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PUBLIC
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AFGHAN PEACE PROCESS

PROSPECTS, IMPLICATIONS AND CHALLENGES



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PREFACE from the EDITORIAL BOARD

On 29 February 2020, the world witnessed a momentous moment as representatives from the United States and the Taliban came to the table in Doha and officially penned their signatures on a peace agreement titled “Agreement for Bringing Peace to Afghanistan”. Consisted of four parts, this Agreement called for the withdrawal of US troops from Afghan soil and obligated the Taliban to prevent terrorist groups, including the Al Qaida, from using Afghan soil to threaten US security, among other commitments. Although some remained skeptical about the agreement, especially in relation to the credibility of Taliban’s promises, it no doubt represents an important progress towards comprehensive peace that has been absent in Afghan for decades.

Since the agreement was made, numerous developments have followed, both in the positive and the negative. One significant event is the commencement of the Intra-Afghan talks between Kabul and Taliban in September 2020. On the other hand, new-elected US President Joe Biden announced his plan in April 2021 to withdrawal all US troops by September 11. In spite of these developments, mistrust between the parties remains endemic, progress has been slow and violence is still on the rise. But none of

these masks the indisputable truth that peace talks are of unmatched importance, in particular to all the men and women who have suffered in Afghanistan. As Ambassador Zalmay Khalilzad, US Special Envoy to Afghanistan and one of the key architects of the Doha Agreement, has put it in the bluntest terms, ‘[t]he choice that the Afghans face is between a negotiated political settlement or a long war’.

This *Public Jurist* issue brings together experts in the field to discuss the prospects, implications and challenges of the Afghan peace process. They include Dr. Tazreena Sajjad, Senior Professorial Lecturer, School of International Service, American University; Professor Grant Farr, Professor Emeritus, Portland State University and Mr. Mushtaq Rahim, Independent Afghanistan-based Political Analyst.

The Editorial Board of *Public Jurist* are indebted to all contributors for the time and effort they have expended to make this symposium possible. It is our hope that these articles can enrich the understanding towards the Afghan peace process among our readers in Hong Kong and beyond. We wish all of you an enjoyable read.

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SUBMISSIONS OF ARTICLES

Public Jurist welcomes articles typically of 500 – 2,500 words long, preferably using the APA reference style and typed in Microsoft Word format. Undergraduate and postgraduate students, as well as scholars from all disciplines are welcomed to submit articles for consideration. Should you have any enquiries, please contact the *Public Jurist* Editorial Board at glchku6810@gmail.com / hkjlpa@hku.hk



ELUSIVE PEACE: THE US-AFGHANISTAN AGREEMENT, THE INTRA-AFGHAN NEGOTIATIONS AND CHALLENGES FOR A STABLE AFGHANISTAN

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Introduction

On January 5, 2021, peace talks between representatives from the Afghan government and the Taliban began in Doha, Qatar to end two decades of ongoing warfare in Afghanistan. The talks follow the US-Taliban Agreement for Bringing Peace to Afghanistan signed on February 29, 2020 in Doha, following 18 months and nine rounds of negotiations between U.S. Special Representative for Afghanistan Reconciliation Zalmay Khalilzad, Taliban's Political Deputy and Head of the Political Office Mullah Abdul Ghani Baradar, delegations from the Afghan government, and numerous other special envoys from neighboring countries and international organizations. The commitments in the Peace Agreement were reinforced in the joint declaration signed on February 29, 2020 between the US Secretary of Defense Mark T. Esper, North

Atlantic Treaty Organization (NATO) Secretary Jens Stoltenberg, and Afghan President Ashraf Ghani in Kabul, Afghanistan. While at its core the terms of the US-Afghanistan deal may be seen as promising, it is the new round of intra-Afghan negotiations that will be critical in determining the country's immediate political future and its long-term prospects for stability.

Key Elements in the Afghanistan-US Deal

The Afghanistan-US deal is historic both in terms of its goals and its inclusive strategy. It is a significant departure from the 2001 Bonn Agreement, which was deliberated between the United Nations Envoy to Afghanistan, Ambassador Lakhdar Brahimi, and U.S. Envoy to the Afghan Opposition, Ambassador James Dobbins, and members of the Northern Alliance, but which excluded the Taliban. At its heart, it addresses two main concerns--the growing demand for US troop withdrawal, and the need to lay a robust groundwork-- that would ultimately enable Afghanistan to move toward stability.

Summarily, the Afghanistan-US deal addresses four key issues:

- A commitment from the Taliban to not threaten the United States and its allies, and to prevent terrorist groups from using Afghanistan as a base for such attacks;
- A commitment to withdraw all foreign troops from Afghan soil including US troops, and military bases, contractors and coalition forces within 14 months of signing the agreement;
- The initiation of intra-Afghan negotiations (which were slated to begin on March 10, 2020); and
- The negotiation of a permanent and comprehensive ceasefire and the creation of a political roadmap for Afghanistan's future.

The joint declaration signed in Kabul Afghanistan reaffirmed these commitments, included the US agreement to reduce its forces to 8,600 within the first 135 days of signing the agreement, and to withdraw all of its troops within 14 months, pending the Taliban's fulfillment of its agreement with the United States (Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan, 2020). The United States also agreed to lift sanctions against the Taliban and continue to seek funds for the training, equipping, and advising of Afghan security forces (Ibid).

The task of implementing the US-Afghanistan deal, which now falls on the incoming Biden administration, faces several challenges. First, questions may be raised about why the negotiations did not include crucial discussions about power decentralization and resource redistribution, which will be critical in laying the groundwork for the country's political roadmap (Masoud, 2020). Experts have warned about a hasty troop withdrawal, given that the situation on the ground remains highly tenuous, and argued that such a move would signal US weakness to Afghanistan's tribal leaders, who may then align with the Taliban (Dobbins, et. al, 2019; Williams, 2020; Boot, 2020; Glinski, 2020). The Taliban's own complex ties with al-Qaeda and the fact that they have not been severed despite its commitment to do so also raise significant questions.

