

treacherous weapons.”¹⁹ The treaty’s Secretariat Director Juan Carlos Ruan also responded to the new landmine policy by explaining that “[t]here is no such thing as responsible use of anti-personnel mines” because “any perceived or limited military utility of anti-personnel mines is grossly outweighed by the humanitarian consequences of their use.”²⁰ The European Union, comprised of member states who are all parties to the Ottawa Convention, released a statement similarly disapproving the United States’ new policy and describing the use of landmines “anywhere, anytime, and by any actor” as “completely unacceptable to the European Union.”²¹ Further, a collection of U.S. and international nongovernmental organizations signed a joint letter “strongly condemn[ing]” the policy and requesting that Congress “take immediate measures” to prevent any further military action in accordance with the policy.²² Presumably anticipating these responses to its policy change, the Department of Defense in its initial press release denied that the new policy would “exacerbate the problems associated with unexploded munitions” and stated that its policy authorizing the use of landmines does not lessen the U.S. commitment to “international humanitarian demining efforts.”²³

USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

United States Signs Agreement with the Taliban, but Prospects for Its Full Implementation Remain Uncertain

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On February 29, 2020, the United States signed an “Agreement for Bringing Peace to Afghanistan” with the Taliban. The agreement provides that the United States and its allies will withdraw all forces from Afghanistan in stages over a fourteen-month period and that the Taliban will not allow actors within its controlled territory to attack the United States and its allies. The agreement contains additional provisions with respect to prisoner exchanges, sanctions relief, and future negotiations regarding a permanent ceasefire and broader political settlement that the Taliban will pursue with the government of Afghanistan. On the same day, the United States and Afghanistan issued a Joint Declaration reflecting some, though not all, of the terms of the U.S. agreement with the Taliban. Over the three months following the

¹⁹ Anti-Personnel Mine Ban Convention Implementation Support Unit Press Release, *US Landmine Policy Change, a Dangerous Step Forward* (Feb. 3, 2020), available at https://www.apminebanconvention.org/fileadmin/APMBC/press-releases/2020-02-03-Mine_Ban_Convention_on_US_landmine_policy.pdf [hereinafter *Ottawa Convention Press Release*]. According to the Landmine Monitor Report, there are only eleven states, not including the United States, that have not committed to ceasing future production of landmines—China, Cuba, India, Iran, Myanmar, North Korea, Pakistan, Russia, Singapore, South Korea, and Vietnam. Landmine Monitor Report, *supra* note 18, at 5.

²⁰ Ottawa Convention Press Release, *supra* note 19.

²¹ Anti-Personnel Mines: Statement by the Spokesperson on the United States’ Decision to Re-introduce Their Use, EUR. COMM’N, at https://eeas.europa.eu/headquarters/headquarters-homepage/73966/anti-personnel-mines-statement-spokesperson-united-states%E2%80%99-decision-re-introduce-their-use_en.

²² Members of the United States Campaign to Ban Landmines, *Joint Statement on the Trump Administration’s New Landmine Policy* (Feb. 28, 2020), available at <https://www.fcni.org/documents/1265>.

²³ Dep’t of Defense Landmine Policy Press Release, *supra* note 6.

signing of the U.S. agreement with the Taliban, the parties have implemented some aspects of its terms. But others remain unfulfilled, despite the passage of deadlines.

The agreement between the Taliban and the United States was the result of the most recent series of on-and-off negotiations between the two parties, a series that began in 2018.¹ The Trump administration first expressed interest in potential negotiations with the Taliban in 2017.² In July 2018, the United States began direct two-party negotiations with the Taliban in Doha, Qatar,³ following a cease-fire between the Afghan government and the Taliban over the holiday of Eid al-Fitr that year.⁴ These negotiations did not include the Afghan government, which the Taliban had called a “puppet” of the United States,⁵ although intra-Afghanistan peace talks (between the Taliban and the Afghan government) remained the asserted U.S. objective.⁶

