

**Brief on Taliban's Transition to Governance: Implications of Sanction Regimes and Challenges to Recognition**

## **Introduction:**

Following the takeover of Kabul, the transition to governance for the Taliban will be mired in complexities; legal, political and social. This document frames the international and regional challenges for the Taliban in sustaining their role at the head of the government, including challenges to recognition, and the implications of sanctions and restrictions imposed by the United Nations, its member-states, and other key international organizations. Major concerns raised and highlighted in the various UN resolutions leading up to the takeover of Taliban include the use of Afghan soil by terrorist organizations, human rights violations and a looming economic and food crisis. Additionally, the international community has expressed concerns over poppy cultivation in the country which may become a major issue in the future.

## **UN Sanctions on Taliban:**

- Unlike other militant groups such as Tehrik-e-Taliban Pakistan (TTP) and Al-Qaida, the Taliban is not specifically listed on any UN sanctions list.<sup>1</sup>
- However, the Taliban remains sanctioned, by virtue of UNSC Resolution 1267<sup>2</sup>, which froze the Taliban's funds and other financial resources in 1999. To this day, the UNSC has not modified or nullified the language of the resolution, and so it remains in force and legally binding.
- The UNSC subsequently adopted Resolution 1988<sup>3</sup>, on 17 June 2011, which split the existing Al-Qaida and Taliban sanctions regime pursuant to UNSCR 1267 (1999) into two. This, thereby, created a new sanctions regime. The sanctions regime is directed solely against designated members of the Taliban and on 'individuals, groups, undertakings and entities' that participate, finance, support, or associate themselves with any acts and activities of the Taliban. The aim of the split was to encourage and incentivize the Taliban to behave in accordance with the Afghan Peace process. UNSCR 1988 imposes restrictions on supplying arms and related material, restrictions on providing services related to military activities, restrictions on providing assets to designated persons or entities, restrictions on dealing with the assets of designation persons or entities, as well as travel bans on designated persons.
- UNSC in 2015 further adopted Resolution 2255, which included provisions to freeze assets, ban travel, and prevent supply or transfer of arms to Taliban. These measures were taken as 'a comprehensive approach to fully disrupt the activities of the Taliban' and recognized the important role that this sanctions regime can play in this regard.

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<sup>1</sup> United Nations Security Council, *United Nations Security Council Consolidated List*, (United Nations, 2021), <https://scsanctions.un.org/owp72en-all.html#alqaedaent>.

<sup>2</sup> United Nations Security Council, *Resolution 1267 (1999)*, (United Nations, 1999), [https://www.undocs.org/S/RES/1267\(1999\)](https://www.undocs.org/S/RES/1267(1999)).

<sup>3</sup> United Nations Security Council, *Resolution 1988 (2011)*, (United Nations, 2011), [https://www.undocs.org/S/RES/1988\(2011\)](https://www.undocs.org/S/RES/1988(2011)).

**Taliban leaders on the UN Sanction list:**

<i>Key Taliban Leaders</i>		
Haibatullah Akhunzada	Leader	Not listed
Mullah Baradur	Vice Emir	Sanctioned
Sirajuddin Haqqani	First Deputy	Not listed
Mullah Mohammad Yaqub Omari	Leader of the Taliban Military Commission/son of Mullah Omar	Not listed
Mohammad Hassan Akhund	Member Leadership Council	Sanctioned
Mawlawi Mohammadullah Mati	Member Leadership Council	Sanctioned
Haji Mawlawi Ubaydullah Akhunzada	Member Judicial Council	Not Listed
Abdul Rahman Agha	Member Judicial Council	Sanctioned
Sher Mohammad Abbas Stanekzai Padshah Khan	Member Political Commission	Sanctioned
Zia ur Rahman Madani	Member Political Commission	Sanctioned
Mawlawi Matiullah Mati	Member Intelligence Commission	Not Listed
Mullah Gul Agha Ishakzai	Member Finance Commission	Sanctioned

## Implications of the UN Sanctions:

- It is not entirely unreasonable to suggest that the UNSC may revise its sanctions regime. The UNSC has already shown certain flexibility during the peace process. For example, on 23 June 2021, the UNSC extended its exemption to the travel ban for 90 days (running from 24 June 2021 to 22 September 2021) for 11 members of the Taliban<sup>4</sup> so that they could travel to meetings in support of peace and reconciliation.<sup>5</sup>
- It is likely the UNSC would use the threat of sanctions and the possibility of their removal or modification to influence the Taliban. Sanction relief would only be provided on the condition that the Taliban comprehensively address concerns of humanitarian rights and freedoms.
- Moving forward, the UNSC could warn certain leaders of the Taliban's government, like Hibatullah Akhundzada, of addition into to the sanctions list if they do not govern Afghanistan in accordance with key principles of humanitarian concern. Similarly, UNSC could also dangle the possibility of delisting certain key members in exchange for good behavior.
- However, ending or modifying the UN sanctions regime is a tall order and requires complete UNSC unanimity. The current group comprising the UNSC this September include the P-5 (i.e. the US, the UK, Russia, China, and France) as well as Estonia, India, Ireland, Kenya, Mexico, Niger, Norway, Saint Vincent and the Grenadines, Tunisia, and Vietnam. Ireland will be chairing this September.
- In the Doha Agreement,<sup>6</sup> it was already agreed that the US will start diplomatic engagement with other members of the UNSC to remove members of the Taliban from the sanctions list. However, both the Taliban and the US consider this agreement to have been breached by the other. It remains unknown then whether certain points of the Doha agreement will be revived.

