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GSP, the mid-term review and Pakistan: The need to recalibrate

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Abstract

The political framework of the Generalised Scheme of Preferences (GSP) has centred on the improvement of governance, democratization, labour rights and human rights in beneficiary countries. One of the fundamental additions to the current regulation's eligibility conditions was the respect of UN conventions on terrorism (Article 19 (c), Chapter V). Furthermore, recital 34 of the present regulation requires the Commission to take into account combatting terrorism in its mid-term assessment. In 2014, Pakistan was granted GSP+ status. This requires effective monitoring and implementation of 27 UN conventions. This Policy Brief argues that Pakistan has not only failed to effectively implement several of these UN conventions but, most importantly, has not curbed its support for terrorist groups that destabilise the region. Islamabad's strategy of nurturing and propelling cross-border terrorism as a foreign policy tool is a serious violation of GSP principles, and distorts the efficacy of EU's global fight against terrorism. The mid-term review is a timely opportunity for the Commission to provide clarity regarding the EU procedures pertaining to the implementation of UN conventions on anti-terrorism, and to investigate Pakistan's severe shortcomings pertaining to violations of GSP+ conventions as well as violations of fundamental GSP principles stemming from state-sponsored, cross-border terrorism.

1. The Mid-term Review of GSP and the EU's fight against terrorism

In 1971, following a resolution of the United Nations Conference on Trade and Development (UNCTAD) and building on the consequent enabling of the General Agreement on Tariffs and Trade (GATT), the European Union initiated a process to build a system of preferences that supported developing countries.¹ It has seen several changes, amendments and reforms over the past 46 years and is presently overseen by Regulation (N978/2012).²

Regulation N° 978/2012:

GSP builds on the EU's Common Commercial Policy, complementing it both by developmental commercial incentives and by the compliance to some of the international community's norms selected by the EU.³

While there are economic, procedural and technical differences between the previous (N° 732/2008) and the current Regulation (N° 978/2012) in terms of eligibility, product coverage, and the depth of tariff cuts etc.,⁴⁵ the most fundamental political amendment is the inclusion of international anti-terrorism conventions as eligibility criteria. The shift is substantial as it enables the commission to initiate the temporary withdrawal of the GSP scheme from beneficiary countries for the failure to comply with international conventions on anti-terrorism.⁶

¹ See European Commission website on GSP:

<http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences>

² See Official Journal of the European Union. Legislative Acts. Regulation (EU) N° 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) N° 732/2008. Regulation L 303/1, Recital 1-5.

http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

³ See Beke, L; Hachez, N. The EU GSP-A Preference for Human Rights and Good Governance? Leuven Centre for Global Governance Solutions, Working Paper N° 155-March 2015.

https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp151-160/wp155-beke-hachez.pdf

⁴ For a detailed summary please see: Chapter I, Generalized System of Preferences: Handbook on the Scheme of the European Union. United Nations Conference on Trade and Development (UNCTAD), 2015.

http://unctad.org/en/PublicationsLibrary/itcdtsbmisc25rev4_en.pdf

⁵ For a summary of concrete changes and objectives please see: Development Solutions. Mid-Term Evaluation of the EU'S Generalised Scheme of Preferences (GSP), Final Interim Report for the EU commission, 21 September 2017, p.14-15.

http://www.gspevaluation.com/wp-content/uploads/2016/12/tradoc_156085.pdf

⁶ Official Journal of the European Union, Legislative Acts. Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012, applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008. Regulation L 303/1, Article 19 (c), Chapter V.

http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

Unlike the 27 conventions listed in annex VIII, the regulation does not contain a separate annex that lists conventions on money-laundering or international anti-terrorism conventions.

The mid-term review and the fight against terrorism

In article 40, paragraph 2, the regulation stipulates that:

By 21 November 2017, the Commission shall submit, to the European Parliament and to the Council, a report on the application of this Regulation. Such a report may, where appropriate, be accompanied by a legislative proposal.

Recital 34 defines the objectives and mandate of the mid-term report:

The Commission should report regularly to the European Parliament and to the Council on the effects of the scheme under this Regulation. Five years after its entry into force, the Commission should report to the European Parliament and to the Council on the application of this Regulation and assess the need to review the scheme, including the special incentive arrangement for sustainable development and good governance and temporary withdrawal provisions of tariff preferences, taking into consideration the fight against terrorism and the field of international standards on transparency and exchange of information in tax matters. In reporting, the Commission should take into account the implications for development, trade and financial needs of beneficiaries. The report should also include a detailed analysis of the impact of this Regulation on trade and on the Union's tariff income, with particular attention to the effects on beneficiary countries. Where applicable, compliance with Union sanitary and phytosanitary legislation should also be assessed. The report should also include an analysis of the effects of the scheme with regard to imports of biofuels and sustainability aspects.⁷

We note therefore, the importance given to the fight against terrorism within the mid-term review process.

⁷ Ibid, Recital 34.

This change is in line with the report “Action plan on combating terrorism” provided by the EU Counter-Terrorism Coordinator (CTC) to the European Council in 2011:

*To pursue and investigate terrorists across Europe and outside is the third pillar of the European strategy combating terrorism. We have to continue and increase our efforts to uncover terrorist networks, to impede communication, travel and planning activities of terrorists and their supporters; to cut off funding and access to attack materials, and to file them in court.*⁸

Furthermore this report makes a direct reference to the UN conventions on anti-terrorism and the need to urge third countries to comply:

Ratification of 16 UN legal instruments against Terrorism and continue to lobby for this in third countries both bilaterally and at EU level.^{9 10}

By including the failure to comply or enforce anti-terrorism conventions as one of the key general GSP withdrawal indicators, and by highlighting the necessity to include the evolving and growing threat of terrorism in Recital 34, the European Commission, in agreement with EU Parliament and the EU Council have made it abundantly clear that the global threat of terrorism must be taken seriously by the EU commission.

GSP +

While the EU grants GSP to countries autonomously, without an application by beneficiary countries, GSP+ admission is a “two-way street”. GSP+ is especially attractive as it grants beneficiary countries deeper tariff preferences.¹¹ Article 9 of the regulation lays out clear

⁸ EU Counter-Terrorism Coordinator (CTC). January 2011, Report to the European Council on EU Action Plan on combating terrorism, p.20.
<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015893%202010%20REV%201>

⁹ Ibid, 3.4.1, p.41.

¹⁰ For a full list of the 16 UN conventions please see the website of the Security Council Counter-Terrorism Committee. <http://www.un.org/en/sc/ctc/laws.html>

¹¹ “Essentially duty-free access on all tariff lines where the duty is solely an ad valorem or specific tariff, and the removal of the ad valorem element in the case of a mixed tariff”, Directorate-General for the International Cooperation and Development, EU Commission, Assessment of economic benefits generated by the EU Trade Regimes towards developing countries, Volume 1, June 2105, p.28, box 5.
http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153595.pdf

benchmarks that need to be met in order to become eligible for GSP+. The largest normative separating point between GSP and GSP+ is the required ratification and effective implementation of 27 conventions.

These comprise of Part A, 15 core UN/ILO human and labour rights and Part B, which focuses on “Conventions related to the environment and to governance principles”.¹² Article 9(b), Chapter III lays out stringent requirements for countries to obtain and maintain GSP+ status. These requirements are more substantial and far-reaching than those of GSP. While Article 9(b) states that conventions in Annex VIII must be ratified and effectively implemented, Article 19(a), chapter V does not require GSP beneficiary countries to ratify or implement the conventions, but merely states that GSP may be temporarily withdrawn in case of “serious and systematic violation of **principles** laid down in the conventions listed in part A of Annex VIII.¹³ Furthermore Article 19(a) does not mention conventions of Part B, Annex VIII.¹⁴

While the onus of decision-making is on the side of the EU commission with regards to granting GSP+, it draws on information provided by the relevant UN/ILO monitoring bodies as well as third parties “including civil society, social partners, the European Parliament or the Council.”¹⁵

Initiating a GSP + withdrawal process

If beneficiary countries of GSP+ fail to effectively implement conventions and do not provide information pertaining to shortcomings mentioned by the relevant monitoring/review, the commission may decide to “adopt an implementing act to initiate the procedure for the temporary withdrawal of the tariff preferences provided under the special incentive arrangement for sustainable development and good governance. The Commission shall inform the European Parliament and the Council thereof.”¹⁶ The regulation indicates that the EU Commission must

¹² Official Journal of the European Union. Legislative Acts. Regulation (EU) N° 978/2012 of the European Parliament and of the Council of 25 October 2012, applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) N° 732/2008. Regulation L 303/1, Annex VIII, http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

¹³ Ibid, Article 19(a).

¹⁴ Ibid.

¹⁵ Ibid, Article 14(3), Chapter III. Also see: Chapter III, Article 1 and Recital 15.

¹⁶ Ibid Article 15(3).

provide a biennial report on the status quo of GSP+ as well as on cooperation and effective implementation thereof by beneficiary countries that includes “conclusions or recommendations of relevant monitoring bodies in respect of each GSP+ beneficiary country.”¹⁷

Article 15 highlights that the implications and conclusions of the biennial report mentioned in Article 14 may also lead to a temporary withdrawal procedure, “either on the basis of the conclusions of the report referred to in Article 14 or on the basis of the evidence available.”¹⁸ Once the Commission decides to initiate a withdrawal procedure and publishes a notice in the “Official Journal of the European Union”, the affected GSP+ beneficiary country has a maximum of 180 days to submit its objections.¹⁹ After this period the Commission must decide within three months to “either terminate the temporary withdrawal procedure or to temporarily withdraw the tariff preferences provided under the special incentive arrangement for sustainable development and good governance”.²⁰ If the Commission opts for the former procedure “such delegated act shall take effect six months after its adoption.”²¹

To summarize, if the Commission decides either due to its own investigations, building on monitoring/review bodies or due to the conclusions of the biennial report (next report due on January 1, 2018) to temporarily withdraw GSP+ status from a beneficiary country, this country is downgraded to GSP status. There are however universally binding conventions mapped out in Article 19 of Chapter V that apply to both GSP and thus also GSP+ countries. These include for example:²²

- a) *Serious and systematic violation of principles laid down in the conventions listed in Part A of Annex VIII.*

¹⁷ Ibid Article 14(2a).

¹⁸ Ibid Article 15(3).

¹⁹ Ibid Article 15(4a/4b).

²⁰ Ibid Article 15(7a/7b).

²¹ Ibid Article 15(10).

²² For a full list please see: Ibid, Article 19(1), Chapter V.

b) Export of goods made by prison labour, serious shortcoming in customs controls of transit drugs (illicit substances), or failure to comply with international conventions on anti-terrorism and money laundering.

2. Pakistan, the civil-military nexus and the Generalised Scheme of Preferences

Since its independence in 1947, truncated civil-military relations, socio-political instability and the instrumentalisation of Islamist elements have marred Pakistan's political culture, institutions, and governance. The military's prevalent control of political institutions and an unabated, albeit ambivalent tug of war between the civilian and military leadership, dominate the political discourse. This has hampered socio-economic advancement and has stifled the progress of Pakistan's heterogeneous, multi-religious and multi-ethnic society.²³

There are three main cleavages that have enabled the military in Pakistan to dominate politics: First, the preoccupation with its perceived arch-rival India, with which Pakistan has instigated war four times.²⁴ Second, the army's successful penetration of political domains such as foreign affairs, defence and trade. Third, the army's utilisation of and relationships with cross-border Jihadists in India and Afghanistan, was instrumental in providing Pakistan with staunchly malign Islamist assets of foreign policy. What Pakistan lacks in conventional military capacities it tries to recoup by clandestinely nurturing and co-opting militant factions to destabilize the region and advance Pakistan's perceived objectives.²⁵

The lack of civilian control over the Armed Forces and a decade-long firm grip on power by generals has led to the creation of terms such as "Garrison State" or the "Praetorian State" to define this power relationship.²⁶

In 2013, for the first time in Pakistan's history, the Islamic Republic witnessed a passing of the torch from one civilian government to the next, reviving hopes for the consolidation of civilian

²³ See Lieven, Anatol. 2012. Pakistan: A Hard Country. Penguin Books, London.

