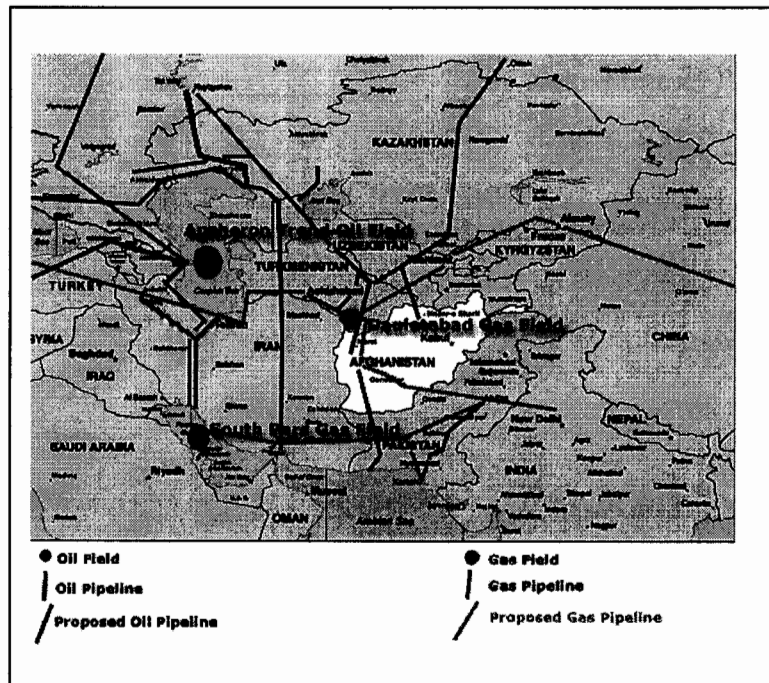
Turkey is concentrating on developing relations with the states in the west of Central Asia, Turkmenistan and Kazakhstan, while its relation with Uzbekistan has been more unstable. Iran gives importance to Turkmenistan and Tajikistan. China is mainly engaged with Kazakhstan and Kyrgyzstan, and the United States concentrates more on the principal states of the region-Uzbekistan and Kazakhstan. Russia has given priority to relation with Kazakhstan, Tajikistan and Kyrgyzstan( although it has given renewed attention to Uzbekistan since late 1999).This pattern of interaction between the Central Asian states and regional powers reflects the various interests of these powers as previously described.

#### **2.6.1 Central Asia and Existing Pipelines**

Central Asian countries have a lot of natural resources and the regional states are utilizing multiple sources and routes for transportation of oil and gas due to the unique geopolitics of the region, the producers cannot easily transport the oil like the Gulf States and will have to rely on the expensive pipelines which are built with the help of neighboring countries. There are eight major oil pipelines which are in existence or going to be completed; Baku-Novorossiysk, the Baku-Supsa, the Caspian pipeline consortium, Iran Oil Swaps Baku-Ceyhan and Kazakhstan-china pipeline, which the Caspian states are utilizing as the main source to export their oil and gas to the major markets. Moreover, there are the three major natural gas pipelines which are exporting gas to the consumers. First, South Caucasus Gas pipeline a 550-mile long pipeline designed to carry gas from Azerbaijan's Shah Deniz Field to the Turkish gas infrastructure. Second, Central Asia Center pipeline attached with Russia Gazprom transport system to export gas to European and other western markets. Third,

Korpezhe Kurt KUI pipeline between Turkmenistan and Iran which was completed in 1997 on the basis of 25 years contract. Recently, Kazakhstan and China started a project for construction of the Pan-Central Asia pipeline to transport gas from Caspian Sea region to China, which is an important development that would lessen the dominance of Russia Gazprom transport system. Additionally, paper work on numerous gas pipelines will come into force shortly when all the countries complete internal procedures. It would be multi-party project involving regional states.

A number of possible routes are available for the transportation of Caspian energy but the admissibility of almost all routes is subject to serious security and economic drawbacks. However; there are six proposed pipeline routes;



**The northern:** Azerbaijan and Kazakhstan- Russian Black Sea Port (Novorossiysk).

**The western:** Azerbaijan-Georgian Black Sea port or Turkish Port Yummurtalik (Gulf of Ceyhan) via any one or three states: Armenia, Georgia and Iran.

**The North-western:** across Balkan States or the Ukraine.

**The Southern Route:** via Iran-Persian Gulf ports.

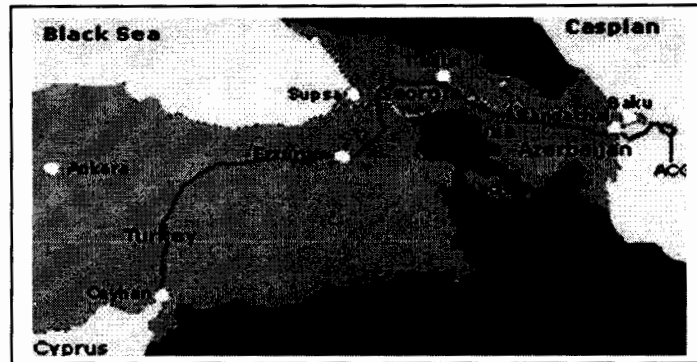
**The South-Eastern:** via Afghanistan and Pakistan-Indian Ocean.

**The Eastern:** via China-east Asia, Japan and Korea.

## 2.6.2 EU and Central Asia

Natural gas has become an important source of energy in the EU. Unlike oil, gas is extremely difficult and costly to ship via tankers therefore pipeline is a preferred method of transportation. Thus, if a supplier refuses to provide gas or charges an unreasonable price, the

consumer cannot quickly or easily turn to another source. The EU gas import is expected to reach 80 percent by 2030. Three countries, Russia, Norway and



Algeria; provide Europe with the bulk of its gas imports. Several EU member states are totally dependent on Russian Natural gas for their domestic energy consumption. Russia is also importing gas from Central Asia. The rest of the gas imported by Europe comes from Algeria.<sup>45</sup>

- 1- The EU countries which do not import gas from Russia are  
Belgium, Ireland, Portugal, Spain, Sweden and UK
- 2- The Countries which are entirely self sufficient gas reserves are  
Norway and Denmark
- 3- The Countries which are most dependent on Russia gas in EU due to geographical  
Reasons as well as the availability of network pipeline are followings;  
Slovakia, Finland, Bulgaria, Lithuania, Greece and Austria.<sup>46</sup>

The EU natural gas sources are Qatar 1%, Nigeria 1%, Algeria 13%, Russian federation 29%, Norway 17%. EU own production total gas is 37%, other 2%.<sup>47</sup>

<sup>45</sup> Natural Gas the Fuel of the Next Decade by Joe Duarte, MD Available at [www.financialsense.com/editorials/duarte/2006/0617.html](http://www.financialsense.com/editorials/duarte/2006/0617.html)

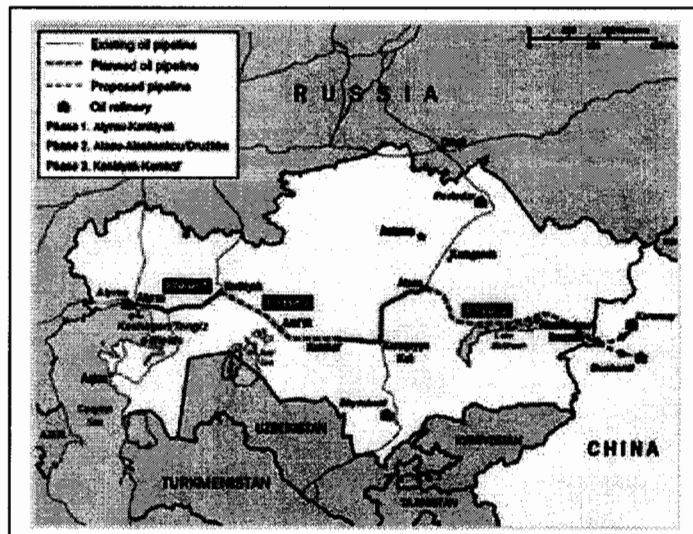
<sup>46</sup> The Institute of strategic Studies Vol:xxviii ,Summer and Autumn 2008 page146

<sup>47</sup> European Commission DG Tren, Eurostat

### 2.6.3 Pakistan and Central Asia

In order to fulfill energy requirements, countries like Pakistan, India, Iran and China have leaned their thrust even to develop civilian nuclear technology so that they can meet the needs of ever expanding economy. Nowadays, we are totally dependent on an abundant and uninterrupted supply of energy for living and working. According to the future needs of country and due to current energy crisis, Pakistan wants to purchase energy from Central Asian States.

In 9th May, 2006, Tajikistan, Kyrgyzstan, Afghanistan and Pakistan agreed to lay 900km Kabul Jalalbad transmission line for electricity trades under long term strategy as Afghanistan assures to provide security. The estimated cost of



line is expected to cost 6 to 700 million dollars. Kyrgyzstan has a surplus of 4000 MW of electricity out of which it could supply 3000 MW to Pakistan, While Tajikistan would supply 1000MW 16600MW but line losses eat as 25% of the actual supply). Besides of this, power generation drops in summer because of a shortage of water in dams. Getting 4000 MW from multinationals, besides the World Bank, the Islamic Development Bank, the Asian Development Bank and the International Finance Corporation are enthusiastic about the idea. The basic problem is about the safety of transmission of lines, this means that additional sources of hydroelectric generation will be required to meet the current power deficit.

Pakistan also wants to import gas and oil from Turkmenistan through pipelines. This project is called TAPI gas pipeline project. The total length of the pipeline would be 1,680 kilometer and it will be built and operated by a consortium of national oil companies from the four

countries, furthermore the cost of the project was just over 3\$ billion in 2003 but today it is \$7.6 billion.

#### **2.6.4 Russia and Central Asia**

Russian vision with regard to Central Asia is vacillated radically during the 1990s. The first Russian government under the reformist, Yegor Gsidar, as acting Prime Minister regarded Central Asia as an economic burden in a situation when Russian had concentrated on reforming its own economy. In 1992-93 a bilateral agreement on friendship and mutual assistance was signed, in which military cooperation was included between Russia and Central Asian States. In 1992 when civil war broke out in Tajikistan, the Russian military intervened, yet the Russian Government remained highly unsure towards Central Asia.

Russia's interest in Central Asia since the break-up of the Soviet Union is mainly related to strategic and security concerns.<sup>48</sup> The strategic concerns are two-fold: first, to integrate the Central Asian States in the CIS sphere and to make them into close allies of Russia and second is to deny external powers strategic access to Central Asia. During the years that followed Russia watched with concern as plans and projects developed for the construction of oil and gas pipelines, in cooperation with Western partners, from the Caspian Sea region along routes that avoid Russian territory.

It was noted that the growth of Central Asian trade with Western and Asian partners at the same time as trade with Russia decreased. Russian concerns in Central Asia also followed from the presence of large Russian population in some of the Central Asian countries, particularly in Kazakhstan, where 33.9 percent of the population is Russian and Kyrgyzstan, with 15.5 %.<sup>49</sup> A strong card of Russia for maintaining control in the region was its monopoly

---

<sup>48</sup> Central Asia has been regarded as important for Russia first and foremost from a strategic standpoint ever since these territories were conquered in the 19<sup>th</sup> century.

<sup>49</sup> Timothy Heleniak, *Going Home: Migration among the Soviet Successor States*, Analysis of Current Event 9, no.6 (June 1997).



of pipeline system for oil and gas exports. If Kazakh oil and gas and Turkman gas were to reach foreign markets they had to pass through Russian pipeline infrastructure and territory. In spite of this dependence, difficulties in coming to term with the Russian partners on transport quotas, fees, price levels and forms of payment made export across Russian territory a less attractive option to Turkmenistan and Kazakhstan. In 1977 the exports of Turkmen gas to Ukraine across Russia was interrupted and efforts by the Russian Government to create an understanding with Turkmenistan were dissatisfied by Gazprom, the Russian gas monopoly. Oil exports from Atyrau in Kazakhstan through the Russian export pipeline from samara were hampered by dispute over quotas and prices. The line via Groznyy and Tikhoretsk to Novorossiysk on the Black Sea was restricted and later closed. In autumn 1999 the Russian Government initiated a counter-offensive to win back influence in the energy sector. In November 1999 construction work was also finally launched in earnest on CPC pipeline from Tengiz in Kazakhstan to Novorossiysk, to be completed in 2001.<sup>50</sup> In 2000 Russia seemed to be recovering some of the influence it had lost during the late 1990s. The opening of CPC pipeline for Kazakh oil to Novorossiysk, planned for 2001, will provide Kazakhstan with a main option for its oil. With the by-pass through Dagestan, the Bku-Novorossiisk pipeline was again operational in spite of the Chechnya war.

Yet Russia's ability to control Central Asia's export of oil and gas was significantly reduced. Now Russia is losing its former role as security manager in Central Asia. Due to failing in increasing in trade and with the challenge of new options for the export of Central Asian oil and gas, Russia's economic influence in the region will weaken further. Russia is losing its capacity to influence the dynamics of the region. In 2007, it signed an agreement with Turkmenistan and Kazakhstan to build a new pipeline that would parallel an older one and add to the export network. Other countries are getting in the action. China has started building a gas line from Turkmenistan via Kazakhstan, a huge undertaking. The United States

---

<sup>50</sup> BBC Monitoring, Inside Central Asia, issue 301 (15-21 November 1999).

want pipelines should build under the Caspian to bring Turkmenistan gas to Azerbaijan, where it would link with recently-built pipelines to Turkey and onward to Europe.

### **2.6.5 The United States and Central Asia**

The Central Asia represents a new frontier for the e policy of the United States. Since the Central Asian States became independent, the US economic, political and military interests there have steadily grown. Until 1994 US interests were restricted to economic and political pursuits.

However, it has all changed. The USA now deploys all its instruments of power to establish itself as a major player in Central Asia and across the Commonwealth of Independent States (CIS). Indeed, involvement of US across the entire Tran Caspian has taken off since 1994-95 when Washington conclusively rejected Russia's claim for an energy monopoly. By then the international financial institutions had embraced the so-called Washington consensus and were putt great pressure and sizeable resources into Central Asian and other CIS states to move them along the lines of a basically US model towards liberal markets and democratic governance. Now U.S. interests in Central Asia can be summarized in three simple words: security, energy, and democracy.<sup>51</sup>

The US decision of 1994-95 to keep Russia from monopolizing Central Asian energy holding reflected the coincidence of two major defense issues, to prevent further Russian havoc on sovereignty and independence of Central Asian and Tran Caucasian states. On the other hand it reflects the success of business interests in persuading the US Government of the centrality of access to oil and Washington's acceptance that for the energy-producing countries their oil and gas offered the only road to economic and political independence and prosperity.

---

<sup>51</sup> U.S. Interests and Central Asia Energy Security by Ariel Cohen, Ph.D.  
<http://www.heritage.org/research/>

The US interest and policies can be analyzed as follows. The United States view three aspects of the Trans Caspian equation as crucial;

- 1 Increasing the supply of energy to consumers.
- 2 Excluding Iran from influencing the exploration, shipment, development and marketing of energy products.
- 3 Preventing any one state from monopolizing the local energy supply.

The United States strongly opposes Russian efforts to obtain a monopoly and exclusive sphere of influence over conflicts resolution, economies, politics, military agenda and energy supplies in Caucasus and Central Asia. Indeed it professes that it simply wishes to counter any regional monopoly and does not see the area as a region for competition with Russia.<sup>52</sup>

The USA sees Turkey as its best ally in becoming engaged in Central Asia. It has been helping Turkey in its negotiations to join the European Union and supporting its efforts to achieve oil and gas pipeline linking Central Asian states via Azerbaijan to Turkey.

The US element in Central Asia will be the most dynamic, and indefinite. It considered that US influence is responsible for the present instability in the region. Due to interests in the Central Asian States, the USA and Russia regard themselves as antagonists. Increased US power in Central Asia could greatly affect Russia's influence and can damage its interests. The USA through its aggressive competition might unbalance the delicate strategic interests in Central Asian region. The USA is open about the geopolitical importance of Central Asia. Richard Boucher, Assistant Secretary of State for South and Central Asian Affairs, in recent testimony to the House Committee on Foreign Affairs, stressed on the importance of Central Asia to the "long-term stability of Afghanistan." He noted that the USA has "ambitious policy objectives in the region." He said "the USA is working to facilitate multiple oil and gas export routes and has been active in promoting private energy sector investment in the region."

---

<sup>52</sup> Interview with US President Bill Clinton, International Affairs (Moscow), no.2 (1997). P.5

### **2.6.6 China and Central Asia**

China has considered five main aspects towards Central Asia; First, Chinese strategists realize that the strategic importance of the Central Asian States will increase and that the region will have a considerable influence on the world of the 21st century. Economically, Central Asia and its surrounding areas will play an important role in the world's supply of energy.

Politically, the Central Asian States are manifesting their own style, this is different from that of Russia or Ukraine and even more different from that of Eastern and Central Europe. Second, the Central Asia can be called a bridge between East and West. China is closely interested in the stability and prosperity of the region. If there were turbulence around that bridge, the future of political and economic cooperation in the whole Eurasian continent would be seriously affected. Political and economic cooperation with Central Asian States is therefore very important for China. Third, China gives high priority to the development of bilateral and cross-border relation with Central Asian States. The more these relations develop and tighten; the more it will give benefit to bilateral interests and contribute to stability and prosperity in the region. Fourth, China considers its relations with the Central Asian States from the point of view of the stability and development of Xinjiang. China will expand the framework and the dynamics of cooperation across the border from Xingjiang and develop relation according to the principle of equality and mutual benefit. Fifth, China has had friendly contacts with the Central Asian States since ancient times.

The Silk Road created close ties between it and the people of Central Asia. Facing the new century, these states together have the need, the ability and indeed the responsibility to contract a Silk Road of modern times. Since the Central Asian States became independent, they and China have come to share security concerns in the region.

Trade and economic cooperation have come to play the main role in relation between China and Central Asian states. In 1993 China became a net importer of oil and it is increasingly reliant on energy imports. Central Asia is especially important to it in this respect. In June 1997 the China National Petroleum Corporation (CNPC) won the right to own and operate the Uzen oilfield in western Kazakhstan, although this subsequently lapsed. In September 1997 the agreement for its largest potential investment in economic cooperation with Central Asia was signed: China planned to construct a 3000-km long oil pipeline from Western Kazakhstan to western China. In September 2000 the Chinese discussed the possibility of feasibility study for pipeline. Kazakhstan is already supplying China with modest amounts of oil by rail. The CNPC also agreed to construct a pipeline from the Uzen region of Kazakhstan to the Turkmenistan border.

From the Chinese perspective, the main requirements for developing its relation with the Central Asian States are as follows.<sup>53</sup>

1. The Central Asian States should support China's standpoint on Taiwan
2. China should support the independence and independence development of each Central Asian State.
3. China and each of the Central Asian States should regard each other as security partners.
4. China and the Central Asian States should regard each other as security partners
5. China and the Central Asian States should stand together against separatism, Islamic extremism and terrorism.
6. China and the three neighboring Central Asian States should take advantage of cross-border ethnic links in order to strengthen friendship, understanding and contacts.
7. Relations between China and the Central Asian states should be built on a firm economic basis.

---

<sup>53</sup> Central Asian Security, The New International Context, page 169 written by Roy Allison and Lena Jonson  
Published by Royal Institute of International Affairs Chatham House 10St.James Square London SW1Y  
4LE

8. China and the Central Asian States should cooperate to defend peace and justice on international scene.

## **2.7 Conclusion**

In their strategic approaches toward Central Asia, both China and Russia seek peace and stability, but there are some contradictions between them. Russia traditionally views the Central Asian States in its sphere of influence and does not want China's deeply involvement there; China is opposed to Russia considers the Central Asian States as a region of its own, and supports their sovereignty, independence and their cooperation with all other countries.

The USA perceives the central Asian states from the perspective of its strategic interests in the broadest sense. First, it is considered that they have rich energy resources, through these resources. The USA usually attempts to control the world. Second, it intends to oppose fundamentalism by active involvement in Central Asia and is concerned that Central Asia and the Middle East might be united to become a dynamic region of Islamic Radicalism. Third, it intends to contain Russia. By means of strong political, economic and military influence in Central Asia it might eventually weaken Russia's strategic influence. Fourth, in entering Central Asia the USA intends to contain China's strategic plans and as part of this to exert influence in Xinjiang. The USA favors pipeline routes that bypass Russia (an energy superpower) and Iran (an energy-rich state on America's enemy list). It has been working for more than a decade to move Turkmenistan gas to south. The route would follow the ancient trading route from Central to South Asia. It would run from the Dauletabad gas-field in Turkmenistan along the highway through Herat, Helmand and Kandahar in Afghanistan; to Quetta and Multan in Pakistan; to Fazilka in India.