By January of 2019, the two sides had agreed to a framework of an agreement “in principle.”⁷ In March, the chief negotiator for the United States, Special Representative Zalmay Khalilzad, announced that the two sides were chiefly negotiating over four issues: “counter-terrorism assurances, troop withdrawal, intra-Afghan dialogue, and a comprehensive ceasefire.”⁸ By September of 2019 they had generated a draft agreement.⁹ Shortly after the announcement of the draft agreement, President Trump cancelled plans for Taliban leaders to meet with him at Camp David after an attack in Kabul that killed an American soldier, calling the negotiations off.¹⁰

¹ CLAYTON THOMAS, CONG. RESEARCH SERV., R45122, AFGHANISTAN: BACKGROUND AND U.S. POLICY: IN BRIEF 2 (2020), available at <https://fas.org/sgp/crs/row/R45122.pdf> [<https://perma.cc/RXK6-MBFF>] [hereinafter CONGRESSIONAL RESEARCH SERVICE 2020 REPORT]. The Obama administration had previously attempted peace talks with the Taliban in 2012, but they were suspended by the Taliban after two months of negotiation. Council on Foreign Relations, *The U.S. War in Afghanistan 1999–2020* (2020), at <https://www.cfr.org/timeline/us-war-afghanistan>. The Obama administration succeeded in negotiating a prisoner swap for Sergeant Beau Bergdahl in 2014 but was unable to reinstate broader negotiations. See *id.*; Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 108 AJIL 517 (2014).

² In a speech given on August 21, 2017, President Trump indicated that the administration’s strategy toward Afghanistan would be “based on conditions” and that “perhaps it will be possible to have a political settlement that includes elements of the Taliban in Afghanistan.” Address to the Nation on United States Strategy in Afghanistan and South Asia, 2017 DAILY COMP. PRES. DOC. 580 (Aug. 21).

³ CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 2; Mujib Mashal & Eric Schmitt, *White House Orders Direct Taliban Talks to Jump-Start Afghan Negotiations*, N.Y. TIMES (July 15, 2018), at <https://www.nytimes.com/2018/07/15/world/asia/afghanistan-taliban-direct-negotiations.html>.

⁴ DEP’T OF DEFENSE, ENHANCING SECURITY AND STABILITY IN AFGHANISTAN 5 (Dec. 2018), available at <https://media.defense.gov/2018/Dec/20/2002075158/-1/-1/1/1225-REPORT-DECEMBER-2018.PDF> [<https://perma.cc/F8Q4-B5J5>] [hereinafter DEP’T OF DEFENSE 2018 REPORT].

⁵ *Taliban Deal Would See US Troops “Withdraw from Five Bases,”* AL JAZEERA (Sept. 2, 2019), at <https://www.aljazeera.com/news/2019/09/taliban-deal-troops-withdraw-bases-190902151734211.html>.

⁶ DEP’T OF DEFENSE 2018 REPORT, *supra* note 4, at 6.

⁷ Mujib Mashal, *U.S. and Taliban Agree in Principle to Peace Framework, Envoy Says*, N.Y. TIMES (Jan. 28, 2019), at <https://www.nytimes.com/2019/01/28/world/asia/taliban-peace-deal-afghanistan.html>.

⁸ U.S. Special Representative Zalmay Khalilzad (@US4AfghanPeace), TWITTER (Mar. 12, 2019, 12:59 PM), at <https://twitter.com/US4AfghanPeace/status/1105513778886643713> [<https://perma.cc/4AFJ-6VYS>].

⁹ *US Envoy Shows Draft of Deal with Taliban to Afghan President*, AL JAZEERA (Sept. 2, 2019), at <https://www.aljazeera.com/news/2019/09/envoy-shows-draft-peace-deal-taliban-afghan-president-19090211633344.html>.

¹⁰ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 7, 2019, 6:51 PM), at <https://twitter.com/realDonaldTrump/status/1170469618177236992> [<https://perma.cc/9EWJ-LUVT>]; Peter Baker, Mujib Mashal, & Michael Crowley, *How Trump’s Plan to Secretly Meet with the Taliban Came Together, and Fell Apart*, N.Y. TIMES (Sept. 8, 2019), at <https://www.nytimes.com/2019/09/08/world/asia/afghanistan-trump-camp-david-taliban.html>.