²⁴ 1947-1949 (first war over Kashmir) / 1965 (second war over Kashmir) / 1971 (Bangladesh) / 1999 (Kargil third war over Kashmir).

²⁵ See: Cohen, Stephen. 2011. Pakistan: Arrival and Departure in The Future of Pakistan, Brookings Institution Press, Washington, D.C.

²⁶ T.V. Paul provides definitions for both terms:

"A **Garrison State** is characterized as a state which is preoccupied with danger, one in which the "specialists on violence" are the most powerful societal group; the main function of the ruling elite is to skilfully guide the minds of men through symbolic manipulation and prevent the full utilization of state resources for non-military purposes"

"A **Praetorian State** is one in which the military frequently intervenes in national politics and dominates the political system while professional officers emerge as a ruling class and play a leading role in the country's institutions"

Paul, T.V. 2015. The Warrior State: Pakistan in the Contemporary World. Oxford University Press, London, p.72.

control.²⁷ However, the subsequent years proved that the disparity between elected officials and military brass remained in favour of the Armed Forces. The military still dominates the realms of anti-terrorism and foreign policy, especially regarding India, Afghanistan and Kashmir. In addition, the Army controls most decision-making power in the sphere of nuclear strategy and policy. It also leverages parities to its corporate interests, such as the defence budget, procurements and further business activities.^{28 29}

While it is accurate that the evolution of the Pakistani state has been widely determined by power struggles between civilians and the military for state power and influence, a narrative of unyielding counterparties is not historically accurate.

The ascendance of the military is to some extent abetted by elected politicians who expedited the Armed Forces' political activities and resource base, thus propelling the demise of civilian control:

Politicians themselves contributed to the military's politicization by asking it to intervene to quell ethnic and religious revolts and to settle political differences. Both the Bengali revolt in 1971, and the Baluchi revolt in 1973-77 were repressed by the army. While the 1971 intervention was decided by General Yahya Khan, the repression in Baluchistan was decided by the elected government of Zulfikar Ali Bhutto, who, like the higher military echelons, was unwilling to redress ethnic grievances that were at the basis of the revolt. (...) In the 1980s Pakistan's role in the jihad against Soviet forces in Afghanistan was amply rewarded by the Reagan administration, which provided Zia with sophisticated military equipment and funding as well as substantial economic aid. Pakistan's support of the mujaheddin on behalf of "the free world" also justified higher allocations to the defence budget: defence spending under Zia dramatically expanded, by '87-'88 overtaking development spending. In that context another event occurred which would have deep consequences: the military high

²⁷ The Economist. Pakistan's Election: Third Time Lucky, May 12, 2013. <https://www.economist.com/blogs/banyan/2013/05/pakistan-s-election-0>

²⁸ Wolf, Siegfried, O. 2017. Pakistan and State-Sponsored Terrorism in South Asia in Terrorism Revisited: Islamism, Political Violence and State-Sponsorship, Casaca, P; Wolf, Siegfried, O. (eds.), Springer, Heidelberg, p.111.

²⁹ A further indicator for the lack of civilian oversight and control is the fact that Pakistan's defence budget is not open for debate by Parliament.

*commands, together with the ISI, a branch of the secret services, took control of Afghan policy and the nuclear sector, and since then have been reluctant to let them go.*³⁰

Furthermore, Pakistan is marred by a plethora of issues –general political instability, the erosion of civil liberties and minority rights, nepotism and corruption along with an unclear devolution of power and socio-economic issues, unsteady, ineffective political institutions lacking political will and credibility, an inhibited freedom of press and association as well as shortcomings in the judicial sector.³¹ In its annual report from 2016, the United Nations Development Programme (UNDP) calculated a Human Development Index score (HDI) of 0.550, lower than the average of 0.621 amongst South Asian Countries.³² In addition Although Pakistan has a higher Gross National Income (GNI) of \$ 5,031 per capita (PPP\$ in 2015) than Bangladesh (GNI p.c.: \$3,341/HDI: 0,579) it has a lower HDI score. In 2010 the UNDP introduced a new indicator that added the dimension of inequality to the HDI.³³ Measurements of the so-called Inequality-adjusted HDI (IHDI) from 2015 show that Pakistan HDI score witnessed a drop of more than 30% when including the factor of inequality (IHDI: 0,380), the highest decrease in South Asia.³⁴

In 2017, Freedom House, which assesses political rights and civil liberties, concluded that Pakistan’s press freedom and net freedom had glaring deficiencies Pakistan’s overall freedom was rated at 4.5/7 (1 most free/7 least free).³⁵

Pakistan – Preferential Treatment within Preferential Schemes

Pakistan was one of the founding members of “Group 77” (G-77), which was established at the United Nations Conference on Trade and Development in 1964.

³⁰ Giunchi, E.A. July 2014. The Political and Economic Role of the Pakistani Military. Institute for International Studies (ISPI), Analysis N° 269, p.4-5.
http://www.ispionline.it/sites/default/files/pubblicazioni/analysis_269_2014.pdf

³¹ See Bertelsmann Transformation Index (BTI). 2016. Pakistan Country Report.
https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Pakistan.pdf

³² Position 147 out of 188 countries and territories.

³³ UNDP Human Development Report. 2016. Briefing note for countries on the 2016 Human Development Report: Pakistan, p.4
http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/es/PAK.pdf

³⁴ Ibid, p.5.

³⁵ Freedom House. Freedom in the World 2017: Pakistan.2017.
<https://freedomhouse.org/report/freedom-world/2017/pakistan>

G-77 was created in order to articulate and promote “collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development.”³⁶ In 1971, the European Community first applied GSP to the G-77 in what is referred to as the “first scheme”³⁷ (1971-1980).³⁸

Thus far, there has been no temporary withdrawal procedure of Pakistan’s GSP status. However, in 1997 international trade unions filed complaints revolving around child labour practices in Pakistan. While the allegations were initially dismissed, the complaint was re-submitted in 1998 “with charges of massive forced and child labour, especially in the carpet industry.”³⁹

Within the scope of the investigation, backed by EU’s Economic and Social Committee, the Commission considered an ILO assessment stating that Pakistani authorities had not undertaken measures to adequately prevent, scrutinize and penalize child labour practices.⁴⁰ The Commission did not refute the allegations, but concluded nevertheless that there was no basis for the initiation of a temporary withdrawal procedure.^{41 42}

Following the September 11 attacks, the EU and Pakistan signed a new co-operation agreement that not only provided direct financial assistance, but also removed tariffs for Pakistan’s primary export sector, the garment industry.

³⁶ The Group of 77 at the United Nations, general Information:
<http://www.g77.org/doc/>

³⁷ The main features were preferential tariff advantages granted unilaterally and on a non-reciprocal basis for: processed agricultural products and finished/semi-finished industrial products .

³⁸ European Parliament Fact Sheets. 6.4.2. Trade regimes applicable to developing countries:
http://www.europarl.europa.eu/facts_2004/6_4_2_en.htm

³⁹ Portela, C; Orbie, J. 2014. Sanctions under the EU’s Generalised Scheme of Preferences (GSP): Coherence by Accident? Contemporary Politics, vol.20, issue 1, p.7.
http://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=2686&context=soss_research

⁴⁰ Ibid.

⁴¹ Fierro, E. 2003. The EU’s approach to human rights conditionality in practice. Martinus Nijhoff, The Hague, p.375.

⁴² “The reasons for the negative decision were of a technical-legal nature: Art 9 of the GSP regulation referred to ‘forced labour’ and not to ‘child labour’ as such. Indeed, when the EU received a complaint alleging the use of child labour in the country in 1997, ILO committees had not commented on Pakistan’s observance of child labour conventions because it had not ratified any of those conventions and was thus not bound by them. Therefore, the complaint had to be worded as ‘forced labour’. In the absence of formal condemnation of Pakistan by the ILO, the EU was unable to make reference to any formal decisions by supervisory bodies” Portela, C; Orbie, J. 2014. Sanctions under the EU’s Generalised Scheme of Preferences (GSP): Coherence by Accident? Contemporary Politics, vol.20, issue 1, p.7-8.
http://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=2686&context=soss_research

The European Commission's Memo/02/122, which outlines the Plan of Action adopted by the Special European Council on September 21, 2001, also reveals changes to Pakistan's GSP status:

*In recognition of Pakistan's changed position on the Taliban regime and its determination to return to democratic rule in 2002, the Commission has stepped up the EU's assistance to Pakistan (up to € 100 million in 2001/2002). A new Co-operation Agreement was signed at the occasion of the visit of President Prodi and PM Verhofstadt to Pakistan on the 24 November 2001, where they also met up with President Musharraf. On 16 October, The Commission presented a package of trade measures designed to significantly improve access for Pakistani exports to the EU. The proposed package has been specifically tailored to target clothing and textiles accounting for three-quarters of Pakistan's exports to the EU. It removes all tariffs on clothing and increases quotas for Pakistani textiles and clothing by 15%. In return, Pakistan will improve access to its markets for EU clothing and textile exporters. **The package gives Pakistan the best possible access to the EU short of a Free Trade Agreement by making it eligible for the new Special Generalised System of Preferences Scheme for countries combatting drugs.** This package was approved by the General Affairs Council on the 10 December 2001.⁴³*

Unlike the current GSP regulation consisting of GSP, GSP+ and EBA, the GSP Regulation (EC) No 2501/2001 of December 2001 had five pillars, one of which was “special arrangements to combat drug production and trafficking.”^{44 45}

The predecessor of Council Regulation (EC) No 2501/2001, (EC) No 2820/98 included a similar special arrangement that supported measures to combat drugs.⁴⁶ Originally the special GSP drugs incentive System was granted to Andean States struggling in the fight against drug trafficking and

⁴³ European Commission press release. EU Response to the 11 September: European Commission action. Memo/02/122..

[http://europa.eu/rapid/press-release MEMO-02-122_en.htm#file.tmp_Foot_1](http://europa.eu/rapid/press-release_MEMO-02-122_en.htm#file.tmp_Foot_1)

⁴⁴ Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004, Official Journal of the European Communities, L 346/1, Article 1(2e).

http://trade.ec.europa.eu/doclib/docs/2003/may/tradoc_113021.pdf

⁴⁵ For trade implications of Article 1(2e) please see: *ibid*, Section 4, Article 10.

⁴⁶ Council Regulation (EC) No 2820/98 of 21 December 1998 applying a multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001, Official Journal of the European Communities, L 357/1, Article 7, Section 4.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998R2820>

production in 1990, and extended to Central American states by 1998.⁴⁷ While there were some minor, technical revisions between both special arrangements from 1998 and 2001, the most substantial shift was the fact that Pakistan was added to the list.⁴⁹

In 2002, India filed a complaint with the World Trade Organisation arguing that the GSP scheme of the European Commission regarding Drug Arrangements was not “generalized, non-reciprocal and non-discriminatory” because it “clearly made a distinction between two categories of developing countries,”⁵⁰ and thus breached Article I.1 of GATT 1994.⁵¹

In 2004, following the adoption of the Appellate Body report by the Dispute Settlement Body (DSB), the EU “reaffirmed its intention to fully comply with the recommendations and rulings of the DSB in a manner that respected its WTO obligations” and in 2005 “announced that the special arrangements to combat drug production and trafficking of Title IV of EC Regulation (2501/2001) had been repealed as of 1 July 2005, and a new regulation (980/2005) had been promulgated bringing the European Communities into compliance with the DSB’s recommendations and rulings.”⁵² The regulation from 2005 inaugurated the trifecta of GSP, GSP+ and EBA that is still in force in the current regulation.

⁴⁷ Colombia, Venezuela, Ecuador, Perú, Bolivia (1990)/Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panamá (1998), *ibid* Annex V

⁴⁸ Orbie, J.; Babarinde, O. 2009. *The Social Dimension of Globalization and EU Development Policy: Promoting Core Labour Standards and Corporate Social Responsibility in Policy Coherence and EU Development Policy*, Carbone, M (ed.), Routledge, New York, p.137.

