

Resetting Pakistan's Relations with Afghanistan

Asia Report N°262 | 28 October 2014

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Executive Summary

Pakistan's relations with Afghanistan have been largely characterised by mutual mistrust and devised through a narrow security prism. While it will require considerable effort to end deep-seated animosity, both countries share close ethnic, linguistic, religious and economic ties. Longstanding Afghan migration to the territories that now compose Pakistan makes them an integral part of Pakistani society. Yet, military-devised interventionist policies, based on perceived national security interests, including support for Afghan, mainly Pashtun, proxies, have marred the relationship. The incoming Afghan President Ashraf Ghani Ahmadzai has offered to expand bilateral ties, providing Islamabad fresh opportunities to improve the relationship. Prime Minister Nawaz Sharif has responded positively, but the Pakistani military and civilian leadership's preferences toward Kabul are diverging further as Afghanistan's transition draws closer. By recalibrating relations toward economic ties and seeking solutions to the presence of millions of Afghan refugees on its soil, Pakistan could engage more constructively with its neighbour.

Sharif's top priority, stabilising a faltering economy, will be elusive in the absence of security and hampered by an unstable neighbour; hence his government has reached out to Afghanistan, hoping to reduce bilateral tensions and contribute to post-transition Afghanistan's stabilisation. The Pakistani military high command, however, continues to hedge its bets, either actively or tacitly supporting a resurgent insurgency, which threatens to undermine Afghanistan's transition.

Since the Taliban's 2001 ouster, Afghan insurgents have found safe havens in Pakistan. The command and control of the three main militant groups – Mullah Omar's Shura (council), Gulbuddin Hekmatyar's Hizb-e Islami and the al-Qaeda-linked Haqqani network – are based in and operate from Pakistan. These havens have and could continue to undermine Afghanistan's efforts to confront the insurgency after the security transition in December 2014.

Pakistan's interventionist policies are also undermining the peace at home. The Afghan insurgents are aligned with home-grown Pakistani tribal extremists, who in turn are part of a syndicate of sectarian, regional and transnational jihadi groups. With the support of their Afghan counterparts, Pakistani tribal extremists are challenging the state's writ, particularly in the Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa (KPK) province, bordering on Afghanistan. Military-led initiatives to counter such threats, based on appeasement deals or heavy handed-military operations against Pakistani Taliban factions, have proved ineffective.

The opening of spaces for Pakistani extremists, using their ties with their Afghan counterparts, to attack Pakistani targets from safe havens in Afghanistan, underscores the importance of ending all support, direct or covert, to Afghan proxies. Yet, much depends on the ability of civilian governments in Pakistan to wrest control over national security and foreign policy from the military in a fragile democratic transition.

Since Pakistan's democratic transition began in 2008, two successive governments have wanted to mend fences with Afghanistan, including through a policy of non-intervention, failing in the face of military intransigence. The first ever transfer of power from one elected government to another, after the May 2013 elections, provided an opening to strengthen civilian control over national security and foreign

policy, including in the relationship with Afghanistan. However, ongoing anti-government demonstrations, begun in August 2014, led by Pakistan Tehreek-i-Insaf (PTI) leader Imran Khan and cleric-cum-politician Tahirul Qadri, have strengthened the military's ability to extract concessions from Sharif's Pakistan Muslim League-Nawaz (PML-N) government, particularly regarding one of the most sensitive regional relationships, that with Afghanistan.

Yet, there are still opportunities, not least because of the new government in Kabul that is reaching out to Pakistan, for Sharif to reset the relationship by expanding ties beyond a narrow security focus. Until the democratic transition stabilises, enabling the government to end tacit or direct support for Afghan proxies, Sharif should work with Kabul to expand economic ties, including by upgrading and expanding infrastructure, including road and rail links connecting the two countries, reducing cumbersome security measures, combatting corruption and beginning talks on a free-trade agreement. The two countries would also benefit from easing cross-border movement and providing economic opportunities to their citizens. Improving the relationship would, however, require Pakistan to ease the uncertain and insecure lives of the millions of Afghan refugees on its territory. Islamabad should sign and ratify the 1951 Refugee Convention and its 1967 Protocol. Until it does, it should enact a national law for refugees that codifies long-term protections and rights, and respects the right of *non-refoulement*.

Islamabad/Brussels, 28 October 2014

Resetting Pakistan's Relations with Afghanistan

I. Introduction

Since assuming office in June 2013, Pakistani Prime Minister Nawaz Sharif has repeatedly linked his country's political and economic stability with peace in its neighbourhood, including a stronger partnership with Afghanistan. Likewise, incoming Afghan President Ashraf Ghani Ahmadzai has offered to expand bilateral ties. Yet, the government has had to contend with significant constraints on its authority in the second phase of Pakistan's democratic transition, reinforced most recently by anti-government demonstrations led by Pakistan Tehreek-i-Insaf (PTI) leader Imran Khan and cleric-cum-politician Tahirul Qadri, that have strengthened the military's ability to extract concessions, particularly with regard to policy toward Afghanistan.

The civilian leadership's preference for peace with Kabul sharply contrasts with the military's hedging strategies, including support for Afghan proxies in the hope of shaping Afghanistan's transition. This is evident in the ongoing operation in North Waziristan, which follows an established pattern of selective strikes against militant groups that attack the Pakistani state, while refusing to target Afghan insurgents, who continue to launch cross-border attacks from Pakistani safe havens with the support and active involvement of their Pakistani jihadi allies.

While the military's control over security policy remains an impediment, there nevertheless remain significant opportunities for the PML-N government to recalibrate Pakistan's relationship with Afghanistan. This report focuses on Pakistan's policy toward and perceptions of Afghanistan, offering ideas on how to seize such opportunities. It is based on interviews with political leaders from national and regional parties, civil society, the business community and traders in Balochistan, Khyber Pakhtunkhwa (KPK) and Islamabad.

II. Policy Imperatives and Internal Implications

A. Pakistan's Monroe Doctrine and Pashtun proxies

Pakistan's relations with Afghanistan have been characterised by mutual mistrust and hostility for most of the country's existence.¹ Inheriting British India's frontiers with Afghanistan, Pakistan perceives Afghanistan as falling within its sphere of influence.² Bent on controlling its backyard, Pakistan's defence establishment has continued the British Empire's interventionist policies toward Afghanistan.³ The adversarial relationship with Afghanistan is also shaped by Kabul's refusal to accept the Durand Line, the British-drawn 1893 boundary, as the international border with Pakistan.⁴ In the late nineteenth century, Afghan ruler Amir Abdur Rehman had renounced claims over bordering Pashtun-majority regions that were placed under British control and are now part of Pakistan. Afghanistan now rejects the Durand Line on the grounds that the agreement was signed under duress. Kabul's irredentist claims, including support for "Pashtunistan" (the land of the Pashtuns), which would include most of Khyber Pakhtunkhwa (KPK) province and much of Balochistan, have therefore influenced Pakistan's Afghan policy.⁵

The military's belief that pan-Pashtun nationalism across the Durand Line could sever much of Pakistan's Pashtun belt was responsible for using Afghan Islamist, mainly Pashtun, proxies to expand Pakistan's influence over Afghanistan.⁶ Almost seven decades later, Pakistan's Pashtun-majority regions are fully incorporated both politically and economically into the state; there is little evidence of Pakistani Pashtuns either supporting merger with Afghanistan or a separate Pashtun homeland. While Afghanistan's refusal to recognise the Durand Line compounds the challenges of border management, it does not justify the Pakistani military turning a blind eye to the cross-border movement of Afghan insurgents.⁷

¹ For Crisis Group analysis of Pakistan's relations with Afghanistan, see Asia Reports N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006; N°145, *Afghanistan: The Need for International Resolve*, 6 February 2008; N°158, *Taliban Propaganda: Winning the War of Words?*, 24 July 2008; N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; N°175, *Afghanistan: What Now for Refugees?*, 31 August 2009; N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; and N°255, *Policing Urban Violence in Pakistan*, 23 January 2014.

² Kabul's policy toward and perceptions of Pakistan will be the focus of a subsequent Crisis Group report, which will examine the implications of regional dynamics on security in post-transition Afghanistan.

³ Britain's policy in the nineteenth century, much like Pakistan's today, had focused on keeping Afghanistan "essentially under its influence", including through interfering "in its internal politics to install or protect a friendly ruler" and to keep "control over the country's external affairs". Rasul Bakhsh Rais, *War without Winners* (Oxford, 1997), pp. 70-71.

⁴ Zahid Hussain, "Sources of Tension in Afghanistan and Pakistan: A Regional Perspective", Barcelona Centre for International Affairs (CIDOB) Policy Research Project, December 2011, pp. 12-13.

⁵ The Northwest Frontier Province (NWFP) was renamed Khyber Pakhtunkhwa (KPK) in 2010. According to an analyst, while Pashtunistan was ostensibly aimed at giving Pakistani Pashtuns the right to secede and form an independent state, the "historic links between the Pashtuns and Afghanistan would likely dictate a merger of Pashtunistan and Afghanistan". Daveed Gartenstein-Ross and Tara Vassefi, "The forgotten history of Afghanistan-Pakistan relations", *Yale Journal of International Affairs* (March 2012), p. 40.

⁶ Afghan Islamists were supported because, in the military's perceptions, they believed in the *umma*, the collective Islamic community, and not the nation state. Crisis Group Reports, *Appeasing the Militants* and *Policing Urban Violence in Pakistan*, both op. cit.

⁷ Crisis Group interview, KPK-based parliamentarian, Islamabad, September 2014.

Afghanistan's close ties with India, largely motivated by hostility with Pakistan, are also often used to justify extending Pakistan's influence over Afghanistan.⁸ Some analysts believe that Pakistan's rivalry with India is the primary driving force behind its Afghan policy: "The Pakistani military establishment views the expanding Indian influence in its 'backyard' as a serious threat" to security.⁹ While the military is concerned about Kabul's close ties with India, there is, as a well-informed observer noted, a "calculated campaign to exaggerate the Indian threat", aimed at justifying intervention in Afghanistan.¹⁰

Even after the restoration of democracy in Pakistan in 2008, following nine years of military rule, the defence establishment has continued to control Afghan policy. The presence of the leadership of the three major Afghan, predominately Pashtun, insurgent groups in Pakistan is also used as a lever in dealings with Kabul and its international allies by avowedly facilitating peace talks with these groups, even while the military claims limited ability to contain cross-border attacks.¹¹

With the international exit drawing close, Pakistan's influence over the Afghan insurgents is also used to ensure that it will have a major say in shaping Afghanistan's political and security transition.¹² Insurgent commanders and foot soldiers are closely monitored and detained or released at will, depending on their readiness to advance Pakistan's interests in negotiations with Kabul and its international allies. Despite earlier denials of having detained Afghan Taliban leaders, security agencies released a number of high-profile commanders in 2012 and 2013.¹³ A parliamentarian, representing a political party that opposes intervention in Afghanistan, asked: "Who arrested these Taliban and who released them?"¹⁴ The Peshawar High Court chief justice also raised questions about the legal basis for apprehending and/or releasing Afghan insurgents.¹⁵

Insurgent efforts to engage Kabul or its international allies independently of Pakistan are quickly thwarted, as in the case of Taliban commander Mullah Abdul

⁸ To justify intervention in Afghanistan, Pakistan's military ruler General Zia-ul-Haq (1978-1988) developed the policy of "strategic depth", aimed at creating a client state in Afghanistan that could be used as a "military hinterland" in the event of war with India. This concept is still frequently used to justify Afghan policy. Mary Ann Weaver, *Pakistan: In the Shadow of Jihad and Afghanistan* (New York, 2010), p. 79. Also, Zahid Hussain, *Frontline Pakistan: The Struggle with Militant Islam* (New York, 2007), p. 30.