Two months later, in November, Trump announced that negotiations had restarted,¹¹ and talks formally reopened on December 7.¹² Just four days later, the Taliban launched an attack on Bagram Air Base, the largest American base in Afghanistan.¹³ Khalilzad immediately called for a “pause” in negotiations.¹⁴ On January 16, 2020, the Taliban proposed a reduction in violence in order to restart the talks, though refusing to offer a complete ceasefire.¹⁵ By February of 2020, media reports indicated that Trump had given approval for a peace deal, conditional on the Taliban’s undertaking a temporary reduction in violence as a show of its commitment.¹⁶ The conditional period was scheduled for a week beginning on February 22.¹⁷ During that week, violence was considerably reduced and a U.S. general stated that he was “satisfied that the Taliban had made a good-faith effort.”¹⁸

On February 28, Trump announced that the United States would sign the agreement.¹⁹ On February 29, Khalilzad and Taliban deputy political leader Mullah Abdul Ghani Baradar signed the “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” (Agreement) in front of Secretary of State Mike Pompeo in Doha.²⁰ The State Department later released a joint statement by the United States and its Afghan coalition allies and a separate joint statement by the United States and Russia, with both statements signaling support for the Agreement.²¹

¹¹ Remarks to United States Troops at Bagram Airfield in Bagram, Afghanistan, 2019 DAILY COMP. PRES. DOC. 835 (Nov. 28).

¹² *First Round of Resurrected US-Taliban Peace Talks Open in Qatar*, AL JAZEERA (Dec. 7, 2019), at <https://www.aljazeera.com/news/2019/12/resurrected-taliban-peace-talks-open-qatar-191207105319486.html>.

¹³ Fahim Abed & Mujib Mashal, *Taliban Attack U.S. Base in Afghanistan as Negotiators Talk Peace*, N.Y. TIMES (Dec. 11, 2019), at <https://www.nytimes.com/2019/12/11/world/asia/Afghanistan-bagram-airfield-attack.html>.

¹⁴ U.S. Special Representative Zalmay Khalilzad (@US4AfghanPeace), TWITTER (Dec. 12, 2019, 6:45 PM), at <https://twitter.com/US4AfghanPeace/status/1205272370614812675> [<https://perma.cc/C9H2-CQQF>].

¹⁵ Mujib Mashal & Taimoor Shah, *Taliban Offer to Reduce Violence in Afghanistan Ahead of Deal with U.S.*, N.Y. TIMES (Jan. 16, 2020), at <https://www.nytimes.com/2020/01/16/world/asia/afghanistan-taliban-agreement.html>; Emma Graham-Harrison, *Taliban Offer to Stand Down Fighters to Restart Peace Talks with US*, GUARDIAN (Jan. 16, 2020), at <https://www.theguardian.com/world/2020/jan/16/taliban-offer-to-stand-down-fighters-to-restart-peace-talks-with-us>.

¹⁶ Mujib Mashal & Lara Jakes, *Trump Gives Conditional Go Ahead on Peace Deal with Taliban, Officials Say*, N.Y. TIMES (Feb. 11, 2020), at <https://www.nytimes.com/2020/02/11/world/asia/afghanistan-taliban-peace-deal.html>.

¹⁷ CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 2–3.

¹⁸ *Id.*

¹⁹ Statement on the United States-Taliban Agreement for Bringing Peace to Afghanistan, 2020 DAILY COMP. PRES. DOC. 106 (Feb. 28).

²⁰ 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, Feb. 29, 2020, available at <https://www.state.gov/wp-content/uploads/2020/02/Signed-Agreement-02292020.pdf> [<https://perma.cc/J6SN-X9RA>] [hereinafter Agreement]; CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 3. Every mention of the Taliban in the Agreement describes it as “the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban.” See generally Agreement, *supra*.

²¹ Dep’t of State, Joint Statement on the Signing of the U.S.-Taliban Agreement (Mar. 6, 2020), at <https://www.state.gov/joint-statement-on-the-signing-of-the-u-s-taliban-agreement> [<https://perma.cc/KV4J-AAEB>]; Dep’t of State, Joint Statement on the Signing of the U.S.-Taliban Agreement (Mar. 9, 2020), at <https://www.state.gov/joint-statement-on-the-signing-of-the-u-s-taliban-agreement-2> [<https://perma.cc/LA6B-UK38>].