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<sup>4</sup> These include Abdul Ghani Baradar Abdul Ahmad Turk (TAi.024), Sher Mohammad Abbas Stanekzai Padshah Khan (TAi.067), Zia-Ur-Rahman Madani (TAi.102), Abdul Salam Hanafi Ali Mardan Qul (TAi.027), Shahabuddin Delawar (TAi.113), Abdul Latif Mansur (TAi.007), Amir Khan Motaqi (TAi.026), Abdul-Haq Wassiq (TAi.082), Khairullah Khairkhwah (TAi.093), Nurullah Nuri (TAi.089), Fazl Mohammad Mazloom (TAi.023), Abdul Kabir Mohammad Jan (TAi.003), Din Mohammad Hanif (TAi.043) and Noor Mohammad Saqib (TAi.110).

<sup>5</sup> The postulate in the UNSCR reads; "*Underlines the importance of a comprehensive political process in Afghanistan to support peace and reconciliation among all Afghans, invites the Government of Afghanistan, in close coordination with the High Peace Council, to submit for the Committee's consideration the names of listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation, and requires such submissions to include, to the extent possible, the following information: (a) The passport number or travel document number of the listed individual; (b) The specific location or locations to which each listed individual is expected to travel and their anticipated transit points, if any; (c) The period of time, not to exceed nine months, during which listed individuals are expected to travel*"

<sup>6</sup> *Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America*, (US State Department, 2020),

<https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>.

- In the future, the negotiation between the US and Taliban might be cited by interested countries for the continued diplomatic relationship with the Taliban. Even with sanctions, the US negotiated with the Taliban regarding the future of Afghanistan. Therefore, an argument could be made that the US itself has rendered the effect of UNSC Resolution 1988 somewhat diluted. Other countries, such as China and Russia might use this as a precedent to recognize the Taliban in the future. Furthermore, if US and its allies insist on imposing more sanctions on the Taliban, Russia and China may block such moves.
- The UN acknowledges that sanctions can only work when all countries respect these sanctions. It has been speculated that countries like China and Russia have maintained a covert relationship with North Korea, despite the sanctions. Therefore, as the Taliban have come to power, even though they are not officially on the UN sanctions list, they might enjoy, covert trade relationships involving transfers of technology, with some countries.
- It is also important to note the UN sanctions allow humanitarian assistance including medical and food provisions to be flown into affected areas. Most recently, the UN has flown medical aid into Mazar-e-Sharif and has pointed out that a further \$200 million are required for food provisions, to ensure food security for the most vulnerable for the month of September. Furthermore, provision of resources for women and children is of utmost importance.

### **European Union Legislation Relevant to the Taliban:**

- After the issuance of UNSCR 1267, the Council of the European Union adopted the Council Common Position (1999/727/CFSP of 15 November 1999) to implement the provisions mandated by the UN.
- The Council of the European Union also adopted Decision 2011/486/CFSP which included provisions for the freezing of funds and economic resources, restrictions on the admission to the Union, prohibition on the direct and indirect supply, sale or transfer, of weapons and military equipment to the Taliban, and prohibition on assistance and services to any individuals or entities listed on the UN Sanctions List.
- However, the EU is concerned that bulk of Afghan refugees may move towards Europe if the situation in Afghanistan deteriorates. This is why a number of European Foreign Ministers are visiting Pakistan to convince the latter to accept the bulk of refugees, which the EU would be ready to offer financial assistance for. This is a trap which Pakistan and other Afghan neighbors should avoid.

### **Asset Freezing of the Taliban by the IMF and World Bank:**

- The US froze Afghan central bank reserves held in US institutions on August 15. The bank has about 9.5 billion USD in reserves, from which 7 billion USD is held in U.S. institutions.

The World Bank has halted funding to Afghanistan and the International Monetary Fund blocked Afghanistan's access to \$460 million.