## **CHAPTER 3**

### **Economic Aspects of TAPI**

#### **3.1 Introduction**

TAPI is intended to move natural gas from Turkmenistan to the Pakistan and Indian for the progress of industry and prosperity of the society. It is 1700 Km long pipeline project. Now its total cost is \$7.6 billion due to unreasonable delay.

Pakistan is facing crucial energy crises especially in electricity. Pakistan's gas resources are also decreasing and now it has only 20 years gas reserves.<sup>54</sup> Our industry collapses in winter season due to shortage of gas. Pakistan is a big exporter of textile. Pakistan's economy depends on agriculture and textile. Both sectors are under crises due to shortage of power. Now Pakistan is third major country which is using CNG for transportation purpose. So if Pakistan does not import natural gas then what will happen in coming decades because Pakistan has insufficient gas reserves? Supply in Pakistan is currently 71m cubic meters per day, which is estimated to increase by 50% in the subsequently five years.

India's economy is growing economy. It is second largest populated country of the world. Its population is growing rapidly. India has not sufficient energy according to its requirement. India has spent a huge budget for importing the crude oil. Natural gas pipelines are golden opportunity to get rid of energy crises.

#### **3.2 Benefits to Contracting States**

##### **3.2.1 Turkmenistan:**

Turkmenistan is also a developing country. Its major source of income is oil and gas export. It will take benefit from revenues accruing to gas sales. Turkmenistan is already exporting gas to Europe and China through pipeline, now it wants to take benefits from its remaining

---

<sup>54</sup> Daily Jang dated April 15, 2009 Report by Shaheen Hasan

natural resources. TAPI pipeline is another opportunity for exporting gas to Pakistan and India. Turkmenistan can make billion of Dollars from gas export to India and Pakistan. Turkmenistan does not only stand to gain financially but can also secure its place as the gas hub of Eurasia if it can fulfill all the commitments which it has made already with Russia, European Union, China and Iran. Turkmenistan shall also take benefits of diversification from natural gas and long term foreign exchange earnings.

### **3.2.2 Afghanistan**

Afghanistan is the second contracting party of TAPI and it is also less developed country due to instability last decades. The economy of Afghanistan is not yet stable. TAPI pipeline will play a vital role for the stability of national treasure. First of all if Afghanistan gets success in providing security to pipeline and makes a pipeline invulnerable for hostile Taliban, then Afghanistan shall get the confidence of foreign investor. The foreign investment is the backbone of each country because it brings employment opportunities, provides industrial infrastructure and plays key role in social development.

Afghanistan is also taking a gas share from pipeline, it proposed to buy eight billion cubic meters per day in years 1 and 2, and up to 14 million mmcf the 90 mmcmd allocated to the project.<sup>55</sup> It depends on Afghanistan that for which purpose it uses gas, but it is more beneficial for Afghanistan to use it for industrial purpose and take charges from investor in the shape of gas bill and impose taxes on industrial products.

Due to industrial establishment, export of Afghanistan will be increased and import will be decreased. The fragile and cash-strapped Afghanistan Government hopes to earn US \$ 160 million in annual transit fees and inject some life into its economy. The annual transit fee of TAPI pipeline is equal to the annual budget of Afghanistan. It means the pipeline fulfills its national coffers. The pipeline also provides job opportunities to national of Afghanistan

---

<sup>55</sup> TAPI and IPI: Socio-Economic Benefits of Gas Pipelines By Mehmood-UI-Hassan Khan  
<http://jang.com.pk/thenews/may2008-weekly/busrev-05-05-2008/p3.htm>



during construction and after its completion. Social infrastructures also develop due to new roads, establishment of telecommunication and medical facilities. Relations with contracting states shall also develop and will be stable. Afghanistan shall take these benefits; it also provides the facilities especially for pipeline protection. The contractual States and international sponsor institution could carry heavy penalty terms that would compel Afghanistan to ensure proper protection of pipeline, particularly since it would be earning huge revenues.

### **3.2.3 Pakistan**

Now Pakistan is facing critical energy crises. In icy winter season, households and industrialists are used to face shortage of supply. Life and machine both suffers immeasurably. TAPI can provide both energy resources and revenue in the form of transit fees to Pakistan. Pakistan can become a possible hub for oil and gas from Southwest Asia and the Arabian Sea to China if road rail is linked and pipeline are built. It provides cheap energy for Pakistan, low transit fee, and access to energy market in the central Asia. It will generate hundred of thousand new jobs in Pakistan. It will provide cheaper and clean energy to investor according to their industrial requirement as well as to domestic consumers.

Pakistan can get rid of electricity crises to produce electricity through gas rather than imported expensive oil. TAPI pipeline contracts is for thirty years, in this period Pakistan can establish other energy resources, such as to like make major dams and establish a mechanism for the production of coal. Pakistan is third biggest country in the world which has a lot of coal reserves. Pakistan has also its own gas reserves and can give investment incentives to foreign investors in the shape of cheaper energy for industrial purposes. Pakistan is the agricultural country; most of its population is directly and indirectly linked with agricultural profession.

Pakistan can use the natural gas in this sector for irrigation purposes and to increase its agricultural export. Pakistan would convert the public transport to CNG and provide natural environment to nation. Pakistan can stabilize its national economy if its imported bill of crude oil is decreased .The second process is the expenses for the refinery of oil. So the completion of gas pipeline can mediate these troubles.

#### **3.2.4 India:**

The TAP gas pipeline now become TAPI, in the beginning India was not willing to enter in this project due to Afghanistan security situation but after all India agreed due to surety of security. Currently domestic petroleum production is stagnating and the volume of oil imports is shooting up. Now India is desperately in need of cheap and efficient energy supplies. India shall use the natural gas for power, fertilizer and for domestic use. A long-term arrangement to import natural gas from Turkmenistan through a pipeline is a solution of energy shortage.

A major benefit for “four Contracting States” which may be thought relevant is the effect which the development of long-term trading relationships will have on the region. The relationship between geopolitical stability and trading relationships is not simple, but in general it is reasonable to assume that trading links are likely to be associated with improved political relationships.

#### **3.3 Conclusions**

The TAPI project is essentially based upon the benefits of opening trade in gas among three low-income countries along with the payment of transit fee to Afghanistan. The price at which the gas will be sold in Pakistan or India would be stabilized or at least limit price rises in the cost of generating electricity and of supplying fuel to industry and, though to a lesser extent, household. It is likely that the primary benefits would be to urban areas of both countries, particularly with regard to the impact on industrial fuel price. India needs new

sources of energy to achieve significant growth rates and Pakistan wants to project itself as a crossroads for trade between Central Asia and Subcontinent, apart from getting gas for its domestic usage. Turkmenistan needs to sell gas, but the ground realities are not favorable or supportive due to security situation in Afghanistan. American pressure on India and Pakistan should withdraw from IPI pipeline and complete the TAPI project.

## CHAPTER 4

### **Barriers of Cross Border Gas Pipeline**

#### **4.1 Introduction**

Unparalleled economic growth of the world is due to increasing availability of energy. In spite of this its proportion in fueling, this growth is not too much because it is also beneficial for economic and environmental sectors, the gas which is traded all over the world only fulfils the one seventh of the world's consumption. The Central Asia which is important for natural gas and oil, Access to the reserves is not possible for the countries which are at the other hand of the shore. Now, the cross border trade of this gas would be substantial not only for the Middle East but it is also important for the entire world. It is natural that trade and commerce expands the horizons of international market which is beneficial for the countries in all respects. It encourages the other countries to come in for investment in the emerging economies. Trade is also a source of regional integration and harmony.

Despite having the vital importance, the cross border gas pipeline faces numerous obstructions and hindrances such as the problems of long distance transportation, security of supply and political risks. Certain other possible obstructions such as the lack of profit and rent sharing mechanism as well as legal and regulatory regime are also factors for the development of cross border gas pipeline. Dilating upon a number of small and large issues, I shall carry on with the following order to make my paper more and more comprehensible.

- 1) Political Situations
- 2) Lack of Well-Developed Local Law
- 3) Security of Supply
- 4) Lack of Jurisdiction (Conflict Resolution)

- 5) Determination of Profit and Loss
- 6) Legal and Regulatory issues

These issues will be discussed in detail under the subsequent headings one by one.

#### **4.2 Political Situations of Contracting States**

Political risk of the cross border Pipeline is that these pipelines face a lot of political security risk. Political instability, unpopular governments and military conflicts render their formation impossible. It has been observed that:

*“Cross border pipelines are exposed to various types of political risks, especially in the reigns proven to civil unrest, political instability and military conflicts. There are numerous examples when pipelines have become targets in civil conflicts In June 2006, Terrorists attacked the pipeline in Baluchistan (Pakistan), causing a spill and fire, due to this supply through pipeline was disturbed to this areas. In 1997, Turkey's Kurdistan worker party (PKK) attacked the Iraqi- Turkish twin pipeline system, causing a spill and fire. Although the attack failed to disrupt the flow of Iraqi crude to the Mediterranean, it sent a waiting signal regarding one of the potential dangers existed or projected oil and gas pipeline in Turkey.”*<sup>56</sup>

The vulnerable plight of the political circumstances in region is very obvious and has been proved to be a devastating factor for the developing economies. Like in other parts of the world, India and Pakistan have also been inherited the territorial conflict by the Britain Colonialism in the form of flashpoint dispute over Kashmir. In the last 62 years, Pakistan and India had fought three wars.

The political history of the two countries shows that the prior issues between the two countries were being vocalized by the ruling heads or political guru only to gain the support from the public. It is vivid evidence that whenever any peace initiative is laid down tension or fight breaks out on the borders and sometimes the terrorists' activities prevail over the country. *For example*; after the 'bus-diplomacy' - visit of Vajpayee from Amritsar to Lahore in February, 1999, Kargil war broke out in October, 1999. Following the 'Agra Summit' - the visit of General Musharraf to Agra, in July, 2001 became a source of peaceful (INDO-Pak)

---

<sup>56</sup> MEES,,Middle East Economic Survey, Vol.XL,No.,04,page 27,published in 1997.

relations but immediately after this in December 2001, a suicide bomb blast in Indian Parliament and Pakistan was being blamed for this attack, due to this to maintain peaceful relations became difficult. India deployed 700,000 Indian troops on its border alongside Pakistan with the threats of 'decisive' action against Pakistan. In response, Pakistan deployed about 300,000 troops on border to counter the Indian mobilization.<sup>57</sup>

Now when foreign minister of Pakistan Shah Mahmood Qureshi went to visit India for dialogue on "issues of mutual interest and explore the possibility of furthering bilateral cooperation for the common benefit and prosperity of the two countries",<sup>58</sup> important thing is that on the same day, the incident of Mumbai attacked happened on 26<sup>th</sup> November 2008. After this attack Indo- Pak relations are not peaceful and the both countries are ready for war.<sup>59</sup>

Now after the above discussion it is proved that Indo -Pak relations are not stable and there is need of confident measure for the long term peaceful relations. One thing which is important for both the countries for the solution of these issues is that both countries should stop the financial and moral support of extremist groups which are the basic cause of these above mentioned incidents. Now it is proved that in the Malegaon bombing, Samjhota Express train attacks, on duty Indian army colonel was involved.<sup>60</sup> Later he was arrested by the Indian police. In the Mumbai attacks Government of Pakistan officially admitted that Ajmal Kisab was a Pakistani militant.

Pakistan has not amicable relations with Afghanistan. It is due to controversial opinion over Durand line, which was established in 1893. The Durand line divided Pashtun and Baluch tribes, who were living in Afghanistan later they became the part of Pashtun and Baluch areas within Pakistan. Due to this opposition, situation on border did not remain favorable

---

<sup>57</sup> [http://en.wikipedia.org/wiki/Indo-Pakistani\\_relations](http://en.wikipedia.org/wiki/Indo-Pakistani_relations)

<sup>58</sup> Pakistan Foreign Minister Qureshi visit to India, <http://www.rediff.com/news/2008/jun/26indpak.htm>

<sup>59</sup> Mumbai rocked by deadly attacks by BBC News Available at, [http://news.bbc.co.uk/2/hi/south\\_asia/7751160.stm](http://news.bbc.co.uk/2/hi/south_asia/7751160.stm) Last Visited on January 28, 2009

<sup>60</sup> <http://www.defence.pk/forums/strategic-geopolitical-issues/17468-pakistan-demand-handing-over-col-purohit-india.html>

especially from 1961 to 1963, during this period diplomatic, trade and transit between the countries suspended.

When the Soviet Union occupied on Afghanistan Pakistan played on important role to kick out Russian from Afghanistan. The UN agencies aided Pakistan and thus Pakistan refuged to several million Afghans. Now Pakistan has developed amicable relations with Taliban, it is considered that it will offer strategic help in future conflict with India. In 2001 invasion Pakistan offered a considerable amount of aid for reconstruction of Afghanistan. In spite this cooperation still there is controversy over the Durand line and Afghanistan's close relationship with India.<sup>61</sup>

#### **4.3 Dultabad Field Risks**

Daulatabad is gas reserves of Turkmenistan, It is already providing gas to Russia, Now experts think it will be difficult for Russia to meet all its assurances to China, Russia, Pakistan and India, because the field contains insufficient gas reserves, its supply is less than expected demand. The supply of gas is increasing with the same ratio. If we observe the previous history of gas, we will come to know that in 2007 Ashakabad produced 70 billion cubic meters of gas, It was 10 billion cubic meters short than the previous year.<sup>62</sup> According to the petroleum ministry of Pakistan, Turkmenistan was to submit a certificate about availability of gas at its Daulatabad field by on 1st October, 2008 but it failed to do so.

Field risk shows that it will not be smooth sail for Turkmenistan to achieve its projected target of 250 billion cubic meters of gas and 110 million tones of oil by 2030. The solution of the field risk is the Turkmen Government should share this risk with other external oil companies by entering into some kind of exploring partnership agreement and before

---

<sup>61</sup> Foreign Relations of Afghanistan Available at [http://en.wikipedia.org/wiki/Foreign\\_relations\\_of\\_Afghanistan](http://en.wikipedia.org/wiki/Foreign_relations_of_Afghanistan) last Visited on February 10,2009

<sup>62</sup> Daily Times19-10-2008

entering into agreement, Turkmenistan should present a third party authentic report of sufficient gas reserves.

#### **4.4 Lack of Well-Developed Local Laws**

Most of the foreign oil companies do not dare to invest in the under developed countries due to the non-availability of laws dealing with relating issues. These countries remain struck in grooves in their old legal systems rather adopting new approaches of laws for multi national companies' investment. Mostly it happens that the developing countries borrow same laws from the developed nations but they don't know the essence of these laws. They have no access to the intention of the law makers.

Subsequently, they become jokes and criticism in the hands of investing countries. Azerbaijan is a valid example of such applications. Soviet Union laws are used in this country and laws which come under promulgation do not come from the legislation but from executive bodies these are local laws which are not easily acceptable to the foreign investors. All the laws relating to the oil and gas matters in central Asian states are still in pipeline agreements, no one knows about their contents. Subsequently these commercial and investment laws create ambiguity for energy ventures.

The example of Pakistan Government and Higher Courts open in the world, when in the case of Hubco Vs WAPDA Supreme Court of Pakistan gave decision that Hubco had no right to take its dispute with WAPDA for arbitration before the International Chamber of Commerce as amendments to the Power Purchase Agreement required examination by a court of law.<sup>63</sup> It was written agreement in the case of dispute parties shall go in arbitration. But SC declared that it is matter of public policy.

---

<sup>63</sup> The Hub Power Company (HUBCO) v Pakistan WAPDA (PLC 2000 SC 841



The international donors' agencies like World Bank, IMF and Asian Development Bank have cautioned these emerging powers to amend their laws according to the requirement for both economics growth.

#### **4.5 Security of Supply**

##### **A- Definition of Security of Supply**

Security of supply means an adequate supply, production, and delivery mechanisms which ensure that required demand will be fulfilled accordingly. Security and diversity of supply require that there should not be sudden physical shortage of supply because this results in involuntary disconnection of supplies or sudden substantial price increases.<sup>64</sup>

A comprehensive system based on such regulation is the need of hour which can cope with every type of problem relating to trade and commerce in the field of cross border oil and gas pipeline. The UK department of trade and industry defines security of supply which contains following points;

1. Reliable and diverse supplies of energy and oil, gas, and electricity
2. Reliable networks and infrastructure
3. Reliable delivery to the customers at reasonable prices

##### **B- Security of Gas Pipeline**

One of the serious risk is security problem of gas pipeline. Security problem exists especially in Afghanistan and Pakistan. The pipeline will pass through the city of Kandahar, in south Afghanistan, it is an area of brutal Talibans, their military, economic and psychological costs

---

<sup>64</sup> [http://www.dti.gov.uk/energy/publication/whitepapers/review\\_sources/entire.pdf](http://www.dti.gov.uk/energy/publication/whitepapers/review_sources/entire.pdf), last visited on March 5,2009

are increasing day by day.<sup>65</sup> Taliban are not in favor of proposed gas pipeline projects due to certain reasons i.e. involvement of USA, taking benefits of Karazi Government as a transit fee, their hostile relation with Pakistan and also Taliban do not accept the economic prosperity of Non Muslim states in the shape of India. All these factors invoke Taliban to go against this project; therefore they can become a great hurdle in the development of this project.

On the other hand security situation in Balochistan is also not suitable for pipeline project. The Baloch liberation Army and other ethnic militant groups have a strong presence on the border of Afghanistan, the territory which adjacent to Pakistan it means that pipeline will be extremely vulnerable to attack.

The militant nationalists' capability to either block or disrupt the operations of the natural gas industry is clearly considerable, constituting a genuine threat, not a mere nuisance. According to reports compiled by writers for the Washington-based Jamestown Foundation, militant attacks and incidents of violence in general have become commonplace since the insurgency began escalating in 2002, and attacks against natural gas installations and pipelines in particular are steadily increasing in number.

*"January 2006 report stated that there had been a total of 843 attacks and incidents of violence. ..re- ported in different parts of [Balochistan], including 54 attacks on law-enforcement agencies, 31 attacks on gas pipelines, 417 rocket attacks on various targets, 291 mine blasts, and 50 abductions. In the same period, a total of 166 incidents of violence were reported in the Kohlu [Marri tribal headquarters] district, including 45 bomb blasts and 110 rocket attacks."*<sup>66</sup>

Why do Baloch attack on local pipeline? The Baloch have clear idea from the very beginning that natural gas exists in Balochistan, therefore owner of gas is Balochistan not Federal. Second issue is that they want reasonable share of gas which Federal Government is not

---

<sup>65</sup> WILL TAPI REMAIN A PIPEDREAM? Raghav Sharma Available at, [http://www.ipcs.org/article\\_details.php?article No=2661&cID=2](http://www.ipcs.org/article_details.php?article No=2661&cID=2) Last Visited on March 12,2009

<sup>66</sup> Baloch Nationalism and the Geopolitics of Energy Resources <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB853.pdf>

providing. In June 2008, the Balochistan Assembly unanimously adopted a resolution demanding such payment for the gas pipelines.<sup>67</sup>

In order to solve these problems, Pakistan's energy security can be fully safeguarded only when Bloch Nationalism has been accommodated in good faith. Military operations are not the solutions of issues. The Bloch should become partner of energy development rather than enemy but it is possible, if Federal Government gives them reasonable share in transit fee. It is also better for federal government to expend huge money on security to give this money for social infrastructure of Balochistan. Any other course is fraught with danger. One important thing is that without peace process in Balochistan, the Federal Government will waste a huge transit amount and will also deprive of energy.

In Afghanistan, USA is willing to police the pipeline infrastructure through permanent stating of its troops in the mentioned dangerous areas; the motive behind this is to fail the IPI pipeline because USA does not want financial progress of Iran. Secondly Turkmenistan, Afghanistan and Pakistan have signed a trilateral framework agreement for keeping security of pipeline. The third solution is that USA should go back and handover Afghanistan to United Nations which may establish a stable Democratic Government with consent of Afghanistan's major leaders. By these solutions, security risks can be reduced.