The Agreement begins with the following language:

A comprehensive peace agreement is made of four parts:

1. Guarantees and enforcement mechanisms that will prevent the use of the soil of Afghanistan by any group or individual against the security of the United States and its allies.
2. Guarantees, enforcement mechanisms, and announcement of a timeline for the withdrawal of all foreign forces from Afghanistan.
3. After the announcement of guarantees for a complete withdrawal of foreign forces and timeline in the presence of international witnesses, and guarantees and the announcement in the presence of international witnesses that Afghan soil will not be used against the security of the United States and its allies, the [Taliban] will start intra-Afghan negotiations with Afghan sides on March 10, 2020
4. A permanent and comprehensive ceasefire will be an item on the agenda of the intra-Afghan dialogue and negotiations. The participants of intra-Afghan negotiations will discuss the date and modalities of a permanent and comprehensive ceasefire, including joint implementation mechanisms, which will be announced along with the completion and agreement over the future political roadmap of Afghanistan.²²

The Agreement clarifies that “[t]he four parts above are interrelated and each will be implemented in accordance with its own agreed timeline and agreed terms. Agreement on the first two parts paves the way for the last two parts.”²³ The Agreement then goes on to provide more specifics regarding the implementation of the first two parts, but it does not provide further detail about how the third and fourth parts are to be implemented.

With respect to withdrawal, the United States “is committed to withdraw from Afghanistan all military forces of the United States, its allies, and Coalition partners . . . within fourteen (14) months following the announcement of this agreement.”²⁴ Over the first 135 days, the United States “will reduce” its troop numbers to 8,600 and withdraw, along with its allies, from five military bases.²⁵ Over the remaining time period, the United States and its allies “will complete withdrawal,” given “the commitment and actions on the obligations of the” Taliban.²⁶ The Agreement further provides that the “United States and its allies will refrain from the threat or the use of force against the territorial integrity or political independence of Afghanistan or intervening in its domestic affairs.”²⁷

The Taliban agreed to take immediate “steps to prevent any group or individual, including al-Qa’ida, from using the soil of Afghanistan to threaten the security of the United States and its allies.”²⁸ Specifically, the Taliban agreed (1) that it “will not allow” such threatening of the security of the U.S. and its allies; (2) that it will “send a clear message that those who pose a

²² Agreement, *supra* note 20.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* The agreement specifies elsewhere that the Taliban’s “obligations . . . apply in areas under their control until the formation of the new post-settlement Afghan Islamic government as determined by the intra-Afghan dialogue and negotiations.” *Id.*

threat to the security of the United States and its allies have no place in Afghanistan”; (3) that it will prevent any such threatening actors “from recruiting, training, and fundraising and will not host them”; (4) that it will “deal with those seeking asylum or residence in Afghanistan according to international migration law . . . so that such persons do not pose a threat to the security of the United States and its allies”; and (5) that it “will not provide visas, passports, travel permits, or other legal documents . . . to enter Afghanistan” to anyone who might threaten “the security of the United States and its allies.”²⁹

The agreement also includes the following provisions:

The United States is committed to start immediately to work with all relevant sides on a plan to expeditiously release combat and political prisoners as a confidence building measure with the coordination and approval of all relevant sides. Up to five thousand (5,000) prisoners of [the Taliban] and up to one thousand (1,000) prisoners of the other side will be released by March 10, 2020, the first day of intra-Afghan negotiations The relevant sides have the goal of releasing all the remaining prisoners over the course of the subsequent three months. The United States commits to completing this goal. The [Taliban] commits that its released prisoners . . . will not pose a threat to the security of the United States and its allies.

With the start of intra-Afghan negotiations, the United States will initiate an administrative review of current U.S. sanctions and the rewards list against members of the [Taliban] with the goal of removing these sanctions by August 27, 2020

With the start of intra-Afghan negotiations, the United States will start diplomatic engagement with the other members of the United Nations Security Council and Afghanistan to remove members of the [Taliban] from the sanctions list with the aim of achieving this objective by May 29, 2020

. . .

The United States will request the recognition and endorsement of the United Nations Security Council for this agreement.

The United States and the [Taliban] seek positive relations with each other and expect that the relations between the United States and the new post-settlement Afghan Islamic government as determined by the intra-Afghan dialogue and negotiations will be positive.