<https://books.google.de/books?id=ngTcAAAAQBAJ&pg=PA137&lpg=PA137&dq=GSP+for+andean+central+american+states+special+incentive+drugs&source=bl&ots=CuRNC1vD2E&sig=yAiyJxnUJqjL1MSJ5gKmjUDsx0&hl=de&sa=X&ved=0ahUKEwiK1-Tk4OvWAhVqM5oKHdaTDuoQ6AEIMjAC#v=onepage&q=GSP%20for%20andean%20central%20american%20states%20special%20incentive%20drugs&f=false>

⁴⁹ Council Regulation (EC) N° 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004, Official Journal of the European Communities, L 346/1, Annex 1.

http://trade.ec.europa.eu/doclib/docs/2003/may/tradoc_113021.pdf

⁵⁰ Schwitzer, S. 2008. Environmental Protection and the Generalized System of Preferences: A Legal and Appropriate Linkage? *International and Comparative Law Quarterly*, vol. 57, p.127-128.

<https://pure.strath.ac.uk/portal/files/14534182/gsp.pdf>

⁵¹ For more information regarding procedure, arguments put forward and conclusions of the dispute please see: WTO. DS246: European Communities-Conditions for the Granting of Tariff Preferences to Developing Countries.

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm

⁵² *Ibid*.

Following the 2010 floods in Pakistan, the Commission championed a proposal to lower import duties for Pakistan, put forward by then Trade Commissioner Karel De Gucht. However, the first proposal was met with serious resistance by several EU Commissioners, who argued that “disguised aid” was the core driving force behind the proposed regulation and a threat to the EU’s textile industry.^{53 54}

The declaration on Pakistan in Council Conclusions from September 16, 2010 reveals that geopolitical factors such as counter-terrorism were given a lot of weight:

(...) taking also into account the strategic importance of Pakistan’s development, security and stability in the region (...) the European Council reiterates its intention to strengthen cooperation on political issues. A stable, democratic and prosperous Pakistan is key to addressing global issues such as counter-terrorism, non-proliferation or counter-narcotics.⁵⁵

Despite intra-EU resistance and, serious concerns that amounted to a two-year phase of discussions and proposed amendments, the commission eventually adopted Regulation (EU) N° 1029/2012 of October 25 2012 introducing emergency autonomous trade preferences for Pakistan. Similar to the 2010 Council Conclusions, geopolitics is enshrined within the regulation, bolstered by the notion that Pakistan is an important European ally and the key actor in the region’s anti-terrorism efforts:

The severity of this natural disaster demands an immediate and substantial response, which would take into account the geostrategic importance of Pakistan's partnership with the

⁵³ Euractiv. EU-Pakistan trade plan faces fresh criticism, May 10 2011.

<https://www.euractiv.com/section/global-europe/news/eu-pakistan-trade-plan-faces-fresh-criticism/>

⁵⁴ Portugal especially voiced its concerns, the then-economy Minister stated: "We see such a proposal bringing severe havoc to the Portuguese textile and clothing industry due to potentially unfair competition resulting from dumping-level prices practised by Pakistan."

⁵⁵ General Secretariat of the Council. European Council 16 September 2010 Conclusions. October 12, 2010, Point 1, Annex II.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/116547.pdf

Union, mainly through Pakistan's key role in the fight against terrorism, while contributing to the overall development, security and stability of the region.⁵⁶⁵⁷

This historical exposition shows that Pakistan was able to evade a temporary GSP withdrawal in 1997 due to very questionable technicalities and furthermore has been granted “preferential treatment” within the GSP initiative. The first phase of “preferential treatment” started in 2001 when Pakistan, as the only country outside of Central/South America, became a beneficiary of special arrangements to combat drug production and trafficking. The existence of the aforementioned special arrangement, along with its implications, was eventually overturned by the WTO after India’s successful appeal against the violation of GATT principles. The second phase of “preferential treatment” started in 2012 when Pakistan received very lucrative emergency autonomous trade preferences that far expanded the benefits of standard GSP, despite criticism and fears of a detrimental impact on several EU industries. It is important to point out that both in 2001 and 2012 geostrategic implications and the fight against terrorism were core arguments used to defend and enact “preferential treatment”. They can however only apply within the logic of viewing Pakistan as an indispensable counter-terrorism ally or as the victim of terrorism. As briefly outlined in this chapter, Pakistan instrumentalises terrorist elements and destabilizes the region; the following chapters will further substantiate these claims. Arguing that there is lack of awareness amongst policy makers regarding Pakistan’s detrimental role in the fight against terrorism is inaccurate. A proposed Parliament amendment to regulation N° 1029/2012 states:

⁵⁶ Regulation (EU) N° 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan, Official Journal of the European Union, L 316/43, Recital (5). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:316:0043:0053:EN:PDF>

⁵⁷ Ibid Recital 8 outlines the main economic contours of the Regulation: “In particular, the European Council underlined its firm commitment to grant exclusively to Pakistan increased market access to the Union through the immediate and time limited reduction of duties on key imports from Pakistan. In the light of that Declaration, the Commission proposed a package identifying 75 tariff lines specific to Pakistan's core export sectors in those areas worst hit by the floods, asserting that an increase in Pakistani exports to the Union of EUR 100 million or more a year would provide real, substantial and worthwhile assistance to the region.”

The regulation entered into force on November 15, 2012 and remained applicable until December 31, 2013.

If Pakistan adopts measures restricting human rights and workers' rights, gender equality or religious rights or if it provides terrorist organisations of any kind with backing or support, the Commission shall immediately propose to repeal this Regulation.⁵⁸

The next chapter will outline the implications of Pakistan's GSP+ status that it acquired in 2014. Furthermore it will emphasise and analyse the 2016 EU Commission biennial report on Pakistan.

⁵⁸ European Parliament amendments adopted on 10 May 2011 to the proposal for a regulation of the European Parliament and of the Council introducing emergency autonomous trade preferences for Pakistan (COM(2010)0552 – C7-0322/2010 – 2010/0289(COD)), Official Journal of the European Union, C 161 E/147, 7.12.2012, Amendment 26 Proposal for a regulation Article 2 – paragraph 1 a.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XP0205&qid=1507811043578&from=EN>

3. Pakistan receives GSP + and the review of the Commission's biennial Report

On January 1, 2014 Pakistan became a beneficiary of GSP+. While Regulation N° 978/2012 became applicable from November 20, 2012, tariff preferences only started applying from January 1, 2014. The rationale behind this time gap was to give potential beneficiary countries time to submit applications and provide the Commission with ample time to comment, review and decide on granting GSP+. For this purpose, the Commission investigates if the applicant countries have undertaken the necessary steps regarding the ratification, effective implementation and monitoring of the 27 conventions.⁵⁹

For Pakistan, this meant that the country had to continue to adhere to the rules and conventions mapped out in the general temporary withdrawal provisions which are common to all arrangements, and was now obliged by the Commission to follow and implement Article 9 in order to become a beneficiary of GSP+.⁶⁰ More concretely, in order to become and remain eligible for GSP+, Pakistan had to ratify and effectively implement 27 conventions and facilitate monitoring thereof. As a GSP beneficiary Pakistan had to ensure that it respected the “principles laid down in the conventions listed in Part A of the Annex VIII”⁶¹ but it was not bound to any of the GSP+ conventions mentioned in Part B of Annex VIII. The most substantial change however, which is not part of the GSP to GSP+ transition logic, and an entirely novel aspect of Regulation N° 978/2012, is the requirement for GSP, GSP+ and EBA to comply with international conventions on anti-terrorism.⁶²

⁵⁹ For more on the process of granting/receiving GSP+ please see: Official Journal of the European Union. Legislative Acts. Regulation (EU) N° 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) N° 732/2008. Regulation L 303/1, Article 9 and 10.
http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

⁶⁰ Ibid.

⁶¹ Ibid., Article 19(a).

⁶² See chapter 1 regarding the inclusion of the fight against terror and international terrorism conventions in Regulation N° 978/2012 also see *ibid.*, Article 19(c).

Ratification, Reservations and Reporting of GSP+ Conventions

As alluded to in Chapter 1, Regulation N^o 978/2012 requires the Commission to provide a biennial report on the status quo of GSP+ compliance regarding ratification, monitoring and implementation of the 27 UN Conventions to the Parliament and Council.⁶³

Although Pakistan had ratified all 27 conventions⁶⁴ prior to filing a request to become a beneficiary of GSP+, it still had major reservations to several UN Human Rights Conventions in 2011.⁶⁵ While Pakistan withdrew most of them in the following years, reservations to four of the seven UN Human Rights conventions are still in force as a graph from Democracy Reporting International highlights:⁶⁶

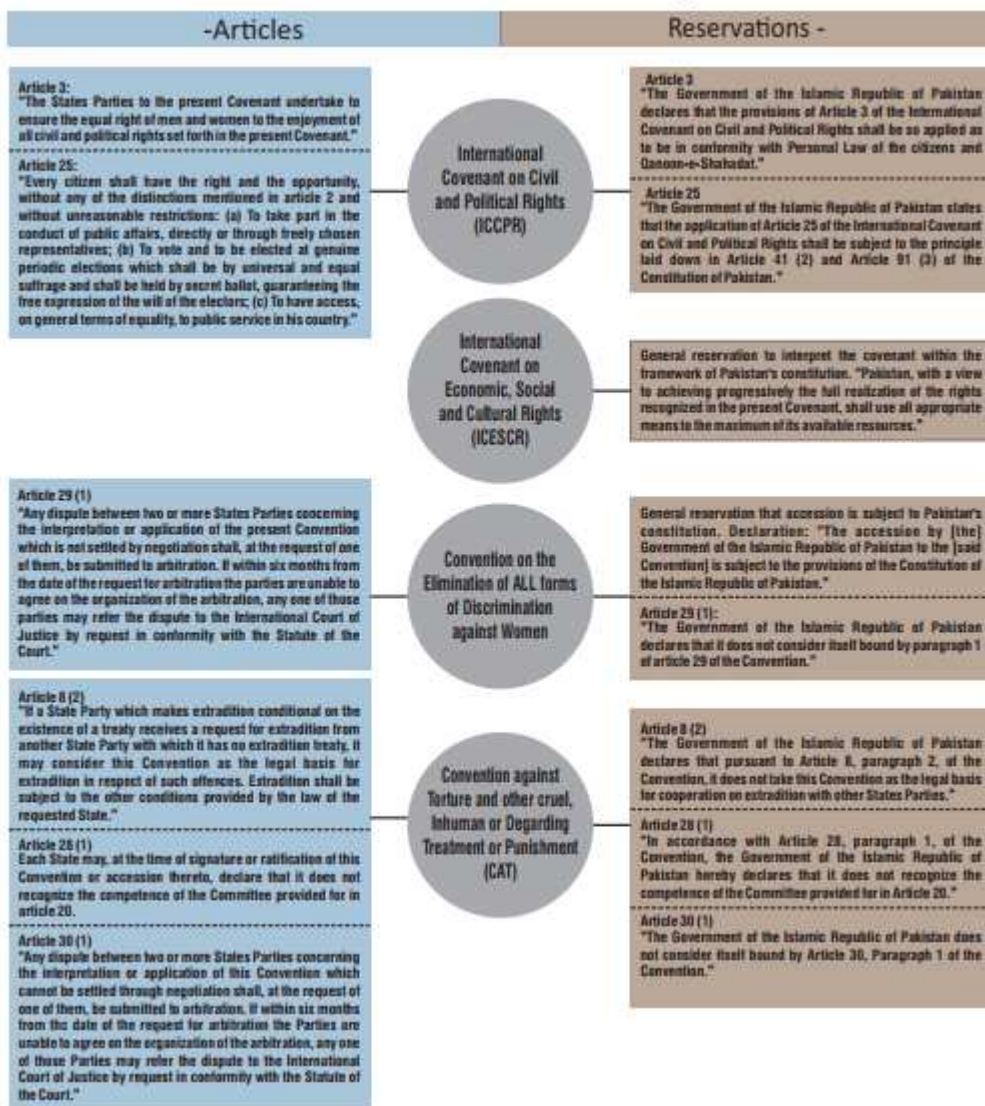
⁶³ “By 1 January 2016, and every two years thereafter, the Commission shall present to the European Parliament and to the Council a report on the status of ratification of the relevant conventions, the compliance of the GSP+ beneficiary countries with any reporting obligations under those conventions and the status of the effective implementation thereof”, Ibid. Article 14 (1).