#### **4.6 Construction Standards**

The best practice for an international pipeline is to ensure that internationally standards are practiced in the construction of the pipeline or not. The method through which it can be achieved is the use of a single independent testing and certification body for each segment of the pipeline system. During construction, pipelines are mostly at risk of disruption from terrorism and damage. The important thing is that all governments provide security for construction teams. History shows that mostly pipeline operations are only disturbed for short

---

<sup>67</sup> Dawn English Newspaper Pakistan 10 June 2006

terms by damage. The controlling station must be constructed in safer locations and areas where the chance for attack will be very less. There are two significant geomorphologic features the route transits in Pakistan (Khojak Pass and Sulaiman Range) that will require special construction measures including the provision of new roads. The route unavoidably, for such an earthquake prone area, transits several significant fault structures which have a potential to affect the pipeline during seismic events, although these effects can be mitigated during detail design.

#### **4.7 Emergency Reaction**

Pipeline inspection and repair team would be able to access the pipeline without unnecessary restrictions on passage when crossing national borders, in the case of emergencies. The environmental issues have increased in recent years and the climate has changed. As the safe environment is the highest challenge of the future and it is the main objective of the energy policies the Turkmenistan-Afghanistan, Pakistan and India are the part and parcel of this scenario. They are obliged to create a mechanism of impact appraisal, inspection of the system for the potential leaks and violation of other land uses. They must adopt the internationally agreed standers which are practiced in the construction of pipelines. There must be a single and independent testing and certification body for the project of pipeline system. To avoid the risk of terrorism and damage the controlling station of the project must be situated in the area which is safe and where the threat of attack is very low.

#### **4.8 Lack of Jurisdiction Conflict Management**

The lack of proper jurisdiction in the projects of cross border gas pipeline is very big problem for managing the conflicts. The parties in the past have tried to overcome problem by adding a clause of conflict resolution in the agreements e.g. International Commercial Arbitration. but the problem is still out of control. The findings of international commercial arbitration

can not make legally bind to parties to the contract. The reward which is passed by arbitrator has not such power to compel the parties or to the sovereign states and the Governments often consider it as old fashion. But now the trend is going for a positive change, the foreign investors are very conscious in this respect and under the umbrella of globalization the economic progress is highly dependent upon the foreign investment. The investors require confidence in property rights and sanctity of the contract.

Turkey in the 1970s was an unreliable transit country. This was at a time when Turkey had a limited desire for foreign investment. Today, foreign investment is central to Turkey's economic strategy, and as the country has become very conscious of its reputation among foreign investors it is likely also to be a very different transit partner.<sup>68</sup> Now in the international cross border trade, parties chose the arbitral mechanism for the settlement of disputes.

#### **4.9 Determination of Profit and Loss**

In the project of cross border gas pipe line, the economic aspect creates a lot of conflicts among the parties. The project attracts profits and rents which are to be shared among the concerned parties, but there is no internationally recognized criteria for the solution of these issues. There are many compound mechanisms which are available up till now, but these are trouble creating and have complicated procedure for the parties which results into the avoidance by the concerned. Problems are occupied where the contribution toward the project has been made and variable costs of project have been covered, the operation of the project must continue whether it is occurred profit or loss. In a case where loss occurs or the pipeline project is unprofitable any party wants to leave the project the revenue will be seized.

In the well organized project of pipelines, there is an alignment of interest and loss for all the concerned parties or shareholders. It depends upon the life of project. The relationship

---

<sup>68</sup> Cross Border Oil and Gas Pipeline: Problems and Prospects, 2003.  
<http://siteresources.worldbank.org/INTOGMC/Resources/crossborderoilandgaspipelines.pdf>, last visited on March 12,2009

between the parties is achieved refers to the allocation of risk and reward among the concerned parties. The successful projects are considered those projects where this interest is in a stabilize form according to the life of the project and no party considers himself as aggrieved party. According to the World Bank study:<sup>69</sup>

“Every successful pipeline project features a well-balanced and usually sophisticated alignment of the interests of all stakeholders. A well-balanced alignment of interests must encompass not only the existing balance of the interests of all stakeholders but also the mechanisms to ensure a balance over time to adjust the balance to changed circumstances and to enforce the agreed-on balance. Transparency is essential to achievement of this alignment for its role in engendering mutual trust among all parties concerned. At the start of a project, joint committees involving all participating project members can help to find a fair alignment of economic interest by assessing the technical, environmental, and economic feasibility of the project. Public website and the presence of an ombudsman for affected populations can contribute to the discovery of solutions acceptable to all civil society stakeholders. International financial institutions can play a positive role in mitigating the political risks by endorsing the commitments of the parties and ensuring observance of international standards related to health, safety, the environment, and the integrity of indigenous peoples.”

For success of cross border pipeline it is very significant, a clause of renegotiation should include in the contract in the case of unforeseen or unforeseeable change such as political and economic crises or natural disasters. This project can be successful if there will be well balanced and sophisticated alignment of the interest of all parties. It must not over rule the rights of existing parties. Their must be a mechanism which adjust the balance for the time and according to the changing circumstances. Their must be a joint committee which ensure the transparent and well alignment of the interest of the parties. The contract of the Maghreb

---

<sup>69</sup> ibid

line and the Bolivia-Brazil line contain provisions (mainly related to pricing) that can be readjusted according to the defined criteria to find balance between the parties.<sup>70</sup>

#### **4.10 Legal and Regulatory Issues**

In construction and operation of cross border pipeline some special legal issues are involved which are not often similar to the local or domestic pipelines. Cross Border petroleum pipelines are mostly located in the territory of different states under their domestic jurisdictions. The national law of those countries governs the operation of these pipelines.

These issues include;

- A) The Right of way
- B) Ownership of pipeline
- C) Transit Fee
- D) Taxation matters
- E) Dispute settlement and forum selection

##### **4.10.1 The Right of Way**

This is the first and most important issue which is available in any pipeline project whether it is national or cross border. The right of way is almost granted by the government according to their own legal procedure which may differ from country to country. With respect to the cross border pipelines, the states undertake to secure this for investor either through an agreement with investor or by an international Agreement with involving state.

The following provision serves as best example in this regard: In mutual recognition that each Project and its related Facilities and Transportation System Involves substantial capital intensive infrastructure development each State hereby represents, warrants and covenants to

---

<sup>70</sup> ibid

the other that its State Authorities shall secure the granting of absolute and exclusive rights to land in its Territory for such Project under clear commercial terms including without limitation, the right of indemnification and release for any and exclusive right to land.

#### **4.10.2 The Owner of Pipeline**

The Cross border pipelines may depend upon the purpose of construction, such as security of supply, unobstructed access to markets regarding structure of ownership. The first, and the most common, case is when one part of a cross-border pipeline has different sections. Normally, such projects of pipelines are owned either by Governments through their national companies or by private entities.

The Owner of gas moved through the line will remain the property of or more of the parties<sup>71</sup> to the Framework agreement or their designated agents according to relevant commercial agreements.

To date, international oil and gas companies have become increasingly involved in the pipeline construction and operation. Project in these pipelines may be owned by different companies (joint ventures), shares in which may belong, in different combinations, to Producers, off takers as well as third parties.

#### **4.10.3 Transit Fee**

A tariff and transit fee is another important issue, which determines the possibility of cross-border pipeline project. The level of transit fees which Governments of Afghanistan and Pakistan would levy is not defined, except that they have to be compatible with the overall economic viability of the project. The normal transit fee is levied on a unit-moved basis, and it assumed that this will be the case for the TAPI. More complex fees could, in principle, be negotiated. One which might be considered is that a basic total levy would be guaranteed,

---

<sup>71</sup> Turkmenistan –Afghanistan-Pakistan-India



with any excess being dependent on the market out-turn. However, a simple unit-moved basis is really all that can be assumed here.

One practice adopted in gas pipelines in the Maghreb is to retain a percentage of the gas, commonly 6% of that in transit, as a transit fee. If this principle was to be applied to TAPI, then the Afghan Government would be entitled to about 1.8 bcm of gas annually.

In the energy charter treaty it is clearly mentioned in article 7(6) that;

*“Contracting party through whose area energy Materials and products transit shall not, in the event of a dispute over any matter arising from that transit, interrupt or reduce, permit any entity subject to its control to interpret or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and products”*

#### **4.10.4 Taxation**

Taxation is another issue, which has primary concern with the cross-border pipeline project investors. Taxation of oil and gas is very complicated, as one single pipeline might cross many jurisdictions. A comprehensive work on this topic has not been found. The cross border pipeline should be considered according to the Article 5 or 6 in OECD,s Model Tax treaty. The permanent establishment concept in article 5.1 should be used as the common International approach for pipeline. Although, the frame agreement of the project accepts that all the materials related to the project would be imported tax-free. In this situation Governments of Afghanistan loses out on quite large tax revenues associated with normal custom duties and also Pakistan.

In BTC pipeline the parties agree and confirm that tax of any kind shall not be charged to or paid by BTC co.<sup>72</sup> Avoidance of double taxation and the prevention of fiscal evasion with respect to the income on tax, treaty have been executed between Pakistan and

---

<sup>72</sup> AGREEMENT BETWEEN THE BAKU-TBILISI-CEYHAN PIPELINE COMPANY AND Government of Georgia Available at, [http://www.bpgeorgia.ge/posted/1339/Establishment\\_of\\_a\\_Grant\\_Program\\_for\\_Georgia.186361.pdf](http://www.bpgeorgia.ge/posted/1339/Establishment_of_a_Grant_Program_for_Georgia.186361.pdf) Last Visited on October 9,2008

Turkmenistan.<sup>73</sup> So it is important for the other contracting states for the promotion of foreign investment sign a treaty for avoidance of double taxation.

#### **4.10.5 Dispute Settlement and Forum Selection**

Dispute Settlement and forum selection are among the most important issues, which have to be addressed in accordance with cross-border pipeline construction or operation. There are several levels of possible disputes which are:

- 1) Between the countries involved in the project,
- 2) Between the Host Government and the Pipeline Investors;
- 3) Between the pipeline owner/ operators and the users (shippers and buyers).

Each of these categories of disputes may require its own dispute settlement mechanism. Interstate is normally settled by negotiation between the parties concerned or may be submitted to the third-party resolution; international Dispute Settlement Mechanism is also available to the parties.

For example, Russia–Ukraine gas disputes is one of them which primarily exist between Ukrainian oil and gas company Naftohaz Ukrainy and Russian gas supplier Gazprom over natural gas supplies, prices, and debts. The disputes have involved politicians of both countries, and have threatened natural gas supplies in numerous European countries that depend on Russian natural gas transported through Ukraine. Russia provides about a quarter of the natural gas consumed in the European Union and Ukraine transports about 80% of Russian gas going to EU.

However, a serious dispute started in March 2005 over the natural gas and transit prices. During this conflict Russia claimed Ukraine was not paying for gas, and diversing gas exported to EU from the pipelines. On the other hand, Ukrainian officials at first denied the

---

<sup>73</sup> Avoidance of Double Taxation Treaty between Turkmenistan and Pakistan Available at , <http://www.pakistanlawsonline.com/LawOnline/law/taxationnext.asp?description=Turkmenistan> Visited on October 9, 2008

accusation, but later Naftohaz Ukrainy admitted it withheld some Russian gas intended for other European countries, and used it for domestic needs. On 1st January 2006 Russia cut off gas supplies passing through Ukrainian territory, but On 4th January 2006 a preliminary agreement between Russia and Ukraine was achieved, and supply was restored. In the last months of 2008 relations between Russia and Ukraine again became tense because of a dispute over the size of gas debts owed by Ukraine.

Then in January 2009, the dispute resulted in 18 European countries reporting major falls or cut-offs of their gas supplies from Russia transported through Ukraine. To resolve that dispute, on 17 January 2009, an international gas conference was held in Moscow among the EU, Ukraine and Russia. The summit did not achieve any solution to the crisis. However, the negotiations continued bilaterally between Russia and Ukraine, which resulted in a deal on restoring gas supplies to Europe and Ukraine. Parties agreed that Ukraine would start paying European prices for its natural gas, less a 20 percent discount for 2009, and would pay the full European market starting from 2010.. On 19 January 2009, the head of Gazprom Alexei Miller and the head of Naftohaz Oleh Dubyna signed the 10-year agreement on natural gas supplies to Ukraine for the period of 2009-2019. Gas supplies restarted on 20 January 2009 and were fully restored on 21 January 2009.

The gas crisis caused irreparable and irreversible damage to customers' confidence in Russia and Ukraine, and due to the gas crisis Gazprom lost more than \$1.1 billion in revenue for the unsupplied gas. Ukraine also got a loss of \$100 million in transit fees because of the cut-off gas supply.

In October 2009 a disagreement about the amount of gas occurred. Ukraine intends to import less gas in 2010 because of its economic recession its industries require far less gas, on the other side, Gasprom insists that Ukraine fulfils its contractual obligations. To resolve this dispute, again the heads of both countries met on November 20, 2009 in Yalta to alter the gas

deal of January 18, 2009 which was resulted that Ukraine would not be fined for buying less gas than the old contract, and Russia promised to lower the required volume of gas purchased by the Ukraine without levying fines for using a lower volume than that set out in current contracts. At the same time, Putin said Russia agreed to boost the tariff paid to Ukraine for the transit of the gas by 60 percent.

For the project of TAPI cross border gas pipeline the above disputes would also be available, to resolve these issues, there must be selected forum for the settlement of disputes. It must resolve the issues among the countries, governments and pipeline investors as well as between pipeline owners and users. For investor many international forums are available for the settlement of investment disputes, like International Center for Settlement of Investment Disputes (ICSID) under the Washington Convention, to arbitration under the UN commission on Institute of Stockholm Chamber of Commerce. The NEW YORK Convention 1958 is the key of success for the enforcement of foreign arbitral award. Afghanistan, Pakistan, India are the parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Turkmenistan still did not rectify the Convention.<sup>74</sup>

The WTO is a case in point. Maintaining as it gives clear guidelines on the issues of charging for transit and not exploring a monopoly disputes can be solved by Article 5 of GATT, which allows freedom of transit and restrict transit charges to cost recovery only. In the energy sector dispute, other forum is ENERGY Charter Treaty. Article 7 of the ECT is related to transit issues. Energy Charter is important forum for dispute settlement in the energy sector.<sup>75</sup>

---

<sup>74</sup> Power, Authority and International Investment Law By Tai-Heng Cheng New York Law School

<sup>75</sup> Energy Charter Treaty Available at <http://www.encharter.org/index.php?id=221> Last Visited on March 10, 2009

## Chapter 5

### **Regulatory Regime of Contracting Countries**

#### **5.1 Introduction**

The project of cross border gas pipeline plays a very vital role and having a paramount importance it results into the utmost progress for the concluding countries. Having unbeatable significance; it can be compared to the blood vessel of the economy, but on the other hand, many issues are involved in it. The Countries which are involved in cross border gas pipeline project are facing the fundamental and most pinching problem of legal issues. As there is no such internationally recognized mechanism which can resolve these issues or it is generally acceptable to all the concerned parties. Under the horizon of this issue, it is the desire of every country or contracting parties that its law would be applicable for the project, which will have be having definite result of prosperity and upper hand on the other parties in the case of any dispute arising out of it. Ultimately, it leads to the clash among the parties.

Turkmenistan, Afghanistan, Pakistan and India are also very enthusiastic to conclude a cross border gas pipeline project and negotiations are going on. The question for applicable law for this project is also an issue which will be mentioned in the Host Government Agreement. I have pointed out those fundamental laws which are required to be discussed in this regard i:e Petroleum laws, Import & Export laws, Land Acquisition laws, Environmental laws and labor laws of four contracting states.

#### **5.2 Petroleum Law of Turkmenistan**

##### **Petroleum Law (Law on Hydrocarbon Resources)**

The Petroleum law of Turkmenistan conducts the petroleum operations. The significance of the this law is that an international treaty to which Turkmenistan is a signatory party, if any

conflict arise between national law and International law then the rules of the international treaty shall apply.

Petroleum in its natural state in or upon the land in the territory of Turkmenistan is the exclusive property of Turkmenistan.<sup>76</sup> No party can explore and produce the petroleum operations without license. There are three main types of license<sup>77</sup>;

- 1- Exploration License;
- 2- Production License;
- 3- Combined Exploration and Production License

Two model agreements, the Production Sharing Agreement (PSA) and Joint Venture Agreement (JVA) in Turkmenistan have been placed at least since 1997, adopted by the decree on the competent body and model contracts. These Model Agreements are negotiable. The licensee has the right to conduct only those operations which are specified in the license. The license shall be granted on the basis of tender or direct negotiation<sup>78</sup>. The requirements for the application of license are given in article 12.

### **License validity Periods**

An Exploration License shall be granted for the period of up to 6 years, the license validity period can be extended in order to fulfillment of work program. The period of extension can be two years and might be extended twice. A production license can be granted for the period of 20 years, the validity period of production license may be extended for the period of five years. A combined exploration and production license is granted for a period, including the Exploration license validity period and the production license period as well as including their possible extensions. A license is terminated when validity periods or extensions are expired, if it is revoked with respect of the present law and if it violates any clause which is mentioned in the contract; in all these situations the license will be terminated. The validity of

---

<sup>76</sup> Petroleum law of Turkmenistan. Article 3

<sup>77</sup> *ibid*, Article 7

<sup>78</sup> *Ibid*, Article 8

license can be suspended by the competent body when the license holder carries out the activities within the frame work of the license but not under the program provided for in the contract, as well as license holder conducts petroleum operations not provided for in the license. In order to suspend the license, competent body notifies to the license holders so that to give deadline for the elimination. The reason which becomes the cause of suspension, if it is eliminated the validity of the license shall be restored at the same time. If the license holder does not eliminate the causes that have resulted to suspend the license or if he fails to eliminate it, the competent body shall have the right to revoke the issued license if it is discovered that false information has been given to the competent body.

## **Main Pipeline**

### **Ownership of the Main Pipeline**

Ownership of the pipeline is defined in article 38 as; Main Pipeline means an engineering facility consisting of the main (linear) part of the pipelines systems and associated on-land facilities, communications and equipment designated for transportation of Petroleum from the place of production (treatment) to the place of transfer to another transportation, refining and consumption facilities.

Construction, financing, operation and maintenance of the Main Pipeline shall be carried out by a specially established company, the owners of which can be the Government, Contractor, independent investors or jointly aforesaid entities and persons.

### **Transportation Tariff**

The company which constructs the pipeline may set and charge a transportation tariff for its use. The principle for the construction and maintenance of pipeline are given in article 40 and 41. According to article 49 the taxable profit shall be charged from contractor by general law. Article 172 of the Tax code sets this rate for entities operating under the auspices of the

petroleum law at 20%. Under article 47 all material and equipments for the petroleum operation are exempted from custom duties.

### **Choice of Forum in case of Dispute**

Article 58 of the petroleum law allows the parties to choose the international institutions of arbitration for the settlement of investment disputes. But issue is that Turkmenistan is neither the member of WTO nor rectifies the New York convention on the recognition and enforcement of foreign arbitral awards.

### **5.2.1 Import/export Regulations for Turkmenistan**

In the petroleum law of Turkmenistan it is written that All materials and equipment used in the of Petroleum Operations shall be exempted from custom duties and the registration at the State Commodity Exchange of Turkmenistan.<sup>79</sup> The Government of Turkmenistan imposes excise taxes on certain imported and exported goods.

#### **Import**

Goods and products imported in accordance with intergovernmental agreement, governmental decrees and order, and for the implementation of project and contracts, including those involving foreign investment, state loans, and humanitarian assistance, are exempt from excise taxes.

- 1- Materials and semi-finished products imported into Turkmenistan with a purpose of future processing as well as finished and semi-finished goods and products made of these raw materials and exported from Turkmenistan are also exempt from excise taxes.

---

<sup>79</sup> Article47



- 2- Excise taxes are paid in the National Currency, the Manta, at a foreign exchange rate determined by the Central Bank of Turkmenistan on the date of contract registration with the state commodity and raw Materials Exchange(scrme)

### **Export**

Some manufactured or processed goods produced in Turkmenistan are subject to excise taxes.