The United States will seek economic cooperation for reconstruction with the new post-settlement Afghan Islamic government as determined by the intra-Afghan dialogue and negotiations, and will not intervene in its internal affairs.³⁰

The Agreement also reportedly contains secret annexes.³¹ Notably absent from the Agreement, at least in its public form, is a provision for an immediate ceasefire or a reduction in violence by the Taliban with respect to the government of Afghanistan; the only provision regarding such a cessation of hostilities is that a “ceasefire will be an item on the agenda of the

²⁹ *Id.*

³⁰ *Id.* (numbering omitted).

³¹ CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 3.

intra-Afghan dialogue.”³² Also absent are any concrete enforcement provisions for either side.³³

The same day that the United States signed the Agreement, it also issued a Joint Declaration between the Islamic Republic of Afghanistan and the United States for Bringing Peace to Afghanistan (Joint Declaration).³⁴ The Joint Declaration in many ways parallels the Agreement with the Taliban. It sets out the following goal for a future peace agreement:

A comprehensive and sustainable peace agreement will include four parts: 1) guarantees to prevent the use of Afghan soil by any international terrorist groups or individuals against the security of the United States and its allies, 2) a timeline for the withdrawal of all U.S. and Coalition forces from Afghanistan, 3) a political settlement resulting from intra-Afghan dialogue and negotiations between the Taliban and an inclusive negotiating team of the Islamic Republic of Afghanistan, and 4) a permanent and comprehensive ceasefire. These four parts are interrelated and interdependent.³⁵

The Joint Declaration “takes note of the U.S.-Taliban agreement” and “affirms [the] readiness” of Afghanistan “to participate in [intra-Afghan] negotiations and its readiness to conclude a ceasefire with the Taliban.”³⁶ The Joint Declaration contains provisions for U.S. withdrawal similar to those found in the Agreement and commits Afghanistan to work diplomatically toward the removal of UN sanctions on Taliban personnel once intra-Afghan negotiations have begun.³⁷ Nonetheless, the Joint Declaration does not perfectly mirror the Agreement. As one notable example, the Joint Declaration does not contain a provision for the release of up to 5,000 imprisoned Taliban persons by March 10.³⁸ Instead, it states that “Afghanistan will participate in a U.S.-facilitated discussion with Taliban representatives . . . to include determining the feasibility of releasing significant numbers of prisoners on both sides.”³⁹

Neither the Agreement nor the Joint Declaration is necessarily binding as a matter of international law. It would be difficult to deem the Agreement to be “concluded between States” as envisioned by Article 2 of the Vienna Convention of the Law of Treaties⁴⁰ in light of the general lack of recognition accorded to the Taliban—as well as the repeated emphasis in the text of the Agreement itself that the United States does not recognize the Taliban as the government of Afghanistan. This does not necessarily preclude the Taliban and the United States from entering into an agreement with international legal force, as armed

³² Agreement, *supra* note 20.

³³ See generally *id.*

³⁴ Joint Declaration Between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan, Afg.-U.S., Feb. 29, 2020, available at <https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf> [<https://perma.cc/8SZB-LA3V>] [hereinafter Joint Declaration].

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Compare generally Joint Declaration, *supra* note 34 with Agreement, *supra* note 20.

³⁹ Joint Declaration, *supra* note 34 (adding that the two nations would “seek the assistance of the ICRC to support this discussion”).

⁴⁰ Vienna Convention on the Law of Treaties, Art. 2, May 23, 1969, 1155 UNTS 331 [hereinafter VCLT].

opposition groups may have some such capacity with respect to peace-related commitments.⁴¹ But the Agreement, while signed, also has indicia sometimes associated with non-binding commitments, such as the repeated use of “will” rather than “shall.”⁴² The Joint Declaration uses similar language.⁴³ And while the Joint Declaration was reached between states, it is unsigned and titled as a “Declaration” rather than an “Agreement”—further signals of nonbinding status.⁴⁴

