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Preface

In this week's CSRS analysis you will read: factors of rush in signing the BSA between Afghanistan and the U.S., conditions of ex-president Hamid Karzai for signing the agreement, conditions of the consultative Loya Jirga, and ignoring those conditions and demands in the agreement.

Although there were plenty of problems and challenges in the context of the agreement, it was signed in a hurry. After the inauguration of the new government, immediately, President Ghani appointed Mohammad Hanif Atmar as the advisor of the National Security Council, and the day after, with the presence of many Afghan high-ranking officials, he signed the agreement with the U.S. ambassador Cunningham in Kabul.

As there were concerns about signing the agreement, it was signing with ignorance, and there was not, at least, the conditions and recommendations of consultative Loya Jirga added to the agreement. The weekly analysis will discuss: the conditions that the Loya Jirga recommended, US-Afghan mutual promises, and the future impacts of the agreement on Afghanistan.

BSA and its impacts on Afghanistan



The newly inaugurated Afghan Government, which is led by President Ashraf Ghani Ahmadzai, rushed in signing the Afghan-US Bilateral Agreement. Though, after signing the agreement, President Ghani assured Afghan Citizens and the neighboring and regional countries that the BSA would not be against the national interest of the country and the region, but only assurance cannot convince Afghan Nation, for the reasons below:

Were the demands and articles of ex-president Karzai added to the agreement? And were those articles and demands accepted?

Were the 31 articles, which were prepared by the consultative Loya Jirga, added to the agreement?

In fact, the context of the agreement distributed to the members of consultative Loya Jirga was not acceptable for any Afghan Citizen, even the ones that accepted the BSA. to be signed had their own provisions and conditions. Even those conditions are not added to the agreement, and there is only some literal word changes made in Pashto and Dari versions of the agreement.

Overall, it is one of those types of agreements that are signed between weak and strong governments, which did not think of the balance between the national interests of both the countries. It is called an agreement between a dominant and recessive government.

In fact, the agreement paved the way for long term military existence of US and NATO in Afghanistan, which will be the main factor for long term war in the country, and their so-called legitimate reason of military existence in the country will be struggle against terrorism. From historical perspective, this agreement will be one of those historical challenging agreements that still Afghanistan suffers from.

The factors of rush in signing the agreement

The demands of ex-president Karzai and the demands of the consultative Loya Jirga held on 24 November 2013, which were not included in the agreement, caused disappointment of the Afghans that were agreed to the agreement to be signed.

Most of analysts believe that the corruption, delaying the presidential election was conspiracy of US and it decided to create a weak government in Afghanistan, divide power among two groups. US believed that if there is a strong government created in Afghanistan, instead of signing the agreement, it will ask US for the account of the lost that Afghanistan faced in last few years. And even if the agreement is signed the Afghan Government will force US to implement the promises that they have done to the Afghan Government. But with a weak government, the Afghan Governmental Officials will be busy with their internal challenges, and US will be able to implement its plans in Afghanistan.

The main purpose of the rush in signing the agreement was that the Afghan Government will not be able to raise their voice about the demands of the consultative Loya Jirga and Karzai's demands from US. Because Karzai's deny from signing the agreement caused many Afghans to point out the negative impacts of the agreement for Afghanistan.

Conditions of Consultative Loya Jirga for Signing BSA

The conditions and demands that were prepared by the consultative Loya Jirga are not included to the agreement. After the demands and conditions of the Loya Jirga, while ex-president Karzai presented his demands and conditions for signing the agreement with US and denied from signing it; most of the media that are supported by foreigners were just advertising that the Loya Jirga accepted the agreement, but they ignored the conditions that the Loya Jirga demanded.

Though the Loya Jirga could not represent all the Afghan Nation, but still they had 31 articles for signing the agreement. And some of the members of the Loya Jirga, in their interviews with media, said that if these 31 articles are not included in the agreement, it is not acceptable for any Afghan.

First of all, it was written in the resolution of the Loya Jirga that the statements of president Karzai are acceptable for all the members of the Loya Jirga specially: immediate actions for peace in the country, improvement of the security condition in the country, immediate suspension of attacks and searching civilian houses by foreign forces, honesty of US in the Afghan-US friendship, and some more that are included in four extra articles of the resolution provided by the Loya Jirga. And the main purpose of the agreement is to bring peace to the country; but in last one year US did not do anything for bringing peace into the country.