### **Customs Valuation**

To pass through customs, an importer of goods must submit the following documents:-

- 1- A trade contract registered with the SCRME, the contract should contain information about quantities and costs in hard currency that will be the basis for the customs valuation.
- 2- A bill of lading with similar information on quantities and costs.
- 3- A customs declaration that can be obtained from the Chamber of Commerce of Turkmenistan.
- 4- A conformance certificate confirming the quality of delivered goods. The certificate can be obtained from the State Standards Inspectorate.
- 5- A Central Bank document confirming a money transfer for purchasing goods or an irrevocable letter of Credit.
- 6- During the customs clearance process, Customs charges a service fee of 0.2% of the contract cost and 20% of the value added tax assessed on the customs service fee sum.

### **Import/export Licenses**

A president decree outlines the separate sets of goods where import or export must be licensed by the president and the Cabinet of Ministers. The SCRME is authorized to issue import/export licenses for all commercial transactions involving foreign participation. The

goods that are auctioned at the SCRME can be exported from or imported into Turkmenistan without licensing.

### **Temporary Entry**

Current rules on temporary entry require that excise taxes can be levied on goods and properties that will be used in Turkmenistan for one year and then exported from the country. However, the excise taxes levied will be paid back upon exporting the goods from Turkmenistan.

### **Trade Standards**

Turkmenistan joined the international standard association in 1991 and in 1992 began to adhere the interstate Council on standard, Metrology and Certification that covers CIS countries. With the exception of cotton, all goods imported into and exported from Turkmenistan must be certified as adhering to quality standard determined by the state chief standards Inspectorate.

### **Free Trade Zones/Warehouses**

According to the law on Free Economic Zones, a special customs regime that includes duty free treatment for goods and property imported goods of foreign origin is provided in the free economic zones. All goods and properties must be declared when imported into or exported from free economic zones.<sup>80</sup>

## **5.2.2 Land Tenure Systems**

### **Turkmenistan**

Land reform has been instituted with significant impact. All land in Turkmenistan is owned by Government.<sup>81</sup> The Government divided former collective land holdings into plots which it leased to individual families, while retaining the overall collective structure and state

---

<sup>80</sup> <http://faolex.fao.org/docs/texts/tuk42565.doc>

<sup>81</sup> [http://turkmenistan.usembassy.gov/ic\\_report.html](http://turkmenistan.usembassy.gov/ic_report.html)

ownership of all agricultural land. Leased plots may eventually be privatized if tenants show satisfactory performance over a period of two years.

This approach has produced a significant shift in the past 10 years to individual or household-based farming, with more than three-quarters of the arable land leased in small plots (6ha average), to individual households or small groups. Most leaseholders consider this land to be rightfully their, and they expect to keep it in future, either as private owners, or by extension of their leasehold.

However, cultivated plots in Turkmenistan will not be affected by the proposed Southern route, and there should be no adverse social impact in rural areas. The semi-desert through which the pipeline will pass is all State land.

#### **Land Acquisition Process and Norms of Turkmenistan:**

Under President's Decree No.3180 of 6 June 1997, the Competent Body is responsible for administering the land expropriation and compensation process.

#### **5.2.3 Environmental Laws of Turkmenistan**

The constitution of Turkmenistan provides basic right to every citizen to take breath clean environment. The Government of Turkmenistan was enacted more than legislation for the protection and preservation of environment. The fundamental legislation for the protection of environment after the independence from former Soviet Union was Nature Conservation 1991. The other legislations for environment protection are following,

- 1- On state Protected Areas 1992
- 2- On Mineral Resources 1992
- 3- On Flora protection and Management 1993
- 4- On Fauna Protection and management 1997
- 5- On Air protection 1996

The purpose of all above laws is protection of environment. Petroleum law article 45 also requires contractor to submit in advance a plan for environmental protection and health protection measures. The Model PSA (Art.28.2) also provides a further detail of environment;

*“In order to protect and preserve the Natural environment, including flora, fauna and marine life of the contract area, including in particular the special ecological conditions of the Caspian Sea”. The contractor” shall implement such environment protection actions as are dictated by good oilfield practice”*

#### **5.2.4 Labor laws of Turkmenistan**

The labor matters are governed by the labor Code of Turkmenistan. The other laws and regulations approved by presidential resolution are;

- 1- The on Leaves of Absence
- 2- The Law on Occupational Safety
- 3- The Law on Pension

Turkmenistan is also the member of International Labor Organization since 1993. The Association of Trade Union of Turkmenistan is the only Trade Union allowed in the country. In Turkmenistan workers are allow to do work 8 hours per day and 40 hours per week. The minimum age for worker is 16 years; it means child labor is not permissible.<sup>82</sup> In heavy industries age increased 16 to 18 years. Foreign workers with the permission of Government can reside in country and do work. The labor laws and regulation also apply to foreign workers otherwise specified by law.

#### **5.3 Petroleum laws of Afghanistan**

A well defined legal framework provides an economic prosperity. A good Petroleum law and regulations are essential for the foreign investment. The Government of Afghanistan passed a new Hydrocarbon (petroleum and gas) law in 2005. Following important articles of said law.

---

<sup>82</sup> UNICEF welcomes Turkmenistan's law banning child labor Available at, [http://www.unicef.org/turkmenistan/media\\_2331.html](http://www.unicef.org/turkmenistan/media_2331.html) Visited on November 27,2008

Under article 2(1) "Hydrocarbons": means Petroleum and Gas and their derivatives.

In the said law it is mentioned that Hydrocarbons which are located or underground in Afghanistan belong to the State. For the management of Hydrocarbons Inter-Ministrel Committee under article 4 is established which consists of the following ministers,

- 1- Minister of Mines and Industries as Chairman.
- 2- Minister of Finance as Vice-Chairman.
- 3- Minister of Foreign Affairs as Member.
- 4- Minister of Economy as Member.
- 5- Minister of Commerce as Member.
- 6- The President of Environment Preservation as Member.

The major duty of the Ministry of Mines and Industries is to formulate and implement policies for the promotion of private investment in the energy sector. In the case when a contractor requires right of passage route, the State shall be responsible to assist him. But the compensation shall be born by the contractor. During operations if any demolitions occurred on surface of land, crops, trees, buildings and animal the contractor shall pay the reasonable compensation to the owner. Important thing in this law under article 16 is that for petroleum and gas operation on private land, the permission of owner of land is compulsory. If permission is not taken, it will be considered trespass and will be punished according to law.

An exploring phase shall not exceed 10 years and producing phase shall not exceed 25 years. In second phase 10 year extension may be granted on request. This law also protect the environment; these are following conditions under article 41:

1. To avoid any damage to flora, fauna, and any other pollution of the environment.
2. To make sure that conducting petroleum and Gas operations do not sustain any damage to the health, welfare, and tranquillity of the related personal and other people.

It is also necessary for contractor to give job opportunity to Afghan Nationals in Petroleum and Gas project.

Article 56 deals with the pipeline transportation:

- (1)- If the state or any other contractor intend to transfer their additional petroleum and gas through the pipeline commissioned by a person according to the provision of this law and the relevant regulation, obtaining the permission of the pipeline owner shall be indispensable. In case of disagreement of the owner, the Ministry of mines and Industries, considering the agreement of the pipeline owner, shall take appropriate decision concerning the use of the pipeline.
- (2)- The rate of transportation and the use of the pipeline shall be determined by the Ministry of Mines and Industries.

If any dispute arises between the state and the contractor, it shall be settled according to the provision of contract. If it is not settled it shall be referred to ICSID or UNICITRAL or any other Arbitral Institute for the settlement of investment dispute.

### **5.3.1 Import/Export Regulation for Afghanistan**

Due to the 20 years of attrition in Afghanistan much of the information on Import and export Regulations exist only in a fragmentary form. No Government financial statistics have been compiled since 1990.

The present Afghan tax system is mainly based on the income tax law of 1965 and the customs law of 1974. The income tax act and the custom law are considered to be generally operational, despite being altered by several administrative directives and decrees. The Public Administration is currently collecting revenue based on these laws, which includes individual and corporate income taxes, gross receipts, fixes presumptive taxes, and customs duties.

According to the tax law, direct taxes are imposed on income and property, while indirect taxes are primarily levied on imports and exports.

Afghanistan's tax revenue will in the short to medium term be mostly derived from customs duties; therefore, designing and implementing a reformed customs administration is of utmost urgency. In addition to monitoring of goods in transit and clearance procedure and merchandise dispatch, the development of capacity focuses on modernizing the clerical systems.

A further short-term need for Afghan Customs is to improve co-operation with their Pakistani counterparts in reducing the level of smuggling of transit back to Pakistan. The medium-term improvement of introducing a simple computerized control and record system will assist in strengthening the transit control system. This measure could reduce the possibility of manipulating the control of the transit system.

The provinces collect most domestic revenues; the lack of control outside Kabul greatly hampers budget execution. In practice only a fraction of the customs duties demanded by the local warlord controlling the border passes to Iran and Pakistan has been received by the government.

## **Afghanistan**

### **5.3.2 Land Acquisition law**

Four forms of land ownership have been identified<sup>83</sup> i.e. Joint ownership by lineage, or village residents related by blood (*mulk-e-khalisa*), public land (*mulk-e-ama*), private land (*mulk-e-shakhs/*), and land owned by religious institutions (*mulk-e- waqfa*).

The buying and selling of land is taking place in Afghanistan, despite the lack of a functioning legal framework. It is fraught with difficulties, and there are frequently several claimants to land and housing. Determining who is the owner, and his or her entitlement, is proving difficult. Land disputes are one of the most important reasons cited by agencies as contributing to the difficulties in enabling IDPs to return to their homes.

---

<sup>83</sup> AFGHANISTAN: LAND POLICY AND ITS IMPLEMENTATION by (A Thematic Brief)  
[http://www.icard.org/en/icard\\_doc\\_down/national\\_Afghanistan.doc](http://www.icard.org/en/icard_doc_down/national_Afghanistan.doc) Visited on March 17, 2009

The situation is made more difficult by instances of forced expulsion by warlords and factions in some provinces.

However, there are strong customary obligations and mechanisms to negotiate property rights, supported by the more democratic Afghan or Pashtun style of collective decision-making. These have been undertaken through *shuras* or *jirgas*, commonly known as a council of elders. Both men and women's *shuras* are practiced in different parts of the country. This mechanism is the best option for deciding resettlement and compensation issues, including:

There has been no movement on land ownership identification in the southern region that

Who owns what property and how much it is worth?

Who is entitled to receive the compensation package and what form the compensation should take.

### **5.3.3 Labour Protection under the Constitution of Afghanistan 2002**

The constitution of Afghanistan gives following privileges to workers;

Everybody choose his profession according to his abilities there is no compulsion on choice of profession .Work is the right of every Afghan <sup>84</sup>and working hours, paid holidays, right of employment and employee, and other related affairs are regulated by law. The forced labour and the child labour are not permissible under the constitution.<sup>85</sup>

Afghanistan has ratified 15 of international labour conventions. Among of them three important conventions are following,

- 1 C.100 Equal Remuneration Convention ,1951
- 2 C.105 Abolition of Forced labour Convention,1957
- 3 C-111 Discrimination (Employment and Occupation) Convention, 1958
4. law for Employment of Foreign Subjects in Afghanistan 1935
5. Law for the Employment of Foreign Nationals in Afghanistan 1314

---

<sup>84</sup> Article 48

<sup>85</sup> Article 49



6. Ordinance No. 103 of the Presidium of the Revolutionary Council of the Democratic Republic of Afghanistan to adopt the Labor Code.

According to labour laws, children under the age of 15, were not allowed to work more than 30 hours per week and 16 to 18 years worker, 35 hours per week under article 49(1), (2) of the labour code. The average workweek for workers was 40 hours. The worker is entitled to ten days essential(urgent) leave with pay every year under article 68(1) and Hajj leave is also permissible for 45 days in entire service under article 71. The dispute settlement mechanism is also given in article 131.

#### **5.3.4 Environmental Law of Afghanistan**

The Environment Act 2005 is the first law for environment protection. . The National Environment protection Agency (NEPA) was established before the enactment of this law and function of NEPA are mentioned in article 9. All the activities which are significant threat on environment are prohibited and the ministries as well as departments are not authorized to issue a license for those activities unless the mitigation measures are taken under article 18. It provides framework for managing natural resource preservation and biodiversity, drinking water, pollution control, and environmental education.

The environment condition is not better in Afghanistan More than 3000 people may die only in Kabul due to air pollution every year.

#### **5.4 Petroleum laws of Pakistan**

##### **Constitutional Position**

Under Article 172(2); the constitution of Pakistan 1973 petroleum is owned by Federal Government.

*“All lands, minerals and other things of value within the continental shelf or underlying the ocean within the territorial waters of Pakistan shall vest in the Federal Government”<sup>86</sup>*

---

<sup>86</sup> Constitution of Pakistan 1973 Article 172 (2)

### **The Minerals (Acquisition & transfer) Order 1961**

Under this order the minerals were transfer to Federal Government. The natural gas also comes under the definition of minerals in section 2. The provisions of this order can not be challenged in any court of law.

### **Regulations of Mines and Oil Fields & Minerals Development Act 1948**

Under the said act the Federal Government of Pakistan is empowered to make rules, conditions, granting of license, renewal of exploring license and the conditions for realties a tax to be paid by licensees. It also deals with the Storage, production, distribution and prices at which petroleum is sold to government. Under this act Federal Government has empowered by entering into petroleum concession agreements & production sharing agreement. It also discusses situation under which any license lease or concession may be revoked or renewal might be refused.

### **Pakistan Petroleum (production and exploration) Rules**

These rules passed in 1949, 1986, 2001 and offshore petroleum exploration as well as production rules were passed in 2003. Although the petroleum rules 1949, 1986, and 2001 were superseded by petroleum rules 2003. These earlier rules remained in force for permits, licenses and leases granted and renewed under those rules until the above mentioned rules have been repealed. Under the petroleum policy 2001 Exploring and production companies will be allowed to construct and operate pipeline both for local and export purpose. Other important aspect of petroleum polices is that” the policy itself had no legal sanctity prior to the issuance of the notification through which it got enforced”. The government of Pakistan issued petroleum policy for the exploration and development of petroleum sector, these polices have been issued time to time in 1991, 1993, 1994, 1997, 2001 and in 2007.

### **Natural Gas Rules 1960**

The Natural Gas Rules 1960 deals with the transmission and distribution and usage of natural gas. These rules are related to midstream and downstream. Without license the construction or lying of pipeline for the purpose of transportation, distribution or supply of gas is prohibited under section 3. Lince requirements are also given in section 4 of the said rules. The license under the gas rules cannot be transfer, change without the prior approval from the authority. Although in 2002, these rules were superseded by the Licensing Rules for Transmission, Distribution and supply of natural gas, 2002 (promulgated under the OGRA Ordinance, 2002).

### **Natural Gas Regulatory Authority (licensing Rules), 2002**

Before the establishment of OGRA, NGRA had been working for producing rules and regulations for grant of a license and its requirements. The procedure for the transfer or assignment, its termination, revocation, modification and punishment in case of violation are also given in these rules. The rights and obligations are also given in these rules. These rules were also adopted under the OGRA.

### **Oil and Gas Regulatory Authority Ordinance, 2002(“OGRA Ordinance”)**

In 2002 the Government of Pakistan issued a new ordinance for the establishment of Oil Gas regulatory Authority. It is extended to the whole of Pakistan including the offshore area. The authority shall consist of chairman and three other members (member finance, member Oil and member gas). Power and function of the authority, tariff and license requirement and issuing license in respect of any activities related to midstream and downstream. The license cannot be changed and transferred without the written permission of Authority. The license has right of easement under this ordinance on the land for the pipeline operational purposes

and also pay the compensation to the occupier of land. In the case of violation of this ordinance, authority has a power to give punishment of imprisonment which shall not exceed two years.

OGRA is dealing with the transportation of oil and gas by pipeline in the territory of Pakistan. The word "pipeline" is defined under the OGRA ordinance as:

*"Any pipe or any system or arrangement of pipes wholly within Pakistan including offshore area, which transports petroleum and includes all equipment of any kind used for the purpose of, or in connection with, or incidental to, the operation of a pipeline in transporting and handling of petroleum".*

Now it is clear that this ordinance's clause does not apply to cross border pipeline because Pakistan is not only importing gas but also a transit country to supply the gas to India. However, the Government has established the Inter State Gas System (Pvt) Ltd. (ISGSL) to act as an interface between GOP and external agencies to facilitate import of natural gas. In Pakistan currently no specific rule and regulations for cross border pipeline exist.

#### **5.4.1 Import/Export Regulations for Pakistan**

Pakistan uses Harmonized System to classify and describe goods. Customs Duties are levied on ad valorem basis. Maximum tariff rates were reduced from 92 percent to 70 percent in June 1994, and from 70 percent to 65 percent in June 1995. The Government of Pakistan (GOP), encouraged by World Bank and IMF had decided to lower the maximum tariff rate in a phased manner, but had delayed implementation of this decision. The maximum tariff rate was reduced to 45 percent from 65 percent. The Federal budget for 1998/99 has retained this tariff rate.

Other than customs duty, the Government charges sales tax (12.5 percent) on the duty paid value of a variety of goods produced in or imported into the country. Customs duty and other charges are payable in Pakistani rupees.

#### **Customs Valuation**

The GOP has cancelled its controversial pre-shipment inspection (PSI).

Valuation system in March 1997 and has revered to Import Trade Price (ITP) based valuation system. The Import Trade Price Manual is updated periodically to facilitate the valuation process.

### **Customs Clearance and Warehousing**

Goods must be landed within the period specified on the bill of lading or within 15 days after entry of the vessel into port. Once the goods have entered and duties have been assessed, the importer must clear them for consumption (by paying the duties) or warehouse them.

### **Import Licenses**

#### **All importing Free Trade Zones/Warehouses**

With a view to promote foreign investment and eater export surplus for the country, the GOP established a free trade zone at Karachi in 1980. The KEPZ has fully-developed infrastructure facilities and offers the following incentives to investors:

- 1- .Salary of foreign personnel is exempted from income tax for five years from the date of arrival in Pakistan.
- 2- Import of machinery, spares and raw materials is free from all Federal and Provincial taxes.
- 3- The right to export from the KEPZ to Pakistan; .No tax on capital gains.
- 4- Unrestricted repatriation of capital, profits and dividends allowed; Exemption from certain Pakistani labor laws.

### **Membership in Free Trade Agreements**

Pakistan is a member of World Trade Organization (WTO). Pakistan is not a member of any free trade arrangement, but is party two arrangements which are seeking progress toward regional trade liberalization. The Economic Co-operation Organization (ECO), whose founding members are Pakistan, Turkey and Iran, grant 10 percent tariff preference on

statutory rates for some goods. (ECO membership was expanded to 10 in 1993, when Afghanistan, Azerbaijan and the five formerly Soviet Muslim republics of Central Asia were admitted.)

### **Exports**

Export of goods from Pakistan is allowed generally. However, export of some items is banned or is subject to certain conditional ties for reasons of short supply and to ensure their availability in the home market. The customs authorities will inspect outbound baggage to ensure that no banned/restricted item is taken out of the country as accompanied personal baggage.

### **Import/Export Documentation**

These documents are required for imports and exports. Bills of lading, invoices, packing lists, certificates of origin, copies of letters of credit, and insurance certificates.<sup>87</sup>

### **Temporary Entry**

GOP imports regulations permit temporary import of legally importable items by foreign companies (e.g. as commercial samples) provided that a bank guarantee or indemnity bond equivalent to the value of the item is provided to the Customs authorities to ensure that the items will be re-exported. Applicable import fees must be paid, but it will be refunded on re-export. Similarly, domestic industrial firms may import items for test, trial and re-export, subject only to the payment of a refundable import fee.

### **Prohibited Imports**

Pakistan controls certain imports through the negative list. Goods which are not on the negative list may be freely imported. The negative list is made up of-

- a) Items banned for religious, security or luxury consumption reason;
- b) Capital and consumer goods banned to protect domestic industry;

---

<sup>87</sup> Import Regulations of Pakistan Published by Foreign Affairs and International Trade Canada Available at <http://www.infoexport.gc.ca/eng/print-version.jsp?did=18199> Visited on April 23, 2009

- c) Intermediate goods used in producing protected goods.

A restricted/conditional list includes items that may be imported only by certain parties (the government or other specified users) or by certain special arrangements (such as imports against credit).

### **Trade Standards**

The Pakistan Standards Institution (PSI) is the national standards body. The various activities of PSI include preparation and implementation of standards, introduction of standards inspections systems, collaboration with international organizations such as the International Standards Organization (ISO) and dissemination of information on standardization and quality control.