⁹ Zahid Hussain, "Sources of Tension in Afghanistan and Pakistan", op. cit., p. 9-10. Also, Safdar Hussain, "Issues and Challenges in Pakistan-Afghanistan Relations after 9/11", *South Asia Studies*, vol. 27, no. 1 (January-July 2012).

¹⁰ Crisis Group interview, Islamabad, February 2014.

¹¹ Mullah Omar's Taliban Shura and the leaderships of Gulbuddin Hekmatyar's Hizb-e Islami and the Haqqani network are based in Pakistan. Crisis Group Asia Report N°256, *Afghanistan's Insurgency After the Transition*, 12 May 2014; and N°221, *Talking About Talks: Toward a Political Settlement in Afghanistan*, 26 March 2012.

¹² Pakistan, for instance, claimed credit for facilitating the Afghan Taliban's opening of a political office in Doha in 2012 to negotiate with the U.S. and Kabul. "Pakistan played key role in U.S.-Taliban breakthrough", *Dawn*, 20 June 2013.

¹³ "Pakistan agrees release of more Taliban prisoners", *Dawn*, 30 November 2012; "Pakistan releases three senior Taliban prisoners", *Dawn*, 26 November 2013.

¹⁴ Crisis Group interview, Senator Afrasiab Khattak, Pashtun-majority Awami National Party (ANP), Peshawar, November 2013.

¹⁵ "Legal glitch: On what grounds was Mullah Baradar released, asks PHC", *The Express Tribune*, 1 November 2013.

Ghani Baradar.¹⁶ Following repeated requests by Kabul to release Baradar in the hopes of kickstarting negotiations with the Taliban, he was ostensibly released but is still reportedly detained by security agencies in Karachi.¹⁷ According to a leaked 2012 NATO report, “senior Taliban representatives, such as Nasiruddin Haqqani, maintain residences in the immediate vicinity of ISI [Inter-Services Intelligence]” in Islamabad.¹⁸ Less than a year later, Haqqani, who had reportedly been involved in peace talks, was killed in an Islamabad suburb.¹⁹ Several other senior Afghan Taliban commanders were killed in January 2014, with some analysts contending that those wanting to pursue talks with Kabul independently of the Pakistani military could have been eliminated.²⁰

Pakistan has repeatedly stressed that it supports a “united Afghanistan”.²¹ Yet, a retired Pakistani military official conceded that the defence establishment still makes a distinction between a “Pashtun Afghanistan” and an Afghanistan of “the others”, referring to ethnic groups that are perceived as less amenable to promoting Pakistan’s interests.²² According to an Awami National Party (ANP) parliamentarian: “When [Afghan President] Daoud Khan, in the 1970s, would say he can’t stay indifferent to the Pashtuns of Pakistan, Pakistan would react angrily. Now, Pakistan has become the champion of Pashtuns in Afghanistan”.²³ The most prominent Pakistani Pashtun-majority nationalist parties, the KPK-based ANP and the Balochistan-based Pakhtunkhwa Milli Awami Party (PKMAP), see the military’s interventionist policies, including support for the Afghan Pashtun insurgents, as inimical for Pashtuns both sides of the border.²⁴

Officials are aware of the animosity Pakistan has incurred from Afghanistan’s non-Pashtun groups for supporting the predominately Pashtun insurgents. A well-informed observer said, “when you are in such a tight embrace of the Taliban, you can’t stay

¹⁶ A co-founder of the Taliban movement, Baradar was the deputy leader of Mullah Omar’s Shura when he was captured in a joint U.S.-Pakistan raid in Karachi in February 2010. The Karzai administration believed that he could play a constructive role in the reconciliation process with the Taliban.

¹⁷ “Released Taliban leader awaits fate in Karachi safe house”, Reuters, 22 September 2013; “Afghan council says it hasn’t met Taliban leader released in Pakistan”, *Dawn*, 15 March 2014.

¹⁸ Full report, “State of the Taliban” at <http://nyti.ms/1rXOeAg>. The ISI (Inter-Services Intelligence directorate) is the military’s premier intelligence agency. A Pakistani foreign office spokesperson called the report “frivolous” and said that “leaks [are] not worth commenting on”. “Pakistan says leaked Nato report not worth commenting on”, *Dawn*, 1 February 2012.

¹⁹ “Haqqani network leader killed in Islamabad”, *Dawn*, 12 November 2013; “Nasiruddin Haqqani: senior militant shot dead in Pakistan”, BBC (online), 11 November 2013.

²⁰ Zia ur Rehman, “Who is killing Afghan Taliban in Pakistan”, *The Friday Times*, 24 January 2014.

²¹ In a meeting with the UN Secretary-General’s special representative for Afghanistan (SRSG), Jan Kubis, the adviser to the prime minister for national security and foreign affairs, Sartaj Aziz, said that “a peaceful, stable and united Afghanistan is in Pakistan’s vital interest”. “Peaceful, stable Afghanistan in Pakistan’s vital interest: Sartaj Aziz”, *The News*, 28 August 2014.

²² These include Tajiks, Uzbeks and Hazaras, whose leadership in the anti-Taliban Northern Alliance was perceived as hostile to Pakistan. Crisis Group interview, Islamabad, December 2013.

²³ Crisis Group interview, Islamabad, September 2014. A staunch supporter of “Pashtunistan”, Sardar Mohammad Daoud Khan (prime minister, 1953-1963) ousted King Zahir Shah’s monarchy, formed a republic and served as president from 1973-1978. Gartenstein-Ross and Vassefi, op. cit., pp. 42-43.

²⁴ Crisis Group interviews, senior ANP, PKMAP leaders, Islamabad, Quetta, Peshawar and Islamabad, December 2013-September 2014.

neutral toward all [Afghan] players”.²⁵ In July 2012, then-Foreign Minister Hina Rabbani Khar said Pakistan did not want “to be seen allied with any particular group in Afghanistan. We have an open policy”. Later that month, then-Prime Minister Raja Pervez Ashraf met Salahuddin Rabbani, an ethnic Tajik and leader of Afghanistan’s High Peace Council (HPC), and other leaders of the former anti-Taliban Northern Alliance.²⁶ An HPC delegation met the prime minister and, separately, the army chief in Islamabad in November 2012.²⁷ Yet, little came of that visit because of concerns about the Pakistani military’s interference in Kabul’s efforts to negotiate with the insurgents.²⁸ The Pakistani military’s likely interference in President Ashraf Ghani Ahmadzai’s stated intention to open negotiations with the Taliban and the Hizb-e Islami could also undermine Prime Minister Nawaz Sharif’s efforts to improve relations with Kabul (see below).²⁹

B. *Interventionist Ambitions and Domestic Implications*

Afghanistan’s refusal to recognise the Durand Line compounds the challenges of border management. Yet, Pakistan’s active support or at the very least turning a blind eye to the cross-border movement of Afghan insurgents makes it, according to a Pakistani parliamentarian, “the more serious violator” of territorial integrity.³⁰ Some analysts believe that the military is reluctant to act against the Afghan insurgents because “creating more enemies”, particularly since the rise of militancy in its tribal belt, would not be in Pakistan’s interest.³¹

Yet, militant groups have expanded their operational space, particularly in the Federally Administered Tribal Areas (FATA) and the KPK heartland, because of military-devised counter-insurgency strategies, based on peace deals with elements of an umbrella organisation, the Tehreek-e-Taliban Pakistan (TTP – Taliban Movement of Pakistan) on the one hand, and poorly coordinated and heavy-handed operations on the other.³² Formed in December 2007, the TTP swore fealty to Mullah Omar,³³ and

²⁵ Crisis Group interview, Pakistani politician with close links to his Afghan counterparts, Islamabad, September 2014.

²⁶ Karzai established the High Peace Council (HPC) in 2010 to manage negotiations with the insurgents. HPC head, former President Burhanuddin Rabbani, was assassinated in September 2011 in Kabul. His son Salahuddin succeeded him. Kabul held Pakistan responsible for Rabbani’s assassination, with Interior Minister Bismillah Khan Mohammadi saying: “Without any doubt Pakistan’s ISI hand has been involved”. Pakistan blamed Afghan refugees for the assassination. “Karzai downplays peace hopes as Afghans cite Pakistani links to Rabbani killers”, Radio Free Europe/Radio Liberty, 8 October 2011; “Pakistan blames Afghan refugees for Rabbani’s murder”, Agence France-Presse, 14 December 2011.

²⁷ “Afghan peace negotiators meet army chief”, *Dawn*, 13 November 2012; “Open invitation: key Afghan officials to visit Pakistan”, *The Express Tribune*, 30 July 2012.

²⁸ Crisis Group interview, informed Pakistani official, Islamabad, December 2013. Following Rabbani’s assassination, President Hamid Karzai said, “if the Taliban [are] being used ... by the ISI, then Afghanistan has to talk with Pakistan and not the Taliban”. “Karzai downplays peace hopes”, op. cit.

²⁹ “Afghanistan, Abdullah sworn in as part of Afghanistan’s power-sharing arrangement”, *The Washington Post*, 29 September 2014.

³⁰ Crisis Group interview, Islamabad, December 2013.

³¹ Mona K. Sheikh and Maja T.J. Greenwald, “Taliban Talks: Past, Present and Prospects for the U.S., Afghanistan and Pakistan”, Danish Institute for International Studies, no. 6, 2013, p. 19.