- The appointment of Mohammad Idris as the Central Bank Governor has not helped matters as his credentials are unknown and Taliban has done little to quell international financial concerns.
- Iran has resumed fuel trade with Afghanistan, which will antagonize the international community; both because of Iran's own status in the International Financial Network and the resumption of economic activity with Afghanistan without international/regional consensus.
- Under sanctions and without international aid, the Taliban might be able to sustain their operations via the drug/opium trade or the selling of American military gear but the Afghan populace will lose out on basic necessities of life, most notably food provisions.<sup>7</sup>
- However, two factors favor the Taliban despite international restrictions. The first is that the Taliban control border points which would be a big source of revenue for the country and can cater to basic needs including salaries of government officials. Secondly, compared to the previous government, a Taliban led dispensation would be less corrupt, enabling it to see to the affairs of the state even if revenues are less.
- Zamir Kabulov, Russia's presidential envoy for Afghanistan, has called for the international community to support Afghanistan's recovery under the Taliban's leadership, and subsequently unfreeze the Afghan government's reserves. Otherwise, the international community will risk a spike in illegal narcotics and arms traffic.

### **Implications of FATF for the Taliban regime:**

- The FATF has already included the UN Analytical Support and Sanctions Monitoring Team pursuant to resolutions relating to Taliban and Al-Qaida as observers to their organization.
- Similarly, the FATF published a report in 2014 on "Financial Flows Linked to the Production and Trafficking of Afghan Opiates" and linked the Taliban leadership with opiate trafficking in Afghanistan.<sup>8</sup>
- Therefore, there is a case that the FATF may want to impose economic sanctions on the Taliban under the guise of terror financing and drug trade.

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<sup>7</sup> News Desk, "Afghan central bank board member asks Biden, IMF to release funds," *Al Jazeera*, September 1, 2021, <https://www.aljazeera.com/news/2021/9/1/biden-imf-should-release-funds-afghan-central-bank-board-member>.

<sup>8</sup> FATF Report, *Financial flows linked to the production and trafficking of Afghan opiates*, (Financial Action Task Force, 2014), <https://www.fatf-gafi.org/publications/methodsandtrends/documents/financial-flows-afghan-opiates.html>.

## **Views of International Human Rights Regime on Taliban:**

- Amnesty International, Humans Rights Watch, Mnemonic and Access Now note the gradually improved human rights conditions in Afghanistan in the preceding 20 years owing to increased transparency in reporting human rights abuses because of social media platforms.
- Acknowledging the “United Nations Guiding Principles on Business and Human Rights”, the aforementioned organizations have called on social media platforms to reserve data which highlights human rights abuses.
- In a letter signed by these four organizations, international civil society groups have been asked to pressure social media companies to allow access to any and all deleted data from Afghanistan that can prove helpful in identifying violations of human rights.
- However, the US’s and EU’s economic and political relationship with Islamic Emirates including the UAE do present a counter argument in itself.

## **Taliban’s Quest for Recognition:**

- As the Taliban seek international legitimacy, questions are being raised on how the Taliban will gain recognition. Recognizing governments is a prerogative of the state. It does not need the approval of any international organization or entity. Therefore, the Taliban can be recognized as a government by other countries.
- In terms of recognizing the Taliban government, the only legal ramification for countries recognizing it is the notion that if the Taliban do commit violations of international law or human rights, then the recognizing countries will be indirectly supporting these actions.
- In March 2020, the UNSC, as per resolution 2513<sup>9</sup>, declared it does not recognize the Islamic Emirate of Afghanistan (the Taliban) and ‘do not support the restoration of the Islamic Emirate of Afghanistan.’<sup>10</sup>
- However, even with the sanctions of UNSC Resolution 1988, the US negotiated with the Taliban regarding the future of Afghanistan.
- The Atlantic Council is of the view that the UN sanctions should be used as a leverage to bring the Taliban to respect human rights in Afghanistan. Various experts from the organization think that the current Taliban regime fears international sanctions and would not want to be impacted by them. Analysts from the Council also think that Russia and China can use this opportunity to embarrass the US by recognizing the Taliban.<sup>11</sup>

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<sup>9</sup> United Nations Security Council, *Resolution 2513 (2020)*, (United Nations, 2020), [https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2513\(2020\)&Language=E&DeviceType=Desktop](https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2513(2020)&Language=E&DeviceType=Desktop).

<sup>10</sup> United Nations Security Council, *Resolution 2513 (2020)*, (United Nations, 2020), <http://unscr.com/en/resolutions/doc/2513>.

<sup>11</sup> Brian O’Toole, "They aren’t listed, but make no mistake: The UN has sanctions on the Taliban," *Atlantic Council*, August 23, 2021.

- The role of the embassies that were currently functioning under the previous democratic government will be considered void in the country that they are operating in if the host country recognizes the Taliban government. Other than that, the status quo prevails regarding the embassies.

