

SEPTEMBER 20, 2018 | NUMBER 849

## Double Game

### Why Pakistan Supports Militants and Resists U.S. Pressure to Stop

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#### EXECUTIVE SUMMARY

The United States and the international community have accused Pakistan of sponsoring militant groups in Afghanistan and Indian-administered Jammu and Kashmir for decades—a charge Pakistan vehemently denies. Pakistan does, in fact, support three prominent jihadi militant groups in Jammu and Kashmir: the Hizb-ul-Mujahideen, Lashkar-e-Taiba, and Jaish-e-Mohammad, even though these groups are officially banned by the Pakistani government. The United States has also routinely criticized Pakistan for supporting the Afghan Taliban and Haqqani Network (a U.S.-designated terrorist group), both of which frequently attack U.S. troops and coalition forces in Afghanistan.

Why does Pakistan continue to sponsor militant groups in the face of considerable U.S. pressure to stop? This question has plagued U.S.-Pakistan relations for decades. President Trump has rebuked Pakistan, inflaming an already tense relationship when he tweeted about decades of U.S. aid to Pakistan with “nothing but lies & deceit” in return. The Trump administration subsequently reduced security and military aid to Pakistan, campaigned to add Pakistan to an intergovernmental watchlist for terrorism financing, and imposed sanctions on seven Pakistani firms involved in prohibited nuclear activities.

Unfortunately, these policies are unlikely to be effective in changing Pakistan’s behavior. Pakistan’s military establishment and intelligence agencies consider militant sponsorship an important mechanism for maintaining Pakistan’s sovereignty and national identity. Pakistan’s civilian institutions, too, have evolved to facilitate militant sponsorship by routinely legitimizing expansive executive powers, limiting judicial oversight, and violating civil liberties in the name of the national interest. Pakistan’s civilian and military institutions, therefore, are much more closely aligned on matters of state sponsorship of militant groups than most U.S. policymakers and academics think, and therefore less susceptible to outside pressure.

However, the pervasiveness of militant sponsorship should not deter the United States from pursuing a productive relationship with Pakistan. The United States and Pakistan have a shared interest in ending the war in Afghanistan. This objective will continue to elude Washington unless policymakers better understand the motivations behind Islamabad’s support for militant groups in Afghanistan and Kashmir. Therefore, policymakers should focus less on trying to change Pakistan’s security policies and instead find ways to leverage its existing strategic perspective in pursuit of U.S. interests.

“The U.S.-Pakistan relationship is currently at an all-time low.”

## INTRODUCTION

On January 1, 2018, President Trump tweeted: “The United States has foolishly given Pakistan more than 33 billion dollars in aid over the last 15 years, and they have given us nothing but lies & deceit, thinking of our leaders as fools. They give safe haven to the terrorists we hunt in Afghanistan, with little help. No more!”<sup>1</sup> The president’s message was clear: the United States will no longer tolerate Pakistan’s policy of aiding and abetting militant groups, specifically the Afghan Taliban and the Haqqani Network.

Pakistan reacted swiftly—and angrily. Foreign Minister Khawaja Muhammad Asif blamed the United States for undermining the U.S.-Pakistan alliance,<sup>2</sup> while the Ministry of Defense retorted that the United States ignores “cross-border safe havens of terrorists who murder Pakistanis.”<sup>3</sup> On January 2, 2018, Prime Minister Shahid Khaqan Abbasi called an emergency session of the National Security Commission, the principal federal forum for Pakistan’s civilian and military leadership for foreign policy.<sup>4</sup> After detailed discussions, the Commission stated that it would continue cooperation with the United States because stability in Afghanistan is one of Pakistan’s core objectives, along with curbing terrorism.<sup>5</sup> Yet, as it became clear that the United States would be suspending military aid,<sup>6</sup> Pakistan retaliated by suspending intelligence-sharing, specifically of human intelligence gathered from ground sources that provides crucial support to ongoing U.S.-led operations in Afghanistan.<sup>7</sup>

Trump had criticized Pakistan on these grounds before. In August 2017, while announcing his strategy in Afghanistan and South Asia, he asserted that his administration intended to change the U.S. approach to Pakistan.<sup>8</sup> The president reproached Pakistan for continuing to provide refuge to terrorist groups at the risk of regional stability, citing 20 U.S.-designated foreign terrorist organizations operating in Pakistan and Afghanistan, the most in any region of the world, he claimed.<sup>9</sup> The National Security Strategy, which the administration released on December 18, 2017,

reinforced the president’s remarks, stating that the United States “will press Pakistan to intensify its counterterrorism efforts” while also “demonstrating that it is a responsible steward of its nuclear assets.”<sup>10</sup>

Trump is hardly the first president to call Pakistan out for sponsoring militant groups. While unveiling his strategy for Afghanistan and Pakistan in 2009, President Barack Obama charged that al Qaeda was planning attacks on the U.S. homeland from its safe haven in Pakistan.<sup>11</sup> Similarly, President George W. Bush wrote in his memoir that he remained skeptical of Pakistan’s insistence that it was acting against militant groups operating within its borders.<sup>12</sup> Neither is Trump the first president to cut security aid to Pakistan. In 2011, the Obama administration suspended \$800 million in security aid that included the provision of U.S. equipment to the Frontier Corps, a paramilitary organization based in the tribal region, and a \$300 million reimbursement to Islamabad for its counterinsurgency expenditures.<sup>13</sup>