Consistent with a term in the Agreement, the United States promptly sought a UN Security Council resolution signaling support for the Agreement. On March 9, the Security Council unanimously passed Resolution 2513, which “[w]elcomes the significant steps towards ending the war and opening the door to intra-Afghan negotiations enabled by” the Joint Declaration and the Agreement.⁴⁵ The resolution also “[c]alls upon all States” to support the peace negotiations and signals the Security Council’s willingness to review the UN sanctions imposed on Taliban personnel once intra-Afghan negotiations have begun.⁴⁶

Trump welcomed the Agreement, stating:

If the Taliban and the government of Afghanistan live up to these commitments, we will have a powerful path forward to end the war in Afghanistan and bring our troops home. These commitments represent an important step to a lasting peace in a new Afghanistan, free from Al Qaeda, ISIS, and any other terrorist group that would seek to bring us harm.⁴⁷

Shortly after the signing of the Agreement and the Joint Declaration, however, prospects for their timely implementation dwindled. In early March the Taliban ended its reduction-in-

⁴¹ See Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AJIL 373, 381 (2006) (reasoning that in “many peace agreements signed by armed opposition groups, grounds can be found to assert that the parties intended the agreement to be binding on the international legal plane, and that the nonstate signatories were ‘subjects of international law’—based on the recognition of such groups under international law, in particular through humanitarian law”); see also Beatrice Walton, *The U.S.-Taliban Agreement: Not a Ceasefire, or a Peace Agreement, and Other International Law Issues*, JUST SECURITY (Mar. 19, 2020), at <https://www.justsecurity.org/69154/the-u-s-taliban-agreement-not-a-ceasefire-or-a-peace-agreement-and-other-international-law-issues> (noting the lack of clarity around the international legal status of the Agreement).

⁴² See generally Agreement, *supra* note 20; ANTHONY AUST, *MODERN TREATY LAW AND PRACTICE* 30 (3d ed. 2013) (observing that “most states now follow a practice of manifesting their intention to conclude a treaty by consciously employing a fairly standard form, and mandatory terminology such as (in English) ‘shall,’ ‘agree,’ ‘undertake,’ ‘rights,’ ‘obligations’ and ‘enter into force’” whereas “when they do not [in]tend to conclude a treaty . . . instead of ‘shall’ they use a less mandatory term, such as ‘will’”).

⁴³ See generally Joint Declaration, *supra* note 34.

⁴⁴ *Id.*; AUST, *supra* note 42, at 30–31 (further discussing conventions used for distinguishing binding and non-binding commitments). Within the United States, the Trump administration has not sought legislative approval for either the Agreement or the Joint Declaration.

⁴⁵ SC Res. 2513 (Mar. 10, 2020).

⁴⁶ *Id.* (also indicating that “Taliban action, or lack thereof” towards certain objectives “will affect this review”). In her remarks regarding the resolution, U.S. Ambassador Cherith Chalet stated that “[t]he support and engagement of the international community will continue to be critical in the next steps of the peace process.” U.S. Mission to the United Nations Press Release, *Explanation of Vote on the UN Security Council adoption of a U.S.-Draft Resolution on the U.S.-Taliban Agreement*, (Mar. 10, 2020), at <https://usun.usmission.gov/explanation-of-vote-on-the-un-security-council-adoption-of-a-u-s-draft-resolution-on-the-u-s-taliban-agreement> [<https://perma.cc/4GH2-PMDV>].

⁴⁷ Statement on the United States-Taliban Agreement for Bringing Peace to Afghanistan, *supra* note 19.

violence period and resumed attacks against Afghan forces, leading the United States to respond with air strikes to protect Afghan forces.⁴⁸ Additional Taliban attacks and U.S. air strikes came hours after a telephone call between Trump and the Taliban's chief political leader, the first such phone call between a U.S. president and a Taliban leader since the beginning of the U.S. military intervention in Afghanistan.⁴⁹ By March 10, a U.S. military commander stated that the rate of Taliban attacks was inconsistent with carrying out the Agreement.⁵⁰

The fulfillment of the Agreement's provisions was further complicated by the response of the Afghan government. The day after the Agreement was signed, Afghan President Ashraf Ghani rejected the exchange of 5,000 prisoners by March 10, stating to the press that "[f]reeing Taliban prisoners is not [under] the authority of America but the authority of the Afghan government."⁵¹ Ghani pointed out that his government had made no commitment to release 5,000 prisoners and asserted that a prisoner swap could not be a precondition to intra-Afghan talks.⁵² By March 10, however, Ghani proposed the release of 1,500 Taliban prisoners over a two-week period, providing that 3,500 more would be released in batches of five hundred conditional upon a decrease in violence and direct negotiations between the Taliban and the Afghan government.⁵³ The Taliban rejected this as insufficient, and intra-Afghan negotiations did not begin by the March 10 date specified in the Agreement.