⁶⁴ “ILO Conventions may not be ratified subject to reservations. Although Conventions contain various provisions ensuring flexibility, including some that specifically enable ratifying States to limit or qualify the obligations assumed on ratification, no limitations on the obligations of a Convention other than those specifically provided for are possible”, ILO legal instruments.
<http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/legal-instruments/lang--en/index.htm>

⁶⁵ “In 2011, in the period leading up to the granting of GSP+, Pakistan withdrew significant reservations on ICCPR (on Articles 6, 7, 12, 13, 18, 19 and 40) and on CAT (on Articles 3, 4, 6, 12, and 13). At the time of ratification, Pakistan made its accession to CEDAW subject to the provisions of the Constitution (reservation to Article 29)”, EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p.190, footnote 31.
https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁶⁶ Democracy Reporting International. 2015. GSP+ in Pakistan: A Brief Introduction.
http://democracy-reporting.org/newdri/wp-content/uploads/2016/05/gsp_in_pakistan_a_brief_introduction..pdf

Pakistan's Reservations to GSP+ Human Rights Conversations



With regards to the Conventions related to the Environment and to Governance Principles (Part B, Annex VIII of Regulation (EU) N° 978/2012)⁶⁷ it is noteworthy that while Pakistan has ratified all

⁶⁷ It is not quite clear why the biennial report breaks down the Conventions related to the Environment and to Governance Principles (Part B, Annex VIII of Regulation (EU) N° 978/2012) into two separate categories and has changes in the wording, see p.204 and p.210 of biennial report. For the list of Conventions in the 2012 Regulation please see: Official Journal of the European Union. Legislative Acts. Regulation (EU) N° 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) N° 732/2008. Regulation L 303/1, Part A and B, Annex VIII. http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

12 conventions, the biennial report depicts severe shortcomings in the realm of compliance with country reporting obligations.⁶⁸

Implementation of GSP+ Conventions

In a prelude to the chapters dedicated to the analysis of effective implementation of GSP+ conventions in Pakistan, the report sets the stage by pointing out fundamental constitutional, institutional and legislative problems that impede the implementation process:

A cross-cutting issue, not restricted to human rights, is the poor implementation and enforcement of legal safeguards provided for in the constitution and in domestic legislation. Problems related to implementation are multifaceted and include prejudice and entrenched stereotypes, for example on the role of women, running contrary to basic human rights, the weakness of state institutions (notably the police and the judiciary), and the legal uncertainties and capacity gaps emanating from the devolution of power through the 18th Amendment. Altogether, this means that the work done to adopt new legislation may not always translate into tangible improvement on the ground.⁶⁹

Ineffective Implementation of UN Conventions: The case of ICCPR

The following part of the Policy Brief will dissect the biennial report's Pakistan chapter and highlight the most substantive shortcomings regarding the effective implementation International Covenant on Civil and Political Rights (ICCPR) that the biennial report mentions.⁷⁰ While deficiencies and a lack of effective implementation are persistent with regards to other UN Human Rights Conventions, ILO Labour Rights Conventions and UN Conventions on Environmental Protection and Climate Change, the purpose of this chapter is not necessarily to provide an

⁶⁸ Specifically regarding the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal, the Cartagena Protocol on Biosafety and the Stockholm Convention on Persistent Organic Pollutants. EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p.204, p.320-321, https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁶⁹ Ibid., p.190.

⁷⁰ For a detailed overview of all violations please see *ibid.*, p. 190-212.

extensive overview of the 2014-2015 report, but rather to focus more thoroughly on concrete exemplary cases that lack effective implementation. Therefore the following subchapter will emphasise the case of ICCPR.

A major hurdle for an effective implementation of the International Covenant on Civil and Political Rights (ICCPR)⁷¹ is the lack of right to a fair trial including “widespread allegations to extract evidence” and the “executions of juveniles”⁷² as well as unlawful offences of military courts.⁷³ Another issue is the often arbitrary usage of the death penalty,⁷⁴ “some of which do not fall into the category of most serious crimes to which the death penalty should be limited according to the ICCPR.”⁷⁵ ⁷⁶ After Pakistan lifted its moratorium on the death penalty in 2014, an increasing number of individuals have been sentenced on the basis of alleged violations of the so-called “blasphemy laws.”⁷⁷ ⁷⁸ ⁷⁹ The report adds that “because of the fear of reprisals, lawyers are very reluctant to defend a person accused of blasphemy (...) mere existence of the law seems to promote

⁷¹ United Nations Treaty Series. 1976. International Covenant on Civil and Political Rights, Adopted by the General Assembly Nations on 19 December 1966, Article 14.
<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

⁷² Violation of Article 6 of ICCPR, see: *ibid.* Article 6 and Article 37 of Convention on the Rights of the Child, see: United Nations Human Rights, Office of the High Commissioner: Convention on the Rights of the Child, Article 37.
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁷³ EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p. 190.
https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁷⁴ According to the biennial report 6,000 individuals are on death row and the overwhelming majority were convicted for common, albeit serious, crimes.

⁷⁵ United Nations Treaty Series. 1976. International Covenant on Civil and Political Rights, Adopted by the General Assembly Nations on 19 December 1966, Part III Article 6(2).
<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

⁷⁶ EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p.190.
https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁷⁷ For a detailed overview and analysis of Blasphemy Laws in Pakistan please see: *As Good as Dead: The Impact of Blasphemy Laws in Pakistan*. 2016. Amnesty International. Blasphemy Laws (Sections 295(B) to 298(C) of Pakistan's penal code) constitute a clear violation of Article 18 of ICCPR.
<https://www.amnesty.org/en/documents/asa33/5136/2016/en/>

⁷⁸ The issue of Blasphemy Laws (Sections 295(B) to 298 C) of Pakistan's penal code) in Pakistan was also raised in the EU Parliament: European Parliament resolution on Pakistan: blasphemy laws (2014/2969(RSP)).
<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2014-0289&language=EN>

⁷⁹ “I am very concerned by the recent surge of violent attacks against Ahmadiyya Muslims by militant extremists. Such violence is fuelled by existing blasphemy legislation in Pakistan particularly targeting minorities,” Statement by UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, see: UNHR, Office of the High Commissioner, “Stop faith-based killings” – UN rights experts urge Pakistan to protect Ahmadiyya Muslim minorities.
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14658>

a culture of hatred and fear (...) even making public statements about the possibility of amending the legislation has proven extremely dangerous.”⁸⁰

The right to freedom of expression, specifically Article 19(2)⁸¹ is severely under threat in Pakistan. Violence and the killing of journalists, bloggers and activists have promoted and strengthened “the habit of self-censorship. Pakistan steadily ranks between 150 and 160 in the World Press Freedom Index (...) Pakistan remains one of the most dangerous countries in the world to be a journalist.”⁸²

Enforced disappearances in Pakistan between 2014-2015 increased. The government defended this practice by alluding to its “war on terrorism” and the necessity to protect the population.⁸³ However, at the regular 33rd session of the United Nations Human Rights Council, the International Commission of Jurists debunks the government’s justification:

*The Government has not brought perpetrators to account in even a single case of enforced disappearance. Rather than effective measures to prevent the practice or to strengthen existing accountability mechanisms, recent legislation actually facilitates enforced disappearances (...) In January 2015, Pakistan empowered military courts to try civilians for terrorism-related offences. These courts have since sentenced at least 100 people to death, and at least 12 have been hanged, after grossly unfair trials without possibility of appeal to any civilian courts, including the Supreme Court (...) Victims’ groups, lawyers, and activists working on enforced disappearance also continue to face security risks including attacks, harassment, surveillance, and intimidation.*⁸⁴

⁸⁰ EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p.193.

https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁸¹ ICCPR Article 19(2) states: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

⁸² EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p.192.

https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁸³ Ibid.

⁸⁴ United Nations Human Rights Council 33rd Regular Session, 13 – 30 September 2016 Agenda Item 3. September 15, 2016. Oral Statement of the International Commission of Jurists, supported by Human Rights Commission of Pakistan, in the Interactive Dialogue with the Working Group on Enforced or Involuntary Disappearances. <https://www.icj.org/wp-content/uploads/2016/09/HRC33-OralStatement-Disappearances-Pakistan-15092016.pdf>

An incomplete and flawed assessment of terrorism in Pakistan

The violations of ICCPR alone should have provided the EU Commission with enough evidence and material to initiate an investigation regarding the eligibility of Pakistan's GSP+ status. While the nature of the report pertaining to the 27 UN conventions is thorough, it is very disconcerting that the report barely mentions the impact of terrorism, and when it does only through the prism of protective state vs. malign non-state actors:

Pakistan has suffered a lot, as it, has witnessed a deteriorating security situation, and the state and notably the military is heavily engaged in the 'war against terror'.⁸⁵

The Commission's assessment of ICCPR violations shows that Pakistani citizens are suffering, mainly due to unlawful practices by the military and the judicial system. The notion however, that Pakistan is merely a victim of terror and the creation of a state vs. non-state dichotomy is fundamentally flawed. This misguided narrative is further substantiated in the next paragraph:

While the menace of terrorism and the decision to fight it create constraints and may shift the attention to what some may consider to be more urgent issues, the need to respect, protect and promote human rights remains as acute as ever.⁸⁶

Here terrorism is depicted as a threat that the government of Pakistan must combat and react to. This victimization of the Pakistani State is inaccurate, misleading and it blatantly ignores both solid evidence and academic analyses.

Nowhere does the report mention that Pakistan sponsors, propels and instrumentalises 'the menace of terrorism', thus destabilizing the region, curtailing the rights and freedoms of its own population and enabling the spread of violence and fundamentalist ideologies. The fact that this report does not scrutinize Pakistan's role as a state sponsor of terrorism in India, Afghanistan and beyond is especially troublesome as the adherence to international anti-terrorism conventions is a fundamental

⁸⁵ EU Commission. 2016. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014 – 2015, p.189.

https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf

⁸⁶ Ibid.

component of Regulation N° 978/2012 that must be respected by GSP, GSP+ and EBA beneficiary countries.⁸⁷

⁸⁷ Official Journal of the European Union. Legislative Acts. Regulation (EU) N° 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) N° 732/2008. Regulation L 303/1, Article 19(c).
http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

4. The Pakistan-Jihadi Nexus

In 2011, while the EU was still in the midst of debating emergency autonomous trade preferences for Pakistan,⁸⁸ Admiral Michael G. Mullen, the Chairman of the Joint Chiefs of Staff (US) provided the Armed Services Committee with scathing remarks on Pakistan's support for terrorist elements:

A second, but no less worrisome, challenge we face is the impunity with which certain extremist groups are allowed to operate from Pakistani soil. The Haqqani network for one acts as a veritable arm of Pakistan's Internal Services Intelligence agency. With ISI support, Haqqani operatives planned and conducted that truck bomb attack as well as the assault on our embassy. We also have credible intelligence that they were behind the June 28 attack on the Intercontinental Hotel in Kabul and a host of other smaller, but effective operations. In choosing to use violent extremism as an instrument of policy, the government of Pakistan and most especially the Pakistani army and ISI jeopardizes not only the prospect of our strategic partnership, but Pakistan's opportunity to be a respected nation with legitimate regional influence. They may believe that by using these proxies they are hedging their bets or redressing what they feel is an imbalance in regional power, but in reality they have already lost that bet. By exporting violence they have eroded their internal security and their position in the region. They have undermined their international credibility and threatened their economic well being. Only a decision to break with this policy can pave the road to a positive future for Pakistan.⁸⁹

His comments were further elaborated by Senator Carl Levin:

In our discussions with Pakistani officials, we heard the same excuses that we've heard before about why Pakistan forces are unable, for whatever reason, to go after the Haqqanis in Northern Waziristan in Pakistan. When I pressed Pakistan Prime Minister Gallani on why Pakistan has not publicly condemned the deadly cross-border attacks on our troops by the

⁸⁸ Regulation (EU) No 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan, Official Journal of the European Union, L 316/43.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:316:0043:0053:EN:PDF>

For a more detailed discussion on (EU) No 1029/2012 please see Chapter 2

⁸⁹ Statement of Adm. Michael G. Mullen, USN, Chairman, Joint Chiefs of Staff during a hearing to receive testimony on the U.S. Strategy in Afghanistan and Iraq, Thursday, September 22, 2011 U.S. Senate, Committee on Armed Services, Washington D.C. , p.11-12.

