



POLICY BRIEF

Towards the Intra-Afghan Negotiations

Views on possible break point issues, possible outcomes and the strategic environment

Third Edition



EU AFGHANISTAN PEACE SUPPORT MECHANISM

میکانیزم حمایت اتحادیه اروپا
از پروسه صلح افغانستان
د افغانستان د سولې څخه
د اروپایي ټولني د ملاتړ تگلاره



Funded by the European Union

Policy Brief

Towards the Intra-Afghan Negotiations

Views on possible break point issues, possible
outcomes and the strategic environment

American University of Afghanistan (AUAF)

Institute of War and Peace Studies (IWPS)

Author:

Muska Dastageer

Instructor of Gender, Peace and Security, AUAF

Third Edition

November 2020

Contents

1. Introduction.....	1
2. Break point issues.....	3
2.1 Hanafi jurisprudence for dispute resolution.....	3
2.2 Where are pressures for concessions?.....	5
2.3 Minor and major rifts.....	6
2.4 Conceding second-order losses for first-order wins.....	7
2.5 The protection of ‘process-fractioning’ and ‘power-fractioning’.....	8
2.6 Battlefield developments.....	9
3. Recommendations.....	12
For U.S. and international interlocutors.....	12
For the negotiating teams of the Afghan Republic and the Taliban.....	13

1. Introduction

The past few weeks have revealed a complex of positions in Doha on both sides of the table, while violence has increased in Afghanistan and the U.S. has elected a new president whose Afghan policies will not be clear for several months. What is being sought – in ending a twenty-five-year long war – is the resolution of long-existing contradictions, in the midst of a dynamic national and international political environment.

Central to any potential resolution would be agreement on a path to a political arrangement on which starkly contradictory political forces might come to agreement. Such an agreement would enact a common framework capable of regulating disagreement, but without suppressing – and thus – exacerbating it. To do so effectively requires from both delegations – that representing the Afghan government, on the one hand, and the Taliban, on the other – that they be able to forge a workable framework. That is to say, one which does not seek to eliminate disagreement or even scope for disagreement nor which prescribes all specific outcomes. Rather, one possibility is a framework that provides a common language and a common horizon within which disagreement can either be resolved or continue to play out in a productive and structured way.

This policy brief discusses break point issues in pre-negotiations, possible outcomes of the intra-Afghan talks and the battlefield environment in Afghanistan in light of developments in Doha, Afghanistan and internationally. A thread throughout the analysis is the recurrent examination of the relationship between the two delegations' competing normative-moral visions and the actual operationalization of these into technical-legislative and administrative practices. In section 2.1., the brief posits that the two visions can co-exist within the confines of the same framework. More specifically, we posit the possibility that the Afghan government's negotiating team might accept the Taliban's particular brand of a religiously derived austere normative vision as the principal reference point for legislation, but that the Taliban, in turn, accept that the Afghan government retain explicit powers for legal and administrative authorities, in order to afford those authorities discretion in administrative practice and political life.

One way this could happen would be to offer the Taliban the ability to articulate a normative, prescriptive vision for Afghanistan, but for the Taliban to also agree, in turn, that the non-Taliban government be given concrete authority to set the legal-technical-administrative practices that implement any such vision. This is detailed in section 2.3. Here we would see both sides winning a first-order preference. Such an arrangement would be high-risk for both sides. If the government were to cede to the Taliban vision, the risk would be high that the Taliban would try to use that agreement to override the government's ability to control day-to-day life and practices of the Afghan people. The risk of resumed civil conflict would be high. On the other hand, if the Taliban were to accept that the current government would continue to control the administrative and procedural organs of government, the Taliban would risk internal strife, leading perhaps to factionalization of the Taliban or the strengthening of irredentist groups such as Da'esh.

One strand of political theory (and the views of many practitioners) posits that political-administrative actions come down to choices made by rational actors¹ choosing the track or course of action whose consequences accords most precisely with their objectives. Another strand of political theory, often espoused in academic circles, posits that the fragmentation of government-level decision-making between several agencies may encumber the power of any one person, office or division by fractioning it. This view is further explored below and in section 2.3.

From this theoretical point of view, the actual preferences or choices of individuals are often much less consequential than anticipated, if not entirely anti-climactic. Following this line of reasoning we might see that the Taliban's incorporation into political structures in Afghanistan would not mean the eradication of these institutions nor of the standards and procedures the Afghan government has established in the post-Bonn political order. In this construct, political impulses resulting from an agreement might fuse with existing processes and procedures, rather than resulting in renewed conflict.

The fundamental premise for the above proposition is that the Taliban genuinely does not angle for a wholesale takeover and has an interest in a post-settlement phase which preserves the existing functional state set-up.² However, the accuracy of this premise is far from evident in the actions and words of the Taliban to date. There is a strong possibility that the Taliban sees the talks in Doha as merely an alternative to a military path to victory. If this is the Taliban's calculus, it would be extremely high-risk for the Afghan government to accede to the Taliban's narrative.

