

Analyzing the Kerry-Lugar bill

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With prominent Democrats such as Joseph Biden calling for shifting the focus of the US military mission in Afghanistan to the urgent goal of stabilizing Pakistan and the special representative to Afghanistan and Pakistan, Richard Holbrooke sharing his concern¹ the US Senate passed a bill (S.1707) on September 24, 2009 authorizing \$7.5 billion in developmental aid to Pakistan. Significantly, the bill mentions no amount for security-related assistance. The Senate bill was approved by the US House of Representatives a week later on September 30, 2009 without any amendments (H.R. 3642).

The final bill (S.1707) titled ‘Enhanced Partnership with Pakistan Act of 2009’ enrolled as agreed to or passed by both House and Senate was presented to the President on October 5, 2009 for final signature to become the Act governing aid which will triple US social and developmental assistance to Pakistan to \$1.5 billion annually through 2010-2014. The bill has drawn considerable debate and opposition in Pakistan over the conditions attached to security assistance.

According to the prime minister, no aid had come through this bill and that it would be premature to speculate on it at the moment.

The bill had originally been under discussion in the Congress since 2008. That bill - S-3263, popularly known as “Biden-Lugar bill” or ‘Enhanced Partnership with Pakistan Act 2008’ was introduced in the Senate Foreign Relations Committee by its then chairman Sen. Joseph Biden and Sen. Richard Lugar and the Senate Committee had approved the bill unanimously in July 2008. The bill recognized the role of Pakistan as US ally and the frontline state in combating terrorism and provided for \$15 billion in economic assistance to Pakistan over the next 10 years beginning 2009. However, the bill died before it could be tabled before the Senate for debate and vote following the upcoming presidential elections in December 2008. The bill was reintroduced in the 111th Congress in

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2009 as the Kerry-Lugar bill that has now been approved after much debate.

The incumbent government of Pakistan feels that the bill does not compromise Pakistan's national sovereignty and is the best it could hope to get under the present circumstances. According to the prime minister, no aid had come through this bill, and that it would be premature to speculate on it at the moment.² The bill's detractors on the other hand are increasingly questioning the legislation as a bill or a document of surrendering Pakistan's decisional ability and control over determining where the coming aid under the Kerry-Lugar bill will be spent.³

American officials too have their concerns, for example Gary Ackerman, chairman of an international sub-committee, who feels that the interests of the United States and Pakistan were not aligned and that the US considers India as a critical ally while Pakistan is viewed as having contacts with radical Islamists.⁴ However, a majority of the officials and Congressmen and women, are convinced that the Kerry-Lugar bill has amply addressed the US concerns and would play an important role in the war against Al-Qaeda.⁵ According to Congressman Howard L. Berman (D-CA), Chairman of the House Foreign Affairs Committee, "We need to forge a true strategic partnership with Pakistan and its people, strengthen its democratic government, and work to make Pakistan a source of stability in a volatile region. Terrorists currently sheltered in Pakistan's lawless hinterlands are plotting to attack the United States. This legislation helps give Pakistan the tools to defeat al Qaeda."⁶ Even the Kerry-Lugar bill 2009 at the outset points out that "FATA, parts of the NWFP, Quetta in Balochistan, and Muridke in Punjab remain a sanctuary for Al-Qaeda, the Afghan Taliban, the Terikh-e Taliban and affiliated groups from which these groups organize terrorist against Pakistan and other countries."

There is a saying in Urdu that can be translated to read that the flood has not yet arrived, but the people along the banks have already rolled up their pants in anticipation of the deluge. Given the history of Pakistan-US relations over the last sixty years, mutual apprehensions on part of both the countries cannot and must not be ignored, particularly now that the US war on terror has shifted to the tribal regions of Pakistan's border with Afghanistan, and there is talk of expanding this war to the settled capital of the already restive Balochistan province.⁷

No doubt, there is growing American concern that the 'war on terror' is rapidly slipping out of control, not in Afghanistan, but in Pakistan from

the ‘safe havens’ in the country’s tribal belt and border along with Afghanistan, and need to be dealt with even if it requires use of military force based on “actionable intelligence”. The fact that Pakistan is a nuclear power that is unravelling is an added concern haunting Washington.