Concerns Surrounding the Intra-Afghan Negotiations

Afghanistan has a long history of local, national and international political negotiations to pursue peace and stability in the country. In fact, even prior to the emergence of the Taliban, there have been several notable efforts to bring various factions across the country for political reconciliation including the initiatives made during the PDPA era, the 1988 Geneva Accords,¹

¹ The Geneva Accords failed to address the power-strug-

the 1992 Peshawar Accords, and Najibullah's most well-known *Aasht-i-Milli*.² Since 2001, the focus singularly shifted to the Taliban with multiple international and national disarmament demobilization and reintegration programs implemented to reduce violence and promote stability in the country. Several of these ran concurrent with initiatives for political compromise mainly (but not only) offered by the Karzai government, including, but not limited to a 2001 amnesty offer, the 2005 *Proceay-i Tahkeem-i Solha* (the Strengthening Peace Programme, or Peace and Reconciliation Commission), the 2006 Musa Qala Accord,³ and the 2009 Afghanistan Peace and Reintegration Programme (APRP), which was followed by the 2010 Afghanistan's National Consultative Peace Jirga (NCPJ) (Sajjad, 2010).

WHILE AT ITS CORE THE TERMS OF THE US-AFGHANISTAN DEAL MAY BE SEEN AS PROMISING, IT IS THE NEW ROUND OF INTRA-AFGHAN NEGOTIATIONS THAT WILL BE CRITICAL IN DETERMINING THE COUNTRY'S IMMEDIATE POLITICAL FUTURE AND ITS LONG-TERM PROSPECTS FOR STABILITY.

The current intra-Afghan negotiations need to

gle between various groups in conflict. The negotiations were based on an incomprehensive agenda to bring about a political settlement to the crisis. For a more detailed discussion, see *The Search For Peace in Afghanistan: From Buffer State to Failed State* by Barnett R. Rubin, 1995, New Haven, CT: Yale University Press.

² For a discussion of the different negotiations and initiatives for peace in Afghanistan, see *Peace At All Costs? Reintegration and Reconciliation in Afghanistan*, AREU, 2010. Also see *Reconciliation in Afghanistan* by Michael Semple, 2009, Washington D.C.: United States Institute of Peace.

³ The September 2006 Musa Qala Accord was signed between the governor of Helmand and the district's tribal elders.

be contextualized within the broader history of these initiatives, the opportunities they created, the challenges that emerged in their implementation processes, and the gaps that remained. While much of the focus has been on the US-Afghanistan Agreement, an even more challenging set of issues perhaps emerge with the intra-Afghan negotiations.

In particular, six inter-connected concerns need to be raised:

(a) *No sustained reduction of violence*: While the US-Afghanistan deal was signed following a seven-day reduction in violence particularly against the US forces, throughout 2019 and 2020, turbulence has largely continued across the country as the United States increased air strikes and raids targeting the Taliban, while the latter continued to carry out high-profile attacks, including on members of the Afghan government, the Afghan National Defense and Security Forces (ANDSF) bases and outposts, all the while gaining more territory. Between 2014 and 2020, it is estimated that 45,000 ANDSF personnel were killed, with approximately 10,900 soldiers being killed in 2019 and 2020 respectively (Brookings 2020). According to the United Nations Assistance Mission in Afghanistan (UNAMA), there were 10,993 civilian casualties in 2018 alone, representing a five per cent increase in overall civilian casualties and an 11 per cent increase in civilian deaths compared to 2017 (UNAMA, 2019). The majority of civilian casualties –63 per cent—was a result of Anti-Government Elements (AGEs), followed by 37 per cent as a result of Taliban-led attacks, and 20 per cent as a result of Daesh/Islamic State Khorosan Province (ISKP) (Ibid). UNAMA reports that 2020 was the sixth year in a row that the number of civilian casualties exceeded 10,000 in the country (UNAMA, 2020). In addition, since the end of NATO's combat mission in Afghanistan in 2014, Afghan security forces have lost substantive assistance with logistics, air support, and intelligence, putting them in the defensive as the Taliban stepped up its attacks against Afghan forces and the government even after the signing of the US-Af-



Former US Secretary of State Michael Pompeo met with the Taliban Delegation in Doha, Qatar (US Department of State via Wikimedia Commons)

ghanistan agreement.

(b) *Thorny issues surrounding prisoner release*: One of the thorny issues of the intra-Afghan negotiations has been the issue of prisoner exchange. Under the U.S.-Taliban agreement, the negotiations were slated to begin following an initial prisoner swap. However, the Afghan government had not been consulted on or agreed to the exchange, in which it was required to release five thousand Taliban prisoners while the Taliban committed to release one thousand Afghan security forces prisoners. There were also tensions as a result of the Taliban expecting the prisoners to be released before the start of the talks, while the Afghan government maintained it would do so after the negotiations commenced. After repeated setbacks including internal tensions within the Afghan government following the September 2019 elections, the last of the prisoners were released, clearing the way for the 2021 negotiations. Unfortunately,

contrary to the Taliban's promises, emerging reports indicate that many freed Taliban fighters have returned to the battlefield (O'Donnell, 2020; RFERL, 2020; France24, 2020). The flawed process of releasing the Taliban prisoners, many of whom were convicted of grave crimes, also raises new questions for the International Criminal Court (ICC)'s investigation of war crimes and crimes against humanity committed in Afghanistan.