Therefore, for the path proposed above to succeed, the Taliban would have to be constrained in any agreement in ways that ensured that the Taliban would not take power against the will of the Afghan people. The Taliban might find such an agreement acceptable if they could portray it to their supporters as a potential transitional stage that would precede an eventual, inevitable assumption of full power by the Taliban through peaceful means. However, such a path would be high-risk for the Taliban, due to the risk of fractionalization described above.

Finding a course that enables both sides to settle on an acceptable level of risk, while also ending violence, will be challenging for both sides. The Taliban would have to realize that institutional-level change cannot be rapid lest stability be compromised. By necessity, it would have to be a gradual process – incremental at most – and in the case of Afghanistan, guaranteed to face encumbering opposition. Here, politics, broadly, and the politics of administrative practices, specifically, will come into the picture. Members of the Taliban would have to work side by side with “old guard bureaucrats” from the Soviet era, as well as those beholden to power brokers from the Karzai era and the newer, reform-oriented officials emerging in the Ghani administration.

Political and institutional arrangements devised on the basis of such a compromise would not produce an outcome devoid of ambiguities and would leave ample scope for clashes. The two impulses would likely often clash within day-to-day administrative practice. It follows therefore that effective dispute resolution mechanisms in a post-settlement Afghan governance system would

1. The rational actor assumption posits that decision-makers carefully calculate costs of alternatives courses of action and choosing whichever maximizes their expected utility. Deriving from economic rational choice theory, it has also been subsumed under international relations by theorists like Kenneth Waltz and Robert Keohane.

2. A CBS News article quotes a member from Taliban's negotiating team as saying that the movement's plan A is a peaceful political solution, and its Plan B is a military takeover. See: <https://www.cbsnews.com/news/afghanistan-taliban-intra-afghan-dialogue-talks-doha-what-does-the-taliban-want/>

be vital. Given differences between the two sides on the subject, dispute resolution is almost guaranteed to be deeply contentious. However, by postponing some points of contention, disagreement on specifics could be shepherded away from the broader plane of peace talks and towards the more limited and concentrated matter of dispute resolution, an area of concrete political and administrative practice.

This option would not just see points of disagreement postponed, but relegated from a level of broad-stroke thought and principle to one of technical-legal design. This would effectively be the removal for later discussion of issues at the emotionally evocative level of a moral conception of the common good where near-irreconcilable discord between the two sides will be guaranteed, leaving them for future resolution.

2. Break point issues

The talks began on 12 September 2020 with each negotiating team establishing a contact group to “set the terms and conditions” before the formal talks begin. The first task was to articulate and agree upon a code of conduct and set the agenda for negotiations.³ Intended to regulate the negotiations, the code of conduct would comprise the rules and regulations guiding talks and ensure a workable format to the negotiation process.

To the surprise of the Afghan government delegation, Taliban went beyond the anticipated emphasis on matters pertaining to form and insisted on prior agreement on fundamental issues. Such a negotiating tactic is an effort to ensure that the Taliban achieve key goals in the “preliminary” discussions, rather than wait on the full, formal negotiations. This is also a tactic the Taliban employed effectively to gain concessions from the U.S. The Afghan government delegation recognized the Taliban effort to predetermine the outcome of the talks and has resisted, with talks slowing to a crawl in subsequent weeks.

The initial areas of disagreement introduced by the Taliban were the issues of i) the Islamic jurisprudence (fiqh) that would govern the negotiations, with Taliban demanding that the Hanafi school of legal thought be determinative on all aspects of the terms and conditions of the negotiations, including dispute resolution during negotiations; ii) terminology pertaining to the origins of the Afghan war (i.e. who was to blame for the war), and; iii) the Taliban’s insistence that the intra-Afghan negotiations (IAN) be subsumed within the framework of the Doha agreement, the US-Taliban deal signed in February, an arrangement to which the Afghan government was not a party.⁴

2.1 Hanafi jurisprudence for dispute resolution

Although both sides appear to have agreed to a formula based on the Afghan Constitution’s Articles 131 and 132 that both allow for Hanafi jurisprudence as the overarching guideline, but also preserves a role for Shi’a jurisprudence, this first break point issue, foreshadowed greater disagreement down the road. The demand from Taliban’s side that post-settlement legislation be

3. Doucet, Lyse. “Afghan-Taliban Peace Talks: What’s Next?” BBC News, 22 September 2020, www.bbc.com/news/world-asia-54255862. Accessed 12 October 2020.

4. Ibid.

5. Javaid, Osama Bin. “Exclusive: Jurisprudence, Inclusivity Slow down Afghan Talks.” Al Jazeera, 23 September 2020, www.aljazeera.com/news/2020/9/23/why-are-afghan-talks-stuck+&cd=5&hl=en&ct=clnk&gl=ae:%20al%20jazeera. Accessed 12 October 2020

derived exclusively from the principles of the Hanafi school of Sunni jurisprudence clashed with the Afghan Government's insistence on inclusivity as Afghanistan's minority Shi'a population subscribes to the Ja'fari school of Shi'a jurisprudence, giving credence to the Shi'a population's fears of a potential genocide if the Taliban return to power. The exclusive adaption of Hanafi jurisprudence would have meant that Afghanistan's minorities, which also includes Sikhs and Hindus in additions to Shi'as, would have had to abide by the logic of a Sunni interpretation of Islamic law, a scenario that would differ starkly from the current inclusive provisions encoded in the Afghan constitution.