³² Crisis Group Reports, *Countering Militancy in FATA*; *Countering Militancy in PATA*, both op. cit.

still provides the Afghan insurgents with sanctuaries and recruits. Because the TTP is part of a broader syndicate that includes local, regional and transnational jihadi groups, it is a threat to both Pakistan and Afghanistan.³⁴

Pakistani sectarian groups aligned to the TTP, such as the Sunni extremist Lashkar-e-Jhangvi (LeJ), have targeted Shias in Afghanistan, including in the December 2011 bombings in Kabul and Mazar-i-Sharif.³⁵ The LeJ has also killed hundreds of Shias in Pakistan – from the southern port city of Karachi to Balochistan's provincial capital Quetta.³⁶ Anti-India oriented jihadis, such as the Jaish-e-Mohammad and Lashkar-e-Tayyaba (LeT, renamed Jamaat-ud-Dawa – JD) maintain close ties with Afghan insurgent groups, particularly the al-Qaeda-linked Haqqani network. The LeT/JD and Haqqani network have reportedly conducted several attacks against Indian targets in Afghanistan, including in 2010 on guest houses used by Indians in Kabul; in 2013 on the Indian consulate in Jalalabad; and in May 2014 on the Indian consulate in Herat.³⁷

Because of their close ties with Afghan insurgents, Pakistani Taliban groups have access to Afghan safe havens, used to launch cross-border attacks in FATA and KPK. TTP leader Mullah Fazlullah operates out of Afghanistan, mainly in Kunar and Nuristan provinces.³⁸ According to a KPK-based parliamentarian, this “coming together of the Afghan and Pakistani Taliban is a nightmare scenario for us all”.³⁹ These attacks, such as the killing of 23 Pakistan Frontier Corps (FC) soldiers in February 2014, have heightened tensions with Afghanistan, with Islamabad lodging several formal protests.⁴⁰ The military's response to such attacks, including by launching missiles into Afghanistan's bordering regions, has further exacerbated bilateral tensions.⁴¹

³³ Rahimullah Yusufzai, “A Who's Who of the Insurgency in Pakistan's North-West Frontier Province”, *Terrorism Monitor*, vol. 7, no 4 (March 2009).

³⁴ In 2010, then-U.S. Defense Secretary Robert Gates said that al-Qaeda had formed a “syndicate” of terror groups, which included Pakistani jihadi groups such as the Lashkar-e-Tayyaba and Taliban factions in Pakistan and Afghanistan. “What we see is that the success of any of these groups leads to new capabilities and a new reputation for all”. He added: “It's dangerous to single out any of these groups ... they are, in effect, a syndicate of terrorist operators”. Four years later, this still describes the relationship between local, regional and transnational jihadi networks in Pakistan. “Gates: Al-Qaeda has assembled a ‘syndicate’ of terror groups”, *The Washington Post*, 20 January 2010. Also, “Gates increases pressure on Pakistan”, *The Nation*, 21 January 2011; and Crisis Group Report, *The Militant Jihadi Challenge*, op. cit.

³⁵ “Pakistan-based group claims role in deadly blast in Kabul”, *The Washington Post*, 6 December 2011.

³⁶ On 4 October 2014, attacks against Shias in KPK's Kohat district and Quetta, killed eleven and injured scores. “Shias targeted in Quetta, Kohat bombings; 11 dead”, *Daily Times*, 5 October 2014.

³⁷ “Indian consulate attacked in Afghanistan”, Associated Press, 23 May 2014; “Indian consulate in Afghanistan attacked by suicide bombers”, *The Guardian*, 3 August 2013; “Militant group expands attacks in Afghanistan”, *The New York Times*, 15 June 2010.

³⁸ Fazlullah, the head of the TTP's Swat faction, moved into Afghanistan after military operations in KPK's Malakand region in 2009. He was appointed TTP leader after Hakimullah Mehsud was killed in a U.S. drone attack in November 2013.

³⁹ Crisis Group interview, Islamabad, January 2014.

⁴⁰ The Frontier Corps (FC) is a federal paramilitary force involved in counter-insurgency operations in FATA and Balochistan, which falls under the interior ministry but is headed by a serving army officer.

⁴¹ Pakistan has denied Afghan claims that it has attacked Afghan territory. “Pakistan protests killing of 23 FC personnel in Afghanistan”, *The Express Tribune*, 20 February 2014; “Pakistan rejects Afghan allegations of cross-border attack”, *The Express Tribune*, 13 August 2014; “Protest lodged with Afghanistan over cross-border terror attack”, Ministry of Foreign Affairs, Islamabad, 30 July 2014.

Even if Afghanistan were to respond to Pakistani requests to take action against sanctuaries used by Pakistani militants and to hand over Mullah Fazlullah, relations will remain tense so long as Pakistan does not end safe havens for the Afghan insurgents.

Pakistan's failure to do so is evident in the ongoing military operation in FATA's North Waziristan agency (administrative district), which was launched after failed efforts, begun in February 2014, to reach a peace deal with the TTP and following high-profile attacks, including on Karachi's airport in June 2014. The operation may have displaced but has not dismantled militant networks and their leadership, as demonstrated by continued attacks. A spate of terror attacks on state and civilian targets in FATA and KPK months after the operation began show that the militants retain the ability to strike.⁴²

The military has claimed that it would not allow any militant groups, local or foreign, to operate in the tribal borderlands.⁴³ However, the Haqqani network, and its Pakistani Taliban allies who have peace deals with the military, are yet to be targeted. Some Afghan and Pakistani militants have reportedly relocated to Afghanistan, others to neighbouring FATA agencies, KPK proper and as far south as Sindh's capital Karachi. Many in FATA believe that the Afghan militants and Pakistani Taliban groups that maintain peace deals with the military were warned well in advance of the operation.⁴⁴ While acknowledging that some militants had fled North Waziristan, Pakistani military and government officials have claimed that the operations would not discriminate between militant factions, including the Haqqanis.⁴⁵ Yet, a senior military official, referring to the Haqqanis, also said: "Of course, there are favourites. Every intelligence agency in the world works with bad guys".⁴⁶

The U.S. has reportedly urged Pakistan to act against the Haqqanis or risk losing hundreds of millions of dollars in future U.S. reimbursements from the Coalition Support Fund.⁴⁷ U.S. officials said they had received no visual evidence that the Haqqanis had been targeted; a senior official said: "We keep telling them they must go

⁴² "Two security personnel killed in Datakhel rocket attack", *Dawn*, 22 October 2014. "Polio worker, two others killed in Mohmand blast", *The Daily Times*, 9 October 2014; "TTP claims Peshawar attack targeting senior army officer", *Dawn*, 24 September 2014; "Armed assault: militants ambush pro-govt tribal leader's house", *The Express Tribune*, 18 September 2014; "Militants blow up rebuilt school in Bajaur", *Dawn*, 9 September 2014; "Watchman killed, 2 soldiers injured in Swat attacks", *The News*, 15 August 2014.

⁴³ The military claims to have killed over 900 militants and cleared most of North Waziristan. These claims are difficult to verify in the absence of independent sources; the media is denied access to the conflict zone. "Over 900 militants killed in Waziristan offensive", *The Express Tribune*, 4 September 2014.

⁴⁴ Crisis Group interviews, FATA-based activists, February-March 2014; KPK parliamentarian, Islamabad, September 2014.

⁴⁵ "Pakistani officials: any militants in North Waziristan a target, even Haqqanis", Reuters, 1 July 2014.

⁴⁶ "Zarb-e-Azb: Gear up for the 'forever' war", *The News*, 14 October 2014.

⁴⁷ According to the "National Defence Authorisation Act for Fiscal Year 2014", reimbursements from the Coalition Support Fund for expenses incurred in support of U.S. military operations, depend on certification by the defence secretary that Pakistan was taking "demonstrable steps" to "support counter-terrorism operations against al-Qaeda, Tehrik-i-Taliban Pakistan, and other militant extremists [sic] groups such as the Haqqani Network and the Quetta Shura Taliban located in Pakistan" and disrupting "the conduct of cross-border attacks against United States, coalition, and Afghan security forces located in Afghanistan by such groups (including the Haqqani Network and the Quetta Shura Taliban) from bases in Pakistan". H.R. 1960, 8 July 2013, pp. 630-631.

after all the terrorists and that they cannot cherry-pick”.⁴⁸ Another official, assessing the military's progress in North Waziristan, warned: “Militant groups, including the Haqqani network and the Pakistani Taliban continue to pose a threat to Pakistan, Pakistan's neighbours, and the U.S.”.⁴⁹

The North Waziristan operation should not conclude, as in the past, through selective peace deals with local extremist groups and continued inaction against their Afghan allies. This will merely embolden both. Pakistan should also end a reliance on heavy-handed, poorly executed military operations, which cause more damage to civilians than to militant networks, if the state is to reassert its writ over the tribal borderlands.⁵⁰ The government's strategy should focus instead on providing economic opportunities and political enfranchisement for citizens in FATA, still governed under the Frontier Crimes Regulations (FCR) 1901 that denies basic constitutional rights and protections.⁵¹ Yet, the contours of both national security policy and relations with Afghanistan are unlikely to change so long as they remain the military's sole domain.

C. *Civil-Military Relations and Afghan Policy*

Nawaz Sharif's convincing election victory in 2013, and the smooth transfer of power in the second historic phase of Pakistan's democratic transition, had raised hopes that the prime minister would be empowered enough to wrest control over crucial areas of foreign policy from the military, including toward Afghanistan. His personal retention of the foreign policy and defence portfolios and stated desire to strengthen Pakistan's relations with its neighbours, and in the Afghanistan context to follow a “no-meddling” policy, appeared to bode well for mutual ties.⁵² Sharif's top priority, reviving a faltering economy, has motivated a rethinking of Afghan policy.⁵³ Yet, while he remains committed to peace with Afghanistan, less than two years into his government, Pakistan's policy toward Afghanistan has changed little. According to a

⁴⁸ “Militants slip away before Pakistan offensive”, *The Wall Street Journal*, 17 July 2014; “Pakistan offensive disrupting militant attacks, U.S. says”, *Los Angeles Times*, 30 July 2014.

⁴⁹ Dan Feldman, Special Representative for Afghanistan and Pakistan (SRAP), Remarks on Pakistan at the Atlantic Council, Washington DC, 14 October 2014.

⁵⁰ By August 2014, the number of registered internally displaced people (IDPs) from North Waziristan stood at over a million; 75 per cent were women and children. The final figure will be determined after verification by the National Database Authority (NADRA). There are already some 930,000 IDPs from FATA and KPK's conflict zones. “Pakistan: North Waziristan displacements situation report”, no. 9, UN Office for the Coordination of Humanitarian Affairs (OCHA), 7 August 2014. “ACAPs (Assessment Capacities Project) briefing note: Pakistan North Waziristan Agency: IDP crisis”, 22 August 2014. Also, Provincial Disaster Management Authority, KPK government website (www.pdma.gov.pk).

⁵¹ For details on FCR's political, administrative and judicial system, see Crisis Group Asia Reports N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006; N°247, *Drones: Myths and Reality in Pakistan*, 21 May 2013; and *Countering Militancy in FATA*, op. cit.

⁵² “PM orders ‘no-meddling’ Afghan policy”, Pakistan Muslim League-Nawaz website (www.pmln.org), 23 July 2013. During his first visit to the U.S., Sharif, addressing a Washington think-tank audience, said he had told President Karzai that his government “wishes neither to interfere in Afghanistan's internal affairs, nor do we have any favourites”. “Sharif says no favourites in Afghanistan”, Panjwok Afghan News, 23 October 2013.