<https://www.armed-services.senate.gov/imo/media/doc/11-70%20-%209-22-11.pdf>

Haqqanis and by the Afghan Taliban, he was unable to provide an answer as to why there has been at least no public condemnation by Pakistan's leaders of those terrorists who are using their soil to cross the border into Afghanistan.⁹⁰

This chapter will revolve around state-sponsored Terrorism and shed light on the origins, objectives, implications and consequences of Pakistan's 'War by Terror', which not only destabilizes the region, strengthens militant Jihadists, spreads and entrenches anti-democratic and fundamentalist ideologies, and leads to the death of innocent civilians, but also increasingly isolates Pakistan regionally. The cases presented in this chapter exemplify and underscore how Pakistan's behaviour of enabling and promoting terrorism is a severe violation of International anti-terrorism conventions mentioned in Article 19(c) of Regulation (EU) No. 978/2012,⁹¹ and is diametrically opposed to the EU's stance on combating terrorism in the region and globally.

Origins and Objectives

Pakistan's long history of supporting militant groups and Jihadists stems from an unabating perception of an India that is obsessed with challenging Pakistan's existence. The notion that India is a constant threat to Pakistan's *raison d'être* has prevailed in Pakistani security circles since Independence, and has more often than not been the driving force of its domestic and foreign policy. This threat is believed to be multifaceted and should not be reduced to geostrategic factors as Aparna Pande highlights:

At the hub of India-Pakistan relations is the question of identity. Pakistan fears not just a military defeat by India but the re-absorption of the separate "Islamic" Pakistani identity within a larger Indian national identity. Thus the threat Pakistan feels from India is not just a physical but psychological and so deep-rooted (...) "Hindu" India is seen to threaten Pakistan's very existence as an independent nation (...) the need to deny any links to India, and yet the inability to look beyond India, while defining Pakistani identity, can be seen in

⁹⁰ Ibid., p.4.

⁹¹ Official Journal of the European Union. Legislative Acts. Regulation (EU) No.978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008. Regulation L 303/1, Article 19(c).
http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

the words expressed by a Pakistani official. (...)”If we are not Muslims, what are we? Second-rate Indians?” (...) Pakistan’s Army Chief General Musharraf’s address to the nation, soon after his coup on October 17, 1999 reflected a similar sentiment: “52 years ago, we started with a beacon of hope and today that beacon is no more and we stand in darkness. There is no despondency, and hopelessness surrounding us with no light anywhere around.” (...) This close intertwining of Pakistani identity with partition and Pakistan’s creation means that any discussion of the logic of partition by Indian commentators is seen as challenging Pakistan’s very existence.⁹²

SADF’s Policy Brief No. 3 on Pakistan’s cross-border terrorism and the Pathankot attack summarises Pakistan’s strategic rationale and modus operandi:

Pakistan considers cross-border terrorism the most cost-effective option to increase its leverage in India and Afghanistan. (...) While Pakistan is not the only one promoting these acts, what makes it unique and worthy of attention is the dominance these tools and the near exclusivism of their use in relations with India, (...) Pakistan has indulged in targeting India with the definite strategic and political goal to destabilise India. (...) Former Pakistani Prime Minister Zulfikar Ali Bhutto’s promise of a “thousand years war” and former Pakistani military ruler General Zia ul Huq’s Operation Gibraltar calling to “bleed India through a thousand cuts” are symbols of Pakistan’s direct involvement in cross-border terrorism⁹³

Although it was limited mostly to Jammu & Kashmir, Islamabad’s instrumentalisation of militant and Islamist groups did not have its inception during Pakistan’s support of the Mujahedin in Afghanistan, but rather after Partition in the first war with India.⁹⁴ Only two years after its loss in

⁹² Pande, A. 2011. Explaining Pakistan’s Foreign Policy: Escaping India, Routledge, London, p.28-29.
https://books.google.de/books?id=ceg-kSmtf94C&pg=PA28&hl=de&source=gbs_toc_r&cad=4#v=onepage&q&f=false

⁹³ SADF. 2016. Pakistan’s cross-border terrorism - the Panthankot attack, SADF Policy Brief No. 3, p.4-5.
<http://sadf.eu/new/wp-content/uploads/2016/08/POLICY-BRIEF.N.3.PAKISTAN-CROSS-BORDER-TERRORISM-1.pdf>

⁹⁴ Fair, C.C. 2011. The Militant Challenge in Pakistan, Asia Policy No. 11, p.108.
http://www.christinefair.net/pubs/AP11_F_MilitantPakistan.pdf

the first Kashmir war in 1948, Pakistani decision-makers started to support and advance the goals of the Pakistan-based Islamist party Jamaat-e-Islami (JeI)⁹⁵ in Afghanistan.⁹⁶

As Wolf points out “Islam has been blatantly misused as an ‘instrument of policy implementation’, not only by influential non-state actors but also by government agencies to achieve certain societal and political goals.”⁹⁷ The majority of Pakistani decision makers have utilized the mobilising force of Islam to expand and entrench their legitimacy, defend anti-democratic practices, and stifle the progress of oppositional political forces-- thus increasing their power and socio-political clout.⁹⁸

With the realisation that conventional warfare against India had led to defeats in 1948 and 1965, the loss of East Pakistan in 1971 further exacerbated Pakistan’s commitment of supporting Jihadist elements and instrumentalising them in asymmetric warfare.⁹⁹

As Singh highlights, the Book ‘The Quaranic Concept of War’ written by Brigadier S.K. Malik in 1979 was extremely influential in providing a substantial ideological base for legitimizing the utilisation of Islam in covert and clandestine terror and defined the ascension of Pakistani state-sponsored support for the subsequent generations:

Brigadier S.K. Malik (...) concluded that the holy Quaran enjoins all believers to use terror as a weapon of war (quoting Malik he adds): The Quaranic military strategy thus enjoins us to prepare ourselves for war to the utmost in order to strike terror into the hearts of the enemies, known or hidden. (quote Malik ends here) The book teaches that terror must be struck during the preparatory stage, in the run-up to war, during war, and for war termination. Terror struck into the hearts of the enemies, therefore, is not only a means, but

⁹⁵ Several JeI cadres later became influential mujahideen in Afghanistan in the 1970s and 1980s.

⁹⁶ Ganguly, S; C. C. Fair. September/October 2015. An Unworthy Ally: Time for Washington to cut Pakistan loose. <https://www.foreignaffairs.com/articles/pakistan/2015-08-18/unworthy-ally>

⁹⁷ Wolf, S. O. Pakistan and State-Sponsored Terrorism in South Asia, in: Terrorism Revisited - Islamism, Political Violence and State-Sponsorship, Casaca, P; Wolf, S.O. (eds.), p.112.

⁹⁸ See: Malik, A. 2011. Political survival: Beyond Ideology. New York, Routledge.

⁹⁹ Ashtana, V. 2010. Cross-Border Terrorism in India: Counterterrorism Strategies and challenges, ACDIS Occasional Paper, p.3. <https://www.ideals.illinois.edu/bitstream/handle/2142/27703/CrossBorderTerrorismInIndiaCounterterrorismStrategiesandChallenges.pdf?sequence=2>

is an end in itself. (...) War, the book argues, must be total. General Zia ul Haq¹⁰⁰ encouraged such efforts and wrote the foreword to the book (...) General Aslam Beg as the army chief and other army leaders (...) cited the book to exhort military officers when addressing them (...) The operationalisation of this concept and the strategic doctrine was carried out initially in Afghanistan, then in Punjab in India from 1984 and then Jammu and Kashmir from 1988 onward. The ‘success’ of the Mujahideen in defeating on superpower provided a great boost to the rationale for the pursuit of this strategy, especially since it was seen as a low-cost option.¹⁰¹

While militant non-state groups that received logistical, operational, financial and material support from Islamabad were predominantly Jihadist in nature, Pakistan’s outreach was not limited to Islamist groups. Between the 1970s and 1990s, the Pakistani state “funded and trained Sikh separatists in their bloody campaign of terror in India’s Punjab region.”¹⁰² Furthermore Islamabad has backed and promoted several ethno-nationalist rebel groups in Northeast India.¹⁰³

Pakistan’s recognition as an overt nuclear power in the late 1990s further propelled Islamabad’s instrumentalisation of Jihadist forces as it made conventional military-related Indian countermeasures very risky.¹⁰⁴ After Washington ascribed the role of key ally to Pakistan in the wake of its ‘War on Terror’ and provided Pakistan with billions of dollars in assistance, policy makers and the military felt even more compelled and emboldened to pursue the strategy of low-cost, high-reward cross-border terrorism.¹⁰⁵

¹⁰⁰ For a very detailed overview of Zia-ul-Haq’s role regarding “total Islamization of Society” and the creation of the Islamist-Military alliance please see: Wolf, S. O. Pakistan and State-Sponsored Terrorism in South Asia, in: Terrorism Revisited - Islamism, Political Violence and State-Sponsorship, Casaca, P; Wolf, S.O. (eds.), p.113-116.

¹⁰¹ Singh, J. 2008. Kashmir, Pakistan and the War by Terror in: Global Terrorism, vol. III, Lutz, B.J; Lutz, J.M (eds), Sage Library of International Relations, London, p.230-231

¹⁰² Ganguly,S; C. C. Fair. September/October 2015. An Unworthy Ally: Time for Washington to cut Pakistan loose. <https://www.foreignaffairs.com/articles/pakistan/2015-08-18/unworthy-ally>

¹⁰³ Ibid.

¹⁰⁴ Fair, C.C. 2011. The Militant Challenge in Pakistan, Asia Policy No. 11, p.118-119. http://www.christinefair.net/pubs/AP11_F_MilitantPakistan.pdf

¹⁰⁵ Casaca, P. The War on Terror, in: Terrorism Revisited - Islamism, Political Violence and State-Sponsorship, Casaca, P; Wolf, S.O. (eds.), p.211- 212.

Pakistan's growing ties to Jihadi Proxies post 9/11

Chapter 2 demonstrated how the EU – both in 2001 after the 9/11 attacks and in 2012 after the disastrous floods – provided Pakistan with very favourable GSP deals.¹⁰⁶ The EU's premise was that Pakistan needed to be strengthened as an important geostrategic partner and an ally in combating terror. This section of the Policy Brief argues that this strategy was unsuccessful and counterproductive. Instead of becoming a key proponent of counter-terrorism, Pakistan bolstered and strengthened its collaboration with militant Islamists after 9/11 in order to gain 'strategic-depth'¹⁰⁷ vis-à-vis India.