However, the U.S.-Pakistan relationship is currently at an all-time low. The Trump administration has already begun to implement a tougher approach toward Pakistan, which may include cutting military and security funding, stripping Pakistan of its designation as a non-NATO ally, and officially labeling Pakistan as a state sponsor of terror.<sup>14</sup> A U.S.-led campaign aims to add Pakistan back on to the terrorism financing watchlist of the Financial Action Task Force (FATF), an intergovernmental body intended to combat international money laundering and terrorism financing.<sup>15</sup> In March 2018, the Department of Commerce imposed sanctions on seven Pakistani firms for engaging in illicit nuclear trade.<sup>16</sup> Yet these policies are unlikely to change Pakistan’s behavior or deter it from sponsoring militant groups, mainly because they are based on a faulty understanding of how militant sponsorship has evolved in Pakistan.

In Washington, the conventional wisdom on Pakistan correctly links militant sponsorship with the state’s military establishment

and intelligence agencies, principally the Inter-Services Intelligence (ISI). U.S. policies to combat militant sponsorship therefore largely focus on cutting aid to the military. However, when it comes to the issue of counterterrorism and national security, Pakistan's civilian institutions are more closely aligned with the military than Washington acknowledges.<sup>17</sup> This civil-military alignment is a result of the Pakistan Army's dominance as one of the strongest institutions in the country.<sup>18</sup> Civil institutions not only are subordinate, but also develop policies and bureaucratic routines of their own that reinforce the military's policy of sponsoring violent nonstate actors.

This paper is divided into three sections. The first section discusses the history of U.S.-Pakistan relations, highlighting how changes in the international order have created unrealistic expectations and divergent security calculations on both sides. The second section briefly describes Pakistan's counterterrorism bureaucracy, providing an institutional roadmap for how civilian counterterrorism structures have facilitated the state's policy of sponsoring militant groups. The final section explains the limitations of the Trump administration's hardline approach toward Pakistan and presents policy recommendations aimed at finding areas for cooperation.

## U.S.-PAKISTAN RELATIONS

The tension in the U.S.-Pakistan relationship stems from two key events: the end of the Cold War and the onset of the Global War on Terror (GWOT).

The Cold War altered the structure of the international system and profoundly affected Pakistan. As Afghanistan's neighbor, Pakistan found itself at the center of the U.S.-Soviet rivalry when the Soviet Union invaded Afghanistan in 1979. In 1980, the United States and Pakistan supported the mujahideen,<sup>19</sup> a group of anti-Soviet tribal warlords funded by the United States and Saudi Arabia and directed by Pakistan's leading intelligence service, the ISI, to fight Soviet forces in Afghanistan.<sup>20</sup>

These tribal groups claimed they were conducting jihad against the godless, communist Soviets. After almost a decade of seemingly unlimited funding and arms, the mujahideen drove Soviet forces out of Afghanistan. As the Soviet Union collapsed and the Cold War ended, so did support for the mujahideen. Pakistan now had at its disposal well-armed, religiously motivated, Sunni-dominated militants that were essentially unemployed after the Cold War.

Scholars disagree about how Pakistan used the mujahideen in the post-Cold War world. Some argue that Pakistan used them to bolster the anti-Indian insurgency in Kashmir and then to gain favor with the United States.<sup>21</sup> Pakistan's recognition and support of the Taliban (the primary remnant of the mujahideen) as it rose to power in Afghanistan in 1996 was a way to dispel the tensions with Afghanistan over the Durand Line—the disputed border between the two countries.<sup>22</sup> Others argue that Pakistan's use of the mujahideen is not a byproduct of the Cold War or a half-baked strategy to support insurgencies in Kashmir or Afghanistan. Rather, it is the focal point of the Pakistani state's strategy of using jihad to meet the state's geostrategic goals and bolster its security.<sup>23</sup>

The terrorist attacks of September 11, 2001, created a state of panic within the United States.<sup>24</sup> Two days after the attacks, then secretary of state Colin Powell famously called Pakistan's president at the time, General Pervez Musharraf, and stated: "You are either with us or against us."<sup>25</sup> While Musharraf chose to side with the United States, he authorized the rescue of key Taliban members from Afghanistan, allowing them to resettle in Pakistan.<sup>26</sup> As the U.S. war in Afghanistan has continued, U.S.-Pakistan relations have steadily deteriorated because of Pakistan's consistent support of the Taliban and the Haqqani Network.

Pakistan is facing intense backlash against its policy of militant sponsorship, both domestically and internationally. In June 2018, the FATF, the international watchdog on

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terrorism financing, put Pakistan on its “gray list,” concluding that Pakistan’s anti-money laundering structure had serious deficiencies.<sup>27</sup> Meanwhile, militant sponsorship also generates domestic political instability.<sup>28</sup> For example, the Pakistan Army’s harsh counterinsurgency campaigns in the northwest tribal region have sparked a Pashtun civil rights movement, leading to concern in Islamabad but also abroad about the fragility of the state’s political system.<sup>29</sup>