To be blunt, Pakistan itself does not inspire confidence, the insecure economic conditions, a political system that lacks direction and leadership combined with growing social tensions, the ever increasing resource scarcity in water, food and energy has sapped the very soul of the people in the country. Such conditions would create nothing but negative impressions in the region and beyond. It would be pointless, therefore, to blame the Americans and its coalition partners still involved in yet another war in Afghanistan for their scepticism and caution in dealing with Pakistan and the array of problems surrounding it, and which have now been buttressed by the added responsibility of waging counterinsurgency military operations inside its own territory. It is this caution that is reflected in the Kerry-Lugar bill passed by the US Congress and is now awaiting final signature by the President before further US assistance could be provided to Pakistan through 2010 to 2014.

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The bills (*S.1707 and H.R. 3642*) claim, “since 2001, the US has contributed more than \$15 billion to Pakistan, of which more than \$10 billion has been security-related assistance and direct payments.” Such will not be the case once the Kerry-Lugar bill is signed, there will be no direct payments, and those that will be made under economic, development and security assistance to Pakistan through 2010-2014 will carry stringent conditions, limitations and reports.

A comprehensive perusal of the final bill *S.1707-* (See Summary) reveals that of all the US aid bills to Pakistan, none have been as comprehensive, stringent and minute to the last details of when, where, why and how US aid to Pakistan for fiscal years 2010-2014 will be

disbursed in order “to promote an enhanced strategic partnership with Pakistan and its people, and for other purposes.”⁸ Micro-management of programs, projects and assistance to Pakistan seems to be the aim of this bill and would be particularly focused on benchmarks relating to democracy, non-proliferation, civilian supremacy, Pakistan’s role in the war on terror, and, relations with India and Afghanistan. Annual assistance will be based on two subsequent monitoring reports that will determine whether Pakistan is fulfilling the obligations of the various sections relating specifically to security assistance.

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S. 1707- A Summary

The approximately 8088-word bipartisan bill, tripling the annual developmental assistance to Pakistan to \$1.5 billion will be released in two tranches of \$750 million, the first to be released in the last quarter of 2009 if the bill is signed by the President. Titled the ‘*Enhanced Partnership with Pakistan Act 2009*’, the bill consists of 14 sections:

1. Sec. 1. Short Title, Table of Contents
2. Sec. 2. Definitions
3. Sec. 3. Findings
4. Sec. 4. Statement of Principles

Title I – Democratic, Economic, and Developmental Assistance for Pakistan

5. Sec. 101. Authorization of Assistance
6. Sec. 102. Authorization of Appropriations
7. Sec. 103. Auditing

Title II – Security Assistance for Pakistan

8. Sec. 201. Purposes of Assistance
9. Sec. 202. Authorization of Assistance

10. Sec. 203. Limitations on Certain Assistance
11. Sec. 204. Pakistan Counterinsurgency Capability Fund
12. Sec. 205. Requirements for Civilian Control of Certain Assistance

Title III – Strategy, Accountability, Monitoring, and other Provisions

13. Sec. 301. Strategy Reports
14. Sec. 302. Monitoring Reports

The salient features of the bill are summarized below. The language in various sections that has been the cause of contention in Pakistan is underlined:

Short Title, Definitions, Findings and Statement of Principles – (Sections 1-4)

Section 2(Definitions) - the appropriate committees for the purpose of this section would be the Committees on Appropriations and the Foreign Relations of the Senate, and the House. Among others, the section provides an implicit definition of “Counterinsurgency” effort to defeat organized movements that seek to overthrow the duly constitutes governments of Pakistan and - notably in a bill related to Pakistan – Afghanistan, through violent means. Specific *organized movements* that have been identified in this and other following sections include the Tehrik-e-Taliban Pakistan (Section 3, No.6), and Lashkar-e-Taiba and Jaish-e-Mohammad (Section 203, subsection (c -2-B). Defeating organized movements gives a wide berth to US in case of expanding military operations in other parts of Pakistan in future.