The 28 more articles of the resolution for signing the agreement were as below:

1. Emphasizing on the resolution provided by the consultative Loya Jirga and the promises done by the US which none of them was implemented.
2. International Community has to support Afghanistan until a time that it stands on its feet, and becomes independent.
3. Strictly respecting the holy religion of Islam, and social and cultural norms of Afghans.
4. Accelerating the peace process, and inter-Afghan negotiation, through which all the nation become united and live peacefully, which the US didn't do it in the past.
5. In the 25th article of the BSA there should be a paragraph added to guaranty both the parties for bringing peace to the country, because US did not mention anything that guaranty its promises to the Afghan Government.
6. If US implemented its promises on time, then the Afghan Government can use the BSA as the source of expansion of relationship between Afghanistan and US.
7. With respect to the value of the agreement, the difference in the English, Pashto and Dari contexts of the agreement, and the mistake in Pashto and Dari contexts of the agreement should be corrected. The dumbness of expressions like: terrorism, attack, agreement, limitations of bases should be removed, for the explanation of these terms there should be legal definition of these concepts.
8. There should be a mechanism built for the prosecution of US soldiers, who commit crimes in Afghanistan, and there should be Afghans in the prosecution process, and the US should pay the financial expenses.
9. For being just about the prosecution, to the extent it is possible, the prosecution should be in Afghanistan, and under any circumstances US is not allowed to have their prisons in Afghanistan or hold the management of any prison in Afghanistan.
10. Military operations and searching civilian houses is not allowed, and President Obama's letter to ex-president Karzai, in which Obama ensured Karzai that searching houses will stop under specific conditions, should be attached to the agreement.
11. For the economic development, US forces should contract with Afghan companies.
12. US should pay attention for training Afghan forces, especially air forces, and there should be such mechanisms built that guarantee the equipment of Afghan forces, about which there are nonbinding promises given in the agreement.

13. The authority of building new utilities and transferring the existing areas and utilities should be in the hand of Afghan president. The facilities build by US army should be with high quality, and they should stop building temporary facilities.
14. In shared military facilities, the existence of US forces should be only for the purpose of training and technical assistance of Afghan forces.
15. It should be predicted in the agreement that the US forces cannot use internet, telecommunication of the country for their intelligence, and they are not allowed to use these facilities against Afghan citizens.
16. The Afghan foreign policy should be based on a friendly neighborhood. Under any circumstances the agreement cannot be against these policies, and US cannot use Afghan land for any military mission against any other country.
17. In the first part of the 26th article of the draft of the agreement it was mentioned; "... the agreement is available up to 2024 and after that ..."; but according to the fourth article of the resolution of the consultative Loya Jirga, they have a condition that the agreement will be valid up to ten years and after ten years it shall be expired, the agreement will be signed as the one between two independent countries and there should be balance in the interests of both the countries.
18. With paying attention to the land and airspace, and sovereignty of the country, the airspace control of the country should be handed over to Afghanistan.
19. The entrance and exit of US military and civilians from the borders of the country should be specified as soon as possible.
20. The policies for transaction, exchange, and expenses of money should be prepared as soon as possible.
21. Civilians, judiciary and other US related officials that are not related to the US military, and are busy with commerce in the country, should pay taxes to the Afghan Government.
22. If in regular activities or military operations of US any Afghan civilian, or the one who lives in Afghanistan and accept the Afghan rules and regulations, caused any transferrable and non-transferrable, agricultural, livestock, or by means lost, as soon as possible the US army should pay them with justice.
23. The list of diplomatic, political, military, and economic reaction in the case of any foreign attack or attempt of such activities should be provided as soon as possible.

24. The members of the Loya Jirga emphasized on the protection of environmental pollution, not using chemical, biological and atomic items, and asked the government to strictly prohibit the usage and burial of atomic items in the country.
25. They also said that there should be a part added to the seventh article about the protection and safety of minerals, underground resources, valuable pearls, and the historical statues and icons of the country.
26. If US does not follow its promises, at the beginning the Afghan Government will cancel the privileges to the US and due to the existing conditions, it will find other ways for the replacement.
27. For the implementation of the BSA. the relevant source of the Afghan Government should be executive branch (central government), National Security Council, or the ministry of foreign affairs.
28. The members of the Loya Jirga demanded the immediate submission of 19 Afghan prisoners that are imprisoned in Guantanamo Prison.