At the same time, the U.S. war in neighboring Afghanistan continues unabated. As a candidate, Trump pledged, “I will never send our finest into battle unless necessary, and I mean absolutely necessary, and will only do so if we have a plan for victory with a capital V.”<sup>30</sup> Yet, as president, he increased the number of troops in Afghanistan,<sup>31</sup> and NATO soon followed.<sup>32</sup> As of June 2018, there are 14,000 U.S. troops in Afghanistan.<sup>33</sup> In April, the Special Investigator General for Afghanistan Reconstruction concluded that overall U.S. reconstruction efforts are going poorly: corruption remains rampant while the economy is heavily dependent on foreign aid, and the Afghan National Security Forces continue to lack capacity to provide security.<sup>34</sup>

The legacies of the Cold War and the GWOT continue to influence the relationship between Islamabad and Washington, and Afghanistan has been at the center of the relationship from the beginning. From the U.S. perspective, the main question that should be dominating the relationship with Pakistan is this: How can the U.S. successfully conclude its war in Afghanistan? Both states want the war to end, but each has a very different idea of what the end state should look like.

### Washington’s Perspective on U.S.-Pakistan Relations

Washington essentially left Afghanistan in the hands of Pakistan and Saudi Arabia after the Soviets withdrew. With respect to Pakistan, U.S. policymakers favored military dictator General Zia ul-Haq, who had proved to be a key U.S. ally during the Cold War.

But as the Soviets were preparing to withdraw from Afghanistan, Haq died in a plane crash in 1988. On the way to attending Haq’s funeral, Secretary of State George Shultz, Under Secretary of State for Political Affairs Michael Armacost, Assistant Secretary of Defense for International Security Richard Armitage, and Rep. Charlie Wilson (D-TX) devised a U.S. strategy for Pakistan that consisted of deepening ties with Pakistan’s military establishment and intelligence agencies while also supporting democratic developments such as general elections.<sup>35</sup>

Soon after the Soviet withdrawal, Afghanistan devolved into a civil war that ended when the Taliban took over and established what they called the Islamic Emirate of Afghanistan.<sup>36</sup> U.S. Assistant Secretary of State for South Asia Robin Raphel visited Afghanistan in April 1996 to urge the Taliban to allow Unocal, an American oil company, to build an oil and gas pipeline from Turkmenistan to Pakistan through Afghanistan. Raphel emphasized that the United States wanted to ensure that Afghanistan (and potentially the United States) would not lose any financial and economic opportunities.<sup>37</sup> In turn, Unocal began to provide economic and humanitarian aid to the Taliban.<sup>38</sup>

Sensing U.S. sympathy for the Taliban, Pakistan’s then prime minister Benazir Bhutto tried to convince Washington to publicly side with the Taliban—and Pakistan. This idea was not radical given the context of U.S. regional policy: Congress had authorized a covert \$20 million budget for the CIA to counter Iran’s influence in the region.<sup>39</sup> Even though Pakistan and Iran were not enemies—both had worked to quash the Baloch insurgency in Pakistan since the 1970s—Pakistan considered the United States a more important strategic ally.<sup>40</sup> More significantly, Iran opposed the Taliban.<sup>41</sup> The Clinton administration, however, refused to openly support the Taliban. In the meantime, the Taliban leadership hosted al Qaeda’s leader, Osama bin Laden, a known threat to U.S. security. Taking advantage of its base in Afghanistan, al Qaeda launched

simultaneous attacks on U.S. embassies in Tanzania and Kenya in August 1998, killing more than 200 people.<sup>42</sup> President Clinton ordered airstrikes against al Qaeda targets in Afghanistan and Sudan.<sup>43</sup> A few months after the strikes, Unocal withdrew from the oil pipeline project, effectively halting it.<sup>44</sup> By 1999, the alliance between the Taliban and al Qaeda was clear,<sup>45</sup> as was Pakistan's unwavering support for the Taliban.<sup>46</sup>

In 2000, Clinton visited India, Pakistan, and Bangladesh—the first U.S. president to visit South Asia since the end of the Cold War.<sup>47</sup> Clinton's historic visit set the tone for an improved U.S.-India relationship.<sup>48</sup> However, the administration was inflexible toward Pakistan. Clinton publicly lauded the country for striving to be a “beacon of democracy in the Muslim world.”<sup>49</sup> But in private he told General Pervez Musharraf, who came to power via a military coup just six months before Clinton's visit, to restore democracy, halt militant sponsorship in Kashmir, and assist the U.S. in capturing Osama bin Laden.<sup>50</sup> The George W. Bush administration more or less maintained the Clinton administration's policy toward South Asia until the 9/11 attacks.

In its initial months, the Bush administration hailed the war in Afghanistan as a success: the Taliban were ousted from Kabul, and their airfields and headquarters were destroyed, effectively eliminating their ability to provide physical sanctuary to al Qaeda.<sup>51</sup> World leaders met in Bonn, Germany, to set the course for Afghan reconstruction in an attempt to avoid the neglect that had followed the Soviet withdrawal in 1989. The Bonn Agreement was signed in December 2001, and the Afghan Interim Authority, led by Hamid Karzai (who later was elected and served as Afghanistan's president until 2014), was given a six-month mandate to begin forming a constitution that would lay down the foundation for an Afghan government.<sup>52</sup> The agreement also created the International Security Assistance Force (ISAF), a NATO-led force tasked with training the Afghan National Security Forces.<sup>53</sup>