Section 3 (Findings) is a 12-point narrative of US-Pakistan relations which recognize that Pakistan is “a major non-NATO ally of the United States” who “has been a valuable partner in the battle against al Qaeda and the Taliban. But, much more remains to be accomplished by both nations since “despite killing or capturing of Al-Qaeda operatives and other terrorists, FATA, parts of NWFP, Quetta in Balochistan and Muridke in Punjab remain a sanctuary for Al-Qaeda, the Afghan Taliban, the Tehrik-e-Taliban and affiliated groups from which these groups organize terrorist actions against Pakistan and other countries.” It recounts the loss of lives, and re-asserts that “Multiple intelligence estimates have warned that Al-Qaeda is actively planning attacks on the U.S. homeland from its safe-haven in Pakistan.”

Section 4 (*Statement of Principles*) declares that the relationship between the US and Pakistan should be based on the 5 principles outlined in the section which recognize that: (1) The two countries share many common goals including combating terrorism and violent radicalism; (2) The US assistance to Pakistan is intended to supplement, not supplant Pakistan's own efforts; (3) The US requires a balanced, integrated, countrywide strategy that does not disproportionately focus on security-related assistance; (4) The US supports Pakistan's struggle against extremist elements and recognizes the profound sacrifice made by Pakistan in the fight against terrorism; and, (5) The US intends to work with the Government of Pakistan to:

- (A) pursue a sustained, long-term, multifaceted relationship between the two countries;
- (B) consolidate democracy, reestablish an independent and transparent judicial system;
- (C) promote long-term development and infrastructure projects in healthcare, education, water management, and energy programs in all areas of Pakistan;
- (D) ensure that all people of Pakistan including those living in areas governed by the Frontier Crimes Regulation, have access to modernized education and vocational training for a prosperous future for their children;
- (E) support the strengthening of core curricula and the quality of schools across Pakistan, including madrassas;
- (F) encourage and promote public-private partnerships in Pakistan to bolster ongoing development efforts and strengthen economic prospects;
- (G) expand people-to-people engagement;
- (H) encourage development of local analytical capacity to measure program effectiveness;
- (I) assist Pakistan's efforts to improve counterterrorism financing and encourage Pakistan to apply for 'Financial Action Task Force' observer status and adhere to the UN's International Convention for the Suppression of the Financing of Terrorism;
- (J) strengthen Pakistan's counterinsurgency and counterterrorism strategy to help prevent any territory of Pakistan from being used as a base or conduit for terrorist attacks in Pakistan and elsewhere;
- (K) strengthen Pakistan's efforts to develop strong and effective law enforcement and national defense forces;
- (L) achieve full cooperation in matters of counter-proliferation of nuclear materials and related works;

- (M) strengthen Pakistan's efforts to gain control of its under-governed areas;
- (N) to explore means to consult and utilize the relevant expertise and skills of the Pakistani-American community.

Title I- DEMOCRATIC, ECONOMIC, AND DEVELOPMENTAL ASSISTANCE FOR PAKISTAN - Sections 101-103

Section 101 (*Authorization of Assistance*) - the President has been authorized to provide assistance to Pakistan under Title I under five broad categories after notification to the appropriate congressional committees which in this section include the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Affairs of both the Senate and the House :