In his statement in July 2016 during a hearing before the House Foreign Affairs Committee, the Subcommittee on Terrorism and Non-proliferation, as well as the Trade Subcommittee on Asia and the Pacific, Bill Roggio, the Senior Editor of the 'Long War Journal' outlined Pakistan's strategy vis-à-vis jihadist groups and the consequences arising thereby:

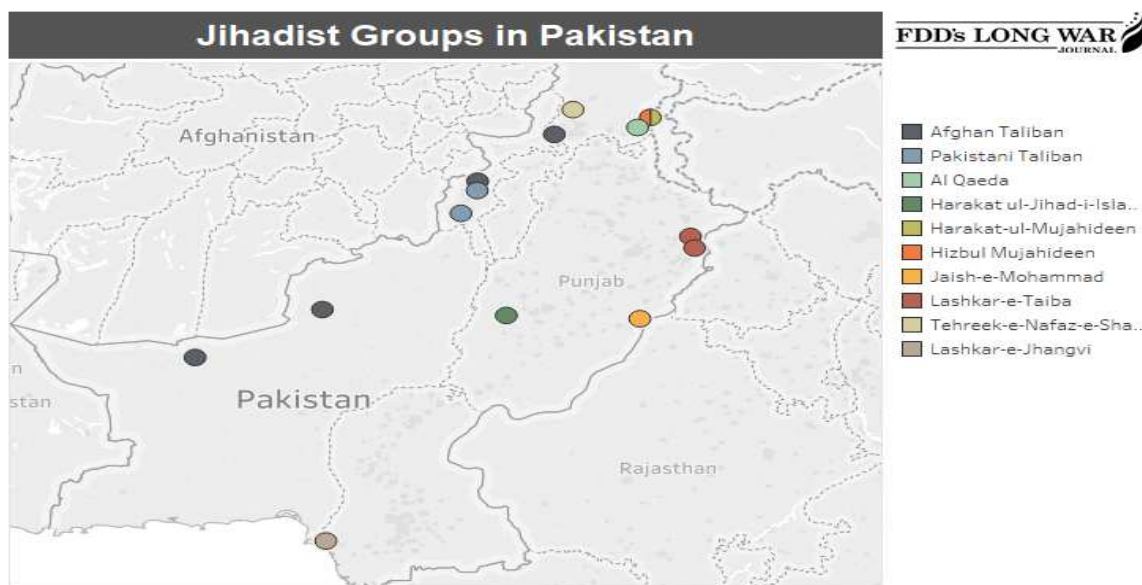
This Committee rightly asks the question of whether Pakistan is a friend or foe in the fight against terrorism. While Pakistani officials and forces have assisted the U.S. in hunting senior al Qaeda figures at times, Pakistan's overall strategy is pro-jihadist and therefore puts it in the foe category. Pakistan does battle some terrorist groups within its borders, but it only does so because these groups pose a direct threat to the state. Pakistan myopically supports a host of terrorist groups in Pakistan, Afghanistan, and India to further its goals in the region. Pakistan backs these groups despite the fact that they are allied with and aid the very terrorist groups that fight the Pakistani state. In addition, many of the jihadist groups sponsored by Pakistan are allied with al Qaeda (...). However, the jihadist ideology has also spread throughout Pakistan as a result of policies adopted by the country's military elite. Therefore, we should not underestimate the degree to which these groups are supported for ideological reasons (...). In order to justify its policy of support to jihadist groups, Pakistani elites have attempted to distinguish between what are referred to as "good Taliban" and

¹⁰⁶ Pakistan became a beneficiary of the special arrangements to combat drug production and trafficking in 2001 and received emergency autonomous trade preferences in 2012, see chapter 2.

¹⁰⁷ A concept, first coined by General Mirza Aslam Beg, (later Chief of Army Staff working under Prime Minister Benazir Bhutto) in the 1980s, which describes Pakistan's attempt to utilize Afghanistan as a strategic instrument against India by attempting to control and influence the political landscape and actors.

“bad Taliban.” Simply stated, the so-called “good Taliban” are groups that advance Pakistan’s foreign policy goals and do not threaten the state or wage war within its borders. “Good Taliban” and other groups deemed acceptable by the Pakistani establishment include the Afghan Taliban, the Haqqani Network, the Mullah Nazir Group, Lashkar-e-Taiba, Harakat-ul-Mujahideen, and Jaish-e-Mohammed. These groups conduct numerous heinous acts of terrorism in the region, and are directly responsible for the deaths of thousands of American soldiers and civilians, and yet are supported by the Pakistani state.¹⁰⁸

The map below illustrates that Jihadi outlets have found sanctuary mostly along Pakistan’s border to India or Afghanistan:¹⁰⁹



Although there are several violent jihadist proxies operating in Pakistan’s border regions, this subchapter will highlight Pakistan’s increasing support¹¹⁰ and ties to Jihadi groups by reference to

¹⁰⁸ Roggio, B. Congressional Testimony, Hearing before House Foreign Affairs Committee, Subcommittee on Terrorism, Nonproliferation, and Trade, Subcommittee on Asia and the Pacific, July 12, 2016, p.1-3. <http://docs.house.gov/meetings/FA/FA18/20160712/105188/HHRG-114-FA18-Wstate-RoggioB-20160712.pdf>

¹⁰⁹ Gutowski, A; Roggio, B. Mapping terrorist groups openly operating inside Pakistan, Long War Journal, August 23, 2017. <https://www.longwarjournal.org/archives/2017/08/mapping-terrorist-groups-openly-operating-inside-pakistan.php>

¹¹⁰ For a thorough and in-depth overview of Pakistan-jihadist ties in Afghanistan see: Gall, C. 2014. The wrong Enemy: America in Afghanistan, 2001-2014. Houghton Mifflin Harcourt, Boston.

the most active and violent groups,¹¹¹ which are: the Afghan Taliban,¹¹² the Haqqani Network (HN)¹¹³ and Lashkar-e-Taiba (LeT).¹¹⁴

As highlighted in the previous subchapter, Pakistan's support for Afghan jihadist groups can be traced back to the late 1970s. After the ouster of Soviet forces the Pakistani government continued its material, logistic and financial support of the Taliban during its 1994-2001 rule. In 1999 Pakistan's interior minister Nasrullah Babar admitted that Pakistan, specifically the ISI (Inter-services Intelligence)¹¹⁵ had created the Taliban.¹¹⁶ Even though Islamabad withdrew its support publicly after the US invasion of Afghanistan and the infamous 'War on Terror', intelligence reports from the raid on Osama bin Laden's compound in Abbottabad, Pakistan indicate that the ISI continued to maintain ties with the Afghan Taliban.¹¹⁷ In 2006, a leaked Ministry of Defence (UK) think-tank paper alleged that the ISI was covertly supporting the Taliban and al-Qaeda and urged for the intelligence service agency to be dismantled:¹¹⁸

The Army's dual role in combating terrorism and at the same time promoting the MMA and so indirectly supporting the Taliban (through the ISI) is coming under closer and closer international scrutiny (...). The West has turned a blind eye towards existing instability and the indirect protection of Al Qaeda and promotion of terrorism. Indirectly Pakistan (through the ISI) has been supporting terrorism and extremism - whether in London on 7/7 or in

¹¹¹ Jaish-e-Mohammed (JeM) is worth mentioning here as well as the group has played a long and major role in conducting terrorist attacks in India. The storming of the Indian Parliament in New Delhi on December 13, 2001 by JeM gunmen that killed 14 and wounded at least 22 was one of JeM's most prominent attacks. JeM was founded by Masood Azhar. After the Pathankot attack in January 2016, Azhar was reported to be arrested by Pakistani authorities, however was seen to be free in April 2016. The JeM gained international traction as China vetoed the UNSC's initiative of putting Masood Azhar on the terror list in December 2016. After the attack on the Indian Parliament, the JeM reduced its activities. After 2014 the JeM resurfaced violently and committed several high profile attacks. These attacks will be analysed in the next subchapter.

For a detailed overview: <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/95>

¹¹² For a detailed overview: <https://www.counterextremism.com/threat/taliban/> and <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/367>

¹¹³For a detailed overview: <https://www.counterextremism.com/threat/haqqani-network/> <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/363#note12>

¹¹⁴ For a detailed overview: <https://www.counterextremism.com/threat/lashkar-e-taiba> and <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/79>

¹¹⁵ Pakistan's premier intelligence service.

¹¹⁶ See: McGrath, K. 2011. *Confronting Al Qaeda: New Strategies to Combat Terrorism*, Naval Institute Press, Maryland.

¹¹⁷ Stanford University. *Mapping Militant Organizations: The Taliban*, last updated July 15, 2016. <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/367>

¹¹⁸ BBC 2. *Key Quotes from the Document (leaked MoD think-tank paper)*, 28 September, 2006. <http://news.bbc.co.uk/2/hi/programmes/newsnight/5388426.stm>

Afghanistan or Iraq. The US/UK cannot begin to turn the tide until they identify the real enemies from attacking ideas tactically - and seek to put in place a more just vision. This will require Pakistan to move away from Army rule and for the ISI to be dismantled and more significantly something to be put in its place.

After a massive, multipronged attack a few months before the leaked document surfaced, Colonel Chris Vernon, NATO chief of staff for southern Afghanistan, stated that all high-profile attacks of the Afghan Taliban were being planned in the western Pakistani city of Quetta, and that Pakistan was allowing the “Taliban to use its territory as a headquarters for attacks on western troops in Afghanistan. These concerns were shared by Afghan President Hamid Karzai who accused Pakistan and its intelligence services of providing military training and logistics to extremists before sending them across the border.”¹¹⁹

The deadly bombing of the Indian Embassy in Kabul in 2008 that killed 58 people was a watershed event regarding U.S. perceptions of Pakistan. U.S. officials intercepted communications between Pakistani intelligence officers and the perpetrators of the attack. Furthermore the analysis of these intercepts lead to the conclusion “that the ISI officers had not been renegades, indicating that their actions might have been authorized by superiors.”¹²⁰

A NATO report based on 27,000 interrogations with more than 4,000 detained Taliban, al-Qaeda and other foreign terrorist groups, leaked to the public in 2012, shows the extent of control that Pakistan’s security establishment and especially the ISI has over the Taliban. The report indicates that Pakistan’s security apparatus is not only aware of the location, operations and strategies of senior Taliban leaders, but that jihadist figures such as Nasiruddin Haqqani reside in close proximity to ISI headquarters in Islamabad.¹²¹

¹¹⁹ Walsh, D. Pakistan sheltering Taliban says British Officers, 19 May, 2006.
<https://www.theguardian.com/world/2006/may/19/pakistan.alqaida>

¹²⁰ Mazzetti, M; Schmittaug, E. Pakistan helped plan Kabul blast, US says, 01 August, 2008.
<http://www.nytimes.com/2008/08/01/world/asia/01iht-pakistan.4.14953617.html>

¹²¹ SADF. Combating Jihadism in Afghanistan, SADF Policy Brief No. 2, 25 November, 2015, p.7-8.
http://sadf.eu/new/wp-content/uploads/2015/11/20151126.POLICY.BRIEF_N.2.AFGHANISTANV2.pdf

In an interview with Al Jazeera in 2015, the former head of the ISI Lt. Gen. Asad Durrani made some revealing remarks regarding the ISI's knowledge of Osama bin Laden's location prior to his death, implying that the intelligence agency used bin Laden as leverage:

My assessment (...) was it is quite possible that they [the ISI] did not know but it was more probable that they did. And the idea was that at the right time, his location would be revealed. And the right time would have been, when you can get the necessary quid pro quo - if you have someone like Osama bin Laden, you are not going to simply hand him over to the United States.¹²²

The core goal of the Haqqani Network (HN)¹²³ is to force the U.S.-led NATO to abandon its mission in Afghanistan and to initiate the resurgence of Taliban rule in the country. HN has mutated from a small, tribal-based jihadist network with limited capabilities to one of the most dangerous and active terrorist outlets in South Asia.¹²⁴

Between February and May 2010, Matt Waldman from Harvard University conducted interviews with several senior Haqqani commanders. These interviews revealed that the ISI was a key component – a ‘command shura’¹²⁵ comprised of Haqqani leader Maulawi Jalaluddin Haqqani, his son Sirajuddin Haqqani and former senior ISI officials who were contracted and still working for the ISI. Furthermore, the ISI played an incremental role in reconnecting former Taliban and Haqqani fighters who abandoned armed struggle and urged them to continue fighting, promising money, weapons and support.¹²⁶

¹²² Tharoor, I. Pakistan likely knew of Osama bin Laden's presence, admits former spy chief, February 11, 2015. https://www.washingtonpost.com/news/worldviews/wp/2015/02/11/pakistan-likely-knew-of-osama-bin-ladens-presence-admits-former-spy-chief/?utm_term=.793c30632bbf

¹²³ See footnote N° 25 for an overview of the Haqqani Network.