The GOP's Export Promotion Bureau has led a successful campaign to provide free advisory service covering planning, documentation and interpretation into local environment, implementation and certification processes for ISO 9000.

### **Normal Time Lines for Clearing Equipment through Customs**

The estimates have been obtained by the Domestic Consultants in discussion with the customs authorities and clearing agents in the three countries.

- 1- Turkmenistan -Customs clearance into Turkmenistan requires a time period of one to three weeks, provided that all documentation is in order.
- 2- Afghanistan -No data is available.
- 3- Pakistan -The time for customs clearance in Karachi port quoted by a clearing agent is a minimum of one week if all the necessary documents are present and correct.

### **5.4.2 Land Acquisition law**

Land Acquisition Act, 1894 is a provincial law from an operational point of view,

Each province has its own different interpretations of the norm for land acquisition and compensation processes. Provincial Governments have also evolved mechanisms for calculation and payment of compensation, suited to their specific needs and socio-cultural contexts. The land Acquisition process goes under the sections 4, 6,9,41 and 42 of the land acquisition act, 1894. Finally an award is made under the section 11 of the Land Acquisition Act, 1894, for permanent acquisition. The procedures so far adopted for compensation, grievance redress, appeal periods, interest rate calculations, etc., do not aggregate to a resettlement policy. Recourse is often taken to *ad hoc* arrangements agreements and understandings for resettlement in difficult situations.

The recommended and nationally harmonized land acquisition procedures, and the relevant authorities involved in the procedure are set out in the Ordinance of February 2002. If once it is ratified, all rules and regulations established by this Ordinance will have precedence over any other laws concerning land acquisition and resettlement.

Apart from legal regulation, a process of negotiation and settlement with *Sirdars* in Baluchistan will be necessary. Baluch *Sirdars* are at the apex of a highly authoritarian socio-economic structure. There are very strong cultural feelings and attachment to the land, and key informants state that it is never sold. There is thus no benchmark for land prices. In tribal territories, the project will find it difficult to determine individual landowners, which will lead to many spurious claimants unless a good methodology is followed. The right to run pipelines through Baluch tribal territory and to pay for the privilege to tribal leaders is currently a very sensitive issue. The royalty price per unit in Baluchistan is significantly lower than in Sind and Punjab and has not been re-negotiated for many years. This is cause of dissatisfaction, reflected in two further attacks carried out on the Sui Gas pipeline during the period of the ISA, in an effort by tribal leaders to demand more money from the managing company.



## **Women's Inheritance and Property Rights under Islamic and Civil Law**

The Muslim women are entitled under both Islamic (Shar'ia) and Civil laws to own or inherit a share of family property (land, goods, buildings, cash). The amount of the entitlement under Shariat law (*virasat*) is less than that of a man.

However, customary law prevails, and it is unusual for a woman to own her own property. In Turkmenistan, property rights are evolving. With leasehold land for agricultural or garden cultivation, women are often the leaseholders. In Afghanistan, most of the women are not even aware of Islamic legal entitlement to own property. In Pakistan, some women are aware and do inherit property from their parents, but tend to retain it only until marriage, and commonly sign it over to their brothers. For a woman to sign away inherited rights is seen as correct behavior. If a father wishes to leave family land or buildings to daughters, he will experience strong resistance from community members.

In Pakistan and especially Afghanistan, neither Islamic nor Civil laws are seen as being so relevant as customary practice as far as women's property rights are concerned. In Punjab, land is often assigned to different title-holders, in order to avoid revenue payments.

### **5.4.3 Health, Safety and Environmental Laws**

Health, Safety and Environmental Law Requirements under the petroleum laws which are as follows:

- 1) Operations shall be conducted in a prudent manner and shall not unreasonably obstruct or interfere with other activities such as navigation, fisheries and agriculture. All reasonable precautions shall be taken to prevent pollution or accumulation of trash to prevent damage to the environment and the surroundings.
- 2) Operator shall take steps necessary for controlling the flow and preventing the waste of Petroleum; for preventing damage to adjoining Petroleum bearing strata, and for

preventing the entrance of water through wells to the Petroleum bearing strata, except when approved by the Government for the purposes of secondary recovery.

- 3) The Government may establish safety zones around temporary and permanent installations.

1. **DGPC's Guidelines for Operational Safety, Health and Environmental Management in Pakistan's Petroleum Exploration and Production Sector**

The DGPC's Guidelines for Operational Safety, Health and Environmental Management in Pakistan's Petroleum Exploration and Production Sector shall be followed during preparation of Environmental Impact Assessment. These Guidelines use World Bank Classification for projects and classifies exploratory drilling "Category A" projects. Category A projects are defined as projects which have one or more of the following attributes that make the potential impacts significant i.e. direct pollutant discharges that are large enough to cause degradation of air, water or soil; large-scale physical disturbance of the site or surroundings; extraction, consumption, or conversion of substantial amounts of forest and other natural resources; measurable modification of hydrologic cycle; hazardous materials in more than incidental quantities, and involuntary displacement of people and other significant social disturbances. Hence, the DGPC's guidelines for operational Safety are actually a token of assurance against any damage. These rules do apply in the similar fashion while considering Iran, Pakistan and India cross border gas pipeline project. This very project will be materialized taking care of all aspect related with DGPC's rules.

2. **Public Consultation and Disclosure Requirements for Environmental Impact Statement**

Pakistan Environmental Protection Act, 1997 specifically requires that the review of an Environmental Impact Assessment shall be carried out with public participation.

The Pakistan Environmental Protection Act, 1997 allows project sponsors to request the Pakistan Environmental Protection Agency to withhold certain information relating to matters such as trade, manufacturing or business secrets, processes or techniques or financial, commercial, scientific or technical information. However, the Pakistan Environmental Protection Agency may turn down the request if, in its judgment, the request for confidentiality is not well founded or public interest in disclosure outweighs in importance possible harm to the competitive position of the project or its proponent.

Similarly, Section 12 (6) of the Pakistan Environmental Protection Act, 1997 makes it mandatory on the Pakistan Environmental Agency to maintain public information registers on environmental assessments.

World Bank requires appropriate consultation with affected groups, local communities, and Non-Governmental organizations (NGOs) prior of the start of environmental assessment and during the assessment. The key requirements of the consultation process include, early consultation through documentation, incorporation of public views in project design, provision of summary of Environmental Impact Assessment to affected groups and consultation with affected groups even after the completion of Environmental assessment.

In view of the above, it is recommended that the surrounding community and affected groups shall be provided as much information as possible regarding the project and they must be consulted regarding the environmental economic and social impacts of the project. After the completion of the environmental assessment, a summary of its findings may also be provided to the community.

This information about Pakistani environment protection act 1997 actually revolves around one aspect consultation with the community. As every project is meant to facilitate the community as it is necessary to involve community in the project. The process of consultation is as important as the project. The Turkmenistan, Afghanistan, Pakistan and India cross border gas pipeline project also assures that it will not neglect the important of

consultation with the community having Pakistan environment protection act 1997, in mind. In this way Iran, Pakistan and India cross border gas pipeline project renders a kind of guarantee against any risk of damage to society, environment and economics and social factors.

### **3. Hazardous Material**

Pakistan Environmental Protection Act, 1997 50 states that no person shall generate, collect, consign, transport, treat, dispose of, store, handle or import any hazardous substance except under a license issued by the Pakistan Environmental Agency and in such manner as may be prescribed. Pakistan Environmental Protection Act, 1997 creates a distinction between hazardous substances and hazardous wastes. Where hazardous waste cannot be imported into Pakistan, a hazardous substance can be imported with a license issued by the Pakistan Environmental Protection Agency. If Operator has a need to import a hazardous material into Pakistan, it should classify said substance as a hazardous substance in order to do so.

The Pakistan Environmental Protection Act, 1997 is unclear as to what actually is a hazardous material, however, the 1993 Rules regarding National Environmental Quality Standards for pollutants and hazardous material which are still in effect under the Pakistan Environmental Protection Act, 1997 describes hazardous material.

### **4. Hazardous Substances**

Pakistan Environmental Protection Act, 1997, 51 hazardous substance has been describes as:

- a) A substance or mixture of substance with by reasons of its chemical reactivity or toxic, explosive, flammable, corrosive, or other characteristics, causes or is likely to cause, directly or in combination with other matters, and adverse environmental effect
- b) Any substance which is prescribed as hazardous by the Pakistan Environmental Protection Agency.

Under the Pakistan Environmental Protection Act, 1997, a licensing requirement for generating collecting, consigning, transporting, treating, disposing, storing, handling or importing hazardous substances in the country has been proposed. The Pakistan Environmental Protection Agency has been proposed as the authority to issue such licenses.

In view the existing legal situation, regulatory compliance action is required at this stage for hazardous material handling. The material safety data sheets (MSDS) provided by the manufacturers of chemicals must also be followed for the safe handling, transportation and disposal of hazardous materials.

Depending on the constituents of the drilling mud, it is potentially hazardous substance and hence forms a hazardous waste after the completion of the drilling operation. Recognizing this, Operator shall try to use non-hazardous mud, analysis mud after completion and adopt a safe disposal method.

## **5. Waste Disposal**

The Pakistan Environmental Protection Act, 1997 states that no person shall dispose of waste On public land or on a highway, except in a container, dustbin or receptacle placed for the purpose of collection of it; or on land owned or administrated by a local councilor local authority except; at a waste management facility operating under a license issued under the Pakistan Environmental Protection Act, 1997 or related rules, purpose of collect it, by burning it in accordance with permission obtained from the local councilor a license issued under the Pakistan Environmental Protection Act, 1997 or related rules, or on any other manner specified in the regulations on or into or under water, except in accordance with a license issued under the Pakistan Environmental Protection Act, 1997 or related rules, On any land owned by another person, except with the consent of the land and in accordance with provisions of subject Act.

According to environment managers in Pakistan, currently there is lack of infrastructure in Pakistan, in terms of designated disposal sites, which results in difficulties in disposing of hazardous waste. Moreover no standards exist for establishment of soil contamination. However, it is expected that the designated disposal sites and soil contamination standards will be established in near future.

As Pakistan environment protection Act, 1997 provides detailed information necessary for project. In this respect, it has classified hazardous material and has also made mechanism which tells how to dispose of waste materials. The TAPI cross border gas pipeline project will follow all these aspect described by Pakistan environmental protection Act, 1997.

#### **6. Penalties under the Pakistan Environmental Protection Act, 1997**

Penalties under the Pakistan Environmental Protection Act, 1997 are broader and more sever than under the Pakistan Environmental Protection Ordinance, 1983. As far as companies are concerned, under the Pakistan Environmental Protection Act, 1997, any offense committed may result in imprisonment of company presidents, General Manager, as well as other appropriate managers and directors guilty of said offense.

#### **7. Environmental Protection under the Non-Environmental Laws**

In addition to these laws, which are specifically designed for environmental protection, various other Federal and Provincial laws have clauses that are also important in the context of environmental protection. These laws are also relevant for the purpose of TAPI cross border gas pipeline project as this is also subject for environmental protection.

#### **8. Environmental Standards**

##### **(a) Air Quality Standards**

Pakistan's National Environmental Quality Standards (NEQS) for industrial air emission

Area is shown in Appendix 20. World Bank guidelines for gaseous emission from onshore oil and gas production facilities are shown in Appendix 21. Any development project is also expected to preserve the ambient air quality. The World Bank recommends that the concentration of pollutants in the ambient air should not exceed the values shown in Appendix 21. In the case of TAPI cross border gas pipeline project appendix 21 is also relevant with expect to preserve the ambient air quality which can be destroyed in case of any leakage.

**(b) Water Quality Standards**

Pakistan Environmental Protection Agency has issued a general NEQS for industrial effluents that are shown in Appendix 20. The existing regulatory guidelines for industrial cooling water discharge are contained in the World Bank's Environmental Guidelines, 1998. The relevant section of the guideline, "Disposal of Industrial Effluents," covers general liquid effluent disposal, sampling and analysis for industry. Appendix 21 shows the proposed World Bank guidelines for effluent for onshore oil and gas production facilities.

**(c) Noise Standards**

The National Quality Standards (NEQS) prescribes criteria for vehicle noise only. No standards for other sources of noise are prescribed.

The World Bank treats noise both as a health hazard for plant operators and nuisance for the surrounding communities. The Bank recommends that noise levels from project's operation, measured at noise receptors located outside the project property boundary should not exceed the limits shown in Appendix 21.

For workplace noise, the World Bank recommends that feasible administrative and engineering controls, including sound-insulated equipment and control rooms, should be employed to reduce the average noise level in normal work areas. The bank requires that plant personnel must use hearing protection when exposed to noise levels above 85 db.

These water quality standard and noise standards are some how relevant to this project. In case of leakage of gas while pipelines passing from any watery resources it will pollute the water quality standard, as the appendix 20 is relevant in this regard.

While operation of the Iran, Pakistan and India cross border gas pipeline project the World Bank recommends some administrative and engineering control which is also needed to be kept in mind while passing through the operation of project.

#### **5.4.4 Labor Laws of Pakistan**

##### **Constitution of Pakistan, 1973**

Under the constitution of 1973, Pakistan has given its commitments for the protection of labor. Pakistan has given its positive intentions for the protection of labor and social justice. It has also taken some special steps for the social and economic well beings for the people of Pakistan. The Preamble to the Constitution of the Islamic Republic of Pakistan, 1973, which has been part of the Constitution as Article 2-A, inter alia guarantees of fundamental rights including the equality of status, of opportunity and before law, social, economic and political justice. The Articles 11, 14, 25 of the Constitution deals with the fundamental rights. Article 11 prohibits slavery, employment of child below the age of 14 in any factory. Whereas Article 14 provides that “the dignity of man and subject to law, the privacy of home, shall be inviolable”. Article 25 inter alia guarantees that all citizens are equal before law and are entitled to equal protection. It may be stated that Article 37(e) of chapter II of the constitution relating to the principles of policy enjoins the state to make provisions for securing just and human condition of work, ensuring that children and women are not employed in vocations unsuited to their age or sex and for maternity benefits for women in employment.

The State shall: <sup>88</sup>

---

<sup>88</sup> Constitution of Pakistan, 1973 Article 38



- a) Secure the well-being of the people, irrespective of sex, caste, creed and race by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to detriment general interest and by ensuring equitable adjustment of rights between employers and employees, landlords and tenants;
- b) Provide to all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;
- c) Provide for all persons employment service: of Pakistan or otherwise, social security by compulsory social insurance or other means.

The provision of the Constitution of Islamic Republic of Pakistan prohibiting slavery, forced labor, etc. read as:<sup>89</sup>

- a) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.
- b) All forms of forced labor and traffic in human being are prohibited.

Practice of bonded labor has been designed, keeping in view the needs of poor people. It is the responsibility of the state to eradicate such evil from the society. It is also responsibility of the state to eliminate the exploitation and fulfill the requirement; of fundamental principles. As according to the provisions of the constitution regarding the freedom of movement, freedom of assembly, freedom of association, freedom of speech, equality of citizens and dignity of man against the practices of bondage, slavery and coercion.<sup>90</sup>

### **ILO Standards**

Pakistan has ratified the 34 ILO Conventions and 7 out of 8 cores conventions of the ILO's declaration on fundamental principles and rights at work. This declaration covers four areas which are;

---

<sup>89</sup> Article 11(1), Ibid

<sup>90</sup> Bonded Labor System (Abolition) Rules, 1995

- a) Freedom of association and the recognition of the right of workers and employers to bargain collectively,
- b) The elimination of all forms of forced or compulsory labor,
- c) The effective abolition of child labor,
- d) The elimination of discrimination in respect of employment and occupation

The ILO declaration was adopted by the ILO Conference in 1998, but Pakistan's commitment to the principles of freedom of association and the rights to collective bargaining go back to 1951 and 1952 respectively indicating a strong commitment by Pakistan to the protection of basic rights in the very early years of Pakistan's nationhood.

For the labor concerning the Turkmenistan, Afghanistan, Pakistan and India cross border gas pipeline project, ILO standers are needed to fulfill as all the concerned countries are party to it.

#### **Pakistan Essential Services Maintenance Act 1952**

Under Pakistan Essential Services Maintenance Act, 1952, reads as follows:<sup>91</sup>

*“Any person engaged in any employment or class of employment to which this Act applies who without reasonable excuse abandons such employment or absents him from work, is guilty of an offence under this Act.”*

Explanation: : 2.A person abandon his employment within the meaning of clause who, notwithstanding that it is an express or implied term of his/her contract of employment that he may terminate his employment on giving notice to his employer of his/her intention to do so, terminates his/her employment without the previous consent of his/her employer."

Infringement of the above said provision would lead to the guilt under section 5 which is punishable with the imprisonment for a term which may extend to one year and also liable to fine. This is discriminatory provision and it is often used by the petroleum companies to abandon its employees from joining another competitor petroleum company. This law exists

---

<sup>91</sup> Pakistan essential services Maintenance Act,1952, Section 5

for all the petroleum companies, generally the only company which invokes this provision; is oil and gas Development Company. This right of essential service is also applicable for the project of TAPI cross border gas pipeline project.

### **Workers Compensation Act, 1923**

Workers Compensation Act, 1923 essentially provides that if personal injury is caused to a worker by accident arising out of and in the course of him/her employment, then the employer must pay compensation under the provisions of Workers Compensation Act, 1923. During the operation of Iran, Pakistan and India cross border gas pipeline project if any worker has caused injury by accident in the course of employment, then he has right to get compensation from the employer under the provisions of workmen compensation act.

### **Employee's Old Age Benefits Act 1976**

This act applies where ten or more persons are employed. According to this act the employer is required to deduct 1500 Rupees form the wages of employees performing managerial or administrative were and professional degrees. This contribution will be ceased when the employ will attain the age of 60 years; if male and 55 years in female.

The Federal Government matches the employer's contribution, and pays the same to a fund under Employees' Old Age Benefits Act, 1976. Subject to certain conditions, and employee covered under Employees' Old Age Benefits Act, 1976 becomes entitled to receive old age pension from this fund upon reaching the age of sixty (60) years, or fifty five (55) years in the case of female employee.

The employer is required to maintain records and registers for purposes of Employees' Old Age benefits Act, 1976. Offences under this Act are punishable with fine of up to Rs. 10,000 or imprisonment extending up to two years. A persistent default in payments under

Employees' Old Age Benefits Act, 1976 may result in increasing of 50% of the original amount due.

### **Industrial Relations Ordinance 2002**

This law deals with formation of labor unions, regulation of relations between employers and workmen, avoidance and settlement of differences of disputes between them. The law also prohibits unfair labor practices, defined in Industrial Relations Ordinance, 2002 on the part of both employers and workmen. For example, threat to dismiss or remove from employment, or intimidation, or coercion of any officer of trade union is and unfair labor practice or canvassing for trade union membership during working hours, or intimidation or coercion of an employer to reach a settlement are unfair labor practices on the part of workmen. Indulgence in unfair labor practices is punishable with imprisonment and fine.

This law also deals with establishment of labor courts. All labor cases are filed under the Industrial Relations Ordinance 2002. However only workmen can file cases, which are called grievance petitions, in the labor courts, others have to file cases in ordinary courts of law. The definition of "workmen" in the Industrial Relations Ordinance, 2002 excludes a person who is:

- a) Employed mainly in a managerial or administrative capacity or
- b) Who being employed in a supervisory capacity, draws wages exceeding Rs. 1500 per month; or
- c) Performs either because of the nature of duties attached to the office or by reasons of the powers vested in him, functions mainly in a managerial nature.

Industrial relation ordinance is the applicable law to govern the matters regarding workmen and employer.

## **India**

### **5.5 Indian Petroleum laws**

The origin of oil and gas industry in India can be traced back to 1867 when oil was struck at Makum near Margherita in Assam. After the partition of subcontinent India became independent state in 1947, the oil and gas industry was controlled that time by international companies. After partition the domestic production was 250,000 tonnes per annum from only one state Assam.

#### **Constitutional position of Petroleum**

An important thing is that the constitution of India provides ownership of petroleum resources in offshore with the Union of India 9 Article 297 and the ownership of petroleum resources in on land areas rests with respective state governments. However regulation and development of petroleum resources both in offshore and on land areas exclusively rests with the Union Government. The Ministry of Petroleum and natural Gas, gets its authority under item no 53, list 1, seventh schedule, article 246 of the constitution of India.

The item reads regulation and development of oil fields and mineral oil resources, petroleum and petroleum products, other liquid and substances declared by parliament by law to be dangerously inflammable”.