BSA and mutual obligations



The study of the bilateral security Agreement with 26 articles and two attachments, we find the following:

Important Points of B.S.A

1. In fact, the agreement is a document for the US that legalize its utilities and permanent military bases, and to have activities in Afghanistan after 2014, which will question the independence and sovereignty of the country. In addition, the agreement gives great authority to the US Army in Afghanistan.
2. US established its bases in strategic points of the country like: Kabul, Bagram, Mazar-e-Sharif, Herat, Kandahar, Helmand, Gardiz, and Jalalabad; so it seems that their aim is not what they say clearly, these bases might be built for other strategic purposes that might be out the Afghan borders.
3. The number of the US army soldier that will be based in these bases are not clarified, so US will be able to station any number of them as it wants.
4. The agreement is valid up to ten years, due to the first part of the 26th article of the agreement, if it is not invalidated, it will automatically extend. It means that the US military bases in Afghanistan are not temporary bases, but are permanent.
5. The foreign forces based in Afghanistan are able to perform military operations in any part of the country. In the fourth part of the second article it is said, "Both the parties agree that the US army can struggle against Al Qaida, and their relevant groups, which will be in the frame of mutual struggle against terrorism." The US did not accept the article that their forces are not allowed to enter the civilian houses and search there. And they gave a conditional promise about it. On the other hand, the word "terrorism" and "relevant of Al Qaida" is also not yet defined.

6. According to the seventh article of the agreement, the bases will be completely under the control of the US forces, anything they want to do they can do without any observation of the Afghan government. No one is able to enter the bases without the permission of the US forces. These bases are free, without any type of payment for the Afghan government, for the US army. On the other hand, their bases and utilities in Afghanistan are unlimited, according to the seventh part of the first article of the agreement, and in the future they can expand their bases to other parts of the country.
7. The US can use Afghan land as the storage of its weapons and equipment. According to the article nine of the agreement, the US can store its weapons, equipment, and any type of supplies in the appointed bases, and other areas of the country that both the parties are agreed on. The US has control over the stored weapons and equipment in the country and can use them, they can also transfer those abroad the country.
8. According to the article ten of the agreement, Afghanistan will provide anything needed by the airplanes used by the US army and the ones that work for the US army. Those airplanes will not pay any type of taxes for the Afghan Government, and will not pay any type of charges for the usage of Afghan airports and airbases. Overall, all the foreign forces are free of any type of taxes. While, if those taxes were given to the Afghan Government, Afghanistan would gain more than what the US promised the Afghan Government to give it annually.
9. It is also mentioned in the same article that Afghanistan allow all the vehicles related to the US army to enter, exit, drive inside the country, and these vehicles does not need any type of registration, and the Afghan Government does not have any authority over these vehicles. And all the vehicles, and airplanes related to the US are free of any type of observation, monitoring, and taxes in the country.
10. The article eleven of the agreement points that all the contractors, who work for US army in Afghanistan, either they are construction, or logistics company, are following the American rules and regulations. And all the contractors and workers of the US army are free of registration and taxes. And only for the purpose of gaining activation license they will refer to AISA, and they will pay the tax for AISA that needs activation once in three years.
11. The US military and their contractors can use the public services like: electricity, water, and gas, and they will pay as much as the Afghan Military Forces pay, and they should not be charged extra.
12. Afghan Government will provide some radio and television frequency free of charge and taxes for the US army. The US army is allowed to use those frequencies while needed. It is mentioned that the US army will provide entertainment programs for their army

through those frequencies. It is clear that those programs will not be limited to the military bases, and those may spread to the residential areas. This point caused concern about the cultural impacts of those programs on the Afghan civilians.

13. One of the most important aspects mentioned in the agreement is the full judicial protection of US military officials in Afghanistan. It is mentioned in the thirteenth article of the agreement that all the US militant and civilians have full judicial protection in Afghanistan. If they have done any type of crime in Afghanistan against any personality, they could not be prosecuted according to the laws of Afghanistan, no Afghan Security Forces or other organization has the right to arrest anyone of the US militant under any circumstances. If someone is arrested by any Afghan he/she should be submitted to the US military forces as soon as possible. And none of the US military members should be submitted to any international judiciary organization, or any other country's judicial system without the agreement of the US government.
14. It is mentioned in the fourteenth article of the agreement that any military of civilian American can have gun without the permission and license of the Afghan Government.
15. The fifteenth article of the agreement mentioned that all the military and civilian American, individually or collectively, can use any airport or border of the country without any visa, it is enough that they have their identity card provided by the US government. And they are exception from the registration and protection of foreign citizens in Afghanistan.
16. Due to the agreement, Afghan Government should provide one year visa for all the officials and contractors of the US Military forces as soon as possible, if any Afghan Official refuses it, the officials are supposed to inform the US forces as soon as possible.
17. It is mentioned in the sixteenth article of the agreement that the US forces are allowed to import and export anything to Afghanistan without the observation activities (except in exceptional cases) and they will not pay any taxes and they do not need any type of permission for such activities.
18. Article seventeen of the agreement says that all the members of the U.S. army, either military or civilians, are free of any type of taxes that are charged on foreign citizens. And all the contractors that are not Afghan citizens and do not live in Afghanistan are free of any type of taxes and charges.
19. It is said in the article eighteen of the agreement that all the driving licenses that are given to the military, civilians, and contractors, who are working for the U.S. army, are accepted by the Afghan Government, and the Afghan Government should provide all the number plates needed for the U.S. military without any type of taxes and charges.