The presumption in favor of inclusivity has underpinned relations between citizens and state in the post-2001 Afghan political order, helping to embed and protect the values and concerns of a range of segments of society. Not only does 'inclusivity' cover a complex of processes that remain ongoing, but for the international community's development agenda in Afghanistan, fostering inclusivity has been one of the areas of greatest investment. Concretely, this has begun forging a social order whose institutions strive to be inclusive of women, minorities and youth, both formally and in practice. With Taliban's insistence on the Hanafi school of legal thought as the principal source for jurisprudence, the imperative to end the war, however, risks qualifying this hitherto unconditional stance.

A reliance on the Hanafi fiqh might not necessarily lead to the undermining of inclusivity as there are variations among Hanafi sources. Some Hanafi legal sources present liberal and pluralistic approaches to Islamic law.⁶ "For example, Hanafi law is full of precedents that can serve to establish rather expansive rights for minority communities". Taliban peace negotiator Mawlawi Abdul Salam Hanafi contested the notion that having Hanafi jurisprudence as the basis for resolving disputes in talks is meant to signal any differentiation between Sunnis and Shi'as. He claimed that, "Hanafi jurisprudence as basis for resolving disputes in talks does, in no way, mean we have any prejudice against our Shia brothers... there is no difference between Shi'a and Sunni in Afghanistan. We will not let anyone stoke such differences."⁷ However, the interpretation of Hanafi sources used by the Taliban during the time they ruled Afghanistan (1996-2001) was not the inclusive version portrayed by Abdul Salam in Doha. The version of Hanafi jurisprudence practiced by the Taliban both during the time they ruled Afghanistan and in areas of Afghanistan that the Taliban currently control, gives ample cause for Afghanistan's Shi'a and other minorities to doubt that inclusivity has been accepted by the Taliban.

This neither refutes the suggestion that the Taliban would eventually require Hanafi jurisprudence enshrined in any new or amended constitution as a governing source of legislation nor does it diminish the possibility that legal-administrative arrangements and discretion wired into institutions (and, necessarily, guaranteed in any agreement) would not be sufficient to ensure equal rights for all citizens.

Some analysts see an implicit premise in the debate on the jurisprudential lynchpins of a post-settlement constitution. This implicit premise is that the larger disagreement on Islamic jurisprudence, of which the procedural matter of dispute resolution is assumed to be a prelude, rests on the idea

6. Mandaville, Peter. "Whither Islam in Afghanistan's Political System After the Taliban Talks?" United States Institute of Peace, 7 October 2020, www.usip.org/publications/2020/10/whither-islam-afghanistans-political-system-after-taliban-talks. Accessed 12 October 2020.

7. "Taliban: Hanafi Jurisprudence In Talks Is Not Prejudice Against Shia Brothers - AVA." Afghan Voice Agency (AVA), 27 September 2020, www.avapress.com/en/news/219640/taliban-hanafi-jurisprudence-in-talks-is-not-prejudice-against-shia-brothers. Accessed 12 October 2020.

that the existence of a single interpretive-legal macro-principle would mean that this one principle then exclusively informs all administrative decision-making in a post-settlement Afghanistan. And while the co-existence of conservative Hanafi legal sources with full and equal rights provisions would likely often clash with administrative practice and political life, it does not mean that the two are irreconcilable, if within an agreed common framework, such as set forth in the current Constitution, that allows for disagreement to play out in productive, structured way.

In other words, what may matter are administrative decision-making and concrete mechanisms by which disputes are resolved. If those mechanisms are in the hands of the government, that might permit the Islamic Republic of Afghanistan to compromise as regards the exact nature of Islamic jurisprudence for which Taliban has a clear preference in the Hanafi school of thought.

Specifically, the republic's negotiating team might accept the Taliban's preference for explicitly naming the Hanafi fiqh as the principal reference point or normative vision for legislation, but only as part of a peace agreement. This would allow for continuation of existing authorities for the government's legal and administrative structures, in order to afford these the discretion in interpreting the Hanafi fiqh's role. This is, in addition to the letter and spirit of laws, also central to the operation of rule of law as it actually plays out: day-to-day administrative decision-making that can be technical-legislative, legal, ad hoc to varying degrees and with scope for discretion. To be clear, such a trade-off would not produce an outcome devoid of compromises, ambiguities and scope for clashes, but it would allow the two negotiating teams to address what might continue to be a significant hurdle in the months to come.