However, there appear to be some overlap with the state authority in the area of “gas and gas works” as defined in the country constitution. This issue is presently pending adjudication before the Supreme Court of India based on the reference made by the president of India with respect to validity of the Gujarat Gas Act, 2000.

Options before Centre in Case of Negative Opinion;

- 1- Constitutional Amendment Article 368- Consent of the states.
- 2- Common Law under Article 252- Consent of the Concerned states legislatures.

## **Petroleum laws**

- 1- The Petroleum Act,1934
- 2- The Oil Field ( Regulatory & Development)Act,1948
- 3- The Petroleum Pipeline Act 1962
- 4- The Oil Industries Act ,1974
- 5- Petroleum Rules, 1976
- 6- P & NG Rules, 1959
- 7- P&NG Rules, 2002
- 8- The Petroleum And Natural Gas Regulatory Board Act,2006<sup>92</sup>

### **The Petroleum Act, 1934**

This act is relating to import, transport, storage, production, refining and blending of petroleum. “To import petroleum” means to bring it into India by land, sea or air.<sup>93</sup> The rules for the import, transport of petroleum, the power are given to Central Government to make rules under section 4 of this act.

### **The Oil Field Act 1948**

This act deals with the oilfield and development of mineral and oil resources.

### **Petroleum & Natural Gas Rules, 1959**

These rules are related to the petroleum exploration licence and lease

### **The Petroleum Pipeline Act 1962**

This act deals with the acquisition of land for the pipeline purpose. It extends to whole of India provided that the state of Jammu and Kashmir<sup>94</sup>. Under this a person who is authorised by the Central Government or State Government or the corporation which proposes to lay

---

<sup>92</sup> <http://petroleum.nic.in/>

<sup>93</sup> Article 2(e)

<sup>94</sup> The Petroleum Pipeline Act , Section 2

pipeline for transporting petroleum and his servants and workmen to enter, survey, take level, to dig or bore and to set out the intended line of work. Under this Section they are authorised to take any steps which are necessary for pipeline operation. In section 7 some exception are given where is not authorised for entrance.

### **The Petroleum Rules 1976**

Part five of the theses rules are apply only to the transportation of petroleum by pipelines. Land must be acquired before installation of pipeline. The Chief Controller is major authority for pipeline operations. This chapter also deals with the approval, route of the pipeline, design of pipeline and attachments, laying pipeline, protection, Hydro testing, shut down, patrolling, addition, alterations, repair and maintenance of pipelines.

### **Oil Industries Act, 1974**

This act is related to levy duty of excise on natural gas.

### **The Petroleum and Natural Gas Regulatory Board Act, 2006**

Chapter 2 of the act is related to establishment of the board, the Board shall consist of a Chairperson, a Member (legal) and three other members to be appointed by the Central Government. The purpose of this act was that setting up of an independent regulatory mechanism with the objective of regulating the refining, processing, storage, transportation, distribution, marketing and sale of petroleum production and natural gas. Functions and powers of the boards are mentioned in chapter three and one of them function is;<sup>95</sup>

Lay down, by regulation, the technical standards and specifications including safety standards in activities relating to specifications including safety standards in activities relating to petroleum, petroleum products and natural gas, including the construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector.

---

<sup>95</sup> Section 11

The board has judicial powers therefore under section 56 now the civil courts do not have jurisdiction about those matters which powers are granted by this act to board and also have no power to grant injunction against the action taken under this act.

### **5.5.1 Import/ export/ Regulation for India**

India is developing country so its laws and regulations are not well developed. The foreign exporters need to be aware of obligations and legal requirement pertinent to an Indian importer in order to ensure efficient transfer of goods and assure payment .These are the following laws and regulations which deals the Indian import and export.

#### **The Customs Act 1962**

This law is related to the application of customs duty deduction, or exemption from custom duties on the prevention of illegal export of goods. The custom duty is charged on the goods exported from India as well as goods imported from foreign countries. Some other laws related to custom duty are;<sup>96</sup>

- 1- Custom Tariff act,1975
- 2- Central Excise Act 1944
- 3- Central trade rules 1993
- 4- Central Excise Tariff Act 1985
- 5- Import and export policy 1997-2000.

#### **Import /Export License**

Import and export license issuing authority is Director General Foreign Trade (DGFT), this authority is working under the Ministry of commerce. Every license shall be valid for the period specified in the license.

---

<sup>96</sup> Indian Export Import Portal Available at <http://exim.indiamart.com/act-regulations/> Visited on March 8,2009



No person may claim a license/ certificate/permission as a right and the DGFT a have the power to refuse to grant or renew a license/certificate/permission in accordance with the provision of the act and the rules made there under.

### **Import / Export Documentation**

The following documents are required for import and export; Bill of lading, invoices, packing lists, certificate or origin, copies of letter of credit and Insurance certificate.<sup>97</sup>

### **Custom Clearance/ work housing**

The importer is required the above mentioned documents to the custom authorities when he received intimation of arrival of goods at the ratified place, when the goods have entered and duties have been assessed. After the payment of duties, goods have been removed by the importer.

### **Prohibited Imports/Exports**

Under section 11 of the customs act, the central government has power to issue Notification which export or import of any goods can be declared prohibited. Under section 3 and 5 of the foreign trade act 1992, the Central Government can make provision for prohibiting the import and export of goods.

Import and export of some specified goods may be restricted under other laws such as;

- 1- Environmental Protection Act
- 2- Wildlife Act
- 3- Indian trade and merchandise market Act
- 4- Arms Act etc

DGFT may, through a notification, adopt and enforce any measure necessary for:-

---

<sup>97</sup> Indian Import Export Documents Available at, <http://www.yangworld.com/YANGWORLDLAWCOMP-impexlaw.html> Visited on April 2,2009

- Protection of public morals.
- Protection of human, animal or plant life or health.
- Protection of patents, trademarks and copyrights and the prevention of deceptive practices.
- Prevention of prison labor.
- Protection of national treasures of artistic, historic or archaeological value.
- Conservation of exhaustible natural resources.
- Protection of trade of fissionable material or material from which they are derived; and
- Prevention of traffic in arms, ammunition and implements of war.

### **Trade Standards**

Bureau of Indian standard is the national standard body. The procedure is required to comply with the Indian quality standard according to the notification No 49(re-200) 1997 dated 24-11-2000 by the Ministry of Commerce.

### **Punishment under the Act 1962**

Sec 112 and 114 deal with the improper import and export, in the case of violation the adjudicating officers may impose penalty up to five times the values of the goods. In the case of prohibited import and export under the custom act or any other law for the time being enforcement shall be liable to punishment of imprisonment for a maximum term of three years (seven years in respect of notified goods) under section 135.<sup>98</sup>

### **5.5.2 Land Acquisition law of India**

India was also a part of subcontinent like Pakistan before partition 1947. Therefore major legislation was enacted by British Government. In India the land acquisition Act of 1894 is the main legal tool for acquiring private land for public purpose. Under the Section 4(1) of

---

<sup>98</sup> The Customs Act 1962, India

land acquisition 1894, a Notification has to be essentially published in the official gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language. It is also necessary that the notification has to be affixed in conspicuous place of that locality.

The person who aggrieved by such notification shall file their objection with in 30 days from the date of preliminary notification.

After receiving objection, if concern authority found unsatisfactory, the final declaration of one year from the date of issuance of preliminary notification according to section 6.

According to section 11 of the act if authority satisfies the objection, it will have to hold an enquiry, on completion of the enquiry award will be passed.

#### **Time Limit**

It is the duty of the competent authority to pass the award with in two years from the date of the declaration under section 6 as a visage under section 4A of the act.

#### **Reference to Court**

Any person interested to whom the award is not satisfactory can submit a written application to the court. The time period for application is six weeks from the date of the declaration of the award.

#### **Women Inheritance and property Rights under Hindu law**

Under the Hindu succession act 1956 daughters have no equal right to son. This law is applicable to Hindus and to any person who is a Buddhist, Jaina or Sikh by religion. But the new succession act 2005 removed the discriminatory on the gender basis. Under section 6 of the new succession act the daughter has following rights;

- The daughter of a coparcener cell by birth becomes a coparcener in her own right in the same manner as the son.

- The daughter has the same rights in the coparcenary property as she would have had if she had been a son.
- The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener.
- The daughter is allotted the same share as is allotted to a son.
- The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter.
- The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

The important thing is that huge population in India is Muslim so their shares are divided according to the shares of Mohammedan law.

### **5.5.3 Environmental laws of India:**

Indian parliament passed the 42<sup>nd</sup> amendments to its constitution in 1976, this amendment passed to improve the environment and to safeguard the forests, lakes, rivers and wildlife of the country. Environment protection act of 1986 defines the environment as” It is inter-relationship among water, air, land, human beings, living creature, plants, microorganism and property”

Water act of 1974 established a central pollution board and a state pollution control Board in order to govern the pollution regulations.

#### **Water (prevention and control of pollution) Act 1974**

This act provides the prevention and control of water pollution .This act gave the authority and power to constitute as many committees as it felt essentials to carry out specific functions

for it. This act prohibits any poisonous or polluting matter into any stream or well. In this act penalties have been introduced for polluting the water, there is imprisonment for three months and fine of Rs.10000/- or fine may be 5000 per day of violation.

#### **The water (prevention and control of pollution) Cess Act 1977**

This law has introduced the system of collection of cases on water consumed by persons carrying on industries and by local authorities. It will help to increase the resources of central and state Board due to this it will be cooperative in controlling water pollution.

#### **The Air (prevention and control of pollution) Act 1981**

This act was introduced for the prevention and control of air pollution. According to this act Air pollution is defined as,

*“An solid, liquid or gaseous substance present in the atmosphere in such connection as may be or lend to be injuries to human beings or other living creatures or plants or property or environment.”*

According to this act prior approval is necessary for operating any industrial Board may decide about controlled equipment like chimney, before its consent. If rule is violated penalties may be seven years imprisonment and fine up to 5000/- per day.

#### **The Environment Act 1986**

This act was introduced to enlist general powers of the central Government which are related to improve the quality of the environment and preventing environmental pollution. In this law, quality of air, water and soil of different areas for different purposes is also included, penalty for contravention of the act may be imprisonment up to seven years or 1 lakh fine. Additional fine may be up to Rs.5000 per day due to violation.

#### **National Environmental Tribunal Act 1995**

The purpose of enactment of this act was to provide liability for damages arising out of any accident; it was enacted with a view to giving compensation for damages to persons, property and the environment.

### **National Appellate Authority Act 1997**

This act was introduced to hear appeals related to restrictions of areas in which any industries, operations or process are not carried. According to this act authority is not bound to civil court, it has power to regulate its own procedure fixing of places, time of enquiry and deciding whether enquiry will held in public or private.

### **Hazardous Waste (Management and handling) rules 1989**

The Ministry of Environment and Forests came out with the above mentioned rules under the Environment Protection Act 1986. The main purpose for promulgation of these rules was for management and handling of hazardous substance.

### **The Public Liability Insurance Act 1991**

This acts held that the owner was liable for death or injury t o any person, damage to any property resulting from an accident occurring while handling any hazardous substance. Under this act Environment relief fund had been established. This fund may be used in case of any emergency.

Non compliance is punishable by 3 months or fine may extend to ten thousand rupees or both. The Relief through this act can be provided 2500 per person in case of death and 12500/- in case of injury. Any additional compensation can be settled through court.

### **5.5.4 Labour Laws of India**

There are various Acts, which regulate labor and employment in India. Some of the Acts are:

- 1- Apprentices Act, 1961
- 2- Beedi Workers Welfare Fund Act, 1976
- 3- Bonded Labor System (Abolition) Act, 1976
- 4- Building and Other Construction Workers (Regulation of Employment Service) Act, 1996
- 5- Child Labor (Prohibition & Regulation) Act, 1986
- 6- Children (Pledging of Labor) Act, 1933
- 7- Maternity Benefit Act, 1961
- 8- Minimum Wages Act, 1948

- 9- National Commission for Safai Karamcharis Act, 1993
- 10- Payment of Bonus Act, 1965
- 11- Payment of Gratuity Act, 1972
- 12- Payment of Wages Act, 1936
- 13- Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- 14- Cine-workers Welfare Fund Act, 1981
- 15- Contract Labor (Regulation & Abolition) Act, 1970
- 16- Dangerous Machines (Regulation) Act, 1983
- 17- Dock Workers (Regulation of Employment) Act, 1948
- 18- Dock Workers (Safety, Health and Welfare) Act, 1986
- 19- Employees Provident Fund & Miscellaneous Provisions Act, 1952
- 20- Employees' State Insurance Act, 1948
- 21- Employers' Liability Act, 1938
- 22- Equal Remuneration Act, 1976
- 23- Factories Act, 1948
- 24- Industrial Disputes Act, 1947
- 25- Industrial Employment (Standing Orders) Act, 1946
- 26- Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979
- 27- Labor Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Est.s) Act, 1988
- 28- Pensions Act, 1871
- 29- Sales Promotion Employees (Conditions of Service) Act, 1976
- 30- Seamen's Provident Fund Act, 1966
- 31- Trade Union Act, 1926
- 32- Weekly Holidays Act, 1948
- 33- Workmen's Compensation Act, 1923

### **Labour and Constitution of India**

Under the Constitution of India, labor is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre. Constitution of India provides that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may social order in which justice, social, economic and political are ensured.<sup>99</sup> Different labor laws have different eligibility criteria for establishments as well as to the workmen. The main laws relating to labor protection, welfare and rights are enumerated below:

#### **The Trade Union Act 1926**

Under the trade union act the matter related to the registration of trade unions are deal.

---

<sup>99</sup> Constitution of India Article 30

**The workmen's Act 1923**

This act provides compensation to workers in case of industrial accident, occupational diseases resulting in disability and death.

**The Payment of Wages Act, 1936**

This act and the minimum wages act 1948 call for regular and timely payment of wages, industry wages boards to recommend the minimum wages and fix the wages-rate structure for each industry.

**The Industrial Dispute Act 1947**

This act deals with the matter of disputes between the employer and employ. In the case of reinstatement of workers by the labor court or Tribunal order that the employer has right to appeal in higher court. The reinstated worker is entitled to 100% of wages while the decision of the higher court is pending.

**The Industrial Employment (standing Order) Act 1959**

This act requires employers in industrial establishments to define condition of employment.

**The Maternity Benefit Act 1961**

This act covers mandatory maternity benefits.

**The Payment of Gratuity Act 1972**

This Act requires employers to pay a gratuity to workers earning less than a certain limit upon termination of service.

This act prohibits job and wages discrimination based on sex, provided that the employment of women in certain categories of work.

**The Essential Service Maintenance Act 1981**

This act empowers the government to prohibit strikes in any industry that is declared essential.



## **The Child Labor (prohibition and Regulation) Act 1986**

Under this the child labor is prohibited both in hazardous and non hazardous occupation.

The Indian government continues to oppose the linking of international trade with labor standards, but it is a signatory to 39 International labor organization (ILO) conventions.

## **5.6 Issues Concerning the Institutional Framework**

### **Turkmenistan and Afghanistan**

As the institutional framework is undeveloped in Turkmenistan and Afghanistan, in relation to entitlement definition and compensation processes, it is important for the project to be flexible and regionally creative when it comes to implementing the 16 Principles.

To some extent, the process will be an exploratory one, and an appropriate methodology will need to be developed during project implementation. This is because there are few, if any, precedents based on current international policy and practice.

**Pakistan and India** have the most developed institutional framework of the four TAPI countries, both in legislation and in its administrative structure from national to community levels. However, Pakistan's policies concerning resettlement, entitlement and compensation, are undergoing transition, and facing numerous obstacles before ratification as legislation. Nonetheless, substantial groundwork to improve and up-date national policy has already been undertaken by national bodies, and this can be usefully integrated into an overall project implementation strategy.

An important point identified by the ISA is the high levels of community dissatisfaction with current statutory institutional processes of determining and paying compensation entitlement. This emphasizes the need to support improvement in local governance as outlined in the *National Resettlement Policy of 2002*.

### **5.6.1 The Role of People's Organizations and Informal Institutions**

It is recommended that the project makes use of community-based and Non- Governmental Organizations with a pre-existing and established presence in affected districts. Such organizations have existing credibility and the confidence of local people, and will have an interest in promoting and implementing relevant aspects of this Policy, as their future credibility would be linked to performance.

### General International Instruments Relevant to Cross-Border Trade and Transit

#### 6.1 Introduction

Cross border trade has been carrying out for many years. It has a legendary role in growing economy of the world. The transport and transit of energy materials have need of substantial degree cooperation and requires an adequate Intel legal framework for its formation. The applicable Intel regulatory framework concerning cross border trade and transit of petroleum infrastructure is not according to the needs of the world of this era. There are two types of pipelines which are off shore (sub-marine) and on land. For the off shore pipelines the UNCLOS provides some basic legal framework for the construction, operation and protection of such pipelines. On the other hand, for the on land pipeline, the international law does not provide or have any special status and their regime depends upon the specific arrangements made by the concerned states (parties).

Both the pipelines belong to category of transit trade. The Pipelines which cross the territory of more than one international border are transit pipeline. There are two types of arrangements which are often made, the first arrangement is of national pipeline, where the infrastructure is under the territorial jurisdiction of the respective state and this is governed by its domestic laws. There may be several owners and operators which would be subject to national regulatory system. This regulatory regime is based on the contracts which are concluded between the owners, operators or through the agreements with respective Governments. It is called connected national pipelines model.

The second model is International Pipeline Project Devise, built and functioning as a single integrated system. It is an interstate pipeline related arrangement which requires a framework

for establishing a set of general principle and obligations, accepted to all the concerned parties. This framework can be achieved through international, multilateral and bilateral agreements.

These instruments have been divided into two portions for discussion. First part consists of international instruments related to freedom of cross border trade and the second part deals with the international institutions and laws related to dispute settlement mechanism including Energy Charter treaty.

### **6.2 Covenant of the League of Nations, 1919**

According to Article 23 (e) of the Covenant of the League of Nations, the members of the league would, "make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League".<sup>100</sup>

So, the Covenant has two underlying principles of international law of particular importance for international trade and communications; which are freedom of transit and equal treatment.

### **6.3 ICC (International Chamber of Commerce)**

The world business community established International Chamber of Commerce in 1919. The well-respected ICC court under the name International Court of Arbitration was established in 1923.<sup>101</sup> Its headquarter and its administrative staff are in Paris. It has handled thousands of international disputes and it is reportedly preferred forum for arbitration between parties from industrialized and less developed countries. In general, however, provisions for ICC arbitration appear to be used relatively and frequently in international economic development agreement. Administrative changes and Arbitrator fees in ICC proceeding are assessed according to the amount, and when a large amount is at stake, it can be disproportionately high compared to the ICC actual costs and the time expended by the Arbitrator. The

---

<sup>100</sup> [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp)

<sup>101</sup> <http://www.iccwbo.org/>

requirement of the advance deposit to cover the anticipated charges can also be burdensome. It may be possible, however, for the parties to negotiate for lower arbitrator fees.

#### **6.4 The Geneva Conventions 1927**

The Geneva Convention 1923 and 1927 are related to international commercial Arbitration. The former is related to arbitration clauses and later deals with the enforcement of arbitral award. The Geneva Convention 1927 now has only historic interest and these conventions have been superseded by the New York Convention 1958. The main demerit of the Geneva Convention is double exequatur; the award had to be recognized at the courts of the country where it was made and second exequatur could be obtained in the enforcing state. Another problematic provision was Article 1(e) it required that the award would not be contrary to the public policy or the principles of law of the enforcing state.<sup>102</sup>

#### **6.5 1921 Barcelona Convention and Statute on Freedom of Transit**

The Barcelona Convention 1921 accomplished following general rule of Article 23(e) of the Covenant of the League of Nations. Having a cogent view that in such matters, general conventions to which other Powers may consent at a later date compose the best method of realizing the purpose of Article 23 (e) of the Covenant of the League of Nations. The 1921 Convention opened the horizon of additional and more political explanation to the principle of freedom of transit. According to its Preamble, the States parties intended, "to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States"<sup>103</sup>

---

<sup>102</sup> [http://interarb.com/v1/g\\_co1927](http://interarb.com/v1/g_co1927)

<sup>103</sup> <http://www.jurisint.org/doc/html/ins/en/2000/2000jiinsen159.html>

Among the main provisions of the Barcelona Convention are non-discrimination under Articles 2, 3 and 4, reasonable transit tariffs Article 4, and non-deviation from the conventional provisions which is obvious from the provisions of the convention which are:<sup>104</sup>

#### Article 2

*“Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport. In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.”*

#### Article 3

*“Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.”*

#### Article 4

*“The Contracting States undertake to apply traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.”*

Except in the case of an emergency affecting the safety or the vital interests of the transit

State Article 7 deals in this regard, which say:

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the

---

<sup>104</sup> Convention and Statute on freedom of Transit, <http://www.jurisint.org/dochtmlinsen20002000jiinsen159.html>

provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.<sup>105</sup>

The Statute does not involve in the withdrawal of facilities, which are greater than those provided for in the Statute which have been granted to traffic in traffic in transit. According the provision of the statute:<sup>106</sup>

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and have been granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Statute also entails no prohibitions of such grant of greater facilities in the future.