(c) *Growing strength of the Taliban*: Today, the Taliban controls more territory than at any time since the 2001 U.S.-led invasion. Its "outside-in" strategy, which was used by other insurgencies in Afghanistan, including the mujahedin who fought Soviet and Afghan government forces in the 1980s, means that over the years it has successfully captured large swathes of rural areas, and consolidated power through generating recruits and resources. It has also implemented a successful strategy of isolating populated areas



Ambassador Zalmay Khalilzad, US Special Representative for Afghanistan Reconciliation (Source: US Institute of Peace via Wikimedia Commons)

to seize control. With more than four years of stalemate in the conflict, it is estimated that as of 2019, only 53.8 percent of Afghan districts are under government control or influence, while 33.9 percent is contested, and the remaining 12.3 percent is under the control or influence of the Taliban (Global Conflict Tracker, 2021). According to FDD's Long War Journal, 46 per cent of the Afghan population live under government influence or controlled areas, while 40 per cent live in contested areas, and 14 per cent under Taliban-controlled territory (Long War Journal, 2020). In other words, in addition to a stronghold in the strategically important southern province of Helmand, the Taliban today controls or contests territory in nearly every province, and remains a threat to multiple provincial capitals. Its 2018 capture of the Farah Province and its hold over the capital of Ghazni Province, for nearly a week before U.S. and Afghan troops took back control, underscore their growing military power (Karimi and Stanekzai, 2018; Azadzoi

and Nordland, 2018).

(d) *Expansion and complexity of armed and extremist groups and ties to the Taliban:* The US-Afghanistan agreement, the joint declaration in Kabul, and the agenda of the intra-Afghan negotiations do not take into account the presence of other extremist and militant networks that today operate in Afghanistan. There are approximately 20 foreign militant groups active in the country, including the Pakistani Taliban, Lashkar-e Jhangvi, Lashkar-e Taiba, Jaish-e Muhammad, Central Asian militant groups including the Islamic Movement of Uzbekistan (IMU), the Islamic Jihad Union, and the East Turkestan Islamic Movement, fighting for Uyghur independence in China (RFERL, 2020). While the Taliban insurgency has been a unifying cause for some smaller foreign militant groups and has an operational, ideological and economic ties with some of them, it is not possible to assume that the each and every one of these militant

groups would abide by a ceasefire that would be primarily negotiated between the Taliban and the Afghan government, or that the Taliban can in fact monitor their violent activities and effectively prevent further attacks. Furthermore, the agreements do not lay out how the Taliban and the ANDSF would conduct counter-terrorism operations or wrestle with how to validate whether or not attacks have been conducted or supported by subgroups within the Taliban. Arguably, it also does not grapple with how the Taliban will prove that it has suppressed the Islamic State Khorasan, which has continued to expand its presence in several eastern Afghan provinces, routinely carried out major attacks in Kabul, and stepped up suicide attacks targeting civilians (CSIS, 2018). Then too is the complex challenge of the ongoing connection between the Taliban and the al-Qaeda through the Haqqani network, despite the fact that the former had committed to severing ties with terrorist groups (Mir, 2020; Kishore, 2020; Sarkar, 2020). This also poses questions about how the United States and UN Security Council can remove sanctions on the Taliban, and whether it will be possible to address their reliance on a well-established and lucrative narcotics trafficking industry that has emerged over the years.

(e) *Weaknesses of the current Afghan government:* Politically, the Afghan government remains weak, ineffective, and struggles with chronic corruption. Its economy and government budget are still significantly dependent on international assistance, and with increasing Taliban encroachment, it does not wield control or influence in about approximately 50 per cent of the country. The most recent political crisis precipitated by the stand-off between the incumbent Ashraf Ghani and Abdullah Abdullah who declared himself president on the day of the swearing-in ceremony following the highly contentious 2019 elections, further escalated political tensions in the country. Despite the power-sharing deal that was brokered between Ghani and Abdullah on May 17 after months of stalemate, the cleavages exposed raise questions about the deep divides in political lead-

ership within the government. Militarily, the Afghan forces have a large numerical advantage compared to the Taliban which has an estimated 60,000 full-time militants and some 90,000 seasonal fighters (RadioFree Europe, 2020). At the same time, a combination of chronic corruption, ineffective leadership, and the escalation of Taliban-led attacks have resulted in record casualties, high attrition, and low morale in the armed forces.

(f) *Representation of, and protection of women's interests:* The significant absence of women and the marginalization of their agendas in political negotiations is not a new concern in international peacemaking efforts. Despite notable achievements and participation in political and community-based mobilizations throughout the country's history, Afghan women have been consistently marginalized in official peace efforts (Sajjad, 2014). The Bonn Agreement was a slight departure from this pattern with three out of 25 signatories being women. At the official parallel UN civil society consultative forum, 40 per cent of the participants were women. The Bonn Agreement established a Ministry of Women's Affairs and included provisions for the inclusion of women in subsequent processes and governing structures, agreeing to the "establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government" (Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions [Bonn Agreement], 2001, 2). In the Emergency Loya Jirga of 2002, while women comprised of 220 of the 1500 delegates, it was the warlords who dominated the negotiations about Afghanistan's road forward (Grenfell, 2004). In 2003, approximately 20 per cent of the 500 delegates were women (and seven out of the 35 members of the Constitutional Commission were women) but again, intimidation and harassment played critical roles in marginalizing many of their concerns (Ibid). In the 2010 Afghan Peace Jirga, while women's participation was again guaranteed, their concerns were not centered, resulting in the Post-Peace Jirga Symposium of Afghan Women,

where 73 women from 33 provinces attended the event to discuss issues important to Afghan women (Statement from the Participants of the Post-Peace Jirga Symposium of Afghan Women, 2010). The 2019 Loya Jirga convened by President Ashraf Ghani boasted of 30 percent of the 3,200 delegates being women, but again a hostile and patronizing environment marked by intimidation and harassment impeded their effective participation (Faizi and Zucchini, 2019).