### **Issue of Representation of Afghanistan in the UN:**

- The question still arises whether the Taliban can represent Afghanistan in the UN. As recognition remains within the purview of individual states, the UN does not hold any authority in recognizing either a new state or a new government of an existing state. However, a precedent in the past has existed in which the credentials of a member state's representatives was challenged and this could pose a threat to the Taliban's political legitimacy as well.<sup>12</sup>
- Technically, the Ashraf Ghani government still occupies Afghanistan's seat at the UN, OIC and other multilateral organizations.
- This would be as if members of the UNGA object to the Taliban representing Afghanistan in the UN. This occurred before, in the case of South Africa (1974) for example, where credentials were objected on the grounds they were appointed by a 'racist regime which could not purport to represent the people of South Africa.'
- However, by virtue of rule XXIX of the GA Rules of Procedures, all representatives of countries are allowed to participate provisionally. The UN Legal counsel issued a legal opinion in 1970 stating that the rejection of the GA credentials of a country's representatives could not result in the exclusion of the member-state entirely, and it was put to a vote in the GA in the case, after which South Africa was excluded from GA meetings until the end of apartheid.
- This case-study would become relevant for the Taliban's path to political legitimacy, if an inclusive government is not formed and member-states wish to find a way to prevent a Taliban-led government from representing Afghanistan as the true and legitimate government in the General Assembly.

### **Issue of Recognition of Emirate of Afghanistan**

- Currently, there are three Emirates in the world, Kuwait, Qatar and the UAE. All of these countries are officially recognized by the UN and enjoy a healthy and productive relationship with almost all of the international organizations.
- Along with this, these Emirates are also recognized by almost all of the international states as well.

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<sup>12</sup> Larry D. Johnson, "Expert Backgrounder: How Can The Taliban Be Prevented From Representing Afghanistan In The United Nations?," *Just Security*, August 18, 2021, <https://www.justsecurity.org/77806/expert-backgrounder-how-can-the-taliban-be-prevented-from-representing-afghanistan-in-the-united-nations/>.



- Considering this, there is a possibility that if there is an Islamic Emirate established in Afghanistan it might get recognition from the UN and other member states. However, this is based on multiple other factors as well.
- The ability of the new Afghan Emirate to establish itself as a guarantor of the basic human rights and norms of the Western world, is one of the key factors.
- As the US and its Western partners have clout in international organizations, they will use it to leverage the Taliban to form the new government along their principles, i.e. democratic and adhering to Western values.
- The major issue which may come in the way of a Taliban led government would be human and woman's rights. How the Taliban behave in the future would determine the stance of the US and EU on the subject of recognition. However, there is a possibility of the immediate neighbors of Afghanistan recognizing the Taliban government including China and Russia. This may be a precursor to the evolution of the regional approach whereby Afghanistan may become the main reason for such an approach. However, a lot of firework is to be expected if immediate neighbors of Afghanistan recognize the Taliban regime.

**ANNEX A: RESOLUTIONS RELEVANT TO THE TALIBAN**

<i>Date</i>	<i>Adopted by</i>	<i>Resolution</i>	<i>Measure</i>
2020	UNSC	2557	All states to continue to freeze assets, ban travel and prevent supply of arms for the Taliban
2019	UNSC	2501	All states to continue to freeze assets, ban travel and prevent supply of arms for the Taliban
2015	UNSC	2255	Decision taken to freeze assets, ban travel and prevent supply or transfer of arms for the Taliban and individuals associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan
2012	UNSC	2080	Decision to freeze assets, ban travel and prevent supply or transfer of arms for the Taliban and individuals associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan
2011	Council of the European Union	Decision 2011/486/CFSP	The European Community to freeze funds, impose restrictions on the admission to the Union, prohibition on the direct and indirect supply of weapons and military equipment, prohibition on the provision of services to individuals and entities listed by Sanctions List
2011	UNSC	1988	Decision to split the Al-Qaida and Taliban sanctions regime.
2009	UNSC	1904	All States shall impose asset freeze, travel ban and arms embargoes on Al-Qaida and the Taliban and on individuals
2004	UNSC	1526	Freeze assets and economic resources but reference is made to properties, to concrete resources rather than banks.
2001	UNSC	1373	Call on states to prohibit and refrain from financing of those involved in terrorist acts as well as rendering them any political support.
2001	UNSC	1368	Condemnation of attacks on September 11, 2001 and calls on states to unite in bringing justice to perpetrators, sponsors of terrorist acts including those who harbor such actors
2000	UNSC	1333	A ban on Taliban and Ariana Afghan Airlines offices abroad (representation ban), and financial sanctions aimed at Osama bin Laden and the al-Qaida network.
1999	Council of the European Union	Council Common Position (1999/727/CFSP)	Adopted provisions of UNSCR 1267
1999	UNSC	1267	Taliban close all terrorist training camps on the territory under its control. As the Taliban did not comply, an aviation ban and financial sanctions were imposed against the Taliban.