Put differently, to ensure a productive, structured path forward despite disagreements on fundamental issues, i.e. which school of Islamic jurisprudence to encode in the constitution or which interpretation should carry most weight, each negotiating team in Doha should first seek to identify its own complex of first-order, second-order and third-order views and concerns to instill flexibility into their positions. Balancing ideal preferences against worst-scenario costs, allows scope for contest and conflict but minimizes the risk of a breakdown in talks.

2.2 Where are pressures for concessions?

Some believe that the onus is on the Afghan government's negotiation team to make concessions due to the Taliban's continued utilization of violence against the government and people of Afghanistan. Others may see that the burden to make concessions is on the Taliban due the fact that it is the Taliban that are using violence against the Afghan state and population.

Those who believe the Afghan government should make concessions point to the nature of insurgent warfare that significantly advantages Taliban due to inbuilt structural asymmetries pertaining to disparities in cost and effort in promoting insecurity (easy) as opposed to ensuring security (difficult).⁸ This is a view that may have found resonance with at least one member of the government's negotiating team. Mohammad Nateqi stated in an interview with 1TVnews, in reference to the matter of jurisprudence: "[S]ome issues were complicated debates for later that should not necessarily have been part of [the] initial rules and regulations. But since they came up, there has been resolve to find solutions. We are not dogmatic; we have several alternatives and options for ways out of logjams. This is a historic opportunity, and we have come with the intention

8. See section 2.4 for further elaboration.

of finding solutions.”⁹ However, the unity that the government negotiating team appears to be displaying in the face of Taliban intransigence on key issues, particularly in countering the Taliban’s effort to pre-determine the outcome of the substantive talks by seeking to include the U.S.-Taliban February 2020 agreement as a basis for the talks, shows that the Taliban’s structural advantage may not be sufficient for them to prevail.

However, since the intra-Afghan talks began and as Taliban violence against Afghan civilians and the Afghan government has increased, there have been growing calls by the majority of Afghans for the Taliban to make a concession on the issue of greatest importance to most Afghans – an immediate ceasefire. While the Taliban calculus appears to have been that by increasing violence, they will pressure the Afghan government to make concessions, that has not yet happened. And it may be that the Taliban’s use of increased violence may backfire by creating greater popular support for a tough Afghan negotiating team in Doha.

Ideally, each negotiation team seek to agree on a normative-moral vision for a post-settlement Afghanistan, with legislative and administrative agencies retaining the discretion to operationalize and devise technical-legislative arrangements for a post-peace settlement common political order. However, given entrenchment on either side, this is perhaps unrealistic. The coming section outlines how a deal could still be reached despite continued disagreement on the normative-moral vision for legislation, at its narrowest, and the overall direction of the state, at its broadest.

The two sides agreeing on a code of conduct for the negotiations could itself be a prelude to an actual agreement and thus a positive step whose signaling value should not be undervalued. However, the more such a code of conduct is unbalanced and presumes that either side is in a superior or inferior position, the less likely it is that any final, broader agreement will be reached. And, if a final agreement is reached based on such inequalities, the result will likely be an agreement so flawed that it is merely a prelude to further conflict rather than a mechanism to end conflict. Perhaps the most any final agreement reached between the parties in Doha can aspire to be is a workable framework for a contest that will continue for decades to come.

2.3 Minor and major rifts

Two more minor differences also surfaced between the two sides during preliminary efforts to set the terms and conditions prior to the beginning of formal talks. These minor rifts have apparently been resolved through mutual concessions. Language proved a sticking point for both sides with the Government side forfeiting the Western-tinged use of the words “social justice” in favor of the Taliban’s preferred “Islamic justice” language. On the other language point the Taliban conceded to describing the war in Afghanistan as a “conflict” rather than their preferred “jihad”.¹⁰

A more fundamental break point issue is Taliban’s demand that the intra-Afghan talks be subsumed within the framework of the Doha agreement, the US-Taliban deal signed in February.¹¹ This is an effort by the Taliban to predetermine the negotiating outcome by trying to get the Afghan government to accept concessions made by the U.S. during the Taliban-U.S. bilateral talks of 2018-2020. While the U.S. concessions to the Taliban were never agreed to by the Afghan government,

9. Mohammad Nateqi’s interview with 1TVnews:<https://twitter.com/1TVNewsAF/status/1308382588533432325>.

10. Javid, Osama Bin. “Exclusive: Jurisprudence, Inclusivity Slow down Afghan Talks.” Al Jazeera, 23 September 2020, www.aljazeera.com/news/2020/9/23/why-are-afghan-talks-stuck+&cd=5&hl=en&ct=clnk&gl=ae:%20al%20jazeera. Accessed 25 October 2020.

11. Doucet, Lyse. “Afghan-Taliban Peace Talks: What’s Next?” BBC News, 22 September 2020, www.bbc.com/news/world-asia-54255862. Accessed 12 October 2020.

nor in many cases were they ever even discussed by the U.S. with the Afghan government, the U.S. utilized the Taliban's erroneous belief that the U.S. Government spoke for and controlled the Afghan government to gain the Taliban's agreement to the Doha document. Now that the Afghan government is engaged in direct talks with the Taliban, the Taliban are finding that the Afghan government is not the puppet of the U.S. that the Taliban had believed. They are seeing that the U.S. made promises it could not deliver on.