Since 2001, despite the fact that Afghan women run businesses, and comprise 27 per cent of the parliament and hold senior government positions (Ahmadi and Parkes, 2020)—this pattern of not centering women as equal stakeholders in any peace effort is deeply troubling. While the United States, NATO, and the Afghan government have agreed to collaborate to ensure that institutions protect the rights of *all* citizens, the absence of a clear strategy and commitment in the US-Afghanistan agreement raises questions of how women's advancements will be protected in the newest effort to create stability in Afghanistan.

The four women in the 21 member team representing the Afghan government -Habiba Sarabi, Fatima Gailani, Sharifa Zurmati Wardak and Fawzia Koofi- have an insurmountable task ahead in the intra-Afghan negotiations. While they are all committed to pushing for the protection and advancement of rights for girls and women, strategic deliberations to reach a ceasefire and hammer out a roadmap for Afghanistan's political future, raise questions about the extent to which they will be able to secure commitment from the Taliban to not roll back on the achievements made regarding women and girls. The track record thus far of acknowledging and centering women's perspectives and demands regarding security, politics, law, economics, education and access to justice, does not inspire confidence. The reality that the Taliban is now negotiating from a point of strength, when the Afghan government has significant weaknesses, and civilians, including women are specifically targeted for violence, deepen such concerns.

Conclusion

The US-Afghanistan deal and the corresponding declaration raises questions about the challenges of troop withdrawal, and if, and whether the Taliban will comply with the commitments made. It also calls attention to the absence of a discussion about why critical issues of equitable distribution and strategies for power decentralization remained absent in the negotiation. Beyond the US-Afghanistan deal however, the intra-Afghan negotiations demand close scrutiny because of the concerns around political compromises that may be made along the way. Since the fall of the Taliban two decades ago, the group can now negotiate from a point of strength, having made strategic and significant territorial gains, while escalating attacks on all aspects of the Afghan government that continues to struggle with endemic challenges. Furthermore, its relationship with different types of militant groups and al-Qaeda, and more broadly the presence of multiple stakeholders in Afghanistan's political future, outside of the Taliban, constitute a complex and dynamic landscape, which the Afghan government has to navigate effectively to implement the terms of any agreement reached. In the process however, hard-fought achievements gained particularly by Afghan women, minorities, children, and certain democratic and human rights norms remain vulnerable to political compromise. It is this litmus test that the intra-Afghan negotiations need to pass in order to lay the foundations toward a more stable future.

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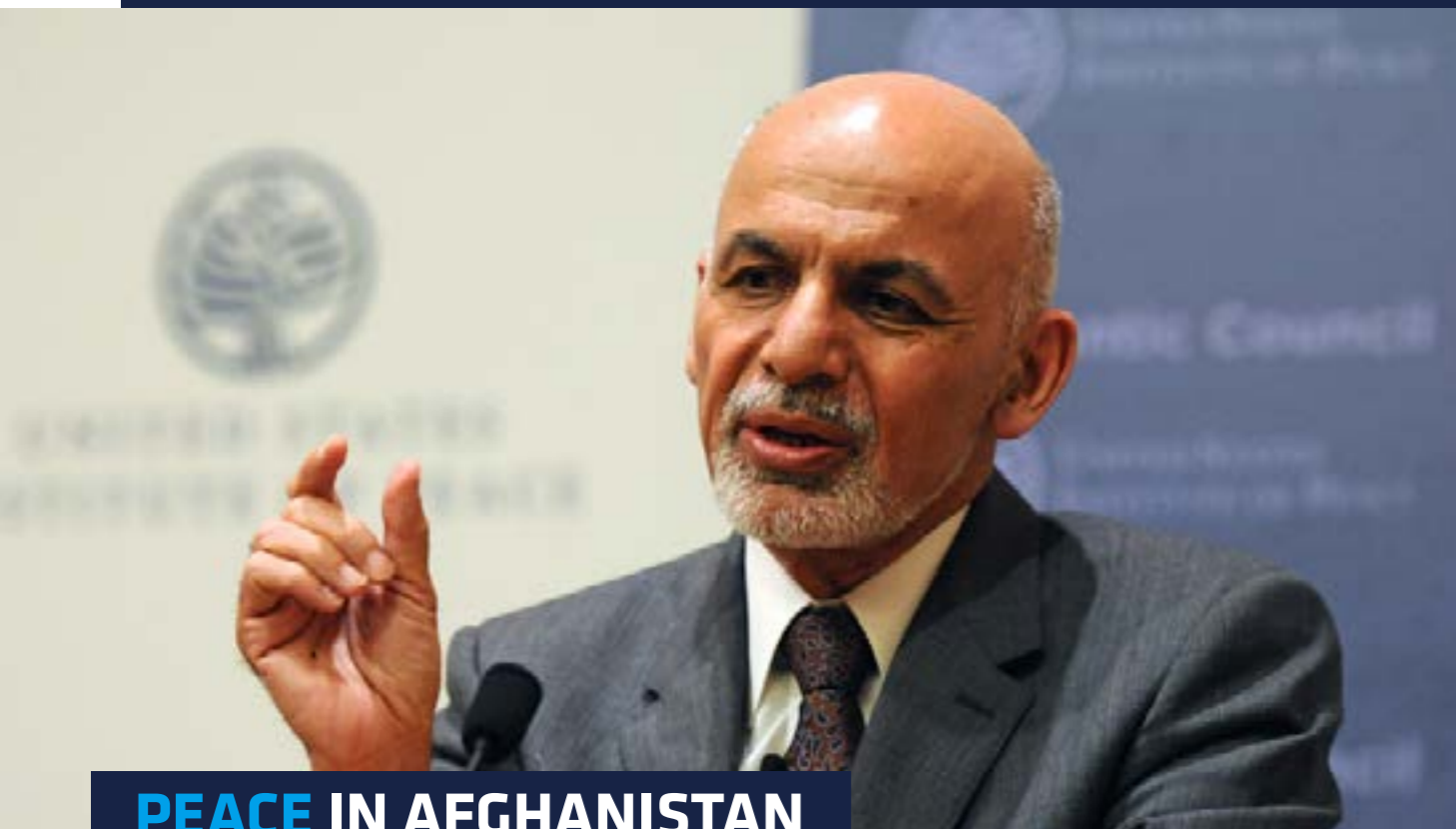
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2007 INTERNATIONAL PEACE DAY IN AFGHANISTAN (SOURCE: UNITED NATIONS VIA FLICKR)