# Prospects of Conflict Resolution in the midst of Ceasefire Violations on the Line of Control

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## Overview

India and Pakistan's recent re-commitment to ceasefire along the Line of Control (LoC) is a timely and positive development. However, it is still yet to be seen whether a ceasefire understanding can provide the conducive environment that is needed to attempt conflict resolution between India and Pakistan. This policy brief assesses that in the absence of properly established legal and treaty mechanisms to manage the LoC, there is risk of ceasefire being violated once again. Therefore, ceasefire agreement should be formalized in order to institutionalize the capacity of the ceasefire and minimize the ad-hoc nature of the current arrangements. As such, Pakistan and India will be taking steps towards managing and preventing their conflicts, if not altogether resolving them.

## Introduction

On 22 February 2021, with the hopes of ushering 'mutually beneficial and sustainable peace', the Director Generals of Military Operations of India and Pakistan, reaffirmed their commitment to the 2003 ceasefire agreement. Their joint statement called for 'strict observance of all agreements, understandings and cease firing along the LoC and all other sectors.'<sup>1</sup> This is a timely reaffirmation, as the pace of firing and shelling across the LoC was picking up again, with nearly 3,000 ceasefire violations (CFVs) reported in 2020.<sup>2</sup> Left unaddressed, CFVs have the potential of triggering and escalating crises, with grave implications for peace and security.

The ceasefire agreement itself is not a formal document. It is a verbal agreement that transpired as result of a ceasefire offer made by Prime Minister of Pakistan in 2003. It was acknowledged and reciprocated, in practice, by India. Pakistan's unilateral ceasefire declaration is considered to have ended a stalemate between the two countries in the aftermath of an attack on the Indian parliament because of which India deployed its troops towards the border, alleging the attack involved non-state actors from Pakistan. The verbal agreement eventually made way for the scheduled SAARC Summit in Islamabad with Vajpayee's participation.<sup>3</sup>

Ceasefire, however, predates 2003. The 1948 and 1965 India-Pakistan wars that were centered on Kashmir both ended in a ceasefire through active UNSC intercession.<sup>4</sup> Both countries agreed to a ceasefire line under the 1948 UNCIP Resolution<sup>5</sup> and in terms of formal agreements which govern the LoC, the 1949 Karachi Agreement is the most relevant. It was further decided after the resolution of the Security Council on Sept 20, 1965 was passed, that if firing took

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<sup>1</sup> Inter Services Public Relations Pakistan, *The Director Generals of Military Operations of India and Pakistan held discussions over the established mechanism of hotline contact*, (Rawalpindi: Inter Services Public Relations Pakistan, 2021), <https://ispr.gov.pk/press-release-detail.php?id=6068>.

<sup>2</sup> Ministry of Foreign Affairs, *Transcript of the Press Briefing by Spokesperson on Friday, 18 December, 2020*, (Islamabad: Government of Pakistan, 2020), <http://mofa.gov.pk/transcript-of-the-press-briefing-by-spokesperson-on-friday-18-december-2020/>.

<sup>3</sup> Ambassador (R) Riaz M. Khan, Email interview, July 3, 2021.

<sup>4</sup> Riaz M. Khan, *Conflict Resolution and Crisis Management: Challenges in Pakistan-India Relations*, (Washington DC: The Stimson Center, 2017)

<sup>5</sup> United Nations Security Council, *Agreement between Military Representatives of India and Pakistan Regarding the Establishment of a Ceasefire Line in the State of Jammu and Kashmir (Karachi Agreement)*, (United Nations, 1949).

place on the border, it would be investigated by a joint team within 24 hours of occurrence.<sup>6</sup> A similar provision is also included in the 1960 Ground Rules between India and Pakistan, which is still pending for final ratification, and so has no legal basis. Despite the lack of ratification, both India and Pakistan tend to abide by the 1960 Ground Rules in certain areas, but only as an ad-hoc arrangement.<sup>7</sup> Under UNSC Resolution 307, ceasefire was formalized once more in 1971 and although the episode was unrelated to Kashmir, the cessation of hostilities on the western front established the LoC in Kashmir. The Simla Agreement makes reference of respecting the line of control that resulted from the ceasefire of 1971, dictating both sides refrain from the threat or the use of force in violation of the Line. As a complement to the suspension of hostilities in Jammu and Kashmir, India argues that the 1972 Simla Agreement has rendered the Karachi Agreement irrelevant, something that Pakistan disagrees with.<sup>8</sup>

## Analysis

After India and Pakistan reached a ceasefire understanding in 2003, the period that followed was one of relative peace and sustained negotiations. It was also the time period in which substantive bilateral efforts were taken to address the Kashmir dispute.<sup>9</sup> This signifies that ceasefire holds during a result-oriented bilateral dialogue process. However, soon thereafter, the ceasefire understanding fell prey to political factors and changes in domestic politics.