Taliban fears of being misled by the U.S. during negotiations up to the 29 February Doha deal appear to underlie the Taliban's surprising endorsement of U.S. President Trump's re-election and the Taliban's early refusal to recognize that Trump had lost the U.S. election.

As the Taliban have encountered the Afghan side's refusal to accept the February document, they are having to re-examine their presumption that the Afghan negotiators are subservient to the U.S. While it is impossible to predict the outcome of this Taliban reexamination, it may lead to the Taliban side fractionalizing as those members of the Taliban team that negotiated with the U.S. encounter skepticism from new members of the Taliban team that were not part of the 2018-2020 experience.

Acceptance of the Doha document would effectively mean incorporating language from that document, to which the Afghan government was not a party, into the terms and conditions of intra-Afghan talks. Refusing this, members of the government's negotiating team have instead pressed for inclusion of the decisions of the Peace Consultative Loya Jirga – a traditional Afghan council of tribal elders – and their own agreement with the U.S. that was signed in Kabul on the same day as the Doha deal. In response to the Afghan position, Taliban negotiator Mullah Khairullah Khairkhwa reiterated the Taliban view that the basis for intra-Afghan talks must be the framework provided by the February agreement they signed with the U.S, otherwise Taliban would not be "ready to negotiate." This disagreement is the key break point issue.

2.4 Conceding second-order losses for first-order wins

Rifts regarding language may be more terminology than substance. But terminology may also be key to whether an agreement is valid and sustainable, or merely a steppingstone to further conflict. The Taliban are making a bid to impose the concessions they won from the U.S. in the U.S.-Taliban deal and force those U.S. concessions on the Afghan side of the intra-Afghan talks. This would deliver victory at the negotiating table to the Taliban, perhaps ending the Taliban's use of violence against the Afghan people and State. But, enshrining the U.S. concessions would also pose a high risk of future conflict, given the unbalanced nature of the U.S.-Taliban deal.

The U.S.-Taliban Doha document calls for "...a new post-settlement Afghan Islamic government as determined by the intra-Afghan dialogue...." By accepting this language, the Afghan government side would be agreeing to its own demise and only negotiating the terms of that demise. If the Afghan side had accepted the primacy of the U.S. document, it would have conclusively weighted the end result in favor of the Taliban's preferences for governance. Though posited by the Taliban as part of a preliminary phase, acceptance of the Taliban demand on the Doha document would effectively determine the foremost point of contention between the two sides: the overarching vision for the state and the nature of governance in a post-settlement Afghanistan.

Therefore, the current phase of the talks, initially believed to be preliminary to serious discussions of substance, have become the grounds on which the core interests of either – a Sharia-based Islamic

system for Taliban's negotiating team and a moderate democratic republic for the government's delegation – may be determined.

It is possible that a limited acquiescence from both could collapse this contradiction. More specifically, a language-level concession from the Republic might see it retain its current institutional set-up and legal-technical-administrative concessions from the Taliban might see it able to claim to its supporters that it maintains the future prospect of determining the normative political-religious vision for Afghanistan.

For either side, their first-order preferences encompass both a macro-level vision for the direction of the state and for specific technical-administrative and legal practices contained within this vision. For Taliban these appear to be their version of Sharia and for the Afghan government, the 2004 constitution, positive law and international law.

However, if the Taliban were to be afforded their articulation of a normative, prescriptive vision for Afghanistan, but conceding in turn that this be given concrete content by accepting the Afghan government's existing legal-technical-administrative norms, we might see both sides winning a first-order preference. For the Taliban, the categorical principle that Afghanistan be an Islamic state weighs most prominently, while for the republic the foremost priority is to retain the technical-administrative and legal practices of a republic. Whether the label on this set of procedures, practices and institutions is 'republic' or something else may only be a second-order concern, depending on the content of the first-order tradeoffs.

2.5 The protection of 'process-fractioning' and 'power-fractioning'

Could the above trade-off collapse what has been conceived as an inevitable contradiction? Only insofar as both sides perceptions are that their gains outweigh the requisite concessions. Both sides would have to weigh carefully the risks involved. If the Taliban refused to concede that procedural content be aligned with current institutional arrangements, the risk to the government is great that conceding would mean the demise of the current system.

The inference that political-administrative actions come down to choices that are made by rational actors choosing the track or course of action whose consequences accords most precisely with their objectives may not be accurate. While practitioners of politics such as political leaders, diplomats and military leaders operate on a presumption of various versions of rational choice theory, some political scientists believe that courses of action are pursued by irrational actors for whom the ruling impulses that structure decision-making go well beyond normative beliefs. This view by some academics sees government behavior less as deliberate choices of a limited circle of decision-makers and more as outputs of multiple organizations functioning according to discernable patterns of behavior. In this view it is this fragmentation of any government into a number of different agencies, ministries, departments that makes the ultimate decisions of governments an aggregate of all these moving parts. This would also mean that the extent to which individuals can disturb, disrupt and indeed control is limited.