Pakistan was generally in favor of the Bonn Agreement.<sup>54</sup> Pakistani officials tried to convince the Bush administration to talk with the Taliban, but President Bush was adamantly against any such negotiations.<sup>55</sup> Within a year of the Bonn Agreement, the Bush administration began to turn away from Afghanistan to focus on regime change in Iraq.<sup>56</sup> The Iraq War not only took resources away from Afghanistan at a crucial moment, but also fueled instability across the Middle East.<sup>57</sup> The discovery of the Khan Network further aggravated U.S.-Pakistan relations under the Bush administration.<sup>58</sup> The Khan Network was essentially a black market for nuclear materials, created and led by Pakistan's leading nuclear scientist, Abdul Qadir Khan. The network helped further nuclear programs in Iran, North Korea, and Libya until its discovery in 2004. While Khan maintained that the Pakistani state knew of these activities, the state denied all knowledge. Even though the Khan Network was dismantled, its lingering impact on nuclear proliferation remains a cause for concern within the U.S. intelligence community.<sup>59</sup> Furthermore, U.S. (and Afghan) officials worry about the safety of Pakistan's nuclear arsenal.<sup>60</sup> Pakistan's former minister of foreign affairs Khurshid Mahmud Kasuri (2002–2007), however, maintains that the army has strengthened its oversight over Pakistan's nuclear weapons.<sup>61</sup>

The Obama administration's Afghanistan policy consisted of two overarching goals: defeating al Qaeda in Afghanistan and Pakistan and preventing al Qaeda from establishing a “safe haven” from which to launch another attack on U.S. territory.<sup>62</sup> Like the Bush administration, the Obama administration pursued a military-centric approach. From 2008 to 2011, Obama increased the number of U.S. ground troops from 30,000 to more than 100,000 to fight the insurgency and help train and increase the capacity of the Afghan security forces.<sup>63</sup> However, he also set a withdrawal date of December 2014 in order to dispel expectations that U.S. involvement in Afghanistan was open-ended.

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Obama emphasized the need for a peaceful Afghan-led government and the importance of Pakistan in achieving that goal.<sup>64</sup> Yet the U.S.-Pakistan relationship remained tense, especially regarding Pakistan’s tacit support of the Afghan Taliban, Haqqani Network, and the Quetta Shura (a Taliban government based in Peshawar, a major city and capital of Pakistan’s Khyber Pakhtunkhwa province).

Tensions between the United States and Pakistan reached a high point when, after nine years of searching, bin Laden was found living in a compound with his family in Abbottabad, Pakistan. U.S. Navy SEALs killed bin Laden in a clandestine raid on May 2, 2011. Officials in both Washington and Islamabad say the Obama administration did not inform Pakistan of the raid before it happened.<sup>65</sup> In June 2011, the administration of Asif Ali Zardari (elected in 2008 after Musharraf’s downfall) called on the Supreme Court of Pakistan to investigate the events that led up to the raid. After two years, the Abbottabad Commission submitted its report, which was later leaked and published by AlJazeera in July 2013. The report was 700 pages long, included 200 recommendations and testimonies from more than 300 witnesses, and held both the Pakistani government and the military responsible for incompetence and complicity in hiding bin Laden.<sup>66</sup>

As the trust deficit between the United States and Pakistan deepened, the Obama administration pursued negotiations with the Taliban.<sup>67</sup> Working with Germany, the United States convinced Qatar to allow the Taliban to open a political office in Doha to facilitate peace talks.<sup>68</sup> Direct negotiations between the United States and the Taliban, meanwhile, made Pakistan’s military establishment nervous, as officials in Islamabad have much preferred to mediate between the two.<sup>69</sup> Ultimately, the Obama administration pursued a multifaceted policy toward Pakistan that involved temporary cuts to military and security aid, a massive development aid package, and public criticism of Pakistan as a “difficult” partner.<sup>70</sup> For example, when

members of the Senate Armed Services Committee asked Admiral James Winnefeld about the nature of U.S.-Pakistan relations during his confirmation hearing to serve as the vice chairman of the Joint Chiefs of Staff, he replied, “Even though this is a difficult partnership, it is an important one.”<sup>71</sup> Yet the administration was unable to deter Pakistan from its policy of militant sponsorship.

For those closely following the U.S.-Pakistan relationship in the context of the U.S. war in Afghanistan, Trump’s hardline approach toward Pakistan is not new. Whereas frustration with Pakistan is warranted, the Trump administration’s policy is misguided, especially if the ultimate goal is to reach a viable political solution with key stakeholders, withdraw U.S. troops from Afghanistan, and protect against potential future threats emerging from Afghanistan in particular and South Asia in general.<sup>72</sup> Like past administrations, the Trump administration views Pakistan largely through the lens of the war in Afghanistan, which has proved to be counterproductive for fostering a cooperative bilateral relationship. Washington tends to devalue the impact that the Cold War and the mujahideen had on Pakistan’s strategic calculus. More significantly, the United States tends to blame Pakistan for the failure of the war in Afghanistan. Pakistan’s continued support for the Afghan Taliban and Haqqani Network has certainly played a significant role in sustaining the insurgency and undermining the Afghan government’s stability. Yet even if Pakistan abruptly halted all support for these militant proxies, the war would still be going badly because of various factors, including U.S. mismanagement of Afghan reconstruction, lack of coordination between U.S. troops and ISAF, and corrupt Afghani politics.<sup>73</sup> Although it remains unclear whether efficient reconstruction efforts or improved coordination between various ground troops would positively influence the trajectory of the war, one thing is obvious: the Trump administration needs to reorient its expectations of Pakistan.