⁵³ Speaking to naval officers, the prime minister emphasised that Pakistan must have peace both within and outside its borders if it is to achieve critically important socio-economic goals. “PM stresses importance of peace in region”, *Dawn*, 18 October 2014.

parliamentarian, because of the military's insistence on retaining control and the government's inability, or unwillingness, to push back, Afghan policy is still shaped by the "baggage of the past", namely the propensity to interfere in Afghanistan.⁵⁴

This civil-military imbalance was also evident during the first phase of the democratic transition following the 2008 elections. The Pakistan Peoples Party (PPP) government, led by President Asif Ali Zardari, had sought rapprochement with Kabul. Its efforts were stymied by the military's refusal to end support for the Quetta Shura, Haqqani network and other Afghan insurgents.⁵⁵

Much like its predecessor, the current Pakistan Muslim League-Nawaz (PML-N) government has also failed to assert control over developments in Pakistan's tribal borderlands, where militancy poses a threat to both countries. "The political leadership has no clue what is happening at the border, and has to take what the military gives us", a parliamentarian observed.⁵⁶ The legislature has used various instruments, including resolutions, question time and hearings, to seek to address this information gap and to challenge the military's narrative on Afghanistan. For example, a defence committee investigation contested the military's claims that India had established several new consulates in Afghan provinces bordering on Pakistan. It found that New Delhi was operating longstanding consulates, and the overall number remained constant.⁵⁷ Yet, parliament's weak research capacity and inadequate support staff limit its ability to acquire reliable information and analysis. If parliament is to play a more active role in informing policy, it must invest in the human and technical resources needed to build that capacity.⁵⁸

The legislature is also contributing, albeit as yet in a limited way, to improving the relationship and tackling mutual distrust. In 2013, a parliamentary Pakistan-Afghanistan friendship group was established as a forum for legislators of both countries to discuss key concerns. A Pakistani parliamentarian and group member said: "There is an almost unanimous consensus [in the friendship group] on two matters: the seriousness of cross-border militancy and the need for greater civilian oversight over Pakistan's security establishment". Calling on both sides to acknowledge legitimate grievances with regards to cross-border militancy, he said: "This admission is important because it allows us to move forward, whereas the military refuses to acknowledge the problem and says, 'we're doing all we can, we have checkpoints everywhere, we stop the militants'". He added, "voices in [Pakistan's] parliament say: 'No matter how many checkpoints we have, [militant] cross-border movement is still happening'".⁵⁹

Ultimately, however, the onus of Afghanistan policy falls on the executive. Since forming government, Sharif has repeatedly linked Pakistan's political and economic stability with peace in its neighbourhood.⁶⁰ He must deliver on pledges of transform-

⁵⁴ Crisis Group interview, Islamabad, August 2014.

⁵⁵ President Karzai, for instance, attended Zardari's oath-taking ceremony in August 2008 at the Pakistani president's invitation, an important gesture meant to signal a fresh turn toward better relations. Mullah Omar's Shura is based in Quetta's vicinity, hence the term "Quetta Shura".

⁵⁶ Crisis Group interview, Islamabad, January 2014.

⁵⁷ Crisis Group interview, member Pakistan-Afghanistan parliamentary friendship group, Islamabad, January 2014.

⁵⁸ For analysis of and recommendations for building parliament's capacity, see Crisis Group Asia Report N°249, *Parliament's Role in Pakistan's Democratic Transition*, 18 September 2013.

⁵⁹ Crisis Group interview, Islamabad, January 2014.

⁶⁰ Amjad Mahmood, "PM stresses importance of peace in region", *op. cit.*

ing Pakistan's relationship with Afghanistan from animosity to one of trust and cooperation.

Demonstrations for Prime Minister Sharif's resignation by Pakistan Tehreek-i-Insaf (PTI) leader Imran Khan and cleric-cum-politician Tahirul Qadri have strengthened Army Chief General Raheel Sharif's hand; he has held corps commanders meetings on the political crisis, and issued public statements and warnings to the government through the Inter-Services Public Relations (ISPR), the military's media arm. Since the political crisis has possibly increased the government's dependence on the military's support for survival, Sharif might, at least for now, refrain from challenging the high command's control over Afghan policy.⁶¹

Yet, the Sharif government could wrest some space for itself in determining the directions of the bilateral relationship by moving beyond a narrow security-centric approach. Focusing instead on expanding economic ties and improving the lot of millions of Afghan nationals living in Pakistan, it could build on gains made once his government overcomes its current political challenges, which already appear to be receding as the protests lose steam. As the second phase of the democratic transition stabilises, the military's room for manoeuvre will inevitably shirk, enabling the government to take the lead in devising and implementing security policy, including toward Afghanistan.

⁶¹ See "Conflict Alert: Protecting Pakistan's Threatened Democracy", Crisis Group, 21 August 2014. Also, "Pakistani leader Nawaz Sharif nears pact with military", *The Wall Street Journal*, 27 August 2014.

III. Expanding Economic Ties

A. Opportunities

Just months into taking office, expressing his desire to broaden relations with Afghanistan, Prime Minister Sharif said: “My own vision is that it should be defined by a strong trade and economic partnership”.⁶² Land and sea routes through Pakistan for bilateral and transit trade are economic lifelines for landlocked Afghanistan. Transit trade is conducted via Karachi and Qasim ports in Sindh province, and both transit and bilateral trade through a number of land routes and border crossings.⁶³ Peshawar/Torkham in FATA’s Khyber agency is the primary route for trade between KPK and Afghanistan’s south-eastern provinces. Routes in the north link KPK’s Chitral and Upper Dir districts and FATA’s Bajaur and Khyber agencies with Afghanistan’s Nuristan, Kunar and Nangarhar provinces; the Ghulam Khan checkpoint between North Waziristan and Khost provides another route further south. The Spin Boldak/Chaman border crossing, linking Balochistan and Afghanistan’s Kandahar province, is the second busiest after Torkham. The Nushki border crossing, connecting Balochistan’s Chagai district and Afghanistan’s Kandahar province, also sustains significant traffic.

The Taliban’s ouster and U.S.-led reconstruction efforts created economic opportunities for Pakistan, including increased demand for Pakistani products such as construction material, engineering equipment, chemicals and food. Bilateral formal trade increased from \$0.82 billion in 2001-2002 to around \$2.5 billion by 2012-2013; Pakistani exports accounted for over \$2.1 billion in 2012-2013 and around the same for the 2013-2014 fiscal year.⁶⁴ Afghan imports include carpets and dried and fresh fruits.⁶⁵ KPK’s capital, Peshawar, has particularly benefited from bilateral trade. A Peshawar-based trader said that Afghan buyers were one of the main reasons why the city’s markets survived despite militant attacks there and elsewhere in KPK, and the province’s resultant economic decline.⁶⁶

Since bilateral trade with Pakistan falls short of meeting Afghan needs, transit trade is all the more vital – and constraints all the more detrimental – for the Afghan economy. Transit trade may be as high, if not higher, than formal bilateral trade. The UN Convention on the Law of the Sea, ratified by Pakistan in 1997, requires it to provide transit rights to landlocked Afghanistan, provided it does not infringe on Pakistan’s sovereignty. World Trade Organisation (WTO) rules also commit Pakistan to allow the passage of Afghan goods across its territory. A Peshawar Chamber of Commerce member said, “Pakistan should not act as if it is granting Afghanistan a favour [in allowing transit trade]; it is obligated by international law”.⁶⁷

Since 2002, NATO/International Security Assistance Force (ISAF) supplies and goods sent to Afghanistan by diplomatic missions and international organisations

⁶² “Sharif says no favourites in Afghanistan”, *op. cit.*

⁶³ Once fully functional, Gwadar port in Balochistan will also be used for Afghan transit trade. See Gwadar Port Authority webpage (www.gwadarport.gov.pk).

⁶⁴ Federation of Pakistani Chambers of Commerce and Industry statistics; Pakistan Economic Surveys 2011-2012, 2012-2013, finance ministry, Islamabad.

⁶⁵ “Af-Pak focus: Running the trade gauntlet”, *Afghanistan Today*, 16 April 2013. Crisis Group interviews, traders and agriculturalists, Swat, KPK, February 2014.

⁶⁶ Crisis Group interview, Peshawar, January 2014.

⁶⁷ Crisis Group interview, Peshawar, January 2014.

have also been a major source of income for Pakistan. Beneficiaries range from the transportation, logistics and service sectors countrywide to warehouses, hotels and restaurants located on the land routes and near crossing points. As the foreign forces depart, Pakistan is benefiting from the repatriation of military equipment but such revenue will end after the international exit, making it even more important to enhance bilateral trade with Afghanistan.⁶⁸ Deeper economic linkages with Afghanistan could also yield important benefits through better access to Central Asia's markets and energy resources.

In March 2010, the two governments agreed to double the current level of bilateral trade to \$5 billion by 2015 – roughly the current estimated value of informal trade.⁶⁹ Some efforts have been made to facilitate bilateral and transit trade. They include the 18 July 2010 Afghanistan-Pakistan Transit Trade Agreement (APTTA), replacing the 1965 Afghan Transit Trade Agreement, to “facilitate the movement of goods between and through their respective territories”.⁷⁰ To do so, however, both governments will have to remove official and unofficial constraints that act as barriers to expanding economic ties.

B. Constraints

Some new policies could hinder the expansion of bilateral trade, including Islamabad's decision to make the payment of goods for export to Afghanistan in U.S. dollars rather than in Pakistan rupees, aimed at curbing the informal economy, from March 2014. Until then, Pakistani and Afghan traders often resorted to cash payments rather than using banking channels.⁷¹ While such trade did not add to Pakistan's foreign exchange reserves, it still contributed to its sluggish economy. The new restrictions could hurt Afghanistan's foreign exchange reserves and nascent banking, and trade-financing systems; they will also harm Pakistan's economy by potentially reducing the volume of trade.⁷² Instead, Islamabad and Kabul should facilitate bilateral trade by making their currencies convertible.

Increasing bilateral trade will also require significantly upgrading infrastructure on both sides. In June 2007, floods destroyed large sections of the railway between Peshawar and Landi Kotal town in Khyber agency, close to the Torkham border crossing. Delays in restoring the track have hampered cross-border trade since traders have had to find alternative and costly road routes to move their goods to Torkham.⁷³

⁶⁸ Crisis Group interview, official, Khyber Pakhtunkhwa Chamber of Commerce and Industry (KPCCI), Peshawar, August 2014.

⁶⁹ “Joint declaration on next steps in Afghanistan-Pakistan Comprehensive Cooperation”, foreign ministry, Pakistan, 11 March 2010. The same year, in November, the Pakistani and Afghan chambers of commerce established a Pakistan-Afghanistan Joint Chamber of Commerce and Industry (PAJCCI).

⁷⁰ Article 1, APTTA 2010. Text available at www.commerce.gov.pk.

⁷¹ Crisis Group interview, trade community leader, Peshawar, January 2014.