20. According to the article 24 of the agreement, Afghanistan cannot refer to international courts and mediation of others because of the violation of the U.S.; “any type of dispute, especially about the interpretation and implementation of the agreement, should be solved through negotiation between the parties, and it should not be referred to any national or international court, or any similar organization, and third party for resolution.”

In addition to these issues, in the process of negotiation about the bilateral security agreement, in some of the documents sent by the Afghan delegation it was mentioned that the U.S. side emphasized that the operations of CIA drones should not follow the agreement.

In fact, the agreement provides any type of freedom for all the members of the U.S. military and their contractors. And up to the extent these freedoms are expanded to that extent the sovereignty and independency of Afghanistan is questioned.

The U.S. nonbinding commitments

The U.S. did not offer any thing for the privileges that it gains from Afghan Government. The Afghan Government asked the U.S. to be committed to the promises about the fixed financial support of the Afghan Security Forces. But the U.S. did not give any promises in the B.S.A. and the only thing that the U.S. mentioned in the agreement are the repetition of the articles mentioned in the strategic agreement signed between the two countries on 5th May, 2012. The third part of the article four of the security agreement pointed to the strategic agreement between Afghanistan and the U.S. and in the light of the decision made in the Chicago Conference in 2012 it is said that the U.S. is responsible for the searching th financial resources for training, supporting and equipment of the Afghan Security Forces. It means that the U.S. is searching for the resources, if they did not find the resources; they are not obliged to implement its promises to the Afghan Government.

About the external attacks on the Afghan territory, the U.S. said in the article six of the agreement that if any country attacks Afghanistan or attempt for attack on the Afghan land, the U.S. and Afghanistan will negotiate and will provide a resolution for it through negotiation and consultation. It is mentioned in the third article of the agreement, “If Afghanistan is attacked, or is under any risk of such attacks both the parties (Afghanistan and the U.S.) will negotiate and will provide resolution through consultation for the required political, economic and military activities against those attacks. All the parts of this article are about negotiation and consultation, and it ignores the demands of Afghan Government from the U.S. government.

But all the mentioned articles in the agreement that the U.S. took its responsibility, do not have the value of losing the sovereignty of the country. Therefore, most of the analysts believe that

the unexpected changes in the position of ex-president Karzai about signing the agreement were based on the lack of balance and justice in the agreement that were against the national interests of Afghanistan. Ex-president Karzai believed that the agreement would be much better than its current condition. And it will bring peace, prosperity and stability to Afghanistan.

As ex-president Karzai said, in the inauguration of the Loya Jirga, that his zeal and honor does not let him sign bases for the foreigners in the country, but he will accept it for the peace and stability of the country. “But, if we do not have peace and stability in the country, as the result of the agreement, we lost everything” according to him. “They will live peacefully in their bases”, he said, “and we will be in war against each other, and we will be full of injuries.”

The peace process

The B.S.A. gives plenty of authorities to the U.S. side, but in return there are uncertain promises given to Afghan side, and instead of containing applicable and mandatory promises, most of the terms are honorary like: respect, honor, consultation, and negotiation, which do not have any legal definition.

Not only Afghanistan will not develop economically with the agreement, but the peace process that is the main requirement of the government will also suspend up to 2024. And even after that, due to the article 26 of the agreement, the U.S. forces stay in the country the implementation of peace process seems impossible.

With signing the B.S.A. the Afghan Government Enemies will get strength, and their war may become much meaningful.

Though President Ashraf Ghani said that, in the future, it is possible to bring changes in the agreement, but it does not seem that changes in the agreement will be possible. As the U.S. did not accept many articles with the pressure of the Afghan Government in the negotiation, how is it possible that they will accept changes in the agreement in the future?!

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