According to a strand of research begun by political scientist Graham Allison in his landmark 1971 work *Essence of Decision*, government-level issues are 'cut up' or "factioned" and parceled out to multiple organizations.¹² Each agency then assesses the issues, processes information, and performs

12. Allison Graham (1971) *Essence of Decision*, 2 edn., New York: Longman.

actions in semi-independence. Factoring permits more specialized attention to particular aspects of problems, but also fractions the power of any one person, office or division over a process.

In this view, the formal preferences or choices of individuals are often anti-climactic. If the Taliban were to accept incorporation into the existing state structures of Afghanistan, rather than insisting on creating their own, this would not mean the eradication of the existing government nor of the procedures established in the post-Bonn political order. It could instead see newer impulses from the Taliban fuse with existing processes and procedures.

If the Taliban are not committed to a wholesale takeover – a proposition that has yet to be tested – a settlement that allowed for such a fusion could be seen by them as in their interests as well. While the Taliban might wish to introduce their vision, a peaceful comprehensive restructuring of society and the concomitant institutional-level changes would not be an automatic or rapid process. Peaceful change is gradual or incremental at first and, in the case of Afghanistan, guaranteed to face opposition. Here, politics and the politics of administrative practices will come into the picture. Members of the Taliban would have to work side by side with “old guard bureaucrats” from the Soviet era as well as with power broker-dominated bureaucrats from the Karzai administration and with younger, more reform-oriented bureaucrats who are slowly coming into the Ghani administrations.

2.6 Battlefield developments

The Taliban ramped up violence levels following the signing of the U.S.-Taliban agreement in Doha on 29 February; Taliban violence accelerated further following the beginning of intra-Afghan talks on 12 September. Taliban violence and battlespace expansion has increased at a much faster rate than the virtually imperceptible progress between the Taliban and the Afghan government in Doha.¹³ The Taliban’s used of violence appears to derive from the assumption that gains on the battleground will lead to greater leverage at the negotiating table.”¹⁴

The 10 October coordinated assault on Lashkar Gah, the capital of Helmand province, and the late October Taliban assaults on areas around Kandahar city may have been inflection points in the parties’ views of the utility of increased violence in obtaining political concessions. The Taliban’s assaults also led the displacement of tens of thousands of people, as the Afghan government sent additional troops to try and reverse the Taliban gains. Some U.S. civilian and military leaders stated that this marked a violation of the spirit and letter of the U.S.-Taliban deal.

According to press reports, secret codicils to the publicly available Doha agreement committed the Taliban to refrain from attacking certain Afghan cities. However, as those secret codicils have never been published it is not possible to state with certainty what they contain or whether they contain any commitment on reduction of violence. While the Taliban’s nationwide campaign of violence throughout the spring, summer and autumn months clearly emphasized that any pledge to reduce violence was long violated, the attack in Lashkar Gah, the capital of Helmand – and a “full-fledged assault” on a city – marks a further, if not flagrant, potential violation.¹⁵

13. George, Susannah, and Aziz Tassal. “As Afghanistan Struggles to Start Peace Talks, Violence Fills the Void.” Washington Post, 10 August 2020, www.washingtonpost.com/world/asia_pacific/spike-in-violence-fills-void-in-afghanistan-during-peace-talks-delay/2020/08/09/97a251fc-d3fd-11ea-826b-cc394d824e35_story.html. Accessed 14 October 2020.

14. Author unknown. “Facing Negotiations, Taliban Almost Took Key Afghan City.” RFE/RL, 14 September 2020, gandhara.rferl.org/a/facing-negotiations-taliban-almost-took-key-afghan-city/30837987.html. Accessed 12 October 2020.

15. Constable, Pamela, and Sharif Hassan. “Taliban Offensive in Helmand Threatens U.S., Afghan Peace Efforts.” Washington Post, 14 October 2020, www.washingtonpost.com/world/africa/taliban-helmand-peace-talks-afghan/2020/10/14/64347d34-0dca-11eb-b404-8d1e675ec701_story.html. Accessed 25 October 2020.

