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Changes needed in bills

By Ahmer Bilal Soofi

THE Kerry-Lugar and Berman bills are being moved simultaneously in the Senate and House of Representatives. A joint committee of legislators from both the houses shall then sit and merge them to enact what is likely to be called a PEACE Act through which Pakistan shall be given an annual aid package.

Both these bills contain several conditions as a prerequisite for aid to Pakistan. However, the text of both bills leave out certain necessary provisions that are expected in a country-specific legislation of this nature. Here I intend to collectively review the text of both bills and also propose the inclusion of certain issues.

The draft law that would be eventually adopted after merging the Kerry Lugar and Berman bills must contain a provision to respect the sovereignty of Pakistan. Right now such a statement is missing. The US government needs to recognise the territorial integrity and political independence of Pakistan. The US government should in legislative language assure Pakistanis that it shall not implement this act in any manner that may affect the territorial integrity and political independence of the state. Such a statement is almost customary in extra-territorial legislation. It would have not only legal value but also enormous political value for Pakistanis.

According to the present language of the bills the US may facilitate peace in the region, which in effect means that the US administration through the incoming law is abstaining from making a clear commitment to facilitate the resolution of regional disputes. If the present language is adopted the US would have no legal compulsion under its own law (PEACE Act) to facilitate the resolution of Kashmir or regional issues. In other words if the status quo is maintained in the region, as India demands, then the bills would not provide any legal basis to Pakistan to argue otherwise. This is contrary to Obama's own position on the resolution of the Kashmir dispute.

The final draft act needs to mention that the US shall facilitate the resolution of the

Kashmir issue or at least that it shall facilitate the resolution of regional disputes, particularly because it is the US Congress itself that has been passing resolutions earlier for resolving the Kashmir issue. Now when an occasion has arisen for Pakistan- and region-specific legislation, it suddenly chooses to omit it.

Under the present drafts, Pakistan has been asked to demonstrate that it is not interfering in the affairs of its neighbouring states. This obligation placed only on Pakistan is surprising. Either a similar obligation should also be placed on India and Afghanistan or the subject of intervention or interference should not be touched on at all in the present bills.

The alleged Indian and Afghan involvement in the Balochistan and Fata insurgencies is well-known. In view of this, the correct approach would have been to ask Pakistan's neighbouring states not to interfere in Pakistan. Instead only Pakistan is facing a conditionality of non-interference.

The possible misuse of such a covenant could mean that even a frivolous complaint from Afghanistan or India would obstruct incoming aid to Pakistan. Therefore, in the final draft act, the obligation of non-interference should be placed on all the neighbouring states. That would be the balanced legislative approach and in conformity with the principle of non-intervention as per international law. What if Pakistan claims that Afghanistan and India are acting in a manner that is curtailing its ability to take effective counter-terrorism measures pursuant to the law? What should Pakistan do then? To address such an eventuality, the final draft act should contain a provision to the effect that the neighbouring states of Pakistan will refrain from acting in a manner that may prejudice or undermine the ability and capacity of the Pakistani government to fulfill the various obligations under the act and in case of suspicion of such an event Pakistan shall provide the details of the same to the US president who would make it part of his report to the Congress.

The provision seeking access to nuclear proliferation suspects must be deleted. In this context, the PEACE Act can become a cause of anger among Pakistanis with regard to their 'nuclear hero'. The US has other specific legislative instruments such as the Non-Proliferation Act to address this particular issue. There is no gain in making this aid-specific legislation controversial.

Under visible influence of the Indian lobby one of the draft bills demands that Pakistan will need to take action against Jamaatud Dawa because the Indian lobby suspects it of being an Al Qaeda associate. This is a smart legal move. If Al Qaeda is somehow linked with any entity that is involved in Kashmir, then it totally changes the outlook of the

Kashmir struggle. From a movement of self-determination against which force can only selectively be used, it shall suddenly become a counter-terrorism issue and fit for an all-out counter-insurgency operation.

There is no provision on support for the internally displaced persons in the draft bills. A provision needs to be added for supporting the IDPs whose omission from the final bill would send across the damaging message of the insensitivity of the US Congress. The bill currently states that Pakistan shall be paid "up to" \$1.5bn per year. In other words, there is no guarantee of any amount for Pakistan. Without this guaranteed exact figure, Pakistan cannot plan for making provisioning. Therefore, the US government must commit a solid figure and delete the 'up to'. These are some of the important points that need to be considered by Pakistani policymakers while interacting with the US administration.

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