Conditions for the prisoner release and intra-Afghan negotiations were made even more challenging by a power struggle between Ghani and Chief Executive Abdullah Abdullah, who both claimed to have been elected Afghan president in September of 2019 and who both took oaths of office for that role on March 9, 2020.⁵⁴ Disputes between Ghani and Abdullah continued during March, leading Secretary Pompeo to visit Afghanistan on March 24 in an unsuccessful attempt to mediate, which was followed by a one-billion-dollar

⁴⁸ Najim Rahim & Mujib Mashal, *Taliban Ramp Up Attacks on Afghans After Trump Says "No Violence,"* N.Y. TIMES (Mar. 4, 2020), at <https://www.nytimes.com/2020/03/04/world/asia/afghanistan-taliban-violence.html>.

⁴⁹ Anne Gearan, *Trump Speaks with Senior Taliban Leader by Phone, in a First Between a U.S. President and Insurgent Force Since Afghan War Began,* WASH. POST (Mar. 3, 2020), at https://www.washingtonpost.com/politics/trump-taliban-phone-call-baradar/2020/03/03/b2a01a4e-5d87-11ea-9055-5fa12981bbbf_story.html; Susannah George, *U.S. Targets Taliban Hours After Trump Phone Call with Militant Leader,* WASH. POST (Mar. 4, 2020), at https://www.washingtonpost.com/world/asia_pacific/us-targets-taliban-with-airstrike-days-after-peace-deal/2020/03/04/6cfa775e-5e0a-11ea-ac50-18701e14e06d_story.html.

⁵⁰ CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 5.

⁵¹ Susannah George & Dan Lamothe, *Afghan Government Objects to Elements of U.S.-Taliban Peace Deal,* WASH. POST (Mar. 1, 2020), at https://www.washingtonpost.com/world/asia_pacific/afghan-government-questions-aspects-of-us-taliban-peace-deal/2020/03/01/0a973228-5a68-11ea-8efd-0f904bdd8057_story.html.

⁵² *Id.*

⁵³ Mujib Mashal, *Afghan President Orders Taliban Prisoner Release,* N.Y. TIMES, (Mar. 10, 2020), at <https://www.nytimes.com/2020/03/10/world/asia/taliban-prisoner-release.html>. The prisoners would be released after considering their health, age, and length of time served, and would be required to sign a statement vowing not to return to the war. Sediq Sediqqi (@SediqSediqqi), TWITTER (Mar. 10, 2020, 3:19 PM), at <https://twitter.com/SediqSediqqi/status/1237458170815098891>.

⁵⁴ CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 5; Mujib Mashal, Fatima Faizi & Najim Rahim, *Ghani Takes the Oath of Afghan President. His Rival Does, Too,* N.Y. TIMES (Mar. 9, 2020), at <https://www.nytimes.com/2020/03/09/world/asia/afghanistan-president-inauguration-ghani-abdullah-.html>.

reduction in U.S. aid for Afghanistan.⁵⁵ A power-sharing agreement between the two leaders was finally reached in mid-May.⁵⁶

Over April and May, the issue of prisoner releases continued to be a sticking point between the Taliban and the Afghan government.⁵⁷ In the meantime, the Taliban stepped up attacks, leading to an increase in violence in comparison with recent years.⁵⁸ In late May, following a cease-fire over the holiday of Eid al-Fitr, the Afghan government stated that it would release nine hundred prisoners.⁵⁹ It remains to be seen what further developments will occur with respect to prisoner releases or the long-delayed start to intra-Afghan negotiations. Under the Agreement, the start to such negotiations is a prerequisite to the United States pursuing the removal of UN and U.S. sanctions against Taliban members.⁶⁰