PEACE IN AFGHANISTAN

PROFESSOR GRANT FARR

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Introduction

On January 5, 2021, the talks between the Afghan Taliban and the Afghan government began again after a month's break. The first round of talks had begun on September 12, 2020, and after four months of talks made little progress, except for agreeing on several minor procedural issues. To date no agenda has been agreed on nor have the negotiating parties agreed on what the next steps might be. In the meantime, both parties are waiting to see what the position of the new Biden administration will be regarding Afghanistan.

The Peace Agreement

The peace talks between the Taliban and the Afghan government are a result of an agreement between the Taliban and the United States signed in Doha, Qatar on February 29, 2020. This agreement, officially title "Agreement for



US Speaker of the House Nancy Pelosi met with Afghanistani President Ashraf Ghani in February 2021 (Office of the US House Speaker via Wikimedia Commons)

Bringing Peace to Afghanistan", specified that the Taliban would not to allow terrorist groups, particularly al Qaeda, to operate in Afghanistan, and the United States agreed to withdraw all of its forces from Afghanistan within 135 days after the signing, that is by July of 2020. The agreement also specified that there would be a brief "reduction in violence", a term the Taliban preferred rather than "ceasefire". The agreement also stipulated that negotiations between the Afghan government and the Taliban would begin within 9 days after the signing of the agreement, that is by March 9th. In addition, as a sign of goodwill, the agreement specified that the Afghan government would release 5000 Taliban prisoners from Afghan jails and the Taliban would release 1000 government prisoners, all of this within ten days of signing of the agreement.

The problem with this arrangement was that the Kabul government was not a party to the talks, and had only marginally been consulted.

Therefore, the Afghan President, Ashraf Ghani, objected to much of the agreement and claimed that he was also unable, or unwilling, to release 5000 prisoners on such short notice, pointing out that many of the Taliban prisoners had committed crimes against citizens of other countries or crimes against humanity and therefore should not be released.

After some time, and pressure from United States' Secretary of State, Mike Pompeo, who threatened to withhold financial aid to Afghanistan, President Ghani agreed to release the prisoners and to begin negotiations with the Taliban. As a result, the talks opened in Doha on September 12, 2020, almost seven months after they were supposed to begin.

The talks got off to a slow start with both parties playing to their base. Most of the negotiations in the first round dealt with issues of protocol, that is what rules should be used to guide the

negotiations. The Taliban insisted on using the rules imbedded in Islamic law, that is Hanafi jurisprudence. The Afghan government negotiators objected to this since it would exclude certain religious minority groups in Afghanistan, particularly the Shia. The talks recessed with little progress in early December 2020 and began again on January 5, 2021.

Issues

Although the talks are ongoing again, little progress is being made. There are several issues that remained unresolved that are holding up any progress. These are the issue of a ceasefire, the role of the original peace agreement with the United States, creation of an interim government, the rights and protection of women and minorities, and, most importantly, the position of the incoming Biden administration.

bombing at the University of Kabul, at hospitals, and the killing of reporters, journalists and government officials. Many of these killings have been by magnetic bombs, explosives attached with magnets to the bottoms of cars which are then either remotely exploded or are detonate with a timer. In the countryside the Taliban have stepped up their attacks on government posts and now control much of Afghanistan.

The increase in killings has deeply affected the Afghan citizens and undermined their trust in the government to protect them. As a result the Afghan government desperately wants a ceasefire and has attempted to propose this at the Doha talks.

The Taliban, on the other hand, does not want a ceasefire. From the Taliban's point of view, violence is its main weapon and negotiation tool. It will only talk about a ceasefire when the other issues, including the role of the Taliban in a future government in Kabul, are resolved.

The Taliban-United States Agreement:

The Taliban are insistent that their agreement with the United States last February be the basis of the negotiation. Specially, the Taliban point out that the United States agreed to unconditionally remove all troops from Afghanistan within a few months. While the United States has removed many of its troops from Afghanistan, it still has a residual force of a few thousand left in the country. It is generally assumed that without the support of American troops, the Afghan government probably could not stand. While American soldiers are no longer participating in battles with the Taliban, American air support of the Afghan army has been critical. If the United States, does in fact pull all or most of its troops out of Afghanistan, the present Afghan government will not stand.

Interim Government:

It has been suggested by the Taliban and other groups that an interim government be created

Ceasefire:

While the Taliban have agreed to not attack American troops or people, in fact in 2020 the level of violence in Afghanistan reached an unprecedented level. Violence has increased by over 50 percent in the last year. This includes

SO WHERE DOES BIDEN STAND ON AFGHANISTAN? THE TRUTH IS NO ONE KNOWS... WHAT DOES APPEAR TO BE THE CASE IS THAT HE AND HIS TEAM WILL HAVE SO MUCH ON THEIR PLATE WHEN THEY TAKE OFFICE ON JANUARY 20TH THAT AFGHANISTAN WILL BE ON THE BACK BURNER.