- (1) **Consolidation of democratic institutions** – will include assistance for strengthening the capacity of the National Parliament and its committees; voter education and civil society training and support for capacity building of political parties; strengthening the capacity of the civilian government at the national, provincial and local levels
- (2) **Support expansion of the rule of law, build capacity of government institutions, and promote respect for internationally recognized human rights** – will include assistance for establishing frameworks that promote government transparency and criminalize corruption; support for police professionalization and training; support for independent, efficient and effective judicial and criminal system; support for implementation of legal and political reforms in FATA; support to counter drug trade; and support for promotion of a responsible and independent media.
- (3) **Promote economic freedoms and sustainable economic development** - through programs for sustainable economic growth in rural areas and management of natural resources through investments in water resource management; expansion of farm-to-market roads, storage facilities and other small-scale infrastructure improvements; investments in energy including local generation and cross-border infrastructure projects with Afghanistan; employment generation through investments in infrastructure projects, construction of roads, development of the national aviation industry and infrastructure and support for small and medium enterprises; support for promoting workers rights; access to microfinance for small businesses,

particularly for women; and countering radicalization by providing training and opportunities to at-risk youth.

- (4) **Support investment in people, particularly women and children, including those displaced in ongoing counterinsurgency operations** – assistance will be provided for promotion of modern education at primary and secondary level, development of modern nationwide curriculums for public, private and religious schools, oversight of all educational institutions including religious, and access to education and vocational training for women and girls; programs for higher education; improving quality public health; building capacity of non-governmental and civil society organizations; support for internally displaced persons and long-term development in regions of Pakistan affected by conflict and displacement through the Refugee Affected and Host Areas (RAHA) initiative in Pakistan .
- (5) **Strengthen public diplomacy** - to combat militant extremism and promote understanding of the United States by encouraging debate against militancy; expanded activities under programs such as Fulbright, the International Visitor Leadership, the Youth Exchange and Study and other related programs administered by the Department of State designed to promote mutual understanding and interfaith dialogue and expand programs between US and Pakistani schools and universities.

Additional and related activities that will be supported under this section will include:

- (1) Appropriation of not less \$150 million for fiscal year 2010 pursuant to authorization under Section 102, for Pakistani police professionalization, equipping, and training.
- (2) Up to \$10 million for each fiscal year pursuant to authorization under Section 102, for administrative expenses of the civilian departments and agencies of the United States government.
- (3) As appropriate, utilizing Pakistani local non-governmental organizations to work with local leaders
- (4) Use of direct expenditures; and
- (5) Of the amounts appropriated for each fiscal year, up to \$5 million may be used by the US Secretary of State to establish a fund for use by the

US Chief of Mission in Pakistan to address urgent needs or opportunities, consistent with the purposes of this section, or for humanitarian relief.

Notification for appropriations under this title - For the fiscal years 2010-2014, the President shall have to notify the appropriate not later than 15 days before obligating any assistance under this section.

Section 102 (*Authorization of Appropriations*) the provisions of this section - the conditionalities - are the teeth of the bill, and specify that up to \$1.5 billion are authorized to be appropriated to the President under this title for each of the fiscal years 2010 through 2014. The section specifies that none of the amounts appropriated for Pakistan be made available after the date that is 60 days after the enactment of this Act unless the Pakistan Assistance Strategy Report (PASR) has been submitted to the appropriate congressional committees (b)-(1)-(A), and that not more \$750 million be made available to Pakistan unless the President's Special Representative to Afghanistan and Pakistan (currently Mr. Richard Holbrooke) submits a certification that Pakistan is making reasonable progress towards achieving the objectives contained in the PASR (b)-(1)-(B)-(i), and, also provide a memorandum explaining the reasons justifying certification (b)-(1)-(B)-(ii). In case vacancy or termination of the office of the Special Representative, the certification and memorandum may be made by the Secretary of State.

Section 103 (*Auditing*) – The Inspector General of the State Department, the USAID and other federal departments and agencies (other than the Inspector General of the Department of Defense) shall carry out audit, investigate, and oversee the obligations and expenditure under Title I. Of the amounts authorized for each fiscal year 2010-2014, up to \$30 million for each fiscal year has been authorized to be made available to carry out this section.