Even as the prisoner talks teeter and conflicts continue between the Taliban and the Afghan government, the United States has signaled continued willingness to reduce the number of U.S. troops in Afghanistan. In late March, as the United States expressed frustration with the Afghan government, Secretary Pompeo stated that the Taliban had “largely” satisfied their side of the Agreement and reiterated commitment to a troop draw-down.⁶¹ COVID-19 has posed a potential challenge to withdrawal; the United States announced that it would pause troop movement due to concerns about the virus, although Trump has also stated that he would be in favor of accelerating withdrawal due to the virus.⁶² On May 20, Taliban leadership reaffirmed their commitment to the Agreement and called on the United States to “not allow this critical opportunity to go [to] waste.”⁶³

⁵⁵ Pamela Constable, *Afghans Are Fearful, Angry with Their Warring Leaders After U.S. Pulls \$1 Billion in Aid*, N.Y. TIMES (Mar. 24, 2020), at https://www.washingtonpost.com/world/afghans-are-fearful-angry-with-their-warring-leaders-after-us-pulls-1-billion-in-aid/2020/03/24/42b6290e-6dd0-11ea-a156-0048b62cdb51_story.html.

⁵⁶ Mujib Mashal, *Afghan Rivals Sign Power-Sharing Deal as Political Crisis Subsides*, N.Y. TIMES (May 17, 2020), at <https://www.nytimes.com/2020/05/17/world/asia/afghanistan-ghani-abdullah.html>.

⁵⁷ E.g., Sharif Hassan & Susannah George, *Afghan-Taliban Talks Over Prisoner Swap Collapse, Threatening to Upend U.S. Peace Deal*, WASH. POST (Apr. 7, 2020), at https://www.washingtonpost.com/world/asia_pacific/afghan-taliban-talks-over-prisoner-swap-collapse-threatening-to-upend-us-peace-deal/2020/04/07/6479f324-738c-11ea-ad9b-254ec99993bc_story.html.

⁵⁸ Mujib Mashal, *Taliban Ramp Up Attacks Even as Coronavirus Spreads in Afghanistan*, N.Y. TIMES (Apr. 24, 2020), at <https://www.nytimes.com/2020/04/24/world/asia/taliban-attacks-afghanistan-coronavirus.html>; Susannah George, *Afghanistan's Civilian Casualties Rise Following U.S.-Taliban Deal*, WASH. POST (May 19, 2020), at https://www.washingtonpost.com/world/asia_pacific/afghanistans-civilian-casualties-rise-following-us-taliban-peace-deal/2020/05/19/18c9e52a-99a6-11ea-ad79-eef7cd734641_story.html. Tensions were heightened still further by a heinous attack on a maternity ward in Kabul, although the Taliban denied responsibility for this attack. See Ryan Browne & Kylie Atwood, *Afghan President Orders Resumption of Offensive Operations Against the Taliban in Blow to Trump's Deal*, CNN (May 12, 2020), at <https://www.cnn.com/2020/05/12/politics/afghanistan-taliban-resumption-deal/index.html>.

⁵⁹ Kathy Gannon & Tameem Akhgar, *Afghan Government Release Hundreds of Taliban Prisoners*, APNEWS (May 26, 2020), at <https://apnews.com/43469a4f62dda76b3880eddfc352a749> (noting that “[t]his would bring to 2,000 the number of Taliban prisoners released so far under” the Agreement, while the “Taliban say they have released 240 captives”).

⁶⁰ Agreement, *supra* note 20.

⁶¹ Constable, *supra* note 55.

⁶² CONGRESSIONAL RESEARCH SERVICE 2020 REPORT, *supra* note 1, at 6–7.

⁶³ *Afghan Taliban Leader Says Committed to Deal with the US*, AL JAZEERA (May 20, 2020), at <https://www.aljazeera.com/news/2020/05/afghan-taliban-leader-committed-deal-200520084836131.html>.

As the end of May approached, Trump was reportedly considering a variety of options, including one for full withdrawal before November.⁶⁴

⁶⁴ Thomas Gibbons-Neff & Julian E. Barnes, *Trump Wants Troops in Afghanistan Home by Election Day. The Pentagon Is Drawing Up Plans*, N.Y. TIMES (May 26, 2020), at <https://www.nytimes.com/2020/05/26/world/asia/afghanistan-troop-withdrawal-election-day.html>.