The Statute does not involve the withdrawal of facilities, which are greater than those provided for in the Statute and have been granted to traffic in traffic in transit (Article 11).

The 1921 Barcelona Convention (together with the 1947 GATT) remains the main legal foundation concerning general transit right. Nonetheless, there are certain solemn restrictions intrinsic to these documents. First, it deals only with transit by rail and on international waterways. In addition, most of the States which participated in the 1921 Conference were European and problems of States from other parts of the world were not properly reflected (although there is a number of non-European States Party to the Convention, including India, Iran, Iraq, Japan, and New Zealand). It is unspoken that the Statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign State, whether or not these territories are independently Members of the League of Nations.

---

<sup>105</sup> 1921 Barcelona Convention and statute on Freedom of Transit, article 7

<sup>106</sup> 1921 Barcelona Convention and statute on Freedom of Transit, article 11

## 6.6 UN Convention on the Law of the Sea 1982

The convention 1982 is globally recognized regime dealing with all matters relating to the law of the Sea. It was opened on 10<sup>th</sup> December 1982, and more than 150 countries participated in it. This convention is representative of all legal and political systems of different regions of the world. Generally it is related to sea therefore it introduced a framework for development specific areas with respect to the law of the Sea. Environmental, central marine, scientific research, delimitation, economic, transfer of technology, commercial activities and the settlement of dispute to the Ocean matters are the sum and substance of this convention. The Coastal states and all other states have freedom of navigation and over flight in the EEZ, as well as freedom to lay submarine cables and pipelines.<sup>107</sup>

## 6.7 1947 General Agreement on Tariffs and Trade

The principle of right of transit was confirmed in the 1947 General Agreement on Tariffs and Trade<sup>108</sup> (hereinafter 1947 GATT). It is applicable to all States, which are involve in the transit of goods. The new GATT agreement was adopted by the WTO in 1994 and it did not introduce any change in the provisions of Article 5.

Trade in energy products under GATT is treated like the other trade in energy transit, but it deals in the way which is not according to the normal practices of GATT rules. According to article five of the GATT 1947:

*"If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially*

---

<sup>107</sup> [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm)

<sup>108</sup> Article 5 of the 1947 General Agreement of Tariffs and Trade



*interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter."*

The provisions of Article 5 covers the transit of energy products, which are oil and gas (including network-bound petroleum)<sup>109</sup>, but there is no such evidence available which shows that this interpretation is supported by State practice. The addition of the "transit" provision in the Energy Charter Treaty was added in order to remove the ambiguity regarding the transit trade.

### **6.8 The European Convention on International Commercial Arbitration 1961**

This convention was developed by the United Nations economic commission for Europe. The basic purpose of this convention was to promote East-West trade. In this convention arbitration procedure is given, how a party can come for arbitration, who and how can appoint the arbitrator, arbitral proceeding, applicable laws, issuing an award and its enforcement. This convention did not rectify the majority of countries. Although it is still in operation yet it is unlike Washington convention 1965 and New York Convention 1958. Now number of countries is increasing which are acceding to the convention. The convention had been signed and ratified by 28 states.<sup>110</sup>

### **6.9 The Washington Convention 1965**

ICSID (International Center for the Settlement of Investment Disputes)

ICSID Created by the Washington convention 1965 for the settlement of investment disputes between states and nationals of the other states. The scope of the Convention is defined in article 25(1);<sup>111</sup>

*"The jurisdiction of the center shall extend to any legal dispute arising directly out of an investment, between a contracting state( or any constituent subdivision or agency of a contracting state*

---

<sup>109</sup> Roggenkamp.M, Transit of Network-bound Energy: the European Experience, in Transport and trade, Kluwer Law International (1997), P.506.

<sup>110</sup> <http://www.jurisint.org/en/ins/153.html>

<sup>111</sup> <http://www.law.berkeley.edu/faculty/ddcaron/Documents/rp04012.html>

*designated to centre by that state) and a national of another contracting state, which the parties to dispute consent in writing to submit to the centre. When the parties have given their consent, no party may withdraw its consent unilaterally.”*

Following requirements must be fulfilled for investment disputes under ICSID;

- 1- It must be legal dispute
- 2- The parties must have agreed to submit their dispute to ICSID
- 3- The dispute must be between a contracting State or its subdivision and foreign investor from another contracting state
- 4- It must arise directly out of an investment

The parties are free to agree the number of arbitrators. In the absence of agreement a three member tribunal will decide the case. One arbitrator will be appointed by each party and the two appointed arbitrator will chose the chairman of the penal. Award can be rendered by the majority of the tribunal. Article 48(3) requires that the award has to address every issues presented to the tribunal with reasons given. Article 54 of the convention is related to the recognition and enforcement of arbitral award. Further more the ICSID rules offer a unique benefit in the relation to the enforcement of award under the terms of Washington convention, an award, even if rendered and default, is entitled to recognition and enforcement in all of the countries as if it was a final judgment of the court of the state that have signed the Washington convention.

ICSID shares office and staff with the World Bank in Washington D.C as in January 1985, 91 states signed the convention and 130 ratified it. IN 1978 ICSID created the “Additional Facility” to cover cases which fall outside the ambit of the ICSID, in particular where one of the parties is not from contracting state. Now 155 signatory and 143 states<sup>112</sup> have ratified the

---

<sup>112</sup> [http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=MemberStates\\_Home](http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=MemberStates_Home)

ICSID Convention .The ICSID is recognized HGA model agreements for the settlement of disputes in cross border energy trade.<sup>113</sup>

#### **6.10 UNCITRAL Rules United Nations Commission on International Trade Law**

The UNCITRAL arbitration rules were drafted by the United Nations Commission on International Trade Law and promulgated by the UN General Assembly in 1976.<sup>114</sup> Due to the flexibility and technical soundness of UNICITAL Rules, they are acceptable to developed and developing Nations. The purpose of these Rules is to reduce legal obstacles to the flow of international trade and to harmonize trade laws.Pakistan and India are also member of UNICITRAL . Now the UNCITRAL has become the dispute settlement institution and law of the United Nations system in the field of international trade law. The UNICITRAL Rules shall govern for arbitration in the absence of specific agreement in IGA.<sup>115</sup> In HGA UNICITAL rules can also adopted.<sup>116</sup>

#### **6.11 The New York Convention 1958**

An award is no more than a piece of paper and the successful party intends the award to be enforced without delay. In arbitration act 1940, written that the enforcement of an award can only be done through National Courts.<sup>117</sup> The New York Convention of 1958 is the most important for international commercial arbitration. It significantly simplified the enforcement of foreign arbitral award and harmonized the national rules for the enforcement of foreign award. The term arbitral award is defined in convention as;<sup>118</sup>

*"The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted."*

---

<sup>113</sup> Article 43(4)(a)(1) of HGA

<sup>114</sup> [http://www.pca-cpa.org/showpage.asp?pag\\_id=1064](http://www.pca-cpa.org/showpage.asp?pag_id=1064)

<sup>115</sup> Article 19(8) IGA

<sup>116</sup> Article 43(4)(b)

<sup>117</sup> Section 17 , Arbitration Act 1940

<sup>118</sup> Article 1(2) of New York convention 1965

The New York convention is binding on contracting states and contracting states are bound to enforce the award. under the convention it is written that;<sup>119</sup>

*“Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards”.*

Article 4 of his convention is related to the documents required to the party who apply for recognition and enforcement of award. The grounds of refusal are also given in article 5 of the convention. The particulars of the ground, mentioned in the New York Convention, are as under:

- 1- The parties to the agreement were under some incapacity or the agreement is not valid
- 2- A party was not given proper notice of appointment of arbitrator or of the arbitration proceeding or was not able to present its case
- 3- The award deal with a matter without the reference to arbitration
- 4- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, if no agreement, in accordance with the law of the country where the arbitration took place
- 5- The award has not yet become binding, or has been set aside or suspended
- 6- The subject matter of the difference was not capable of settlement by arbitration in the country where enforcement is being sought; and
- 7- The recognition and enforcement of award would be contrary to the public policy of the country where enforcement is being sought

This convention is also recognized in both energy model agreements for the enforcement of arbitral award.<sup>120</sup>

---

<sup>119</sup> Article 3 of New York convention 1965

<sup>120</sup> Article 43 (5), (2) of HGA

## 6.12 Energy charter Treaty

### Transport and Transit-Related Provisions

#### 1. Overview of the ECT

The 1994 Energy charter Treaty (ECT) is the only multilateral instrument, which establishes a necessary general legal framework for a secure and unhindered transport of energy Products and materials. The ECT is signed by 53 states and 22 states are observers. Turkmenistan is the member and Pakistan is the observer of ECT. Afghanistan and India are neither the members nor the observers of Energy Charter treaty.<sup>121</sup>

#### Objective

These are the objectives of Energy Charter Treaty:<sup>122</sup>

- 1- The promotion of energy efficiency policies consistent with sustainable development;
- 2- The creation of conditions which induce producers and consumers to use energy as economically, efficiently and environmentally soundly as possible;
- 3- The fostering of cooperation in the field of energy efficiency.
- 4- The disputes settlement between participating states and in the case of investments - between investors and host states;

The 1994 Energy charter Treaty (ECT) is the only polygonal instrument which establishes a compulsory general legal framework for a safe and unhindered transport of energy products and materials. The aim of the Treaty is to institute a legal framework in order to encourage continuing cooperation in the energy field in harmony with the principles of the European Energy Charter. The Treaty's most imperative provisions concern investment protection, trade in energy materials and products, transit and dispute settlement. Each Party must take the essential measures to smooth the progress of the transit of energy materials and products in

---

<sup>121</sup> <http://www.encharter.org/index.php?id=61>

<sup>122</sup> [http://en.wikipedia.org/wiki/Energy\\_Charter\\_Treaty](http://en.wikipedia.org/wiki/Energy_Charter_Treaty)

column with the principle of freedom of transit and without difference" as to the origin, destination or ownership of such energy materials and products or unfairness as to price on the basis of such distinctions, and without striking any difficult to deal with delays, limitations or charges.

The energy charter treaty also deals with the dispute settlement between the parties<sup>123</sup>, investor and host government<sup>124</sup>, transit dispute and trade disputes<sup>125</sup>. The energy charter treaty also provides a mechanism for the settlement of disputes related to competition<sup>126</sup> and environment<sup>127</sup>.

This Treaty contains the provisions concerning transit trade, competition, transparency, sovereignty, taxation and the environment. Brief introductions of the treaty's provision are, set out hereunder namely: <sup>128</sup>

### **Competition**

Each Party must work to alleviate market distortions and barriers to competition in economic activity in the energy sector. It must ensure that its legislative environment can address unilateral and concerted anti-competitive conduct in economic activity in the energy sector.

### **Transparency**

The Contracting Parties must designate at least one enquiry point. to which requests for information about laws, regulations, judicial decisions and administrative rulings of general application on energy materials and products may be addressed.

### **Sovereignty**

Each Contracting Party exercises sovereignty over its energy resources in accordance with and subject to the rules of international law and also has the right to decide the geographical areas within its area to be made available for exploration and development.

---

<sup>123</sup> Article 27 of the Energy Charter Treaty

<sup>124</sup> Article 26 of the ECT

<sup>125</sup> Article 29 and annex D

<sup>126</sup> Article 6 of ECT

<sup>127</sup> Article 19 of ECT

<sup>128</sup> [http://www.fco.gov.uk/resources/en/pdf/pdf13/fco\\_ts78-00i\\_ect\\_](http://www.fco.gov.uk/resources/en/pdf/pdf13/fco_ts78-00i_ect_)

## **Environment**

The "polluter pays" principle is incorporated into the Treaty, which encourages market-oriented price formation that fully reflects environmental costs and benefits. The Contracting Parties must reduce in an economically efficient manner, harmful environmental impacts occurring either within or outside its area from all operations within the energy cycle in its area, taking proper account of safety.

## **Taxation**

The Treaty creates no new tax rights or obligations direct taxation continues to be governed by the national legislation of each country or by applicable bilateral agreements.

The Energy Charter Treaty was formulated for entire energy investment. It also introduces terms related to energy trade and transportation across national borders. In order to achieve a full integrated international pipeline project, the ECT contains proposed model forms of Host Government Agreement and Inter-Governmental Agreement.<sup>129</sup>

### **6.13 Inter Governmental Agreement**

IGA is a written agreement in which two or more countries are involved. The project sponsors are not the parties to the IGA, but they are beneficiaries of these governmental commitments. The IGA is a high standard agreement and IGA may address following matters;

- 1- Mutual agreement to grant land rights
- 2- Protection of investor in host country
- 3- Protection of human rights of host country
- 4- Clear cut division and identification of territory of each participating country
- 5- Consistent approach to the transportation facilities
- 6- Mutual agreement for allowing free transit of hydrocarbons

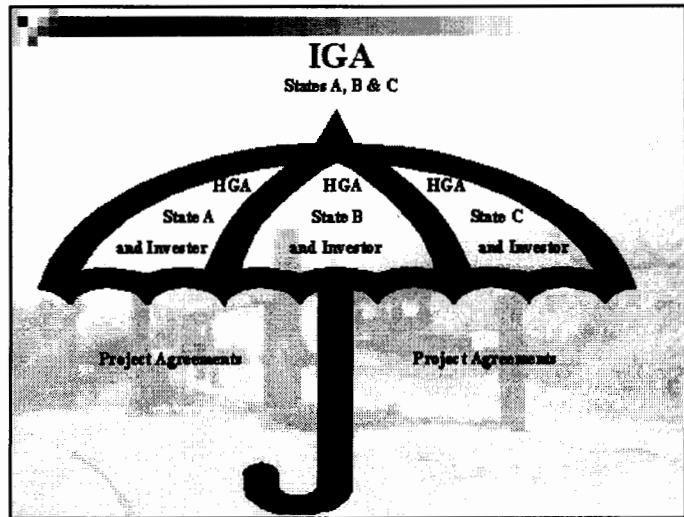
---

<sup>129</sup> [http://www.encharter.org/fileadmin/user\\_upload/document/ma-en.pdf](http://www.encharter.org/fileadmin/user_upload/document/ma-en.pdf)

- 7- Procedure for resolving any disputes which may take place
- 8- Providing safety and security for the project
- 9- Access to necessary facilities
- 10- Providing significant financial rights related banking and currency

#### 6.14 Host Government Agreement

It grants necessary rights in each country to the pipeline company. HGA are found in less developed areas. HGAs are representative of various terms such as rights, standards, responsibilities, exemptions and what a state expects from the period in return of. the host state might get taxes, duties, fees, and Job opportunities.



#### Pipeline Company may seek

- 1- Rights to develop and implement the project
- 2- Grant of rights to land
- 3- Necessary financial rights such as banking rights and currency restriction
- 4- Exemption from competition and monopoly
- 5- Taxation only in profits
- 6- Insurance of security
- 7- Unrestricted movement personal, services and goods etc
- 8- Access to all significant facilities



The host Govt. wants to attract compatible foreign investment in order to enhance local benefits related to economy. It may seek;

- 1- Development of the project in limited period for any reason provided that Force Majeure
- 2- Follow the certain environmental safety standard and health
- 3- Maximum consumption of local labour and local goods
- 4- Imposition of local law in certain national issues
- 5- Opportunity for international arbitration
- 6- The project investor shall decommission the project after the expiry of the agreement

#### **6.15 The WTO Dispute Settlement Mechanism**

The world trade organization was established on 1st January 1995, as the successor to GATT and as the legal and institutional foundation of international trading system. The WTO is governed by Ministerial Conference which meets at least every year to review its performance and established policy. On a day-to-day basis, the WTO is governed by its General Council and several subsidy bodies like council for goods, for services and for trips. The most important body of the WTO is the Dispute Settlement Body.

The dispute settlement body consists of representative of every WTO Member.<sup>130</sup>

The DSB has the authority to establish dispute settlement panels, to adopt panel and appellate body reports, maintain surveillance of implementation of ruling and recommendations, and authorize suspension of concession and others obligations under the covered agreements.

The DSU confers compulsory jurisdiction on the DSB for purposes of resolving disputes. In the words of DSU” the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system”

---

<sup>130</sup> Dispute Settlement in the World Trade Organization Practice and Procedure by David Palmeter and Petros C.Mavroidis Kluwer Law The Hague ,The Netherlands page no 16

TO dispute settlement system provides for more than one dispute settlement methods. The DSU allows the settlement of disputes through consultation, good offices, conciliation and mediation, through adjudication by adhoc panels and the appellate body or through arbitration.

There are four stages in WTO for the settlement proceedings which are follows;

- 1- Consultation
- 2- Panel process
- 3- Appeals
- 4- Implementation of the recommendations and rulings

### **Consultation**

Dispute settlement begins with a formal request for consultation. It is necessary the countries in dispute have to talk to each other and settle the dispute themselves. Two time limits for members' countries, it must respond within 10 days of receipt and consult within 30 days after receipt.<sup>131</sup> If it fails, they have another opportunity to ask the WTO DG good offices, mediate or conciliation. The consultations are considered confidential and are without prejudice to the right of members in any further proceedings.<sup>132</sup>

### **The Panel Proceedings**

After the above mentioned procedure if no solutions found within 60 days, the members may request for panel. If the panel is not established in first meeting then it shall established in 2<sup>nd</sup> DSB meeting.<sup>133</sup> Panels normally are consists of three individuals, from which one serves as chair. One important thing is that if in dispute there is involvement of developing country, at least one panelist shall be from a developing country if the developing country members so requests.<sup>134</sup> The standard terms shall apply unless special terms agreed between the parties within 20 days. The terms of reference determine the subject matter jurisdiction of the panel

---

<sup>131</sup> DSU Art.13.7

<sup>132</sup> DSU Art.4.6

<sup>133</sup> DSU Art 6

<sup>134</sup> DSU AER 8.6

and fulfill the due process of notifying the responding party and potential third parties-of the claims at issue. The panel's final report should normally be given to the parties within six months from the date of composition of the panel.<sup>135</sup> In case of urgency, including those related to perishable goods, the deadline is shortened to three month. After the interim review, the panel circulates the report to DSB, DSB adopts the report within 60 days unless appealed. The DSU specifies that three of the seven Members of the Appellate Body shall hear a case.<sup>136</sup> Decision relating to an appeal is taken only by members of the division hearing the appeal.<sup>137</sup> If a division cannot reach consensus, the decision will be made by majority vote.<sup>138</sup> The Appellate Body has used the term "division" for the group of three members.<sup>139</sup>

In the case of appellate review the time limit is not to exceed 90 days and the DSB adopts Appellate report with in 60 days. After the completion of both processes whether the words used in above mentioned sentence is "should" means to be hortatory not mandatory. It means time period may extend in complex cases the parties thus far have agreed. Party goes in appellate review or not, DSB monitors implementations of adopted panel/ appellate body recommendations. Now the final stage is enforcement of judgment, the parties negotiate for compensation with in reasonable time if not then the DSB authorizes retaliation pending full implementation with in 60 days after the expiry of reasonable period of time.

#### **6.16 General Agreement on Tariffs and Trade 1994**

The provisions of GATT 1994 shall not apply to measures taken by a Member under specific compulsory legislation, corporate by that Member before contracting party to GATT 1947.