US President Joe Biden spoke on phone with Afghanistani President Ashraf Ghani in April (White House via Wikimedia Commons)

that would be a step to bringing the Taliban into the fold. This idea is of course strongly opposed by the Ghani government which argues that the present government in Kabul was elected in a democratic process according to the Afghan constitution. However, it is also clear that the present government in Kabul does not have the support of many Afghans, including some important Afghan politicians, and that it will be difficult to incorporate the Taliban into the government in its present form.

The protection of Women and Minorities

When the Taliban ruled Afghanistan from 1996 to 2001, women and religious minorities suffered. Women were not allowed to work or even to leave their house without being accompanied by a man. Women were not allowed to go to school beyond puberty and were required to wear a veil that completely covered their head and body whenever they went out in public. Many women who violated these rules were

stoned to death.

Religious minorities were also persecuted by the Taliban, particularly the Shi'a Hazara, who make up about 10 percent of the Afghan population. Thousands of Hazara were slaughtered by the Taliban.

In the negotiations in Doha, the issue of the rights of women and religious minorities has been brought up by the Afghan government negotiators. The Taliban has waffled on this issue, at times saying that they are the new Taliban and will respect the rights of women and minorities, and at other times citing Islamic law that restricts the rights of women and minorities. This issue will need to be resolved, and without a guarantee that women and minorities will be protected, there is little hope for an agreement.

The Biden Factor

The current negotiations in Doha are presently at a standstill. Both the Afghan government's and the Taliban's team have a skeleton staff in Doha, since it is expected that little progress will be made until it becomes clear what the position of the Biden administration will be. If the Biden administration supports the original Doha agreement and all American troops leave Afghanistan, certainly the current Afghan government will fall, and the Taliban will take over leadership of Afghanistan in one form or another. However, if Biden's team agrees to leave troops in Afghanistan, contrary to the Doha agreement, the Kabul government may remain in power, and the Taliban will have negotiate with it.

There are other important decisions regarding Afghanistan that the Biden team will need to make. These include the role of Ambassador Zalmay Khalilzad. Ambassador Khalilzad is the main architect of the Doha Agreement and continues to work with both sides. As an American citizen born of Afghan heritage, he has the unique ability to understand and work with the Afghan people. In addition to his current role leading the American effort in Afghanistan, he also served as U.S. Ambassador to Afghanistan from 2004 to 2005.

Ambassador Khalilzad, however, served under President Trump and President Bush and is considered a Republican. In addition, his positions and actions in the Afghan peace process have antagonized President Ghani. Ironically, although he is an American diplomat, he is trusted and liked by the Taliban and disliked by the present Afghan government.

Should the Biden team, remove him from his role, which is likely, America's relationship with the Taliban will suffer, but its relationship with the Ghani government may improve.

Conclusion

So where does Biden stand on Afghanistan? The truth is no one knows. In his role as vice president in the Obama administration, Biden advocated at one time for a small force in Afghanistan focused on intelligence gathering. But that was some time ago in a different situation. What does appear to be the case is that he and his team will have so much on their plate when they take office on January 20th that Afghanistan will be on the back burner.





AFGHAN PEACE PROCESS – PROSPECTS AND CHALLENGES

MR. MUSHTAQ RAHIM

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I. Afghans Amidst Hope and Despair

Afghan conflict is at a historic crossroad amidst uncertainties, cautious optimism and fear of a potential civil war. The Doha process that began in September 2018 under the stewardship of Zalmay Khalilzad, Trump administration's special representative for Afghan peace, is being seen as Afghan people's real chance to envision a future without the calamity of war and destruction (Sen, 2018). However, the process is not without challenges including lack of understanding on major issues between the Afghan Government and the US envoy, spike in violence waged by the Taliban across the country, target killings of the qualified cadre and renowned civil society activists and change of guard in the American administration after the November 2020 elections in the US (Javaid, 2021).

The Trump administration was in a real haste in concluding the Afghan conflict and offered a lot of concessions to the Taliban on the negotiating table (Public Broadcasting Services, 2018). Khalilzad took a solo flight and engaged unilaterally with Taliban who rejected sharing the table with the Afghan Government since they did not recognise it as a legitimate authority (Kaura, 2019). However, Khalilzad continually informed Afghan President Ashraf Ghani and his team on the dynamics, progress, and agreements he bilaterally made with the opposite side (President's Office, 2020). Following the signing of an agreement¹ between the US Government and Taliban, the anticipation was that a comprehensive peace deal could be delivered soon and prior to the US elections. However, due to the delays in execution of some of the clauses of the initial agreement and political wrangling among Kabul based politicians on their role and place in the peace process, the progress was paused (Deutsche Welle, 2020).

Second phase of the Doha process was a historic event as the Afghan warring parties met on the negotiation table for the first time. The team negotiating on behalf of the Afghan Government engaged with the Taliban delegation in "Talking for Talks" in Doha in September 2020 to develop a modus operandi for the negotiation process. The process consumed over three months before the two sides settled on the ground rules for the intra-Afghan negotiations (Afghanistan Analysts Network, 2021). It is important to outline that the intra-Afghan talks are being undertaken without a mediator or facilitator.