**Title II – SECURITY ASSISTANCE FOR PAKISTAN -
Sections 201-205**

No amounts have been specified under Title II, and the sections under this title carry within them most of the clause that have been the source of criticism in Pakistan

Section 201 (*Purposes*) - lays down four basic purposes of assistance under this title, these include: (1) to support Pakistan's national security

needs to fight and win the ongoing counterinsurgency within its borders in accordance with its national interests; (2) work with Government of Pakistan to improve border security and control to prevent Pakistani territory from being used as a base or conduit; (3) cooperation with the Government of Pakistan to coordinate action against extremists and terrorist targets; and (4) Strengthen institutions of democratic governance and promote civilian control of military institutions.

Section 202 (*Authorization of Assistance*) – programs that will be assisted under this title include:

- (a) **International Military Education and Training** - substantial amount of funds made available to carry out this subsection be used to pay for study and training in counterinsurgency and civil-military relations.
- (b) **Foreign Military Financing Program** – significant portion of the amount made available for this subsection shall be for purchase of defense articles, defense services and military education and training relating to counterinsurgency and counterterrorism operations in Pakistan;
- (c) **Sense of Congress** – the US should facilitate Pakistan’s establishment of a program to provide reconstruction assistance, including through Pakistan’s military as appropriate, in areas damaged by combat operations.
- (d) **Exchange Programs between military and Civilian Personnel of Pakistan and Certain other Countries** – including military and civilian personnel of Pakistan; military and civilian personnel from countries determined by the Secretary of State to be in the process of consolidating and strengthening a democratic form of government; and military and civilian personnel of NATO countries. Elements of the program may include conferences, seminars, exchanges, and other events including publications and reimbursements for personnel participating in the program.

Section 203 (*Limitations on Certain Assistance*) – states that:

- (a) For fiscal years 2011-2014, no security-related assistance may be provided to Pakistan unless the Secretary of State, under the direction of the President, makes the certification required under subsection (c)
- (b) For fiscal years 2012-2014, no letter of offer to sell major defense equipment to Pakistan may be issued pursuant to the Arms Export Control Act (22 U.S.C. 2751 et seq.) and no license to export major defense equipment to Pakistan may be issued unless the Secretary of

State, under the direction of the President, makes the certification required under subsection (c)

(c) **Certification** – The Secretary of State, under the direction of the President, must certify to the appropriate congressional subcommittees - the Committee on Foreign Affairs, the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Permanent Select Committee on Intelligence of the House of Representatives; and the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate - that the Government of Pakistan is:

1. Continuing to cooperate with the US in efforts to dismantle suppliers' networks relating to acquisition of nuclear weapons-related materials, such as providing relevant information from or direct access to Pakistani nationals associated with such networks.
2. The Government of Pakistan during the preceding fiscal year has demonstrated a sustained commitment, and is making significant efforts in combating terrorist groups consistent with the purposes of assistance described in section 201 including progress on matters such as:
 - (A) ceasing support, including by any elements within the Pakistan military or its intelligence agency, to extremist and terrorist groups, particularly to any group that has conducted attacks against United States, or coalition forces in Afghanistan, or against the territory or people of neighboring countries;
 - (B) preventing Al-Qaeda, the Taliban and associated terrorist groups, such as Lashkar-e-Taiba and Jash-e-Mohammed, from operating in the territory of Pakistan, including carrying out cross-border attacks into neighbouring countries, closing terrorist camps in the FATA, dismantling terrorist bases of operations on other parts of the country, including Quetta and Muridke, and taking action when provided with intelligence about high-level terrorist targets; and
 - (C) strengthening counterterrorism and anti-money laundering laws.
3. The security forces of Pakistan are not materially and substantially subverting the political or judicial processes of Pakistan

Section 205 (*Requirements for Civilian Control of Certain Assistance*) –

(a) **Requirements** – among the two, that for fiscal years 2010-2014, any direct cash security-related assistance or non-assistance payments by the US to the Government of Pakistan may only be provided or made to civilian authorities of a civilian government.

(b) **Waiver** –

1. *Security-Related Assistance* – the Secretary of State may waive the requirements of subsection (a) in consultation with the Secretary of Defense if the Secretary of State certifies to appropriate congressional committees that the waiver is important to the national security of the US.
2. *Non-Assistance Payments* - the Secretary of Defense, in consultation with the Secretary of State, may waive the requirements of subsection (a) if the Secretary of Defense certifies to the appropriate congressional committees that the waiver is important to the national interest of the US.