## Islamabad's Perspective on U.S.-Pakistan Relations

From Pakistan's perspective, its relationship with the United States is still dominated by the Cold War, U.S. support for the mujahideen, and a feeling of abandonment once Washington shifted its focus elsewhere after the Berlin Wall fell. In many respects, Islamabad sees the United States as an unreliable ally that continues to ignore the myriad sacrifices Pakistan has made as a key partner in the GWOT.

Pakistan's support for the Taliban continues to this day. Yet, when questioned about the policy of militant sponsorship, Pakistani officials deny it and demand evidence. There is, of course, plenty of evidence. Throughout the 1990s, Pakistan provided diplomatic and material assistance to the Taliban as part of its "strategic depth" policy. Strategic depth is loosely defined as the army's strategy for maintaining influence over the Afghan government in Kabul to prevent it from backing Pakistan's domestic insurgencies, such as the Balochi and Sindhi movements and the ongoing Pashtun movement, and to counter India's plans for regional domination.<sup>74</sup> Over the years, a handful of high-level army officers and ISI agents joined the Taliban.<sup>75</sup> An ex-ISI agent, Colonel "Imam" Sultan Amir, advised local Taliban leaders in the 1990s.<sup>76</sup> In 2001, just before U.S. troops were deployed to Afghanistan, the Bush administration approved an ISI plan to airlift Pakistanis in Afghanistan back to Pakistan. In the process of the airlift, the ISI also rescued key members of the Taliban, and relocated them to Baluchistan and Pakistan's tribal areas.<sup>77</sup> Pakistan has also continued to provide safe haven to militant groups waging jihad in Kashmir. Lashkar-e-Taiba (LeT), one of the most prominent anti-India militant groups, remains active in Pakistan despite official state bans.<sup>78</sup> Similarly, Jaish-e-Mohammad (JeM), the group that claimed responsibility for the attacks on Indian army bases in Pathankot and Uri in 2016, is headquartered in southern Punjab.<sup>79</sup> While he was president, Hamid Karzai (2004–2014) continuously

accused Pakistan of undermining the Afghan government by sponsoring the Taliban, who routinely attack U.S., ISAF, and Afghan National Security Forces (ANSF) troops in Afghanistan.<sup>80</sup>

Pakistan thinks that it has borne significant costs by being an active participant in the GWOT and believes further that Washington habitually ignores these sacrifices. Pakistan currently hosts more than 1.4 million Afghan refugees, most of whom fled because of the U.S. invasion of Afghanistan following 9/11.<sup>81</sup> Many Taliban escaped to Pakistan and regrouped in the Federally Administered Tribal Areas (FATA) in the northwest, where the mountainous terrain provided the perfect cover. FATA is a majority Pashtun area that consists of seven tribal agencies and six frontier regions that are governed by Pakistan's federal government through colonial-era laws called the Frontier Crimes Regulation, which have granted a measure of autonomy to the region.<sup>82</sup> Consequently, the Pakistani military rarely intruded into FATA.<sup>83</sup> But in 2002, under U.S. pressure, the Pakistan Army began conducting counterinsurgency operations in three of the tribal agencies—Khyber, North Waziristan, and South Waziristan—to weed out the Taliban seeking refuge there.<sup>84</sup> The ruthless operations left thousands of Pashtuns dead, detained by military authorities, or internally displaced, while 200 tribal elders were killed. In response to the army's operations, some Afghan Taliban members and others formed an umbrella organization called the Tehrik-i-Taliban Pakistan, or Pakistani Taliban, that actively targets both Pakistani security forces and civilians.<sup>85</sup> In one particularly egregious example, the Pakistani Taliban attacked the Army Public School in Peshawar in 2014, killed more than 130 children, and issued warnings of future attacks.<sup>86</sup> Some Pakistani officials, therefore, go so far as to blame the United States for the rise of the Pakistani Taliban.

Since 2002, terrorist groups have killed more than 22,000 Pakistani civilians.<sup>87</sup> In response to repeated threats and attacks by

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the Pakistani Taliban, the Pakistan Army has continued to launch counterinsurgency campaigns in the tribal areas and the province of Khyber Pakhtunkhwa,<sup>88</sup> also dominated by Pashtuns.<sup>89</sup> Military authorities claimed that more than 3,500 militants were killed in the *Zarb-e-Azb* (Strike of the Sword) campaign that lasted from June 2014 to April 2016.<sup>90</sup> *Radd-ul-Fasaad* (Elimination of Strife) is an ongoing operation that began in February 2017 and aimed at eliminating terrorist sleeper cells across the country.<sup>91</sup> These campaigns have continued to displace thousands of Pashtuns and have resulted in numerous cases of “missing persons” and “enforced disappearances.”<sup>92</sup> From Pakistan’s perspective, it is currently involved in two wars: the GWOT and a domestic counterterrorism war.<sup>93</sup>