Upon retreating late on 12 October, Taliban claimed that their offensive had been in response to the “call of locals”, with operations aiming to recapture areas taken from them by Afghan forces a few months earlier.¹⁶ Both USFOR-A spokesman Colonel Sonny Leggett and Resolute Support (RS) Commander General Scott Miller assured continued U.S. and RS support for Afghan National Defense and Security Forces (ANDSF) in the face of Taliban hostilities and criticized the Taliban for undermining the Afghan peace talks. On its part, the Taliban, in a statement on 18 October, accused the U.S. military of “direct and clear” violations of the Doha agreement, with little reference to their own ten-day assault in Helmand, which displaced more than 5000 families.¹⁷ In response to this, U.S. Special Representative for Afghan Reconciliation Zalmay Khalilzad, in a series of tweets on 19 October, responded to the Taliban’s accusations, by tweeting, “unfounded charges of violations and inflammatory rhetoric do not advance peace. Instead, we should pursue strict adherence to all articles of the U.S.-Taliban agreement and [the] U.S.-Afghanistan Joint Declaration and not neglect the commitment to gradually reduce violence.”¹⁸ (Note: Khalilzad has yet to produce an documentary evidence that the Taliban have agreed in writing to any reduction in violence. End note)

The increase in violence could suggest an emboldened Taliban that believes it has tacit (despite Khalilzad’s tweets) U.S. acceptance of their use of violence and has seen the current stalemate in Doha as a permissive moment to both “reclaim” areas they have lost and signal strength to a number of different audiences, including the U.S., the Afghan population, the Afghan government and regional actors. Iran, which in recent weeks has mounted a diplomatic offensive against the U.S.-imposed Doha process, may also be a target for the Taliban.

Apart from the possibility that the Taliban may have mounted recent offensives to send a message to the U.S., it might also be argued that the opportunity structures shaped by the long pre-negotiation phase following the U.S.-Taliban Doha agreement advantaged and emboldened Taliban. This traces back to the inbuilt structural advantage in insurgency warfare for insurgents and the opposite – a marked disadvantage – for the militarily superior state. Battlespace success criteria for Taliban – as for any insurgency – revolves around promoting disorder through terror in order to foment discontent with the government. More specifically, fomenting discontent with the government’s inability to maintain security and thus questioning its legitimacy. This was seen following the recent attack on Kabul University where many Afghan political actors used their voices to criticize the Afghan government for not preventing the attack, rather than criticizing those who were actually guilty of the killings.

Promoting disorder and insecurity is much easier to accomplish, let alone much less costly, than the maintenance of order and security, which is the success criteria for a government and the means by which governments sustain legitimacy. This disparity in cost and effort – the ease of promoting disorder and the difficulty in maintaining order – significantly advantages Taliban, allowing them to accept a protracted war - particularly when, as does the Taliban in Pakistan, the insurgency enjoys a protected safe haven where it can train, arm and finance its attacks. One of the ways this asymmetry was evident in the pre-negotiation lead-up from the signing of the U.S.-Doha agreement on 29

16. Mujahid, Z. (2020) 12 October. Available at https://twitter.com/Zabehulah_M33/status/1315660093053169664 (accessed: 13 October 2020)

17. Mujahid, Z. (2020) 18 October. Available at https://twitter.com/Zabehulah_M33/status/1317778162890276865

18. Khalilzad, Z. (2020) 19 October. Available at <https://twitter.com/US4AfghanPeace/status/1317951141645307905>

February was in the starkly different expectations from the Taliban and the Afghan Government. At no point was the Taliban obliged to prove anything and or held accountable for its actions. The U.S.-Taliban agreement contained no concrete commitments for action by the Taliban, only promises. This allowed the Taliban to remain vague on key points, including the nature of the Islamic governance system they might envisage in Afghanistan and whether this would reverse rights developments for women, Shi'a, ethnic minorities and others of the past two decades.¹⁹ In contrast, the onus to actually produce a discernible effect was on the Afghan government. Put differently, the Afghan government was judged solely on what it actually did, i.e. release prisoners, not its promises. The advantage has also been evident in that the Taliban has been free to wait and choose its preferred hour for peace, with the Trump administration's fear of the electoral costs of a continuation of the war providing a facilitative external condition for the Taliban.

Conditions following the Doha Agreement have apparently favored Taliban, and according to multiple sources close to either side, members of the movement repeatedly express that they have "won the war". This combined with the fact of an Afghan government devoid of leverage saw Taliban assume a maximalist bargaining position, seeking to extract as many concessions as possible. This now stands to change, potentially, on a global scale with the election of a new U.S. President whose Afghan policy is yet to be clarified and with the emergence of Iran as a critic of the Doha agreement.

Additionally, with the attack on Lashkar Gah perhaps violating the Doha Agreement, resulting U.S.-Taliban tensions may have led to a statement from U.S. Special Representative Zalmay Khalilzad on 15 October 2020 that he, along with RS Commander General Scott Miller, had agreed with Taliban to "re-set actions by strictly adhering to implementation of all elements of the U.S.-Taliban Agreement and all commitments made."²⁰ Statements from Khalilzad on 24 October further reinforced an impression of a harsher tone vis-à-vis Taliban, with Khalilzad tweeting "Civilians are victims of car bombs, IEDs, and targeted killings perpetrated by the Taliban."²¹ However, the statements by Khalilzad have yet to be followed by any discernable decrease in Taliban violence.