[Figure 1]: Indian Ceasefire Violations along the LOC; [Data Source]: Reports and accounts that quote aggregate numbers of CFVs taken from daily newspapers, statements of ISPR and statements of MOFA.

As can be seen in Figure 1, there have been repeated violations across the LoC despite the agreement, and the number of violations skyrocketed in recent years, especially 2017 onwards. For a closer look, the CFVs along the LoC have been demonstrated in Figure 1A, Figure 1B and Figure 1C. The number of CFVs remained mild in the years leading up to 2008 (*Figure*

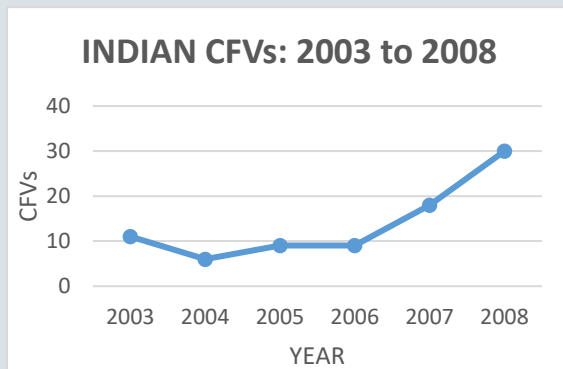
<sup>6</sup> A.G. Noorani, "Ceasefire Pact," DAWN.COM, last modified November 12, 2016, <https://www.dawn.com/news/1295766>.

<sup>7</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

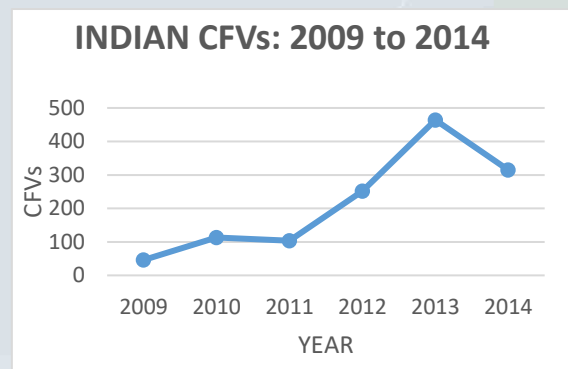
<sup>8</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

<sup>9</sup> Riaz M. Khan, *Conflict Resolution and Crisis Management: Challenges in Pakistan-India Relations*, (Washington DC: The Stimson Center, 2017)

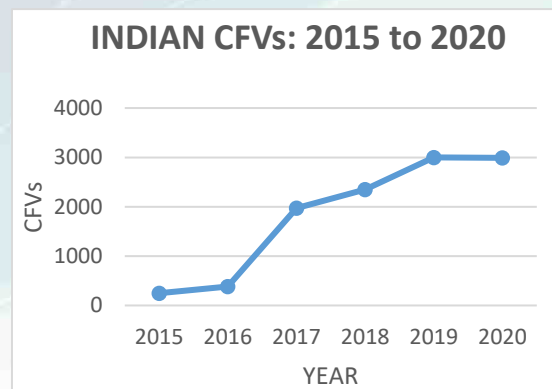
1A) but they peaked in 2008. This suggests that the ceasefire agreement held during Manmohan Singh government although it came under stress when Mumbai attacks took place. Soon thereafter, it can be seen that the number of incidents began increasing and really hit a high in 2013. However, 2013 onwards, tensions along the LoC began deescalating, as witnessed with a slow-down in LoC violations. Under Modi, initially the understanding held tenuously when India accused Pakistani elements for Uri and Pathan Kot incidents.<sup>10</sup> It was not until 2017 that the CFVs dramatically began escalating once more (Figure 1C). Following Pulwama and then Indian moves to absorb IOK as Union territory, the ceasefire violations intensified.



[Figure 1A]: Indian CFVs from 2003-8



[Figure 1B]: Indian CFVs from 2009-14



[Figure 1C]: Indian CFVs from 2015-20

It is relevant to look into the factors that have contributed to steep escalation of CFVs before it was put on hold by the recommitment between the two DG MOs in 2021. Firstly, the sharpest escalation of ceasefire violations had coincided with Modi's time in office. This should come as little surprise, as the Bharatiya Janata Party (BJP) is notorious for its aggressive anti-Pakistan and anti-Muslim politics, where it criticizes any potential compromise with Pakistan. The BJP's second term in power was marked by many heavy-handed actions on Kashmir. This testifies that political will and leadership has a material impact on the timing and intensity of CFVs. After all, the conditions and consequences of the 2003 agreement also speak of the

<sup>10</sup> Ambassador (R) Riaz M. Khan, Email interview, July 3, 2021.

importance of political factors, as ceasefire was withheld up to a point, but eventually fell victim to changes in both parties' domestic politics.