The appropriate congressional committees in this section include: the Committee on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate. The term ‘civilian government of Pakistan’ does not include any government whose duly elected head of government is deposed by military coup or decree.

Title III – STRATEGY, ACCOUNTABILITY, MONITORING, AND OTHER PROVISIONS - Sections 301-302

Section 301 (*Strategy Reports*)

Following reports and plan are to be submitted to the appropriate congressional committees before deliberating assistance to Pakistan:

- (a) **Pakistan Assistance Strategy Report** - to be submitted no later than 45 days after the enactment of this Act by the Secretary of State describing US policy and strategy with respect to assistance to Pakistan under this Act. The report would include among others the principle objectives of US assistance under title I of this Act (a-1), projection of the levels of assistance for Pakistan under this Act,

broken down into the 17 categories described in the annual ‘Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance’** (a-6), and for reasons best known to the makers of this legislation an analysis for suitable replacement for existing Pakistani helicopters, including recommendations for sustainment and training (a-7).

(**The Millennium Challenge Account (MCA) is a bilateral development fund announced by the Bush administration in 2002 and created in 2004 under which conditional financial assistance is provided by the United States)

(b) Comprehensive Regional Strategy Report

1. Sense of Congress – that it is critical to Pakistan’s long-term prosperity and security to strengthen regional relationships among India, Pakistan and Afghanistan.
2. The President shall develop a comprehensive interagency regional security strategy to eliminate terrorist threats and close safe havens in Pakistan, including by working with the Government of Pakistan and other relevant governments and organizations in the region and elsewhere, as appropriate, to best implement effective counterinsurgency and counterterrorism efforts in and near the border areas of Pakistan and Afghanistan, including the FATA, the NWFP, parts of Balochistan, and parts of Punjab .
3. The report would be submitted to the appropriate congressional committees no later than 180 days after the date of the enactment of this Act. The Appropriate congressional committees defined under this paragraph include the Committee on Appropriations, the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on Appropriations, the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.

(c) Security-Related Assistance Plan - The Secretary of State to submit to appropriate congressional committees, no later than 180 days after the enactment of this Act, a plan for the proposed use of amounts

authorized for security-related assistance for each of the fiscal years 2010 through 2014.

Section 302 (Monitoring Reports)

- (a) **Semi-Annual Monitoring Report** – To be submitted by the Secretary of State in consultation with the Secretary of Defense to appropriate congressional committees, no later than 180 days after the submission of the ‘Pakistan Assistance Strategy Report’, and every 180 days thereafter through September 30, 2014. Among others the report shall include an evaluation of efforts undertaken by the Government of Pakistan to: disrupt, dismantle, and defeat al Qaeda, the Taliban, and other extremist and terrorist groups in the FATA and settled areas; eliminate the safe havens of such forces in Pakistan; close terrorist camps, including those of Lashkar-e-Taiba and Jaish-e-Mohammed; cease all support for extremist and terrorist groups; prevent attacks into neighbouring countries; increase oversight over curriculum in madrassas, including closing madrassas with direct links to the Taliban or other extremist and terrorist groups; and improve counterterrorism financing and anti-money laundering laws, apply for observer status for the Financial Action Task Force, and take steps to adhere to the United Nations International Convention for the Suppression of Financing of Terrorism (a-11). Detailed description of Pakistan's efforts to prevent proliferation of nuclear-related material and expertise (a-12). An assessment of whether assistance provided to Pakistan has directly or indirectly aided the expansion of Pakistan's nuclear weapons program, whether by the diversion of United States assistance or the reallocation of Pakistan's financial resources that would otherwise be spent for programs and activities unrelated to its nuclear weapons program (a-13). And, an assessment of the extent to which the Government of Pakistan exercises effective civilian control of the military, including a description of the extent to which civilian executive leaders and parliament exercise oversight and approval of military budgets, the chain of command, the process of promotion for senior military leaders, civilian involvement in strategic guidance and planning, and military involvement in civil administration.
- (b) **Government Accountability Office Reports** – to be submitted by the Secretary of State:
- (1) ***Pakistan Assistance Strategy Report*** - No later than one year after the submission of the ‘Pakistan Assistance Strategy