At this point, a month and a half into intra-Afghan peace talks, the question remains unanswered whether the Taliban are prepared to work toward an agreement that integrates them into a political power-sharing structure, or if they continue to seek complete political power over all of Afghanistan. The erratic actions of U.S. President Trump, particularly as he continues to contest his election loss in the U.S. is exacerbating fears that a significant reduction of American and NATO troops in Afghanistan would give Taliban a free hand to escalate violence further and to attempt to make real their "military takeover" threat,²² forcefully wresting political control from the government.

As a result of these recent actions and as the world awaits a set of new U.S. policies both domestic and foreign, many in Afghanistan see a residual U.S. and RS presence as a fundamental precondition for a peaceful transition into a post-settlement phase.

19. Shah, Kriti M. "The Taliban's Political Strategy." ORF, 19 September 2020, www.orfonline.org/expert-speak/taliban-political-strategy/. Accessed 12 October 2020.

20. Khalilzad, Z. (2020) 15 October. Available at <https://twitter.com/US4AfghanPeace/status/1316730865217671168> (accessed: 16 October 2020)

21. Khalilzad, Z. (2020) 24 October. Available at <https://twitter.com/US4AfghanPeace/status/1320094795822436354> (accessed: 25 October 2020)

22. Author unknown. "Taliban plan 'military takeover' as Plan B." Salam Watandar, 28 September. <https://swn.af/english/Article.aspx?a=57413>. Accessed: 25 October 2020

3. Recommendations

For U.S. and international interlocutors

Flexibility as criterion of good faith. The two parties should be encouraged to find themselves at ease with second-best and third-best options. For either side to reiterate and insist that all their demands are first-order demands will stall the process. Interlocutors should thus seek to frame flexibility as a criterion of good faith. While underlying concerns should be taken seriously and addressed, willingness to compromise should also be rewarded. Some of this will come down to conduct – i.e. negotiators refraining from wholesale invalidation or aggressive refusal – but much of it requires a shift in frame of mind.

Structuring choice architecture to favor mid-positions. As the brief has sought to demonstrate, there are viable mid-positions that combines first-order preferences from both sides, namely a continuance of the post-Bonn system of democratic government that would see social and economic gains preserved, but with terminology changes, perhaps in the constitution, that refine the definition of the Islamic nature of the Afghan state and allow for the Taliban, after accepting the legal-technical and administrative structures of the existing state to transition into a political party, making a bid for political power. But, on the part of Taliban, this will require a departure from the intransigence which the group has shown thus far. Given the success of its use of violence in getting the U.S. to acquiesce and concede to the Taliban in the February agreement, it is uncertain if the Taliban is prepared to make these concessions. Additionally, as long as the U.S. continues to make concessions to the Taliban and refuses to hold the Taliban to account for violating whatever provisions may be in the secret codicils to the Doha agreement, the U.S. role will be minimal or perhaps even counterproductive. Whether the U.S. has a limit beyond which the Taliban can push it is an unanswered question thus far, and may be a question that will not be answerable until a new U.S. administration takes power and decides on its Afghan policy.

Streamlining signaling. U.S. signaling has been marked by ambiguities and contradictions, with suggestions of civil-military tensions. Take the recent instance of both USFOR-A Spokesman Colonel Sonny Leggett and Resolute Support (RS) Commander General Scott Miller harshly criticizing Taliban for undermining the Afghan peace talks and assuring of U.S. and RS continued support for the ANDSF in the face of Taliban hostilities only days before more conciliatory statements towards the Taliban from Khalilzad. U.S. public statements in the lead-up to the Doha deal in February and following have arguably advantaged Taliban and placed the Afghan government into a position from which it wins U.S. favor only by acquiescing to U.S demands for concessions to the Taliban. For any process to evoke a thin thread holding together one side's bad faith whims while the U.S. repeatedly acquiesces and concedes, with no ceasefire in sight, will decrease U.S. legitimacy in the eyes of the Afghan people.

The importance of time. It is important that both negotiating teams have enough time to develop mutual accord on which to base a political roadmap. There has to be space in negotiations for indirection. Amid the goal-oriented directedness of the process - to reach a settlement and ceasefire - time must be carved out for the two sides to imaginatively experience the worldview of their opponent.

For the negotiating teams of the Afghan Republic and the Taliban

Clarifying first-order preferences and concerns. Another key argument the policy brief advocates is that each negotiating team in Doha should seek to identify its own complex of first-order, second-order and third-order preferences and concerns. The balancing of ideal preferences against worst-scenario costs could lead to greater flexibility in the key positions of either side; carving out scope for contest and conflict but minimizing at the same time the risk of a breakdown in talks. Such readiness to forfeit second-order preferences in return for agreement on first-order ones can help ensure a productive, structured path forward despite continued disagreements on less important issues.

Openness to extra-textual and unwritten institutions and norms. As each negotiating team pursues a set of predefined objectives, it is also useful for the two sides to remain open to potential extra-textual and unwritten political institutions, arrangements and norms in Afghan society that might have remained uncaptured by positive law thus far. The peace talks are not just an opportunity to end a four-decade-long war by resolving long-fought contentions; the occasion is also a malleable moment in the nation's history.