The second round of talks or the main negotiation process is yet to get underway at the time of writing of these lines though it was supposed to begin in early January. The two sides, after agreeing on the modus operandi for the negotiation in mid-December, went on recess before regathering in the Qatari capital in early January 2021 (Adili, 2021). The round was

¹ <https://www.peaceagreements.org/view/2232> - Date Accessed ~ 21 January 2021

aimed at agreeing on an agenda of negotiations with contrasting and competing priorities of the two sides such as ceasefire, power-sharing, constitutional arrangements, outlook of state system etc. The resumption of talks is apparently stalled by the new US administration's second thoughts about the process and the attitude of Taliban towards meeting their obligations. In the meantime, Taliban made a tactical move by travelling to Iran and Russia, the two rivals of the US. The trips can be analysed as a demonstration of availability of choices to them in case Joe Biden chooses to reconsider the Doha deal (RFE/RL's Radio Free Afghanistan, 2021).

ALTHOUGH IT IS WAY TOO EARLY TO TALK ABOUT GUARANTOR AND ESTABLISHMENT OF A MONITORING MECHANISM FOR THE PEACE AGREEMENT AT THIS STAGE, IT IS OF PARAMOUNT IMPORTANCE TO HAVE OUTSIDERS OVERSEEING THE IMPLEMENTATION OF THE PEACE AGREEMENT AND ASSURING THAT ALL PARTIES RESPECT THE AGREEMENTS.

II. The Bumpy Road Ahead

The Afghan peace process faced a serious question on its future after the surprising result of the US elections where Trump was vacated in favour of Joseph R. Biden, the 46th President of the US. Although Afghanistan was not on the agenda during the US election campaign, Biden and his administration have to make decisions about Afghanistan since the new president took his seat at the White House (Coll, 2021). The



Afghan Women's Network Conference in 2014 on women's involvement in the Afghan peace process (Inclusive Security via Flickr)

expectation is that the Biden administration will continue to respect the February 2020 Doha agreement and will pursue its implementation (Qazi, 2020). However, unlike Trump and his team who offered all concessions to the Taliban with little reciprocation, the expectation is that Biden may stop offering the bonanza by seeking reciprocation (Ruttig, 2020). This would please the Afghan Government and create breathing space for the Ghani administration that has always been a passive participant playing on the back-foot since the start of the Doha process.

The change in the US approach to the peace process may allow the Afghan Government to toughen up its stance on key issues such as future make-up of the Government, power sharing formula, reconciliation between the two sides and ceasefire, a subject always preferred to be discussed first by the Government and last by the Taliban. The Government officials have already started presenting a stronger opposition on some of the major issues of contention. These positions may eventually add more impasses to the peace process and could challenge the

success of the fragile political negotiation in the face of a strong military struggle. As a result, the process is faced with hindrances and progress has lost pace as Taliban have always maintained a very rigid position while negotiating matters of serious implications for the Afghan people.

The peace process is faced with the lack of trust between the Afghan negotiating sides. The two sides have not been able to establish the level of rapport required for building the bridges of trust. However, thanks to Donald Trump, Khalilzad enjoyed a different level of understanding with Taliban leadership, which has helped the two sides make smooth forward strides. Due to the change of guard at the Oval office, it is foreseen that Khalilzad may have to share a lot of space with Biden confidant which means his free riding will be curtailed. As a result, the level of confidence between the US and Taliban may recede warranting new rounds of diplomatic negotiation, dialogue and discussion between the two sides to achieve the level of trust required for taking the peace process forward (Clark, 2020). All this means

reduction in the pace of the already slow process which gives time to the spoilers existing in all sides trying to pose challenges to the fragile peace process.

As there has been progress in the peace and reconciliation process, significant increase in violence has also been observed. There have been attacks against the Afghan security forces across the country which has caused skepticism about the future of peace process (Mashal, Faizi, & Gibbons-Neff, 2020). More importantly, target killings have had a devastating effect on the psyche of the people. While the attacks on the Government installations and Afghan forces have regularly been claimed by Taliban, the perpetrators of the target killings remain anonymous giving a chance to the speculations that the spoilers might have already joined the fray to disrupt the peace process (Abed & Gibbons-Neff, 2021). Even increase in the Taliban attacks can be associated with the spoilers looking to dislodge the Government at least in major cities in order to harm the peace process.

III. Encompassing Challenges

While the formal negotiations between the Afghan parties have gotten under way, there is a lack of clarity on the vision of the two parties for the future. The two parties have been maintaining a very rigid stance on the make-up of the Government as none of the two are prepared to reveal their possible zone of agreement vis-a-vis issues of contention. Taliban in particular have been insistent on the establishment of an Islamic state system, in other words, subversion of the current political system. There is no clear definition of an Islamic state system leaving the issue riddled in so many questions such as the election of the state administration, legislation, civil rights of the citizens, freedom of expression and women rights (Rubin, 2020). The Islamic state system can mean anything between the very strict theocracy similar to the previous reign of the Taliban to the mild practices adopted by the

different Islamic countries in other parts of the world.

In the meantime, the Taliban rank and file have been viewing the Doha deal as a triumph on the battlefield and as such they are maintaining a vision to takeover power exclusively as they did in the mid-90's after ousting the warlords from almost all parts of Afghanistan (International Crisis Group, 2020). This has created a sense of euphoria among the foot soldiers who may not settle for anything less than a utopian state system run single-handedly by them. This leaves the peace process faced with the menace of breakup among Taliban ranks in the case of something like power sharing, transitional or interim arrangements comprised of those presented as enemies over the last two decades. In such a case, it is not difficult to imagine the possibility of Taliban fighters parting their ways and continuing their armed struggle under different tags (United Nations, 2020). On the other hand, pursuance of a totalitarian agenda may give a pretext to the warlords who have been dominating the Afghan Government over the course of last two decades and as a result have become much more powerful than they were during the years of civil war in 90's to remobilise illegal armed groups with a narrative of defending their communities (Amiry, 2021).