⁷² Payments were made in both Pakistan rupees and U.S. dollars. Khan Jan Alokzai, president of the Pakistan-Afghanistan Joint Chamber of Commerce and Industry said that the measure would adversely affect the “export of perishable and food items as normal banking channels are not available for swift transactions between the two countries at Torkham or other border crossings”. “Trails of Pak-Afghan trade”, *The News*, 23 March 2014. Also, “No takers for dollar-based export to Afghanistan”, *Dawn*, 23 March 2014; “Is dollarization of Pak-Afghan trade a good idea?”, *Business Recorder*, 17 January 2014.

⁷³ “Last call for Khyber's ghost trains”, *Dawn*, 16 July 2013.

In July 2010, Pakistan and Afghanistan signed a memorandum of understanding for the construction of rail links between Peshawar and Jalalabad, Nangarhar province's capital.⁷⁴ Implementing this agreement, a top priority for the Sharif government, would benefit both countries.⁷⁵ According to a Peshawar-based Pakistan-Afghanistan Joint Chamber of Commerce and Industry (PAJCCI) member, this could, if accompanied by political efforts, improve the bilateral business environment, and also potentially boost Pakistan's trade with Central Asia.⁷⁶

In June 2011, then-U.S. Secretary of State Hillary Clinton launched the New Silk Road initiative, aimed at stabilising Afghanistan and its immediate neighbourhood by promoting the integration of the Central and South Asian economies. The plan called for building both the "hardware" – road and rail links, electricity networks and pipelines – and "software" – lowering trade and travel barriers.⁷⁷ In February 2014, Afghanistan, Pakistan, Kyrgyzstan and Tajikistan agreed on the terms and conditions for establishing the Central Asia-South Asia Electricity and Transmission and Trade project (CASA-1000), with Ashraf Ghani's government, in one of its first foreign policy decisions, signing an agreement with Pakistan over transit pricing on 11 October. If this overly ambitious project is brought to fruition, it would help provide electricity, via Afghanistan, from Central Asia to energy deficient Pakistan.⁷⁸

Another major, equally ambitious regional energy project, the Turkmenistan-Afghanistan-Pakistan-India (TAPI) pipeline, would, if security in both states improved along with relations between Pakistan and India,⁷⁹ supply natural gas from Turkmenistan to Pakistan and India via Afghanistan.⁸⁰ In February 2014, Islamabad and Kabul agreed to upgrade the 75-km Torkham-Jalalabad road to a dual carriageway.⁸¹ Prime Minister Sharif also increased development assistance to Afghanistan, including for upgrading the Torkham-Jalalabad road, from \$385 to \$500 million.⁸²

While these are promising developments, Pakistani entrepreneurs hold the military responsible for some lost opportunities in Afghanistan. They cite, for example,

⁷⁴ "MOU signed for Peshawar-Jalalabad rail link: World Bank to provide \$1.5 million", Associated Press of Pakistan, 9 July 2010.

⁷⁵ Press conference, Railways Minister Khawaja Saad Rafique. "Pakistan offers road, rail routes to all regional countries: Saad", *Business Recorder*, 10 December 2013. Also, "Joint Declaration on next steps in Afghanistan/Pakistan comprehensive cooperation", foreign ministry, Islamabad, 11 March 2010; "Plan for rail link between Peshawar, Jalalabad", *Dawn*, 8 April 2010.

⁷⁶ Crisis Group interview, PAJCCI official, Peshawar, August 2014.

⁷⁷ "The United States' 'New Silk Road' strategy: What is it?", Remarks, Robert Hormats, under-secretary for economic, energy and agricultural affairs, address to the Johns Hopkins School for Advanced International Studies (SAIS) Central-Asia-Caucasus Institute and CSIC Forum, Washington DC, 29 September 2011 (www.state.gov).

⁷⁸ In addition to considerable infrastructure requirements, political tensions in Central Asia, including Uzbekistan's objections to CASA-1000, could impede the project. See, Crisis Group Europe and Central Asia Report N°233, *Water Pressures in Central Asia*, 11 September 2014.

⁷⁹ There have been frequent clashes along the Line of Control (LoC) dividing Pakistan- and Indian-administered Kashmir in October 2014, with scores of civilians killed and injured on both sides. "More than 30 killed in clashes on India-Pakistan border", *The Telegraph*, 9 October 2014; "Thousands flee homes amid India-Pakistan clashes", Reuters, 7 October 2014.

⁸⁰ The four countries had signed the initial CASA agreement in November 2007. "CASA-1000: Pakistan, Central Asia agree in principal to terms for power project", *The Express Tribune*, 19 February 2014; "The TAPI pipeline conundrum", Agence France-Presse, 18 December 2013.

⁸¹ "Pakistan, Afghanistan to enhance trade ties", *Dawn*, 24 February 2014.

⁸² For a breakdown of grants to Afghanistan, see, "Pakistan as partner in development of Afghanistan", planning and reform ministry (www.pc.gov.pk), Islamabad.

the project to upgrade the Torkham-Jalalabad road, claiming that private sector firms were squeezed out by the military's construction wing, the Frontier Works Organisation (FWO).⁸³ Afghan policies are also restrictive. Pakistani workers can only acquire a three-month Afghan visa, and they cannot reapply within three months of its expiry. As a result, work can be disrupted halfway through a project.⁸⁴

High tariffs and fees, cumbersome and disproportionate security measures and rampant corruption have led to the growth of the informal economy in both countries. According to an official of the Afghanistan Chamber of Commerce and Industries, while official trade was worth around \$2.5 billion annually, smuggling added another \$1.5 billion.⁸⁵ Pakistani goods are smuggled into Afghanistan. Duty-free goods transiting through Pakistan, deliberately ordered in excess of Afghan requirements, are often smuggled back, squeezing Pakistani businesses that cannot compete and depriving the exchequer of revenue. Bara and Shoba markets in Peshawar are hubs of smuggled goods from tea to spare car parts to household electrical appliances. The alleged collusion of customs officials and traders on both sides sustains such activity.⁸⁶

The APTTA requires guaranteed insurance for traded items, financial security for goods in transit, and tracking devices installed on vehicles transporting goods to prevent pilferage. A trade analyst described such requirements as "security overkill";⁸⁷ they are also ineffective, for instance the trackers are often dysfunctional. Moreover, Pakistan requires the use of "bonded carriers" – private hired trucks, registered with the Federal Board of Revenue for Rs50,000 (around \$500), to prevent smuggling.⁸⁸ Yet, commodities are often offloaded from containers. The only way to prevent smuggling is not through enhancing security measures, which are easily circumvented, but by lowering duties on commodities as well as non-tariff costs. Of some of the commonly smuggled goods imported by Afghanistan under APTTA, Pakistan applies a 25 per cent on synthetic fabrics and readymade garments; 15.2 per cent tariff on tires; 10.7 per cent tariff on electric motors; and 10 per cent tariff on tea.⁸⁹

The costs for Afghan importers in conducting bilateral and transit trade through formal channels are also high. They include purchasing imported goods in hard currency; port charges in Karachi; transportation fees charged by truckers; and *rahdari*, or customs duty on entering Afghanistan.⁹⁰ Customs clearance in Karachi is ardu-

⁸³ Crisis Group interviews, KPCCI officials, businessmen and traders, Peshawar, January-August 2014. On 1 October 2014, the Competition Commission of Pakistan asked the government to withdraw all concessions and exemptions for the FWO and other military-owned corporations since they disadvantaged private sector companies, undermining their growth and competitiveness. "Govt urged to withdraw exemptions for military owned corps", *The News*, 2 October 2014.

⁸⁴ Crisis Group interviews, traders and chambers of commerce members, Peshawar, January 2014.

⁸⁵ "Smuggling threatens legal economy in Afghan southeast", Institute of Peace and War Reporting, 19 March 2014.

⁸⁶ "Smuggling of various goods causes Rs. 22 billion loss to kitty", *Business Recorder*, 10 December 2013.

⁸⁷ "Afghan transit trade continued to divert to Iran during 2013", *The News*, 3 January 2014.

⁸⁸ Crisis Group interviews, traders and chambers of commerce representatives, Peshawar, January 2014.

⁸⁹ "Selected trade and manufacturing data for Pakistan: a brief analysis", Pakistan Business Council (www.pbc.pk/wp), June 2014.

⁹⁰ Shippers are allowed fourteen days "free time" at Pakistani ports before charged detention and demurrage charges for the release of goods are applied. Some consignments are detained for as long as six months. Crisis Group interviews, employee, Afghan importing company; Peshawar Chamber of Commerce member, Peshawar, January 2014.

ous, with Afghan importers frequently complaining of customs officials' bias against goods destined for Afghanistan.⁹¹ Goods are checked at three different points: at the entry point in Karachi, on the road, and at the exit points such as Chaman, Ghulam Khan and Torkham. Undocumented costs allegedly include bribes to officials at each point, to port officials to have goods cleared, and to border guards and officials, including in FATA, to allow goods to enter Afghanistan.⁹² According to a parliamentarian from KPK, "our border management is such that trade is restricted while the movement of militants is facilitated".⁹³ A Peshawar-based academic claimed that the security establishment and its allies in the local administration were more interested in "chasing trucks than the Taliban".⁹⁴

Pakistani traders also have to deal with several security agencies. At the Torkham border, these include Customs, the Federal Investigation Agency (FIA), which handles immigration at entry/exit points, the Frontier Corps, tribal Levies, and Khyber agency's senior bureaucrat, called the political agent.⁹⁵ All have jurisdiction but with limited if any coordination and significant overlap. If traders or truckers are approved by one authority to cross the border with goods, they are often blocked by another. "Customs will say, 'okay', but then the Levies will stop you. Levies will say 'okay', but the FC will stop you and so on", said an informed observer.⁹⁶

There are also a number of Afghan hurdles to enhancing formal bilateral and transit trade. Pakistani access to Central Asia markets, provided for under the APTTA, has yet to materialise.⁹⁷ Instead, there has been a sharp spike in tariffs and duties by Afghan customs, and additional financial constraints on transit to Central Asia, including a \$100 fee per container and a 110 per cent duty charge for road utilisation.⁹⁸

Pakistan and Afghanistan's economies would be best served through a free-trade agreement. Both countries should also consider areas of potentially mutual gain such as agricultural development, water management and exploration of Afghanistan's natural resources. Islamabad must, however, address Kabul's concerns about Pakistani exports impeding the growth of its local industry.⁹⁹ Pakistan should also assure Afghanistan that trade would not become hostage to political gamesmanship. Following the November 2011 NATO attack on the Salala checkpost in FATA's Mohmand agency that killed 24 Pakistani soldiers, Pakistan blocked NATO's supply routes to Afghanistan, which also blocked trade with Afghanistan. The supply routes were reopened in July 2012. They were blocked again by KPK's provincial government, reopening in February 2014 after a Peshawar High Court decision.¹⁰⁰ While NATO

⁹¹ Crisis Group interview, KPK Chamber of Commerce representative, Peshawar, February 2014.