Pakistan’s feelings of regional insecurity help drive its policy of militant sponsorship. Because of concerns about competing militant groups, tribal cleavages, and domestic unrest, Pakistan seeks to establish a pro-Pakistan government in Kabul via the Taliban.<sup>94</sup> As such, Pakistan is wary of increased Indian engagement in Afghanistan. India has a long history of supporting development projects in Afghanistan.<sup>95</sup> Most recently, India has invested heavily in Iran’s Chabahar Port, reducing Afghanistan’s reliance on Pakistani ports as a trade route to the Indian Ocean.<sup>96</sup> From Pakistan’s perspective, Chabahar is proof of India’s scheme to encircle Pakistan.<sup>97</sup> But India’s investment in Chabahar is also a way for India to counter China’s growing influence within South Asia.<sup>98</sup> As longtime allies, Pakistan and China have a relatively stable relationship, and the ongoing China-Pakistan Economic Corridor (CPEC)—a multi-billion-dollar development project funded and led by China in Pakistan—will most likely increase China’s interest in Pakistan’s political and economic stability.<sup>99</sup>

Therefore, Pakistan’s view of its bilateral relationship with the United States is informed by both domestic security priorities and dynamic regional interests. Pakistan’s response to the Trump administration’s hardline policy consists of a combination of playing the

victim and exercising restraint. Pakistan seeks to persuade the United States by arguing that its counterinsurgency operations in the tribal areas have eliminated all Afghan Taliban and Haqqani Network safe havens. Pakistani officials also emphasize the number of Pakistani civilians that have been killed by the Pakistani Taliban and U.S. drone strikes in the tribal region, highlighting the human costs Pakistanis have borne as a result of the U.S.-led GWOT. Pakistan has also shown restraint by keeping NATO supply routes open after Trump’s January tweet (in the past, Pakistan has closed supply routes multiple times).<sup>100</sup> Ultimately, Pakistan does not want to be isolated from the United States and is working to prevent further deterioration in relations.

It is important that the Trump administration maintains a constructive working relationship with Pakistan in order to conclude the war in Afghanistan. But to accomplish this goal, the administration needs to adjust its expectations of Pakistan. Like all past U.S. administrations, the Trump administration’s approach is based on the notion that Pakistan’s civilian institutions will respond to pressure tactics and push back against the policy of militant sponsorship that is driven by the military establishment and intelligence agencies. But a close examination of Pakistan’s civilian counterterrorism bureaucracy demonstrates that the civilian institutions have become complicit in militant sponsorship by expanding executive powers, legitimizing the military’s overreach, and refusing to reform.

### PAKISTAN’S CIVILIAN COUNTERTERRORISM ESTABLISHMENT

Washington’s attempts to pressure Pakistan to stop supporting militants rest on a faulty assumption that Pakistan’s civilian institutions can push back on the military’s prerogatives on militant sponsorship. In fact, Pakistan’s civilian institutions simply empower the military and intelligence communities and reinforce their perspective on nonstate militants.



In particular, three civilian institutions play a key role in supporting militant sponsorship: the legislature, the judiciary, and the police.

Pakistan's anti-terrorism legal regime consists of 16 colonial-era criminal laws and more recent counterterrorism statutes.<sup>101</sup> Both civilian leaders and military dictators have used the anti-terrorism legal regime established by the legislature to increase their power and promote their legitimacy after political crises. For example, soon after gaining power via a military coup in 1999, President Musharraf used the Anti-Terrorism Act of 1997 to discredit then prime minister Nawaz Sharif and justify his coup. The Anti-Terrorism Act provides the foundation for Pakistan's counterterrorism bureaucracy.<sup>102</sup> According to the act, those charged with terrorism will be tried in special courts called Anti-Terrorism Courts (ATCs), which operate nationwide.<sup>103</sup> Sharif, however, had not committed any act of terrorism. Instead, Musharraf amended the law by expanding its jurisdiction to include crimes such as conspiracy, arms trafficking, hijacking, and kidnapping. Musharraf then used these amendments to build a case against Sharif, forcing the former prime minister to be tried in an ATC rather than a regular criminal court.<sup>104</sup> Political leaders have also used anti-terrorism statutes to expand executive and military power, providing the military establishment legal cover for questionable practices. For instance, the identical "aid to civil power" regulations for the federally and provincially administered tribal areas legalized the military's previously unauthorized detention of civilians caught during the counterinsurgency campaigns in 2009 and 2010, many of whom are still detained without any charges against them.<sup>105</sup>

The second civilian institution that plays an important role in counterterrorism is the judiciary. In the context of counterterrorism, the judiciary's main responsibility has been to ensure that anti-terrorism statutes do not violate Pakistan's constitution. However, Pakistan's Supreme Court has routinely upheld expansive anti-terrorism laws, citing the

doctrine of state necessity.<sup>106</sup> The doctrine of necessity is a commonly used legal principle in commonwealth countries that is used to justify otherwise illegal government action.<sup>107</sup> For example, in 2015 the court used the doctrine to allow civilians charged with terrorism to be tried in military courts.<sup>108</sup> The military courts were established via a constitutional amendment in 2015 after the Pakistani Taliban attacked a school in Peshawar, killing more than 130 children.<sup>109</sup> The civilian government had responded quickly, passing a National Action Plan that included reinstating the death penalty and establishing special trial courts run by the military tribunals for "swift" justice.<sup>110</sup> Human-rights activists argued that trying civilians charged with terrorist acts in military courts was unconstitutional. Pakistan's Supreme Court disagreed.<sup>111</sup> The judiciary has also accepted the formation of specialized courts like the ATCs, fundamentally agreeing with the legislative branch that a separate court system for those charged with terrorism would be more efficient than the regular criminal justice system.<sup>112</sup>