Absence of a mediator has also been a serious challenge to the progress of the peace process. The two parties around the table are talking to each other directly without mediation and support from a third party. This as a result leaves the process exposed to disruption, delays and possible breakdown in the event of deadlocks. A mutually acceptable mediator can help facilitate smooth progress of the negotiation, sort out issues posing deadlocks and offer solutions to the problems that could challenge the success of the ongoing peace process. Afghanistan has rich tradition of involving mediators in community level conflicts as part of its traditional Jirga²

² A traditional system widely used for conflict resolution and consensus based decision making among Afghans. People of reputation and influence mediate in Jirga. The decisions of Jirga have a binding status.

system. A lot of lessons can be drawn from the centuries old system in order to convince the parties to agree on involving a mediator in the very important process.

IV. Succeeding Against Odds

Although it is way too early to talk about guarantor and establishment of a monitoring mechanism for the peace agreement at this stage, it is of paramount importance to have outsiders overseeing the implementation of the peace agreement and assuring that all parties respect the agreements. The agreement signed with Hizb-e-Islami, the insurgent group that reconciled in 2016, did not contain such a mechanism which resulted in a lot of difference between the Government and the pacified group (Rahim, 2018).

In light of the dynamics discussed, the existent gaps and challenges, the Afghan peace process is walking a very tight rope. Achieving peace out of the ongoing peace negotiations is as much possible as going back to square one and continuation of the asymmetric warfare. In the meantime, the parties to the conflict have also realised that the only way out of the stalemate is a negotiated settlement. In such a scenario, the possibility of achieving peace and allowing Afghanistan to advance to the stage of post conflict, peacebuilding process is very much genuine. All parties to the conflict must cash-in on the available opportunity in order to achieve durable peace paving the way for positive peace in Afghanistan.

In order to make peace and create ground for conflict transformation, it is necessary that the current process proceeds unhindered. The two Afghan sides must learn from the past and try to widen the zone of possible agreement on issues of serious contention instead of lurking around their rigid positions. Although the new US administration has allocated importance to Afghanistan on its foreign policy agenda and Biden administration is working on its strategic options, it will have to build rapport with the

Afghan Government to fill the void in the process and build trust with Taliban in order to remain a useful facilitator (Cooper, Schmitt, & Sanger, 2021). Particularly, when it comes to the regional players, the US will have to exert its influence and work with them in order to avoid spoiler effect of the regional manipulators of the Afghan conflict and mobilise them as partner on the Afghan peace process (US Institute of Peace, 2021). And last but not the least, the level of violence will have to be significantly reduced if there is a serious intent to find a political solution to the Afghan conflict.

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A CHILD IN AFGHANISTAN (SOURCE: SOHAIB GHYASI)

THIRD VOLUME (2020) OF THE *HONG KONG JOURNAL OF LAW AND PUBLIC AFFAIRS: CLIMATE CHANGE DISPLACEMENT AND THE INTERNATIONAL LAW*



The Third Volume 2020 of the *Hong Kong Journal of Law and Public Affairs*, published in December 2020, is entitled “Climate Change Displacement and the International Law”.

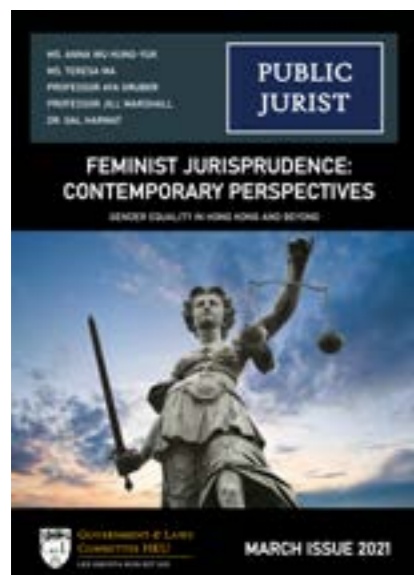
The plight of environmental migrants is not novel to the international community. Obstacles faced while attempting to bring them within the purview of the 1951 Refugee Convention compels exploration of alternative legal and regulatory framework and drives litigation at both domestic and international levels. This Volume brings together experts and practitioners of climate change-induced displacement and surveys the propriety and inadequacies of existing international legal regimes. Several contributions also examine the prospects and implications of *Teitiota v New Zealand* – the first ruling delivered by the United Nations Human Rights Committee on environmental migrants in January 2020.

OBTAINING A COPY

You may access the online copy here at: <http://www.hkuglc.org/government-and-laws-committee-hku-hkjlpa>

Apart from the symposium of articles, this Third Volume reproduces in full an interview conducted with Professor Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights (2014 – 2018) and currently Perry World House Professor of the Practice of Law and Human Rights at the University of Pennsylvania. Additionally, three authors of recently published monographs are interviewed on their work. The Volume concludes with a review of Government and Laws Committee's initiatives and publications of the First Semester of Academic Year 2020-2021.

LATEST ISSUE OF *PUBLIC JURIST*



**MARCH ISSUE 2020
FEMINIST JURISPRUDENCE: CONTEMPORARY PERSPECTIVES**

To celebrate the International Women’s Day in March, this issue is specifically dedicated to empowering individuals who share a vision of an equal world. Featuring a collection of writings contributed by and interviews with respected female politicians, lawyers and peace advocates, this issue sheds light on the interplay of gender, law and politics in Hong Kong and beyond. Contributions review different feminist legal theories, investigate the criminal law justice system of the United States and intersectionality together with the double jeopardy of race and gender. Lastly, this collection also looks into the social construction of gender through deciphering the gendered meaning of daily objects and processes.

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