⁹² Crisis Group interviews, FATA and KPK-based traders, Chambers of Commerce representatives, and politicians, Peshawar, January 2014.

⁹³ Crisis Group interview, Islamabad, January 2014.

⁹⁴ Crisis Group interview, Peshawar, January 2014.

⁹⁵ The Levies, a local security force, are appointed by and operate under the command of FATA agencies' civil administration.

⁹⁶ Crisis Group interview, Islamabad, January 2014.

⁹⁷ Crisis Group interview, trading community leader, Peshawar, January 2014.

⁹⁸ "PAJCCI's initiative to support and promote trading and business community across the border lauded", press release, Pakistan Afghanistan Joint Chamber of Commerce and Industry, 26 December 2013.

⁹⁹ A FATA-based Pakistani trader admitted that Pakistani cement companies had in the past overwhelmed and impeded the growth of Afghanistan's cement industry. Crisis Group interview, Peshawar, January 2014.

¹⁰⁰ "PTI ends NATO blockade", Agence France-Presse, 28 February 2014.

was able to circumvent the blockade by using the Chaman/Spin Boldak route through Balochistan as well as the Northern Distribution Network, a transit route through Central Asia to Europe, Pakistani and Afghan traders were far more affected.¹⁰¹

With Iran offering an alternative, Afghanistan's reliance on Pakistani routes for transit trade has somewhat decreased.¹⁰² According to Pakistan's finance ministry, Afghanistan's share of the percentage of total Pakistani exports declined from 10 per cent in 2011-2012 to 8 per cent in 2012-2013.¹⁰³ Transit trade is also declining, with a December 2012 survey attributing the slowdown to Iran's "better infrastructure, lesser cost, fewer check points and lesser corruption".¹⁰⁴ Unless Pakistan addresses Afghan concerns, the Iranian route could conceivably become even more attractive to Kabul, undermining the economy of Pakistan's border regions and KPK.

Bilateral trade ties could also be adversely affected by the uncertainty around Afghanistan's transition. While Afghan demand for food and fuel from Pakistan is unlikely to decline drastically after NATO/ISAF's withdrawal, Pakistani businesses are concerned about prospects in other sectors. With construction in Afghanistan already waning, Pakistani cement producers expect a considerable reduction in demand. A Peshawar-based trader said that his Afghan clients were already scaling down purchases in anticipation of an economic decline.¹⁰⁵ Producers and traders in FATA, which relies on exports to Afghan markets, also fear a decline in both formal and informal trade if security deteriorates after December 2014.¹⁰⁶

Islamabad should reach out to Kabul now, pledging to broaden economic ties, which would help to fill gaps created by the withdrawal of foreign forces and restore investor confidence in both countries. It should avail of offers by new Afghan President Ashraf Ghani Ahmadzai to improve relations with Pakistan, including through integrating their economies better to take advantage of regional, particularly the Chinese and Indian, markets. During his presidential campaign, Ghani said: "Afghanistan and Pakistan have a choice: Do we become Asian roundabouts or do we become cul-de-sacs?". On another occasion, he said: "The goal is a special relationship between Afghanistan and Pakistan that would resemble that of France and Germany".¹⁰⁷

Prime Minister Sharif has responded positively to Ghani's overtures, with President Mamnoon Hussain the only head of state at Ghani's inauguration on 29 September 2014. During their bilateral meeting, according to an official Pakistani statement, the two sides "agreed on substantive and sustained engagement at multiple levels to advance the shared goals of peace and stability, economic development and regional cooperation". According to a statement from his office, the Afghan president said: "Peace, economic and trade relations are the main issues that the two sides should further explore".¹⁰⁸ President Hussain also underscored the importance of enhanced

¹⁰¹ Crisis Group interviews, traders, business community, KPK, February 2014.

¹⁰² Once Iran's Chahabar port, which opened in July 2013, becomes fully operational, Afghanistan's reliance on Pakistani land and sea routes will reduce even further.

¹⁰³ Economic Survey of Pakistan, 2012-2013, finance ministry, Islamabad.

¹⁰⁴ "Dividends of peace and governance, Pak-Afghan bilateral and transit trade: business perception survey", PAJCCI (www.pajcci.com), December 2012.

¹⁰⁵ Crisis Group interview, Peshawar, January 2014.

¹⁰⁶ Crisis Group interviews, FATA-based traders and producers, Peshawar, January 2014.

¹⁰⁷ "Afghan poll hopeful Ghani wants 'special relationship' with Pakistan", Agence France-Presse, 15 April 2014; "Afghan run-off polls: Ghani vows to build ties with Pakistan, tackle corruption", Agence France-Presse, 14 June 2014.

¹⁰⁸ "Pakistan president completes visit to Afghanistan", foreign ministry, Islamabad, 29 September 2014; "Dr. Ashraf Ghani Ahmadzai meets Pakistan President", Office of the President, Kabul, 30

people-to-people exchanges,¹⁰⁹ which would only be possible if the two states find mutually acceptable ways of legalising cross-border mobility and the presence of millions of Afghan refugees in Pakistan.

September 2014. Also, "President Ashraf Ghani of Afghanistan is sworn in, even as he shares the stage", *The New York Times*, 30 September 2014.

¹⁰⁹ "Pakistan will work closely with the new Afghan leadership: Mamnoon", *The Nation*, 30 September 2014.

IV. Afghans in Pakistan

A. *The Refugee Question*

Historical links between Pakistan and Afghanistan have united their communities even as mutual discord and hostility have divided their states. Sharing ethnicity, culture and religion, thousands of Pakistanis and Afghans have continued to move across a porous 2,640-km border even during periods of insecurity and tensions between Islamabad and Kabul. It is estimated that some 50,000 to 60,000 people cross both borders every day.¹¹⁰ Although these movements could benefit Pakistan's relations with Afghanistan by enhancing peoples-to-peoples links, and also benefit Pakistan's economy, they are often associated, a parliamentarian said, with criminality, illegal migration and terrorism (discussed later).¹¹¹ Islamabad should, with Kabul's agreement, legalise economic mobility. More specifically, Pakistan should either naturalise Afghan refugees who have been in the country for decades and their Pakistan-born children or, at the very least, provide long-term legal cover for their presence.

Pakistan has not signed the 1951 Refugee Convention and its 1967 Protocol.¹¹² Yet, it hosts 1.63 million registered and an estimated 1.40 million undocumented Afghan refugees, one of the largest refugee communities in the world.¹¹³ The vast majority are ethnic Pashtuns, who have fled conflict and persecution since 1979, and their descendants. Instead of providing legal status to the first wave of refugees following the 1979 Soviet intervention in Afghanistan, military ruler General Zia-ul-Haq, keen on exploiting the Afghan jihad for both domestic and external purposes, used the rhetoric of Islamic brotherhood, calling the refugees "*mohajirs*" and their Pakistani hosts "*ansars*".¹¹⁴ According to an Islamabad-based Afghan lawyer, "in the absence of national laws and codified privileges, the status of Afghan refugees is subject to the whims of governments".¹¹⁵

¹¹⁰ Afghan ambassador to Pakistan Janan Mosazai's address, Afghan independence day celebrations, Islamabad, 8 September 2014. Crisis Group interviews, KPK parliamentarians, Peshawar, Islamabad, February 2014. Also Crisis Group Report, *What Now for Refugees?*, op. cit.

¹¹¹ Crisis Group interview, Islamabad, January 2014.

¹¹² During and after the drafting of the 1951 Convention, both Pakistan and India argued that the text was tailored to the needs of European refugees following the Second World War, failing to address the needs of refugees in South Asia following the 1947 division of British India. At a November 1949 UN meeting, the Pakistani representative contended, "if the proposal before the Committee were adopted, Pakistan would have to share in financing the legal protection of an undefined number of refugees in Europe while obtaining no benefits for the millions of refugees in its own country". Pakistan still refuses to sign the Convention, and since the Zia regime, has justified it on the grounds that it has hosted millions of Afghan refugees as an Islamic obligation. Sara E. Davies, "The Asian rejection? International refugee law in Asia", *The Australian Journal of Politics and History* (December 2006).

¹¹³ According to UNHCR, 40 per cent live in refugee villages in the bordering regions of KPK and Balochistan, and 60 per cent with rural host communities and in urban centres. "2014 UNHCR country operations profile-Pakistan", UNHCR website (www.unhcr.org); Minister for States and Frontier Regions (SAFRON) Lt. General (ret'd) Abdul Qadir Baloch's reply to questions on Afghan refugees in the National Assembly. "Govt to repatriate Afghan refugees by December 2014", *Business Recorder*, 18 September 2013.

¹¹⁴ The *mohajirs* (immigrants, now a term used more generally for refugees in Pakistan) were early Muslims who followed Prophet Mohammad from Mecca to Medina, while Medina's early Muslims were called *ansars* (helpers). "Analysis: The sticky question of refugees", *Dawn*, 29 July 2014.

¹¹⁵ Crisis Group interview, Islamabad, December 2013.

Pakistan's current policy toward Afghan refugees is based on the dual principles of voluntary and gradual returns, contained in the Tripartite Agreement between Islamabad, Kabul and the UN High Commissioner for Refugees (UNHCR). To stay legally in Pakistan, Afghan refugees must obtain Proof of Registration (PoR) cards issued by the government, with UNHCR assistance, which establish the holder as an "Afghan citizen living in Pakistan".¹¹⁶ Those without PoRs are deemed illegal migrants, although some obtain asylum cards that protect them from deportation.¹¹⁷ Logistical constraints and fear of persecution and exploitation have led many to avoid registering. Many others have illegally acquired Pakistani national identity cards.¹¹⁸

UNHCR interviews asylum seekers to determine the credibility of claims and thus their refugee status.¹¹⁹ The government is reportedly considering a national law on refugees that would provide legal rights and entitlements, although Pakistan would still not become a party to the 1951 Convention.¹²⁰ A national law on refugees would allow Islamabad to determine the validity of asylum claims, allowing UNHCR to play its more traditional oversight role. With such a law, Pakistan could also more effectively regulate refugee presence, while rights advocates and UNHCR should continue to lobby Islamabad to sign and ratify the 1951 Convention and 1967 Protocol.

Since March 2002, UNHCR has facilitated the voluntary return of 3.8 million registered refugees.¹²¹ While repatriation technically entails "de-registration" at the border, many who left did not surrender their PoRs. Modest UNHCR repatriation packages, covering travel costs and a \$150 payment per person, increased in March 2014 to \$200, are insufficient to meet the economic challenges faced by returnees.¹²² As security in Afghanistan deteriorates, returns have also slowed down, with the vast majority of those remaining unlikely to go back in the near future.¹²³ Should security

¹¹⁶ The registration process started in 2005 and was completed officially in 2007 but the provision of PoR cards was extended several times. Imran Khan Laghari, "Challenges of refugees in a non-signatory country: A situation analysis of Pakistan", *Refugeewatch*, 30 June 2014; "New policy to guide Afghan repatriation until 2015", *The Express Tribune*, 4 August 2013.