Report', including among others an assessment of the impact of the assistance on the security and stability of Pakistan (1-D)

- (2) ***Certification Report*** - Not later than 120 day after the President makes the certification described in section 203 (c), the US Controller General shall conduct an independent analysis of the certification, and submit a report to the appropriate congressional committees containing the results of the analysis.

The appropriate congressional committees defined in this section include the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Affairs of the House of Representatives; and the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate.

A thorough perusal of the combined congressional legislation (S. 1707) presented to the President for his final signature on October 5, 2009 reveals two aspects of the bill:

1. The entire 5-year \$1.5 billion annual assistance to Pakistan from fiscal 2010 through 2014 will be devoted to democratic, economic and developmental assistance that has been dealt with under Title I of the bill and carries no conditions other than a certification by the President's Special Representative to Afghanistan and Pakistan, or in case of vacancy or termination of the office of the Special Representative, by the Secretary of State, that Pakistan is making *reasonable progress* in achieving the benchmarks laid out in the 'Pakistan Assistance Strategy Report'(Section 301-(a)). These benchmarks all refer to civil liberties, political development and rights, government accountability and capacity building, enhancing the rule of law and control of corruption, sustainable economic development, natural resource management, expansion of agriculture, investments in energy generation, access to microfinance for small business and income generation, education and public health and strengthening of public diplomacy to combat militant extremism. None of these benchmarks make any reference to assistance being conditional to Pakistan eliminating safe haven of Al-Qaeda, the Taliban and other terrorist organizations, nor dismantling nuclear suppliers' networks or access to individuals associated with such networks.
2. None of the annual \$1.5 billion will be appropriated for security assistance to Pakistan dealt with under Title II. Any assistance under

Title II will be conditional to Pakistan's continued cooperation with the US in dismantling suppliers networks relating to nuclear weapons-related materials and providing relevant information from or direct access to Pakistani nationals associated with such networks; making significant efforts towards combating terrorist groups including ceasing support by elements within the Pakistan military or its intelligence agency, to extremist and terrorist groups; preventing Al-Qaeda, the Taliban and associated terrorist groups such as Lashkar-e-Taiba and Jaish-e-Mohammad from operating in the territory of Pakistan, including carrying out cross-border attacks into neighbouring countries and dismantling terrorist bases in FATA, NWFP, Quetta and Muridke; strengthening counterterrorism and anti-money laundering laws; non-subversion of the judicial and political processes in the country by the security forces of Pakistan [Section 203-(c)]; and control of military institutions by a democratically elected government[Section 201-(4)].

“Insult”, “Gharait (honour, self-respect)”, “Kerry-Lugar and our sovereignty”, “Surrender”, “Client State” - are some of the platitudes adorning the debate in Pakistan on whether to accept or reject the Kerry-Lugar bill along with some of the “conditions” that have been imposed with regard to security assistance to Pakistan.

“Insult”, “Gharait (honour, self-respect)”, “Kerry-Lugar and our sovereignty”, “Surrender”, “Client State” - are some of the platitudes adorning the debate in Pakistan on whether to accept or reject the Kerry-Lugar bill along with some of the “conditions” that have been imposed with regard to security assistance to Pakistan. Besides the ‘conditions’ on security assistance, even the \$1.5 billion in annual development assistance has been labelled as ‘peanuts’ and questioned by local business companies who claim that such an amount can be brought in the country on an annual basis by the private sector.⁹ The Pakistan Army has also expressed reservations both with the US officials and the national political elite. and it has now been agreed between the president, the prime minister and the army chief that the Obama administration would be asked to address Pakistan's concerns pertaining to the controversial clauses relating to its national interests and security.