¹²⁴ See Peters, G. 2012. Haqqani Network Financing: The Evolution of an Industry, Combatting Terrorism Center (West Point). https://ctc.usma.edu/v2/wp-content/uploads/2012/07/CTC_Haqqani_Network_Financing-Report_Final.pdf

¹²⁵ Arab for “consultation”.

¹²⁶ Waldman, M. June 2010. The Sun in the Sky: The Relationship between Pakistan's ISI and the Afghan Insurgents, London School of Economics, Crisis States Discussion Papers no. 18, p.17-18. <https://www.files.ethz.ch/isn/117472/DP%2018.pdf>

The implications of these findings were also echoed by a leaked U.S. State Department Cable from 2008 that noted:

Although Pakistan now identifies both al-Qaida and the Taliban as existential threats, (...) Pakistani government institutions still support the Taliban in two key ways. They permit the Quetta Taliban Shura (the Taliban leadership council) to operate unfettered in Baluchistan province. Inter-Services Intelligence (ISI) provides intelligence and financial support to insurgent groups - especially the Jalaluddin Haqqani network out of Miram Shah, North Waziristan - to conduct attacks the Pakistani Army's current operations in the FATA's Bajaur Agency are directed exclusively against insurgent groups that refused to cooperate, while the Haqqani network remains untouched and continues a policy of cross-border attacks.¹²⁷

A declassified U.S. State Department cable from 2016 highlights the role the ISI played in funding the 2009 suicide attack on Forward Operating Base Chapman in Afghanistan's Khost province, which killed seven C.I.A. operatives and a Jordanian intelligence official.¹²⁸ The cable states that the ISI paid the Haqqani Network \$200,000 to facilitate the attack.¹²⁹

Nonetheless, senior Pakistani officials remained supportive of the Haqqani Network and were unwilling to capture or persecute any perpetrators. This inactivity led to an increase of drone attacks in Northern Waziristan in the summer of 2010, but was unable to dramatically alter or reduce the militant activities of the Haqqani Network.¹³⁰

The persistence of ISI-Haqqani ties once again became evident in the aftermath of the Haqqani Network attack on the U.S. Embassy and ISAF Headquarters on September 13, 2011. Mobile

¹²⁷ Wikileaks. Allies find briefing on Afghanistan National Intelligence Estimate (NIE) "gloomy", but focus on recommendations to improve situation, December 05, 2008.
https://wikileaks.org/plusd/cables/08USNATO453_a.html

¹²⁸ Groll, E. Pakistani Spies may have funded 2009 Suicide Bombing targeting CIA Outpost, Foreign Policy April 13, 2016.
<http://foreignpolicy.com/2016/04/13/pakistani-spies-may-have-funded-2009-suicide-bombing-targeting-cia-outpost/>

¹²⁹ National Security Archive. April 2016. Foreign Intelligence Service and Haqqani Network Involvement in 30 December 2009 Suicide Attack on FOB Chapman.
<https://nsarchive.files.wordpress.com/2016/04/hqn9.pdf>

¹³⁰ Dressler, J.A. October 2010. The Haqqani Network: From Pakistan to Afghanistan, Institute for the Study of War, p. 35.
http://www.understandingwar.org/sites/default/files/Haqqani_Network_0.pdf

phones recovered from killed assailants had been used to communicate with Pakistani intelligence officials before and during the attack.¹³¹

The LeT, at times referred to as the next al-Qaeda in the subcontinent due to its sophistication and prowess, has not only received strong and persistent support from the ISI, but is also viewed as the ISI's most reliable partner.¹³²

In the initial years after its inception, the LeT was predominantly active in Afghanistan. It was the military wing of infamous Islamist Pakistani organization 'Markaz-ad-Dawa-wal-Irshad', which was founded in 1989 and focused on recruiting volunteers to join the Taliban.¹³³

In the early 1990s with the support of the Pakistani security apparatus the LeT refocused its attention to India and Kashmir. Hamid Gul, the head of the ISI during Zia-ul-Haq's reign, was instrumental in the creation of the LeT and was a close associate of the group's leader Hafiz Saeed.¹³⁴

While the LeT's vision and agenda has always been transnational and pan-Islamic, its key goal since 9/11 has been the liberation of Kashmir and the annihilation of the Indian state. The narrow focus on India makes it distinct from groups such as al-Qaeda and enabled the group to market itself as 'freedom fighters'. The LeT's core objectives are aligned with those of the Pakistani state, which resulted in the latter's pro-active support, preferential treatment and instrumentalisation of the former.¹³⁵

¹³¹ Brown, W; Ressler, D. 2013. Fountainhead of Jihad: The Haqqani Nexus, 1973-2012, Oxford University Press, New York, p.158.

¹³² See: Tankel, S. April/May 2009. Lashkar-e-Taiba: From 9/11 to Mumbai. The International Centre for the Study of Radicalisation and Political Violence (ICSR), King's College.
http://ps.au.dk/fileadmin/site_files/filer_statskundskab/subsites/cir/pdf-filer/Tankel_01.pdf

¹³³ Bajoria, J. Lashkar-e-Taiba. Council on Foreign Relations, January 14, 2010.
<https://www.cfr.org/backgroundunder/lashkar-e-taiba-army-pure-aka-lashkar-e-tayyiba-lashkar-e-toiba-lashkar-i-taiba#p1>

¹³⁴ Riedel, B. Terror's Godfather. Brookings, August 20, 2015.
<https://www.brookings.edu/opinions/terrors-godfather/>

¹³⁵ Tankel, S. April/May 2009. Lashkar-e-Taiba: From 9/11 to Mumbai. The International Centre for the Study of Radicalisation and Political Violence (ICSR), King's College, p.4-5.
http://ps.au.dk/fileadmin/site_files/filer_statskundskab/subsites/cir/pdf-filer/Tankel_01.pdf

However, while the self-labeling might imply an India-only focus, the LeT supports and maintains ties to al-Qaeda¹³⁶ and to Haqqani Network operatives, and continued to pursue goals in Afghanistan that are in line with Pakistan's pursuit of 'strategic depth' regarding India.¹³⁷

Furthermore, the LeT's global presence includes at least 21 countries with the "intention of either supporting or participating in what Saeed has called the perpetual 'jihad against the infidels.'"¹³⁸ In addition to its international presence the LeT has also been very active in the procurement of weapons, explosives and communications equipment for terrorist attacks from the global arms market, but also from the ISI.¹³⁹

The testimonies of David Healey, a Pakistani-American convicted in the 2008 Mumbai attacks that killed over 160, provided further evidence of the ISI-LeT collaboration. Healey told Indian public prosecutor Ujjwal Nikam that he was working for the ISI¹⁴⁰ and on February 9, 2016 reiterated his comments by telling a special Indian court that the ISI "gave moral, military and financial support" to the LeT.¹⁴¹ The 2008 indictment by U.S. prosecutors identified Major Iqbal as one of the masterminds of the Mumbai attacks, who helped organise and fund Healey's reconnaissance mission in Mumbai and as an individual involved in planning and funding attacks by the LeT. However, According to U.S. and Indian anti-terror officials as well as Indian court documents, Iqbal was a serving ISI officer.¹⁴² In addition Sajid Mir,¹⁴³ a senior LeT chief and key plotter of the attacks was not persecuted by Pakistani officials, despite the fact that recordings of his voice

¹³⁶ In 2005 the UNSC added the LeT to the al-Qaeda sanctions list:

"Lashkar-e-Tayyiba was listed on 2 May 2005 pursuant to paragraphs 1 and 2 of resolution 1526 (2004) as being associated with Al-Qaida, Usama bin Laden or the Taliban for "participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf or in support of", "supplying, selling or transferring arms and related materiel to" or "otherwise supporting acts or activities of" Al-Qaida (QDe.004), Usama bin Laden and the Taliban."

https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/lashkar-e-tayyiba

¹³⁷ Tellis, A.J. March 2012. The Menace that is Laskar-e-Taiba. Carnegie, Policy Outlook, p.7.

http://carnegieendowment.org/files/LeT_menace.pdf

¹³⁸ Ibid., p.5.

¹³⁹ Ibid.

¹⁴⁰ Shams, S. Was Pakistan's ISI directly involved in the Mumbai attacks? Deutsche Welle, February 10, 2016.

<http://www.dw.com/en/was-pakistans-isi-directly-involved-in-the-mumbai-attacks/a-19037878>

¹⁴¹ Ibid.

¹⁴² Rotella, S. Four alleged Masterminds of 2008 Mumbai Attacks are indicted in Chicago. ProPublica, April 25, 2011.

<https://www.propublica.org/article/four-alleged-masterminds-of-2008-mumbai-attacks-are-indicted-in-chicago>

¹⁴³ Ibid.: "In 2007 Mir was convicted of terrorism in absentia by French authorities, who accused him of being an officer of the Pakistani military and possibly the ISI".

indicated that he was directing the mission from a safe house in Pakistan.¹⁴⁴ In 2013, a Frontline report revealed that investigators confirmed that Mir “remained operational and that his whereabouts are known to Pakistani security.”¹⁴⁵

In her testimony prepared for the U.S Senate, Foreign Relations Committee Hearing on extremist groups in Afghanistan and Pakistan in 2011, Christine Fair, a member of SADF’s advisory board, elaborated on the durable and close-knit intertwining of the idiosyncratic ISI-LeT nexus:

The LeT differs from the other militant groups in several important ways. First, the LeT has never targeted the Pakistani state or any target (international or otherwise) within Pakistan. It exclusively operates outside of Pakistan. This is further evidence of the tight linkages between LeT and the Pakistani security establishment.

Second, unlike all of the aforementioned groups, the LeT has never experienced an exogenous leadership split of any consequence since its founding years. The organization has at various times reorganized (...). But this is not the same as leadership quarrels that has resulted in disgruntled factions in opposition to each other. In fact, the ISI often engineers or foments dissent among the other Deobandi and JI-backed militant groups to retain some control over them and to limit their ability to develop independently of the state. The LeT is the only group that the ISI has kept intact without significant cleavages at the apex body of decisions makers.

Finally, whereas the state has taken on several of the Deobandi groups and al Qaeda through inept and not always efficacious military operations, it has taken only marginal and cosmetic steps in the wake of the Mumbai 2008 attacks. The Pakistan government has

¹⁴⁴ Ibid.

¹⁴⁵ Rotella, S. Four disturbing Questions about the Mumbai Terror Attack. Frontline, February 22, 2013. <http://www.pbs.org/wgbh/frontline/article/four-disturbing-questions-about-the-mumbai-terror-attack/>

refused to ban JuD.¹⁴⁶ After several groups were banned in 2002 (including LeT), all of them regrouped under other names with their financial assets largely intact. (...) As before, the groups reformed without loss of operational capabilities. JuD was the only group that was not banned at that time. This enabled JuD¹⁴⁷ to continue to expand its overt as well as covert actions with preferential state treatment. In the wake of Mumbai, Pakistan promised to ban JuD after the U.N. Security Council proscribed the organization and identified its leadership as terrorist in early 2009. However, Pakistan never honoured this commitment. While some of its leadership is in jail to appease Washington after Mumbai, they continue to meet their associates and plan operations.¹⁴⁸

Cross-border terrorism and Regional Push-Back post 2014

Afghanistan

The fact that statements and testimonies from officials on the ground in 2017 echo those from before 2012 is indicative of Pakistan's unaltered modus operandi:

The Taliban and Haqqani network are the greatest threats to security in Afghanistan. Their senior leaders remain insulated from pressure and enjoy freedom of action within Pakistan safe havens. As long as they enjoy external enablement, they have no incentive to reconcile. The primary factor that will enable our success is the elimination of external sanctuary and support to the insurgents. (...) Multiple witnesses have appeared before this body and testified that insurgents cannot be defeated while they enjoy external sanctuary and support from outside of the national boundaries of the conflict area. External safe haven and support

¹⁴⁶ "In 2008 The Security Council listed Jamaat-ud-Dawa as an alias of the proscribed Lashkar-e-Taiba terror group. Jamaat-ud-Dawa has long been known to be a front for the Lashkar-e-Taiba. Saeed renamed the Lashkar-e-Taiba to Jamaat-ud-Dawa in 2002 after Lashkar was banned by the Pakistani government. Pakistan never acted against the Jamaat-ud-Dawa. Instead, Saeed and his leaders rebranded the group as a Muslim charity to mask the operations of Lashkar-e-Taiba."