¹¹⁷ UNHCR coordinates with the Commissionerate for Afghan Refugees (CAR), established in 1979, and local civil society partners to help asylum seekers obtain legal aid. As Muslim migrants, Afghans can file for asylum. Pakistan has also given citizenship to some wealthier Afghans. Crisis Group interview, Afghan lawyer, December 2013.

¹¹⁸ Crisis Group interviews, bureaucrats, Abbottabad, KPK, February 2014. "NADRA officials arrested for issuing fake CNICs to Afghans", *Dawn*, 3 January 2013; "NADRA starts crackdown against fake CNICs", *The Express Tribune*, 22 September 2012.

¹¹⁹ UNHCR maintains a quota of 1,200-1,400 refugees entitled to resettlement in a third country if there are compelling reasons not to remain in Pakistan. Crisis Group interviews, UNHCR representatives, Islamabad and Peshawar, February 2014.

¹²⁰ Crisis Group interviews, government and UNHCR officials, Islamabad, February 2014. Also "Pakistan: new refugee law should meet global standards", *Human Rights Watch*, 15 November 2013.

¹²¹ "2014 UNHCR country operations profile-Pakistan", UNHCR website (www.unhcr.org).

¹²² Crisis Group interviews, UNHCR, and lawyers representing Afghan refugees, Islamabad and Peshawar, February 2014. The Pakistan government called on UNHCR to increase the payment to \$250 per person voluntarily returning home. "Pindi police nab 16 Afghan nationals under Foreign Act", *Daily Times*, 24 February 2014; Crisis Group telephone interview, UNHCR official, October 2014.

¹²³ According to a Danish Refugee Council survey, 83 per cent of refugees did not want to return home. According to UNHCR, the planning figure for repatriation in 2014 was 150,000 but voluntary repatriation would depend on "the sustainability of reintegration and on positive developments in relation to the transition period in Afghanistan". "2014 UNHCR country operations profile", *op. cit.* Also, David Longstreath, "Afghan refugees in Pakistan wait for reforms", *Integrated Regional Information Networks (IRIN)*, 3 October 2013; and Crisis Group Report, *Afghanistan's Insurgency After the Transition*, *op. cit.*

in Afghanistan seriously deteriorate after the departure of foreign forces, there could conceivably be new refugee flows to Pakistan.

Registered refugees in Pakistan face uncertainty, dependent on Islamabad's willingness to continue to legalise their existence. An Afghan refugee said: "We are worried every time the expiry date of our PoR cards nears".¹²⁴ The PPP government extended the PORs several times, on a six-monthly basis, until 30 June 2013. In July, the PML-N government agreed to extend the legal stay of Afghan refugees, in consultation with Kabul, until 15 December 2015.¹²⁵ A PoR renewal drive began in late February 2014 in two stages, the first for cards that had expired in December 2013, and the second, to last until the end of 2014, for children born to registered parents.¹²⁶ The government has not allowed registration of unregistered Afghans, who have no option but to live illegally and could be expelled. Pakistan allegedly deported more than 10,400 undocumented Afghans in 2013 and the deportations have continued in 2014.¹²⁷ According to Federal Minister for States and Frontier Region (SAFRON) Abdul Qadir Baloch, the government intends to register illegal Afghan refugees but even that would be insufficient to resolve the refugee issue.¹²⁸

Pakistan's approach is short-sighted at best. Repatriation will only be sustainable, and contribute to Afghanistan's stability, if it is voluntary and economic migrants can travel freely. Mobility has allowed Afghan families to establish networks across borders that help them tap economic opportunities in the region, diversify sources of income and evade persecution.¹²⁹ Their remittances, already important for Afghanistan's economy, will play an even more significant role as foreign assistance shrinks.¹³⁰ If Pakistan is serious about wanting to contribute to Afghanistan's stabilisation, it should facilitate rather than impede such economic opportunities. It would also benefit Pakistani markets, particularly in border areas, which have been developed and sustained by Afghan refugees and economic migrants.

B. Domestic Perceptions

In October 2013, SAFRON Minister Abdul Qadir Baloch warned that Pakistan would not accept new Afghan refugees. He said: "In case Afghanistan is unstable, then the local residents will be left with no choice but to flee to Pakistan, but even then we won't welcome them". Qadir warned: "Pakistan would use all legal channels in collaboration with the international community to block entry of Afghans on the border". Put-

¹²⁴ Longstreath, op. cit.

¹²⁵ "Just like home: Afghan refugees can open accounts, get driving permits", *The Express Tribune*, 18 August 2013.

¹²⁶ The "National policy on management and repatriation of Afghan refugees", adopted by the PML-N government in July 2013, after consultations with Kabul and UNHCR, extended the Tripartite Agreement and PoRs until end-2015. "Pakistan world's largest host of refugees: UNHCR", *Dawn*, 20 June 2014; "NADRA issues PoR cards for 1.6m Afghan refugees", *Pakistan Today*, 25 February 2014.

¹²⁷ "Vol rep and border monitoring monthly update", UNHCR, January 2014. Crisis Group interviews, lawyers, Islamabad and Peshawar, January-August 2014.

¹²⁸ "Govt to register illegal Afghan refugees", *The Frontier Post*, 29 April 2014.

¹²⁹ Crisis Group Report, *What Now for Refugees?*, op. cit.

¹³⁰ While remittances to Afghanistan are not routinely measured, the International Organisation for Migration (IOM) estimated \$385 million, and the World Bank \$500 million, in remittances in 2013. "Country profile: Afghanistan", IOM website (www.iom.org). Also, "Changing patterns of global migration and remittances", Pew Research Center, December 2013.

ting the cost to Pakistan of hosting Afghan refugees for several decades at \$200 billion, he added, “the people will not tolerate refugees anymore”.¹³¹ Echoing similar sentiments, KPK Governor Sardar Mehtab Ahmed Khan said: “The repatriation of Afghan refugees should be initiated from Pakistan. Our infrastructure and economy have been badly damaged just because of these refugees”.¹³²

In February 2014, holding Afghan refugees responsible for 80 per cent of crimes and terror attacks, the Peshawar administration said it would consider confining them to specific areas in the city. An official claimed that the “involvement of local people in such crimes is next to nil. However, the Afghans lure Pakistanis by giving them some cash”.¹³³

According to a social sciences textbook for KPK's public schools:

The arrival of Afghan immigrants (*muhajireen*) since 1979 has burdened the province's limited resources. Afghan camps across the province resulted in an increase of social problems such as crime and drug smuggling. From 2001 onwards, they have been repatriating, due to which these problems have decreased. The government has taken effective measures in curbing these problems.¹³⁴

Ethnic dynamics also shape attitudes toward Afghan refugees. With the Baloch already concerned that the influx of Pakistani economic migrants could make them a minority in their homeland, the influx of the predominantly Pashtun Afghan refugees is perceived to have further tipped the demographics in favour of local Pashtuns.¹³⁵ In Quetta, Balochistan's capital, which hosts around 11 per cent of the Afghan refugees, they are blamed for everything – from “eating into” the province's precious resources, to smuggling weapons, maintaining links with military-backed militias that target Baloch dissidents, and working on behalf of Balochistan-based Afghan insurgents, including Mullah Omar's Taliban. Some Baloch leaders believe that peace in their province depends on refugee returns. Others fear that instability in Afghanistan could result in a new wave of refugees to Balochistan, further aggravating Baloch resentment and fuelling militancy.¹³⁶

Although Baloch alienation has not led to attacks on refugees, Sunni extremist organisations, with close ties to the Afghan insurgents, have frequently targeted the predominately Shia Hazara community. Waves of Hazara economic migrants and refugees, facing persecution in nineteenth-century Afghanistan, had sought shelter in Balochistan and were granted Pakistani citizenship. Fleeing the civil war and Taliban rule, tens of thousands of Hazara refugees joined their ethnic kin in Balochistan.¹³⁷ With hundreds of Pakistani and Afghan Hazaras killed in targeted attacks by the

¹³¹ “More Afghan refugees not welcome: minister”, *Dawn*, 26 October 2013.

¹³² “KP governor tells Kabul to focus on return of Afghan refugees”, *The Nation*, 26 July 2014.

¹³³ “Plan to confine Afghans to specific areas in Peshawar”, *Dawn*, 4 February 2014.

¹³⁴ Class Four Social Sciences textbook, Khyber Pakhtunkhwa Textbook Board, p. 33. Crisis Group translation from Urdu.

¹³⁵ By one estimate, 85 per cent of the refugees are Pashtuns, with smaller numbers of Hazaras, Tajiks and Uzbeks. Laghari, op. cit. The Baloch and Pashtuns are the two largest ethnic groups in Balochistan. For Balochistan's ethnic dynamics, see Crisis Group Asia Briefing N°69, *Pakistan: The Forgotten Conflict in Balochistan*, 22 October 2007; and Report N°119, *Pakistan: The Worsening Conflict in Balochistan*, 14 September 2006.

¹³⁶ Crisis Group interviews, Raouf Mengal, senior official, Balochistan National Party-Mengal; Hasil Bizenjo, senior vice president, National Party, Islamabad, January 2014.

¹³⁷ “Who are the Hazaras?”, *The Express Tribune*, 5 October 2011.

Sunni extremist Lashkar-e-Jhangvi, many Hazara refugees are moving out of Quetta to safer cities such as Karachi and Islamabad.¹³⁸ Pakistani Hazaras have started claiming that they are Afghan refugees, hoping to gain asylum in a third country.¹³⁹

While Afghan Hazaras fear for their lives in Balochistan, they are perceived as security threats in Sindh. In February 2014, as the PoR renewal began, Sindh's Chief Minister Qaim Ali Shah called on the federal government to end the exercise in his province, evoking fears that 2.5 million "aliens" were contributing to social unrest and crime in Karachi and other cities such as Hyderabad.¹⁴⁰ Because Afghan and Pakistani Taliban elements have found havens in predominately Pashtun slum settlements in Karachi and other urban centres in Sindh, it is important to monitor the movement of extremists. Yet, this should not result in the denial of protections and rights to Afghan refugees.

As the transition in Afghanistan draws near, some lawyers and civil society groups working with Afghan refugees believe that harassment and forced deportations are already increasing.¹⁴¹ Some refugees are allegedly targeted for extortion, others are identified for expulsion. In January 2014, the Rawalpindi police conducted an operation to expel Afghan refugees; the following month, they arrested sixteen unregistered Afghans.¹⁴² Police raids of refugee settlements, targeting both PoR holders and unregistered Afghans, are frequent. Following terror attacks in Islamabad on the judicial complex in March and on a market in April 2014, many houses in squatter settlements mainly housing Afghan refugees and migrants were demolished and residents evicted.¹⁴³

The principle of *non-refoulement* in the 1951 Convention and 1967 Protocol prevents forced repatriation to territories where refugees face threats to their lives or freedoms on the basis of race, religion, nationality, political opinion or association. Although Pakistan is not party to the 1951 Convention, the principle of *non-refoulement* satisfies the criteria of international customary law, which applies to Pakistan and is acknowledged by Pakistani authorities.¹⁴⁴ Yet, Afghans lack any legal recourse to ensure that their hosts respect Pakistan's international obligations.