The third civilian institution at the forefront of counterterrorism is the police. According to the Anti-Terrorism Act, the police can use deadly force, detain suspects for up to 90 days, target militant "networks," and confiscate the passports of suspects charged under the statute. The police also have provincial Counterterrorism Departments, Rapid Response Forces, and high-security prisons to counter terrorist groups.<sup>113</sup> Yet daily police activities are still governed by antiquated colonial laws that affect how the police can gather evidence.<sup>114</sup> For example, under regular criminal laws, a confession to a police officer is not permitted in a court of law, but according to the Anti-Terrorism Act, it is. The police often arrest a suspect under the act regardless of the crime, which in turn has overburdened Anti-Terrorism Courts. Civilian leaders have also been reluctant to reform the police. Instead, politicians routinely interfere in police investigations, officer recruitment, officer transfers, and basic material purchases—and often use

**“Pakistan’s civilian institutions simply reinforce the military and intelligence community’s support for nonstate militants.”**

“Cutting U.S. military and security aid to Pakistan has largely failed to change Pakistan’s policies.”

the police as personal bodyguards, especially in rural areas.<sup>115</sup> As a result, the Pakistani police remain one of the weakest civilian counterterrorism institutions.

Pakistan’s military establishment and intelligence agencies are primarily responsible for sponsoring groups such as the Afghan Taliban, Haqqani Network, LeT, and JeM. But the tendency of the legislature and the courts to expand the power of the executive and the military, and the police’s continued operational weakness and corruption have created a civilian counterterrorism bureaucracy that is beholden to the military and its sponsorship of militant groups. Therefore, each civilian institution involved in counterterrorism—the legislature, judiciary, and police—helps facilitate, rather than counteract, militant sponsorship.

### **A PRAGMATIC U.S. APPROACH TOWARD PAKISTAN**

Continuous U.S. support of Pakistan’s military has only exacerbated the country’s civil-military imbalance.<sup>116</sup> The United States needs to adopt a more informed and constructive approach toward Pakistan. The Trump administration has taken a hardline approach toward Pakistan aimed at curbing the state’s sponsorship of militant groups. This approach includes military and security aid cuts; a U.S.-led campaign to put Pakistan on FATF’s gray list; and targeting LeT, a U.S.-designated terrorist group that operates openly in Pakistan.

Cutting U.S. military and security aid to Pakistan in order to pressure the country to stop supporting militant groups has been tried repeatedly throughout the years and has largely failed to change Pakistan’s policies. At the Obama administration’s behest, Congress established the Pakistan Counterinsurgency Fund in 2009 to provide U.S. military equipment and combat training to Pakistan’s military and paramilitary forces for counterinsurgency operations in the tribal areas.<sup>117</sup> As Pakistan’s support for the Taliban and Haqqani Network continued, Congress discontinued the fund soon after it started—a move supported by

the Obama White House.<sup>118</sup> The Trump administration is currently withholding Foreign Military Financing, a grant and loan program used by several countries to acquire U.S. arms. Trump has also partially cut the Coalition Support Fund (CSF),<sup>119</sup> established to reimburse Pakistan for America’s use of Pakistani military bases to launch ground offensives—and later drone strikes—in the tribal areas.<sup>120</sup> Ending financial support to Pakistan’s military establishment is a good thing because taxpayer dollars should not go toward corrupt foreign militaries, particularly those that aid terrorist groups. However, cutting off aid will not alter Pakistan’s use of militant proxies.

The United States and India spearheaded a campaign to add Pakistan to the FATF’s gray list—a list of countries that can be sanctioned because of their involvement in illicit terrorist financing. To garner some goodwill, Pakistan amended its anti-terrorism law in February 2018 to ban the Jamaat ud Dawa and the Falah-i-Insaniat, charity wings of LeT, the notorious militant group that wages jihad in Kashmir with the Pakistan Army’s support.<sup>121</sup> The FATF, however, issued a warning anyway, and eventually added Pakistan to its list in June 2018, opening the possibility of more sanctions.<sup>122</sup>

Yet sanctions rarely alter state behavior.<sup>123</sup> In any case, adding Pakistan to the FATF gray list in the hope that authorities would stop sponsoring the Taliban, Haqqani Network, and Kashmiri insurgents has already been tried—and it failed. The Obama administration also advocated adding Pakistan to the FATF’s gray list, where it remained from 2012 to 2015. During this period, Pakistan not only continued to sponsor militant groups but managed to stabilize exports and imports. Pakistan also completed its International Monetary Fund program and raised \$5 billion in the international bond market.<sup>124</sup> Being on the FATF list, therefore, hardly hindered Pakistan’s economic growth. At best, the pressure could force the government to reform its Anti-Money Laundering Act, a currently dormant law designed to combat

the financing of militant organizations and groups operating within Pakistan, with an emphasis on implementation.<sup>125</sup> However, such cosmetic changes will not substantively alter Pakistan's policies.