Secondly, experts point to absence of any monitoring mechanism as to who initiates fire first. UNMOGIP can be such neutral entity, who under its mandate, are supposed to investigate and complaints of CFVs and report them to the UN Headquarters.<sup>11</sup> However, India does not facilitate the work of UNMOGIP since India considers its mandate expired after the Simla Agreement, something Pakistan disagrees with. Consequently, the blame game goes on. The official stance of Pakistan is that it is due to India's unprovoked firing at civilian populations that the situation escalates. India offers a single explanation that the Pakistani military provides covering fire to terrorists that allegedly infiltrate the Indian occupied side of the region, however, such an explanation has been debunked by many experts because there does not appear to be a systematic correlation between fire and cross-border infiltration. State repression in IIOJK and local operational factors, such as unauthorized crossing of civilians from either side or rampant defense construction have been quoted too.<sup>12</sup>

YEARS	2017	2018	2019	2020
LOC CFVs	1,970	2,350	3,000	2,992

[Figure 2]: Number of CFVs in the years of 2017 – 2020.

As displayed in *Figure 2*, in the years running from 2017 to 2020, LOC violations were at their highest. Under this hostile environment, the 2021 reaffirmation of both nations to the ceasefire understanding was a welcome and positive development. The question is whether this can provide the conducive environment that is needed to attempt conflict resolution?

It would be premature to consider the ceasefire as reflective of a change of mindset in Modi government. It would also be naïve to think that the ceasefire itself would lead to serious engagement and rapprochement between the two nations. The reason it will not is because the BJP government has not fundamentally changed any bit of its overarching objectives of creating a Hindu Rashtra through a Hindutva driven philosophy. Further, it is continuing with its aggressive attempts to change demography in the occupied Kashmir. The Indian leadership has also not publicly made any statement regarding the peace process or rapprochement, indicating that it has not warmed up to the idea of sincere engagement with Pakistan as yet. Even if India was ready, Pakistan may still remain skeptical unless India reverses its actions of 5 August 2019, which were an assault on Kashmir identity.

The 2019 BJP manifesto<sup>13</sup> highlights 'zero tolerance approach to terrorism' as a fundamental part of its 'Nation first' policy. However, in sharp contrast to this stated policy, the BJP mantra during elections was heavily focused on 'teaching Pakistan a lesson'. The situation on ground is no different. India's defense budget has steadily increased over the past few years. These variables suggest that India might not be willing to compromise on its aggressive posture towards Pakistan. The recently agreed upon ceasefire along the LoC should not lull

<sup>11</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

<sup>12</sup> Happymon Jacob, *Ceasefire Violations in Jammu and Kashmir: A Line on Fire*, (United States Institute of Peace, 2017).

<sup>13</sup> Bhartiya Janta Party, *Sankalp Patra Lok Sabha 2019*, (Bhartiya Janta Party, 2019).

policymakers into thinking that there is going to be fundamental change in India's approach, nor would it be amenable to creating space for conflict resolution.

In fact, India is currently facing an economic crunch<sup>14</sup>, with sluggish growth, rising inflation, unemployment on the rise, and a ballooning fiscal deficit. Given these economic woes, it is plausible that Prime Minister Modi would be inclined to divert international attention and distract his domestic audience from India's economic troubles. India has, on several occasions, resorted to false-flag operations to deflect international attention and blame Pakistan for alleged infiltration and support to Kashmiri militants, thus justifying heightened fires by India across the LoC. Another tactic used by is engaging surgical strikes against Pakistan, such as the one carried out in February 2019 in Balakot area of Pakistan on the pretext that Pakistan was harboring anti India militants. Pakistan handled the crisis maturely by first knocking down Indian aircraft and then releasing the captured pilot. But it is intriguing to note that the Balakot operation coincided with India's general elections, and so it is not entirely unreasonable to suggest that there might have been a political strategy to achieve mileage from unilateral military action against Pakistan. This is a pattern that might be repeated by future Indian political/military leadership when it comes to deflecting international/domestic attention. Therefore, Pakistan should be wary.