Even as the National Assembly debates the merits and demerits of the bill, the president, the prime minister and the army chief have agreed to ask the Obama administration to address Pakistan's concerns pertaining to the controversial clauses relating to its national interest and security.¹⁰ Pakistan's decision is expected to be conveyed to the US president after the conclusion of parliamentary debate. President Obama has till October 15, 2009 after which he can send the legislation back to the Congress for reconsideration. It would then become the responsibility of the US Congress

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of how it determines the future course of US relations with Pakistan. It is pertinent to note here that under the US constitution if the president sends the legislation back for reconsideration, and if the Congress passes the same without any amendments after reconsideration, the legislation would become law governing US assistance to Pakistan even if the president does not sign the legislation.

Pakistan reserves the choice of refusing the assistance under the present Kerry-Lugar bill. Such a choice would be unfortunate under our present circumstances where the Americans have made it amply clear that eliminating the Qaeda leadership, primarily in Pakistan, using Special Operations forces, Predator missile strikes and other surgical tactics will be their prime approach in the war on terror.¹¹ According to John Kerry, after whom the present legislation is named, "Pakistan is the critical focus, the greatest security risk for the United States. And all of this exercise, after all, is about our security."¹²

For the Americans, the choices are very clear – if Pakistan will not take care of its problems, the Americans will do it for them. In international politics, there are no permanent friends or enemies, only permanent interests. Pakistan with all its economic, political and security shortcomings, must work to build on a relationship that is based on mutual interest. America may be a friend that Pakistan can do without, but it is a reality Pakistan cannot do away with in the context of the wider geopolitical, strategic and regional interests. Most Pakistanis may talk of

the Kerry-Lugar assistance as being “peanuts”, they may not like it, but there is little choice apart from refusing it completely.

Following an ongoing review of the Afghan strategy, the White House is already promoting missile strikes and raids by special forces to take out terrorist targets, particularly in Pakistan, rather than increasing the number of troops in Afghanistan.¹³ With the next targets in Pakistan clearly having been identified both in the Kerry-Lugar bill and by the US ambassador in Pakistan, the consequences could be nothing short of disaster.

Post Script, May 2011: This conclusion is already being borne out following the killing of the most wanted terrorist on the US list, Osama bin Laden in the Pakistani city of Abbotabad on May 1, 2011, and a report by Jane Perlez in The New York Times on May 1, 2011, that the Kerry-Lugar aid plan for Pakistan is “floundering because Washington’s fears of Pakistani corruption and incompetence has slowed disbursement of the money.” The report, quoting the US Government Accountability Office, said that only \$179.5 million of the first \$1.5 billion of the five-year programme had been disbursed by December 2010.

Notes & References

- ¹ Advisers to Obama Divided on Size of Afghan Force, *NYT* September 4, 2009.
- ² ‘Gilani’s no to foreign dictation in war on terror’, *The News International*, Sept. 29, 2009.
- ³ Ayaz Amir, ‘Kerry-Lugar: bill or document of surrender?’ *The News International*, Oct. 2, 2009.
- ⁴ ‘Congress okays Kerry-Lugar bill, with apprehensions’ *The News International*, Oct. 1, 2009.
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ ‘US has good mind to bomb Quetta: UK paper’, *The News International*, Sept. 28, 2009.
- ⁸ See text of S. 1707–A Bill.
- ⁹ ‘Nishat Group brought \$1b to Pakistan’, *The News International*, October 12, 2009.
- ¹⁰ ‘Troika agrees to disagree with US’, *The News International*, October 11, 2009.
- ¹¹ ‘McChrystal rejects Biden strategy for war in Afghanistan’, *Air America Media*, Editor Posts, October 1, 2009.
- ¹² ‘Pakistan is the greatest security risk for US: John Kerry’, *The Nation*, October 1, 2009.
- ¹³ ‘Surgical Strikes Shape Afghanistan Debate’, *NYT*, October 6, 2009.