This exemption applies only in following cases:

---

<sup>135</sup> DSU Art 12.8

<sup>136</sup> DSU Art 17.1

<sup>137</sup> AB Rules 111(1)

<sup>138</sup> AB Rules 111(2)

<sup>139</sup> AB Rules VI (1)

1. The continuation or prompt renewal of a non-conforming provision of such legislation; and
  2. The amendment to a non-conforming provision of such legislation to the extent that the amendment does not decrease the conformity of the provision with Part two of GATT 1947:
  2. This exemption is limited to measures taken under legislation described above that is notified and specified prior to the date of entry into force of the WTO Agreement. If such legislation is subsequently modified to decrease its conformity with Part II of GATT 1994, it will no longer qualify for coverage under this paragraph.
  3. The Ministerial Conference shall review this exemption not later than five years after the date of entry into force of the WTO Agreement and thereafter every two years for as long as the exemption is in force for the purpose of examining whether the conditions which created the need for the exemption still prevail.
  4. A Member whose measures are covered by this exemption shall annually submit a detailed statistical notification consisting of a five-year moving average of actual and expected deliveries of relevant vessels as well as additional information on the use, sale, lease or repair of relevant vessels covered by this exemption.
  5. A Member that considers that this exemption operates in such a manner as to justify a reciprocal and proportionate limitation on the use, sale, lease or repair of vessels constructed in the territory of the Member invoking the exemption shall be free to introduce such a limitation subject to prior notification to the Ministerial Conference.
- Taxation' the Treaty creates no new tax rights or obligations Direct taxation continues to be governed by the national legislation of each country or by applicable bilateral agreements.

6. This exemption is without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other forum.<sup>140</sup>

## 6.17 The INOGATE Agreement

### Background

In 1994 the European Commission launched, an interstate oil and Gas Pipeline Management Project with a view to assess the situation of regional pipeline transport in Central Asia, INOGATE (Interstate Oil and Gas Transport to Europe) are also forms of this project which focus on institutional issues and increase the regional collaboration. One of the priorities of the project was to design and implement a commonly accepted institutional framework based upon the principles of the European Energy Charter and the provisions of the ECT with the objective of setting up commonly accepted rules and regulations for interstate oil and gas transport and transit.<sup>141</sup>

The project's focal point was institutional and financial frameworks and operational structures that could be made to meet the above said objectives. All aspects of interstate oil and gas trade that require regional co-operation are accompanied by recommendations regarding the most suitable as well as model documents for transport and transit regulation; oil and gas operational procedures, and more generally the immediate result of the TACIS/INOGATE project. Agreement on the Institutional Framework for the Establishment of interstate oil-and Gas Transport Systems (the INOGATE Agreement) was initiated on 16th December 1998 by the representatives of 10 former republics of the FSU<sup>142</sup> (all of which are either States party or signatories to the ECT). The Agreement is seen as only the first building block of the

---

<sup>140</sup> General Agreement on Tariffs aTrade, 1994.

[http://www.wto.org/english/docs\\_e/legal\\_e/06-gatt.pdf](http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf)

<sup>141</sup> TACIS"INOGATE" program 1996, Institutional Issues and strengthening of Regional CO-operation, [http://www.mfa.gov.yu/ForeignInvest/Inogate\\_e.htm](http://www.mfa.gov.yu/ForeignInvest/Inogate_e.htm)

<sup>142</sup> Former Soviet Union, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, and Uzbekistan

institutional system which was supplemented by a number of protocols addressing specific issues, such as transit, dispute settlement, construction, operation, rehabilitation and maintenance schemes.

#### **Objectives of the INOGATE Agreement**

The objective of the INOGATE Agreement is to create an institutional framework which is necessary to ensure the construction, rehabilitation, maintenance and effective operation of interstate oil and gas transportation systems (INOGTS). These are defined as, "transportation systems of oil or natural gas and/or their processed products crossing the territories of more than one States"

Its main purpose is to enable in order to secure energy supply for EU by promoting integrations of regional oil and gas pipelines through adequate technical assistance and financial support, whilst acting as a catalyst in attracting private investors and international financial organizations to finance such projects.<sup>143</sup>

The function of the INOGTS can be allocated to a common Operation, to be established or selected according to the principles rules and procedures which will be negotiated and agreed upon by the Participating Parties 22 and as appropriate by other legal entities concerned. Similarly, rehabilitation and construction, maintenance, and project management may be assigned to a legal entity or a group of legal entities, established or selected as the Participating Parties may jointly decide.

According to the INOGATE Agreement,<sup>23</sup> "it sets out necessary framework in terms of basic principles, rules and procedures for the implementation of its scope of application, as well as for the protection of any third parties operating within the institutional framework established by it".

---

<sup>143</sup> [http://www.mfa.gov.yu/ForeignInvest/Inogate\\_e.htm](http://www.mfa.gov.yu/ForeignInvest/Inogate_e.htm)

In fact, the INOGATE Agreement is rather a set of useful guidelines and recommendations than an instrument establishing clear, straightforward and unequivocal legally binding obligations.

### **Institutional Mechanisms**

Under this agreement it was decided to create two international bodies for each of the INOGATS. It was observed that:

1. An interstate Committee will be responsible for monitoring the implementation of the decision to create particular INOGATS.
2. An Emergency Committee will make recommendations on the co-ordination of all the actions and measures to be taken by each Participating Party to ensure the security and protection of the INOGATS, especially in the case of emergency.

### **6.18 EU Regulations**

There are some energy transit related legal instruments which are approved by the European Union, in particular the EC Council Directive on the Transit of Natural Gas, through Grids, 1991.<sup>144</sup> These instruments which are alike in terms of their basic contents are intended to improve the security of Community's regarding energy supplies through free trade. Member States are required to take the actions in order to facilitate transit of natural gas. The wording of this provision is rather comparable to the basic obligation under ECT<sup>145</sup> but the definition of "Transit" is different. Gas Directive defines "transit" as "Every transaction for the transport of natural gas between grids"<sup>146</sup>

Where;

Transmission is carried out by the party or parties responsible in each Member state for high-pressure natural gas grids (i.e. the national transmission companies enlisted); the grid of origin or final

---

<sup>144</sup> Council Directive 91/296/EEC of 31 May 1991 on the Transit of natural gas through grids, official journal no.L147,12/06/1991,p.37-40.

<sup>145</sup> article 7(1) of the ECT

<sup>146</sup> Article 2 of the EU Council Directive 91/296/EEC 31 May, 1991.

destination is situated in the country, this transport involves the crossing of at least one Country border.

Two major differences between "transit" under the Gas Directive and "transit" in its usual sense as incorporated in other international legal instruments.

1. The "freedom" of transit can be enjoyed by a limited number of authorized bodies or undertakings.
2. The crossing of one Community border would be sufficient to consider transport as transit. Transit requirements under the Gas Directive are similar to customary conditions. They are based on the principles of non-discrimination and fairness for all the concerned parties, security of supply and the most efficient operation of existing systems. Unfair clauses and unjustified restrictions are explicitly prohibited<sup>147</sup>. Member States are requested to ensure that the authorized parties under their jurisdiction act without delay to;<sup>148</sup>
  - a. Notify the Commission and the national authorities concerned of any request for transit.
  - b. Open negotiations on the conditions of the natural gas transit requested.
  - c. Inform the Commission and the national authorities of the conclusion of a transit contract.
  - d. Inform the Commission and the national authorities of the reasons for the failure of the negotiations to result in the conclusion of a contract.

The Directive provides conciliation mechanism, in case the parties concerned don't have the same opinion on the conditions of transit. This matter will be submitted to the conciliation

---

<sup>147</sup> Ibid Article 3

<sup>148</sup> Ibid



body on the request of the parties. This body will be chaired by the Commission responsible for grids and consisted of the representatives of the parties.

### **6.19 Agreement on Trade-Related Aspects of Intellectual Property Rights**

According to the article 3 of the TRIPS agreement member states are required to give the same treatment as they give it to their own nationals.<sup>149</sup> This is only to enhance the free trade and to eliminate the barriers with respect to the international trade. By Keeping the above said in mind the TRIPS agreement describes it in following words:<sup>150</sup>

1. *"Each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS."*
2. *"Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade".*

---

<sup>149</sup> For the purpose of Article 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this agreement.

<sup>150</sup> Agreement on trade related Aspects of Intellectual Property Rights, National Treatment under article 3. [http://www.wto.org/english/docs\\_e/legal\\_e27-trips.pdf](http://www.wto.org/english/docs_e/legal_e27-trips.pdf).

## Chapter 7

### 7.1 Conclusion

Natural gas is a major source of energy supply therefore it has significant role in world's progress. This inevitable need of energy forces different countries to have amicable relations with one another. Turkmenistan, Afghanistan, Pakistan and India conceptually agree to start construction work on the TAPI gas pipeline project; the proposed pipeline carries gas from Daultabad field to Afghanistan to Multan, Pakistan a distance of 790 miles with another 400 miles with extension to India. Asian Development Bank is the major sponsor of this project, the estimated cost of this project is \$7.6 million dollar.

This project is feasible for provided related issues are addressed to the satisfaction of stake holders. The main barrier in the progress of the project is hostile relations of three countries i.e. Afghanistan Pakistan and India have fought three wars and Pakistan's relations with Afghanistan are not stable. Due to this political situation investors are reluctant to invest in this project, there is a vague situation that what will happen in future due to political instability and previous practices of both countries.

This project appears sound from the financial and economic analysis specially after the participation of India, where the huge consumers market exists, this project will also be beneficial for Afghanistan, to take benefits of huge transit fee as well as a supply of gas to Afghan industry. Pakistan is also the beneficiary of this project, in positions to take a transit fee and also take a benefit of gas.

The TAPI gas pipeline is facing some hurdles such as political and security conditions of Afghanistan and in Balochistan, (the province of Pakistan). As it is evident that many time local gas pipeline have been burst by the Baloch Liberation Army, Another hurdle is the unconformity of Daultabad gas field reserves especially after the fresh agreement of Turkmenistan with the Russian company Gasprom. Some other issues like lack of well

developed local laws and tariff and transit issues, which create hurdle if not properly addressed up front.

All contracting states are developing countries and have no specific legislation regarding the cross border pipeline although these countries have national laws regarding the oil & gas industry as well as pipeline such as petroleum laws, import export laws, land acquisition laws, labor and environmental laws.

In the cross border pipeline many international laws are involved for the freedom of trade. The specific treaty which deals with the cross border pipeline is the energy charter treaty. Pakistan and Afghanistan are the observer of energy charter treaty. The energy charter treaty deals with the freedom of trade and solution of transit and the mechanism of dispute settlement. The two model agreements related to cross border pipeline are IGA and HGA which are world wide accepted agreements for cross border pipeline. The other forums which are mentioned in the IGA and HGA are the ICSID, Uncitral rules and the New York convention for the enforcement of foreign arbitral award is also the part of this study.

#### Recommendations;

The following are the suggestions and recommendations for the mitigation of barriers after the research.

- 1- Before entering into the contract, the Government of Turkmenistan should provide a third party certificate of sufficient gas reserves for the completion of this project.
- 2- The security situation can be improved by dialogue with Taliban. The Use of force is not the solution of disputes. The new USA Democratic President is also willing for the dialogue with Taliban.
- 3- The security situation in Balochistan, Pakistan Government can mitigate by giving jobs to job seekers and reasonable royalty from this project to Balochistan Government.

- 4- Pakistan and India should take special measures to restore stable confidence for long time peaceful relations.
- 5- It is recommended that all contracting states rectify the Energy Charter Treaty.
- 6- It is suggested that these countries have lack of well developed laws and regulatory frame work which is a high risk for the investors; therefore contracting states should enter into Model Agreements.
- 7- The Customs Duties law and National Taxes law exemption to make the project less susceptible to bureaucratic import delays, more attractive to investors, and reduce the overall project cost, it is apparent that the project would benefit from a special customs and taxes special exemption states as has been agreed, for other similar size pipeline project worldwide.
- 8- It is also recommended that border crossing by personal and equipments during construction, operation and in emergency should be included in such an agreement. So the contracting states should give the special exemption to workers from the strict immigration laws in the case of emergency. In the project, job opportunities ought to provide local people during the construction and operation of the pipeline
- 9- During the construction different nationality holder will work. In my point of view a commission should be established for settlement of labor issues. The member of the commission should take from contracting states.
- 10- It should also mention in the contract that if any worker violates the law and regulation of that country, the Host Government will have authority to take action against him.
- 11- For the project's success, the contracting states should sign the Double Taxation Treaty. This thing shall attract the foreign investors and especially the investors of contracting states.

- 12- In the case of conflict between national law and the contract or in International law and Municipal law, the International law shall be applicable or the provision of agreement shall prevail. In Turkmenistan's Petroleum Law, it is written that in the case of conflict between National Petroleum Law and International Treaty, the International Treaty shall apply.<sup>151</sup>
- 13- In the case of dispute among the contracting states or Host Government and Joint Venture, they shall solve through the Negotiation, Conciliation and Mediation. The Provision for Alternate Dispute Resolution is also including in the Civil Procedure Code of Pakistan.
- 14- If the dispute is not settled by Alternative Dispute Resolution, the parties should have no option of court proceeding under the agreement. The other remedy to the parties which they can avail should be arbitration. It is clearly written in the agreement which International Form shall play a role of Arbitration. It depends on parties by mutual consent to choose the AAA or ICA or LCA or ECT or WTO Dispute Settlement Mechanism.
- 15- In the case of dispute between Host Government and Joint Venture, the Dispute shall solve by the Washington Convention 1965. Under this Convention an International Institution is established for the Settlement of Investment Disputes.
- 16- The Contracting States should enact the National law for the enforcement of arbitral award. Pakistan has already passed the ordinance for the enforcement of arbitral award in 2005. The New York Convention 1958 is International Instrument for the enforcement of arbitral award.
- 17- Afghanistan and Pakistan should enact the special law for Acquisition of land for the pipeline purpose. The Land Acquisition Act of Pakistan has lengthy procedure which shall create a hurdle in speedy work. India has already law regarding for said

---

<sup>151</sup> Petroleum law of Turkmenistan Article 2

purpose,<sup>152</sup> in Turkmenistan owner of land is Government so there is no hurdle as such Afghanistan and Pakistan. The governments of each participating state have to ensure the necessary lands available for the laying of TAPI pipeline.

18. IGA and HGA should be ratified by the Parliament itself before executive which will work as a deterrent against any subsequent renegeing attempt.

At the end the contracting states should remove the barrier by negotiation and before entering into the international experiences related to the cross border pipeline, which essentially involve the ECT, IGA, HGA Agreements as well as the EU regulations, ought to be considered for the smooth run of the project. Moreover, the international treaties are also supposed to keep in mind with in the same context.

---

**152** Petroleum and Minerals Pipelines (Acquisition Of Right Of User Inland) Act 1962

## CHAPTER 8

### Bibliography

#### SELECTED BOOKS, JOURNALS AND ARTICALS

1. Pakistan Economic Survey 2008-09 page 224
2. Annual Plan 2008-09 planning commission of Pakistan
3. Published in DAWN, 9th June 2007
4. IPI or TAP Pakistan needs Early Materialization of a Gas Line written by Safdar Sial in journal of Pakistan Institute of Peace Studies Islamabad page 3 published on 29-3-2008.
5. Dictionary of politics by M. Mahmood A.P.H Publishing Corporation 5, Ansari Road, Darya Ganj New Delhi-110002 page no 68
6. A Dictionary of Modern Politics by David Robertson third edition Europe Publications London and New York Page no 206
7. A Dictionary of political thought by The British Council Macmillan Press London page no 187
8. Sources and issues of Muslim world by Zahid Hussain Anjum Ever New Book Palace Urdu Bazar, Lahore.
9. The Stateman's Year Book 2007-08. The Politics, Culture and Economics of the World, by Bary Turner (palgrahe Macmillan).
10. Afghanistan under Soviet Domination 1964-1991, 3<sup>rd</sup> ed. London, 1992, Hyman, A
11. Political Science by Ahsan-ul-Allah Saqib, Dogar publisher Urdu Bazar Lahore
12. Pak-Afghan relations: The Durand line issue by Ahmad Shyeq Qassem; institute of policy studies vol, 5, no 2 April 2008.
13. Delhi-Kabul ties: implications for the region by Humrar Iqbal; vol xxvii No.6 June 2008; Institute of Regional studies Islamabad
14. Foure crises and peace process by P.R Chari, Dr Pervaiz Iqbal Cheema and Stephan P.Cohen Washington DC.Brooking institute press, 2007 page 252
15. Conflict Transformation Approach to Indo-Pakistan conflict By Syed Imran Sardar.Vol xxvii Nos.8-9 August –September 2008.Institute of Regional Studies Islamabad
16. Daily Jang April 15, 2009 Report by Shaheen Hasan

17. Timothy Heleniak, Going Home: Migration among the Soviet Successor States, Analysis of Current Event 9, no.6 (June 1997).
18. BBC Monitoring, Inside Central Asia, issue 301 (15-21 November 1999).
19. Interview with US President Bill Clinton, International Affairs ( Moscow), no.2 (1997). P.5
20. Central Asian Security, The New International Context page 169 written by Roy Allison and Lena Jonson Published by Royal Institute of International Affairs Chatham House 10St.James Square London SW1Y 4LE
21. International Encyclopaedia of Laws Authors Muhammad Arif and Dr.Sohaib Qadar Kluwer Law International London
22. The Hub Power Company (HUBCO) v Pakistan WAPDA (PLC 2000 SC 841
23. Roggenkamp.M, Transit of Network-bound Energy: the European Experience, in Transport and trade, Kluwer Law International (1997), P.506.
24. Dispute Settlement in the World Trade Organization Practice and Procedure by David Palmeter and Petros C.Mavroidis Kluwer Law The Hague ,The Netherlands page no 16
25. Comparative International Commercial Arbitration by Julin D M Lew Q C, Loukas A Mistelis and Stefan M Kroll Published by Kluwer Law International London
26. Constitutions, Petroleum Laws, Import Export Laws, Land acquisition Laws, Environmental Laws and Labour Laws of contracting states.

#### **ELECTRONIC RESEARCH**

1. Afghanistan History and Politics Available at <http://en.wikipedia.org/wiki/Afghanistans> Last Visited on November 16,2008
2. TAPI gas pipeline- Wikipedia, the free encyclopedia. Avail at <http://en.wikipedia.org/wiki/turkamistan-Afghanistan-Pakistan-india-gas-pipeline>
3. U.S. Interests and Central Asia Energy Security by Ariel Cohen, Ph.D available at, <http://www.heritage.org/research>
4. TAPI and IPI: socio-economic benefits of gas pipelines By Mehmood-Ul-Hassan Khan available at <http://jang.com.pk/thenews/may2008-weekly/busrev-05-05-2008/p3.htm>
5. Baloch Nationalism and the Geopolitics of Energy Resources available at, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB853.pdf>
6. Cross Border oil and gas pipeline: Robles and prospects, 2003.



<http://siteresources.worldbank.org/INTOGMC/Resources/crossborderoilandgaspipelines.pdf>

7. Convention and Statute on freedom of Transit,  
<http://www.jurisint.orgdohtmlinsen20002000jiinsen159.html>
8. General Agreement on Tariffs and Trade, 1994.  
[http://www.wto.org/english/docs\\_e/legal\\_e/06-gatt.pdf](http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf)
9. Agreement on trade related Aspects of Intellectual Property Rights, National Treatment under article 3. [http://www.wto.orgenglishtdocs\\_elegal\\_e27-trips.pdf](http://www.wto.orgenglishtdocs_elegal_e27-trips.pdf).
10. Anistan: land policy and its implementation by (A Thematic Brief)  
[http://www.icarrd.org/en/icard\\_doc\\_down/national\\_Afghanistan.doc](http://www.icarrd.org/en/icard_doc_down/national_Afghanistan.doc)
11. Introduction of Turkmenistan available at  
[http://en.wikipedia.org/wiki/People's\\_Council\\_of\\_Turkmenistan](http://en.wikipedia.org/wiki/People's_Council_of_Turkmenistan)
12. Baloch Nationalism and the Geopolitics of Energy Resources available at,  
<http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB853.pdf>
13. Pakistan Law Site Article <http://www.pakistanlawsite.com/LawOnline/law- /taxationnext.asp?description= Turkmenistan>
14. Energy Chartered Treaty available at <http://www.encharter.org/index.php?id=221>
15. Turkmenistan prohibits child labour available at  
[http://www.unicef.org/turkmenistan/media\\_2331.html](http://www.unicef.org/turkmenistan/media_2331.html)
16. TACIS"INOGATE"program 1996, Institutional Issues and strengthening of Regional C0-operation, [http://www.mfa.gov.yu/ForeignInvest/Inogate\\_e.htm](http://www.mfa.gov.yu/ForeignInvest/Inogate_e.htm)