Like past administrations, the Trump administration is also trying to curb Pakistan's sponsorship of the LeT by designating the Milli Muslim League, the political party of LeT, as a global terrorist group.<sup>126</sup> Yet "terrorist" labels are more political than practical, and as such, will have minimal impact on Pakistan's sponsorship of the LeT. For its part, Pakistan's election commission has refused to register the party, preventing it from participating in the general elections (though its members are running in the elections as independent candidates).<sup>127</sup> Despite Washington's designation of the group as a terrorist organization, the Pakistani military continues to support the League.<sup>128</sup>

Underlying these U.S. policies is the assumption that Pakistan can be convinced to sever all ties with the Taliban and Haqqani Network. Ambassador Richard G. Olson, who served as U.S. ambassador to Pakistan from 2012 to 2015 and special representative for Afghanistan and Pakistan from 2015 to 2016, argues that the Trump administration should tell Pakistan it must cut all ties with the Taliban and the Haqqani Network in order to repair its damaged relationship with the United States.<sup>129</sup> Yet the United States has never been able to convince Pakistan to stop supporting the Taliban, the Haqqanis, or the Quetta Shura.

Many analysts worry that Pakistan will increasingly look toward China as its relationship with the United States worsens, but Pakistan's "drift" toward China is not new. Pakistan's foreign policy has always been influenced by South Asian regional politics, in which China is a significant actor. China and Pakistan have been allies for decades, with China often providing material and diplomatic support to Pakistan to counter India. China even played a key role in developing Pakistan's nuclear program. However, the Sino-Pakistan

relationship, especially in its current form, should not be a cause of alarm in Washington. In recent years, Beijing has heavily invested in Pakistan through the CPEC, a multi-billion-dollar development project. China, therefore, has an interest in a stable Pakistan. In fact, China has been in talks with Baloch militants to prevent any attacks on Chinese workers and CPEC projects.<sup>130</sup> Rumors that China is planning to build a naval base near Pakistan's Gwadar port, where it signed a 40-year lease in 2017, have been a source of anxiety in Washington, but both China and Pakistan deny any plans to build a base.<sup>131</sup> In any case, such a military base would not necessarily pose a threat to U.S. interests.<sup>132</sup>

The United States and Pakistan may never have an ideal relationship, but they do agree on one fundamental thing: U.S. involvement in Afghanistan needs to end. To achieve this shared objective, the United States must adopt a more pragmatic approach toward Pakistan. The Trump administration should adjust its expectations with respect to Pakistan and its support for militant groups, especially the Taliban. Although the United States has been fighting the Taliban for almost two decades, no enduring resolution to the war in Afghanistan is possible without their cooperation. The Trump administration should pursue an Afghan-led peace process that directly involves the Taliban.<sup>133</sup> While the Taliban have so far refused to participate in Afghanistan's parliamentary elections, scheduled for this fall, they have expressed an interest in negotiating with the United States. Instead of rejecting that offer, the Trump administration should try to leverage talks with the Taliban to mediate the U.S. relationship with the Afghan government, while also planning for a military withdrawal. Pakistan can be a useful partner in such an effort.

The Trump administration should seek common ground with Pakistan while acknowledging areas of disagreement. For example, protecting Pakistan's nuclear arsenal from militant groups is a priority for both countries. According to Gina Haspel's

**“The Trump administration should seek common ground with Pakistan while acknowledging areas of disagreement.”**

“U.S. and Pakistani support for an Afghan-led peace process is a step in the right direction.”

testimony during her confirmation hearing to become CIA director, the CIA remains focused on monitoring any activities between extremist groups and Pakistan's nuclear arsenal, which may provide a good opportunity for American and Pakistani intelligence communities to cooperate.<sup>134</sup> Finding a feasible and lasting end to the war in Afghanistan is also mutually beneficial for the United States and Pakistan. The United States wants to ensure that Afghanistan has a stable government and that the country does not become a launching pad for another terrorist attack on the United States. However, Washington has ruled out any role for the Taliban in the Afghan government. Pakistan's objective is to ensure a pro-Pakistan government in Kabul, one that will assist it in deterring India, and maintains that the Taliban would be the most reliable actor. Yet the Taliban's pro-Pakistan tendencies are questionable at best. Furthermore, it remains unclear whether Afghanistan can even have a stable government in the next few years. Ongoing U.S. and Pakistani support for an Afghan-led peace process is a step in the right direction. The United States must come to grips with its inability to get Pakistan to stop sponsoring militants and pursue direct talks with the Taliban while the opportunity still exists.

For years, the United States has supported Pakistan's military establishment over its civilian institutions. While Pakistan's

civil-military imbalance is a result of numerous domestic factors, U.S. support for the Pakistan Army has aggravated it. The United States has also overlooked the ways in which Pakistan's civilian institutions have evolved to facilitate militant sponsorship, directly or indirectly. The only way the Trump administration can have a positive relationship with Pakistan is recognize the futility of pressuring Pakistan to stop funding militants and partner with Islamabad on terms it can accommodate. A strategic reevaluation of the U.S.-Pakistan relationship is in order.

## CONCLUSION

Pakistan has a long history of militant sponsorship. The military establishment has played a central role in Pakistan's use of militant groups as proxies, but contrary to longstanding presumptions in Washington, Pakistan's civilian establishment by no means serves as a check against these policies. Militant sponsorship has become a kind of whole-of-government principle of Pakistan's security policy and national identity. Punitive U.S. actions to discourage it, therefore, have little chance of success. Washington should incorporate this reality into its policy and look for alternative solutions to securing a durable peace in Afghanistan that can set the stage for a U.S. withdrawal and establish a new and constructive relationship with Pakistan.

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