There is also reason to believe that the ceasefire will again be violated. Many a time, ceasefire affirmations have been made and to some extent, formal talks have initiated. For example, in May 2018, following a number of CFVs, Pakistan and India agreed to fully implement the 2003 ceasefire understanding in letter and spirit, yet still verbal affirmations were not enough to stop CFVs from continuing.<sup>15</sup> Reconciliation efforts have continuously broken down, often following a terrorist incident within India. Even when Modi became the PM, there was a resumption of peace talks and Modi even paid a surprise visit to Pakistan. However, the tendency in India has been to use every terrorist attack to blame Pakistan and then heighten firing at the LoC. For instance, after the Uri incident of September 2016, we witnessed an exponential rise in LoC violations and even claims of a surgical strike. Be it the Mumbai attacks, Pathankot, or Uri, India has used terrorism as a pretense for escalating tensions at the LoC. Another repeat of this pattern is in the recent attack on an IAF base in Jammu.<sup>16</sup> The media and the LEAs were quick to blame LeT for the attack. In the coming weeks, there could be an expectation of increased escalation along the LoC.

## Conclusion and Recommendations

The ceasefire agreement, as a verbal agreement, is itself legally binding. It represents a promise between both countries, and under international law, a promise constitutes an unequivocal statement formulated (be in writing or orally) by one state to the other with the intention of making a legally binding commitment. As the promise was made by the Prime Minister of Pakistan and accepted by India's Foreign Ministry, it lends supports to the legal effect as these offices are generally believed under international law to have the capacity to bind their states.<sup>17</sup>

<sup>14</sup> Nikhil Inamdar and Aparna Alluri, "India economy: Seven years of Modi in seven charts," *BBC News*, June 22, 2021.

<sup>15</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

<sup>16</sup> News Desk, "Jammu attack: 'LeT hand likely, drones may have come from across border'," *Times of India*, June 29, 2021

<sup>17</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.



Failure to comply means the promise has been breached, resulting in state responsibility and invoking the doctrine of estoppel (in which Pakistan would have to prove that it had a legitimate expectation that India would adhere to the 2003 Ceasefire Agreement and that it was prejudiced as a result of its non-compliance with this representation). As a legally binding obligation, its violation would give rise to state responsibility, which as per the ILC Articles on State Responsibility, is engaged when there is wrongful conduct attributable to the State.

As a legally binding promise, both parties are bound to abide by it. They, however, do not. In the absence of properly established legal and treaty mechanisms to manage the LoC, there is increased likelihood that the agreement will be violated. This promise is often breached, because India and Pakistan do not fear legal implications of violating the LoC as neither of them have attempted to hold the other to account.<sup>18</sup> Steps taken to formalize the agreement, which commits both India and Pakistan to ceasefire through a comprehensive written document, may remedy that situation. Through formalization, a comprehensive and written document can be drafted that will institutionalize the ceasefire. A clear and detailed signed agreement is required that dictates rules, guidelines and principles to better manage the border, and define the eligibility of a violation. This binds both India and Pakistan to ceasefire and in legal experts' views, countries would definitely benefit from formalizing the 2003 ceasefire agreement as it reduces the ad hoc nature of the current arrangement.<sup>19</sup> Simultaneously, joint border SOPs can be drafted, intimating the return of inadvertent crossers, movements at night, and managing people living close to the LoC.<sup>20</sup> There are many institutional mechanisms already in place, and the vast number of security-related Confidence Building Measures that India and Pakistan have developed, like hotlines at military and diplomatic levels and commander-level flag staff meeting, have served as ready mechanisms in de-escalating tension.<sup>21</sup> This reemphasizes that the more formal the agreements, the more institutionalized the CBMs, and the more SOPs in place, the less likelihood of tension.

It can be rightly said that Ceasefire Agreement will likely remain subject to violation unless underlying problems between Pakistan and India are not addressed. Although resolving outstanding conflicts is the ideal way of preventing CFVs, until that happens, Pakistan would do well to consider reducing the ad-hoc nature of current arrangements which gives way to India in violating its obligations. Pakistan should also be wary that international law considers even minor skirmishes between armed forces (be they land, air, or naval forces), to spark international armed conflict and lead to the applicability of humanitarian law. Although experts have pointed out LoC violations cannot be amounted to an armed attack as a distinction needs to be established between international armed conflict and other forms of hostile actions based on the level of intensity, this is still a legal obligation that Pakistan must show responsibility towards, especially in the case it opts to hold India into account. For prospect of conflict resolution between India and Pakistan, diplomatic solutions will remain the preferable options. However, for Pakistan, this requires a serious attempt to resolve the Kashmir dispute. The

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<sup>18</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

<sup>19</sup> Jamal Aziz, Executive Director RSIL and Ayesha Malik, Research Fellow RSIL, Email interview, July 9, 2021.

<sup>20</sup> Happymon Jacob, *Ceasefire Violations in Jammu and Kashmir: A Line on Fire*, (United States Institute of Peace, 2017).

<sup>21</sup> Riaz M. Khan, *Conflict Resolution and Crisis Management: Challenges in Pakistan-India Relations*, (Washington DC: The Stimson Center, 2017)

larger question of Kashmir may not be resolved anytime soon, and so Pakistan and India may, at this point, like to focus on conflict management, not conflict resolution.