Islamabad might be reluctant to assimilate and naturalise the refugees but it should respect its legal obligations.¹⁴⁵ It should ideally naturalise Pakistan-born refugees and their children, and sign and ratify the convention and protocol. Until then, it should

¹³⁸ Almost 250 Hazaras were killed in just two attacks in Quetta in January and February 2013. "Sectarian agendas", *Daily Times*, 2 September 2014. Also Crisis Group Reports, *Policing Urban Violence in Pakistan* and *The Militant Jihadi Challenge*, both op. cit.

¹³⁹ Crisis Group interview, lawyer working with Afghan refugees, Islamabad, February 2014.

¹⁴⁰ "Monitoring provincial borders: Sindh asks centre to stop registration of Afghan refugees", *The Express Tribune*, 28 February 2014.

¹⁴¹ Crisis Group interviews, Islamabad and Peshawar, February 2014; Laghari, op. cit.

¹⁴² "Pindi police nab 16 Afghan nationals under Foreign Act", *Daily Times*, 24 February 2014.

¹⁴³ "Refugees a second time", *The News*, 20 April 2014; "Pakistan slum clearances politically motivated", IRIN Asia, 7 April 2014.

¹⁴⁴ According to the Commissionerate for Afghan refugees, "section 33 of the Convention, prohibiting the refoulement of foreigners, binds Pakistan to its character as international peremptory law". See the Commissionerate's website (www.afghanrefugees.pitb.gov.pk). Also, "Advisory opinion on the extra-territorial application of *non-refoulement* obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol", UNHCR, Geneva, 26 January 2007.

¹⁴⁵ According to the Commissionerate for Afghan refugees, "section 34, obliging the contracting parties [of the Convention] to facilitate the assimilation and naturalisation of refugees" does not apply to Pakistan. Ibid.

enact legislation that gives Afghan refugees codified and long-term legal rights and protections. By doing so, it would ensure that the millions of Afghan refugees on its territory serve as ambassadors of goodwill for Pakistan when they ultimately return home.

V. Conclusion

As Afghanistan's transition draws closer, "the question that is being asked", a parliamentarian said, "is who will supervise Pakistan's policy toward the transition?". He warned that the relationship will remain fraught so long as Pakistan continues to "outsource borders to the militants".¹⁴⁶ While the military appears determined to hedge its bets by supporting Afghan proxies, the civilian leadership is well aware that the country's security is best served by a stable Afghanistan. If Afghanistan stabilises, so will its economy, with the resultant expansion in bilateral and transit trade benefiting Pakistan.

Uncertainty about post-2014 Afghanistan and implications for bilateral ties are restraining KPK and FATA-based Pakistani entrepreneurs and traders from expanding their businesses and investing more capital across the border. Even if the Afghan transition is smooth, the potential for enhanced economic ties will only be fully realised if both sides improve their infrastructure and reduce institutional impediments. Bilateral relations will also improve if Pakistan offers security, livelihoods and economic opportunities to the millions of Afghans who form part of its society.

Much depends on the civilian leadership's ability and/or willingness to wrest political space from the military, whose strategies, including support for Afghan proxies, have gravely strained bilateral ties. Until then, the relationship will remain hostage to the high command's unwillingness to change course, although links between home-grown militants and their Afghan counterparts are opening spaces to violent extremists on both sides of the border.

The ongoing political crisis in Pakistan might have made the assertion of civilian control over national security and foreign policy, particularly in the context of relations with Afghanistan, all the more challenging. Yet, by going beyond a narrow security-centric approach, and focusing instead on economic and people-to-people links, the PML-N government could more constructively reset the relationship. It has already taken some positive steps, including through efforts to enhance economic ties and by extending Afghan refugees' legal stay until the end of 2015. It should build on such policies. As the political crisis recedes and the second phase of the democratic transition consolidates, weakening the military's hold over security policy, the Sharif government should end all support, tacit or overt, for Afghan proxies and reap the rewards of peace with Afghanistan.

Islamabad/Brussels, 28 October 2014

¹⁴⁶ Crisis Group interview, Islamabad, September 2014.

Appendix A: Map of Pakistan



Based on UN Map No. 4181 Rev. 1 (January 2004), "North-West Frontier" has been changed to "Khyber Pakhtunkhwa".

Appendix B: Glossary

ANP – Awami National Party (ANP), a secular Pashtun-dominated party, headed a coalition government in KPK with the PPP from 2008-2013.

APTTA – Afghanistan-Pakistan Transit Trade Agreement.

FATA – Federally Administered Tribal Areas.

FC – Frontier Corps, a federal paramilitary force involved in counter-insurgency operations in FATA and Balochistan. It falls under the interior ministry but is headed by a serving army officer.

FCR – Frontier Crimes Regulations, a draconian, colonial-era legal framework adopted in 1901 and retained after independence in 1947 to govern FATA.

HPC – High Peace Council.

ISAF – International Security Assistance Force.

ISI – Inter-Services Intelligence directorate, the military's main intelligence agency.

ISPR – Inter-Services Public Relations (ISPR), the military's media arm.

KPK – Khyber Pakhtunkhwa, formerly known as the Northwest Frontier Province (NWFP).

LeJ – Lashkar-e-Jhangvi, an extremist Deobandi organisation, responsible for sectarian killings and other terrorist violence, headquartered in Punjab but with a countrywide network.

LeT – Lashkar-e-Tayyaba, anti-India jihadi group led by Hafez Saeed, banned and renamed Jamaat-ud-Dawa in 2002, responsible for the November 2008 Mumbai attacks.

PAJCCI – Pakistan-Afghanistan Joint Chamber of Commerce and Industry.

PATA – Provincially Administered Tribal Areas.

PKMAP – Pakhtunkhwa Milli Awami Party, a Pashtun nationalist political party based in Balochistan's Pashtun belt; currently a coalition partner in Balochistan's provincial government with the National Party led by Chief Minister Dr Abdul Malik Baloch.

PML-N – Pakistan Muslim League-Nawaz, led by Prime Minister Nawaz Sharif, currently heading a majority government at the centre and in Punjab.

PoR – Proof of Registration, required of Afghan refugees to stay legally in Pakistan.

PPP – Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967. Since Benazir Bhutto's December 2007 assassination, the party is headed by her widower, former President Asif Ali Zardari, and son, Bilawal Bhutto Zardari. It led the coalition government in the centre from 2008 to 2013 and is currently the largest opposition party in the National Assembly. It also heads the Sindh provincial government.

PTI – Pakistan Tehreek-e-Insaf, founded by Imran Khan, currently heading the Khyber Pakhtunkhwa provincial government.

SAFRON – States and Frontier Region ministry.

TTP – Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan), an umbrella organisation of predominantly Pashtun militant groups in KPK and FATA.

UNHCR – UN High Commissioner for Refugees.

Appendix C: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 125 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown, and Dean of Paris School of International Affairs (Sciences Po), Ghassan Salamé.

Crisis Group's President & CEO, Jean-Marie Guéhenno, assumed his role on 1 September 2014. Mr. Guéhenno served as the United Nations Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013.

Crisis Group's international headquarters is in Brussels, and the organisation has offices or representation in 26 locations: Baghdad/Suleimaniya, Bangkok, Beijing, Beirut, Bishkek, Bogotá, Cairo, Dakar, Dubai, Gaza City, Islamabad, Istanbul, Jerusalem, Johannesburg, Kabul, London, Mexico City, Moscow, Nairobi, New York, Seoul, Toronto, Tripoli, Tunis, Washington DC. Crisis Group currently covers some 70 areas of actual or potential conflict across four continents. In Africa, this includes, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Sierra Leone, Somalia, South Sudan, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Malaysia, Myanmar, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, North Caucasus, Serbia and Turkey; in the Middle East and North Africa, Algeria, Bahrain, Egypt, Iran, Iraq, Israel-Palestine, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, Western Sahara and Yemen; and in Latin America and the Caribbean, Colombia, Guatemala, Mexico and Venezuela.

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Appendix D: Reports and Briefings on Asia since 2011

As of 1 October 2013, Central Asia publications are listed under the Europe and Central Asia program.

North East Asia

China and Inter-Korean Clashes in the Yellow Sea, Asia Report N°200, 27 January 2011 (also available in Chinese).

Strangers at Home: North Koreans in the South, Asia Report N°208, 14 July 2011 (also available in Korean).

South Korea: The Shifting Sands of Security Policy, Asia Briefing N°130, 1 December 2011.

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Stirring up the South China Sea (II): Regional Responses, Asia Report N°229, 24 July 2012 (also available in Chinese).

North Korean Succession and the Risks of Instability, Asia Report N°230, 25 July 2012 (also available in Chinese and Korean).

China's Central Asia Problem, Asia Report N°244, 27 February 2013 (also available in Chinese).

Dangerous Waters: China-Japan Relations on the Rocks, Asia Report N°245, 8 April 2013 (also available in Chinese).

Fire on the City Gate: Why China Keeps North Korea Close, Asia Report N°254, 9 December 2013 (also available in Chinese).

Old Scores and New Grudges: Evolving Sino-Japanese Tensions, Asia Report N°258, 24 July 2014.

Risks of Intelligence Pathologies in South Korea, Asia Report N°259, 5 August 2014.

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Nepal: Identity Politics and Federalism, Asia Report N°199, 13 January 2011 (also available in Nepali).

Afghanistan's Elections Stalemate, Asia Briefing N°117, 23 February 2011.

Reforming Pakistan's Electoral System, Asia Report N°203, 30 March 2011.

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India and Sri Lanka after the LTTE, Asia Report N°206, 23 June 2011.

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Reconciliation in Sri Lanka: Harder Than Ever, Asia Report N°209, 18 July 2011.

Aid and Conflict in Afghanistan, Asia Report N°210, 4 August 2011.

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Reforming Pakistan's Prison System, Asia Report N°212, 12 October 2011.

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Sri Lanka's North (II): Rebuilding under the Military, Asia Report N°220, 16 March 2012.

Talking About Talks: Toward a Political Settlement in Afghanistan, Asia Report N°221, 26 March 2012.

Pakistan's Relations with India: Beyond Kashmir?, Asia Report N°224, 3 May 2012.

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Election Reform in Pakistan, Asia Briefing N°137, 16 August 2012.

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Sri Lanka: Tamil Politics and the Quest for a Political Solution, Asia Report N°239, 20 November 2012.

Pakistan: Countering Militancy in PATA, Asia Report N°242, 15 January 2013.

Sri Lanka's Authoritarian Turn: The Need for International Action, Asia Report N°243, 20 February 2013.

Drones: Myths and Reality in Pakistan, Asia Report N°247, 21 May 2013.

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