Roggio, B. UN declares Jamaat-ud-Dawa a terrorist front group. Long War Journal, December 11, 2008.
https://www.longwarjournal.org/archives/2008/12/un_declares_jamaatud.php

¹⁴⁷ For more on JuD see: SADF. Pakistan's cross-border terrorism: The Pathankot attack, SADF Policy Brief no. 3, 30 August, 2016, p.11.
<http://sadf.eu/new/wp-content/uploads/2016/08/POLICY-BRIEF.N.3.PAKISTAN-CROSS-BORDER-TERRORISM-1.pdf>

¹⁴⁸ Fair, C.C. Lashkar-e-Taiba beyond Bin Laden: Enduring Challenges for the Region and the International Community. Testimony prepared for the U.S. Senate, Foreign Relations Committee Hearings on Al Qaeda, the Taliban, and Other Extremist Groups in Afghanistan and Pakistan, May 24, 2011, p.6-7. https://www.foreign.senate.gov/imo/media/doc/Fair_Testimony.pdf

in Pakistan increases the cost (...) in terms of lives, time, and money, and it advantages the enemy with the strategic initiative, allowing them to determine the pace and venue of conflict from sanctuary.¹⁴⁹

In addition to Pakistan's destabilizing regional behaviour, it appears that even when the state does conduct anti-terror operations, which as the biennial EU commission on GSP+ accurately highlights create severe human rights violations, it still colludes with jihadists both locally and globally. A 2016 New York Times report from Carlotta Gall¹⁵⁰ indicates that ahead of the Army's 2014 operation in North Waziristan hundreds of (foreign) fighters were informed of the impending operation and dispersed to Afghanistan or fled to Quetta-Qatar-Turkey with the goal of joining violent Islamist groups in Syria:

The latest Taliban offensive began in 2014. United States and NATO forces were winding down their operations in Afghanistan and preparing to withdraw when Pakistan decided, after years of prevarication, to clear Taliban and Al Qaeda fighters from their sanctuary in Pakistan's tribal area of North Waziristan.

But the militants were tipped off early, and hundreds escaped, tribesmen and Taliban fighters said. Many fled over the border to Afghanistan, just at the vulnerable moment when Afghanistan was assuming responsibility for its own security. Ninety foreign fighters with their families arrived in Paktika Province that summer, to the alarm of Afghan officials.

Further along the border in Paktika Province, Taliban fighters occupied abandoned C.I.A. bases and outposts. A legislator from the region warned me that they would use the positions to project attacks deeper into Afghanistan and even up to Kabul. Some of the most devastating suicide bomb attacks occurred in that province in the months that followed.

¹⁴⁹ General Nicholson, J.W. Statement for the Record by General John W. Nicholson, Commander U.S. Forces-Afghanistan before the Senate Armed Services Committee on the Situation in Afghanistan, February 9, 2017, p.9-11. https://www.armed-services.senate.gov/imo/media/doc/Nicholson_02-09-17.pdf

¹⁵⁰ Carlotta Gall was the New York Times Afghanistan and Pakistan Correspondent for 12 years.

Meanwhile, in Pakistan, the Haqqani network, moved from North Waziristan into the adjacent district of Kurram. From there it continues to enjoy safe haven and conduct its insurgency against American, international and Afghan targets.

Ahead of Pakistan's 2014 operation in North Waziristan, scores, even hundreds, of foreign fighters left the tribal. Tribesmen and Taliban members from the area say fighters travelled to Quetta, and then flew to Qatar. There they received new passports and passage to Turkey, from where they could cross into Syria. Others travelled overland along well-worn smuggling routes from Pakistan through Iran and Iraq.

The fighters arrived just in time to boost the sweeping offensive by ISIS into Iraq and the creation of the Islamic State in the summer of 2014.

If these accounts are correct, Pakistan was cooperating with Qatar, and perhaps others, to move international Sunni jihadists (including 300 Pakistanis) from Pakistan's tribal areas, where they were no longer needed, to new battlefields in Syria.

It is just another reminder of Pakistan's central involvement in creating and managing violent jihadist groups, one Pakistani politician, who spoke on the condition of anonymity when talking about intelligence affairs, told me.¹⁵¹

Two years ago, The United Nations Missions to Afghanistan (UNAMA) reported that in 2015 Afghanistan witnessed the highest number of civilian casualties (11002) since 2009.¹⁵² In 2016 the number rose to 11418¹⁵³ and current mid-term numbers indicate that this tragic trend seems to continue.¹⁵⁴

¹⁵¹ Gall, C. Pakistan's Hand in the Rise of International Jihad. New York Times, February 06, 2016. <https://www.nytimes.com/2016/02/07/opinion/sunday/pakistans-hand-in-the-rise-of-international-jihad.html>

¹⁵² UNAMA. February 2016. Afghanistan Annual Report: Protection of Civilians in Armed Conflict, p.1: https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf

¹⁵³ Gossman, P. Afghanistan's Civilian Casualties hit Record High in 2016. Human Rights Watch, February 06, 2017. <https://www.hrw.org/news/2017/02/06/afghanistans-civilian-casualties-hit-record-high-2016>

¹⁵⁴ UNAMA. July 2017. Afghanistan Midyear Report: Protection of Civilians in Armed Conflict, p.3. https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf

The Indian diplomatic presence had to endure three major attacks on its facilities between 2014 and 2016 that resulted in the death of dozens and damaged Indian mission buildings. In the aftermath of the most recent attack on March 02 2016 on the Indian consulate in Jalalabad, Afghan President Hamid Karzai accused Pakistan of cross-border terrorism:

They are simply attacking India's presence in Afghanistan, whenever they get the opportunity. The whole spectrum of India-Afghan relations, the relationship itself, is the target of the attacks. (...) Each of those attacks has originated from across the border, from the neighbouring Pakistan. That's where the origin of this trouble is: the Lashkar-e-Taiba is from there, the Lashkar-e-Jhangvi, Jaish-e-Mohammad, all these outfits are from Pakistan. So, the sanctuaries, the training grounds, the financial factors and the motivating factors are all inside Pakistan, and come from across the border.¹⁵⁵

One week before the two-day Kabul Process for Peace and Security, attended by the the UN, NATO, the EU and regional representatives, Afghanistan witnessed the most deadly militant attack (150 deceased) since 2001 on May 31, 2017.¹⁵⁶ Once again corroborated intelligence indicated that the Pakistan-backed Haqqani Network was responsible for the attacks. Afghan President Ghani did not mince words and stated that the act was indicative of an “undeclared war by Pakistan against Afghanistan.”¹⁵⁷

A statement issued by Afghanistan's National Directorate of Security (NDS) reiterated the sentiment of Ghani:

These terrorists once again proved they don't represent any religion and they only carry out such coward attacks to please their Pakistani masters which is against all Islamic and human rights principles.¹⁵⁸

¹⁵⁵ Haidar, S. 9 Killed in Attack on Indian Mission in Afghanistan; Karzai blames Pakistan, March 03, 2016. <http://www.thehindu.com/news/national/9-killed-in-attack-on-indian-mission-in-afghanistan-karzai-blames-pakistan/article8306057.ece>

¹⁵⁶ BBC. Kabul Blast: Afghan leader says bomb toll passes 150. June 06, 2017. <http://www.bbc.com/news/world-asia-40170596>

¹⁵⁷ Najafizida, E; Kay, C. Ghani says Afghanistan hit by undeclared War from Pakistan. Bloomberg, June 06, 2017. <https://www.bloomberg.com/news/articles/2017-06-06/ghani-says-afghanistan-suffering-undeclared-war-from-pakistan>

¹⁵⁸ Kumar, R. Afghanistan blames Pakistan for planning deadly Kabul Attack. Foreign Policy, June 01, 2017. <http://foreignpolicy.com/2017/06/01/afghanistan-blames-pakistan-for-planning-deadly-kabul-attack/>

In an interview with Deutsche Welle Rahmatullah Nabil, the former chief of NDS made reference to Pakistan's unchanged modus operandi by alleging that "Pakistan wants to find new support for its proxy jihadists. It also wants to convey a message to the US that without Pakistan's help, Washington is going to fail in Afghanistan."¹⁵⁹ Miagual Wasiq Ghani's Political and Social relations chief commented on the issue of Pakistani safe havens by proclaiming that "it is clear that the Taliban leaders are based in the Pakistani cities of Peshawar, Karachi and Quetta. Pakistan hasn't forced them to shun their activities and stop using their soil."¹⁶⁰

These Afghani evaluations of Pakistan's support for terrorist groups, which exacerbate the instability of the entire region, are also shared by international analysts. In an interview Thomas Ruttig, co-director of the renowned think tank 'Afghanistan Analysts Network', echoed the sentiments of Afghani officials, after being asked if Pakistan's military establishment was really interested in bringing about change in Afghanistan:

*"I think the national interest of Pakistan as it is defined by the military establishment is remaining as influential as possible in Afghanistan, continuing to use the Taliban as their main card. Even if there are promises that they would change this, we have not seen tangible results. So we still need to be doubtful of the position of Pakistan. Yes, I'm sceptical, but I wish it would change and that the Afghan Government would achieve the aim of convincing Pakistan that it is also in their own interest to end the war in Afghanistan."*¹⁶¹

India

Pakistan is not immune to international pressure. In the past, it has banned or blacklisted terrorist organisations and individuals. While at first glance this practice appears to apply pressure on jihadists, the situation is not that simple. A very common phenomenon that can be observed in

¹⁵⁹ Shams, S. Afghans rail against Kabul, Islamabad over deadly blast. Deutsche Welle, June 02, 2017. <http://www.dw.com/en/afghans-rail-against-kabul-islamabad-over-deadly-blast/a-39094137>

¹⁶⁰ Ibid.

¹⁶¹ Grassi, D. Afghanistan: missed opportunities and threats for the future. Interview with Thomas Ruttig. EastWest, May 14, 2015. <http://eastwest.eu/en/opinioni/open-doors/afghanistan-missed-opportunities-and-threats-for-the-future-interview-with-thomas-ruttig-co-director-of-the-afghanistan-analysts-network>

Pakistan is that tarnished terrorist groups rebrand and regroup, and then continue to operate freely under the auspices of protective Pakistani authorities. For example, after the LeT was officially banned in 2008 it continued to operate under the flag of the Jamaat-ud-Dawa (JuD)¹⁶² and when JuD was put on the terror list as a LeT front organisation in 2015, Hafiz Saeed¹⁶³ the head of the LeT, created the Tehreek Azadi in Jammu and Kashmir, which eventually was also banned in mid-2017.¹⁶⁴ A few weeks later, JuD cadres formed a political party named the Milli Muslim League (MML), headed by Saifullah Khalid, a senior leader of JuD.¹⁶⁵ What this makes evident is that while there are technical repercussions and sanctions, these do not translate into effective counter-terrorism measures. This enables jihadists from organisations that have been banned internationally, regionally and even in Pakistan to operate freely and with impunity. Since 2011 Pakistan has refocused and strengthened its support for the Jaish-e-Mohammad (JeM) that due to internal disputes regarding its relationship with Islamabad had remained dormant and factionalised.

While the UN has designated the JeM as a terror group, China¹⁶⁶ has vetoed the UN's ban on its leader Masood Azhar. According to Christine Fair, Azhar was operating freely in his hometown of Bawalpur in Southern Punjab and "Pakistan's ISI has been resurrecting the JeM under Azhar's leadership as a part of its strategy to rehabilitate those assets who defected to the Pakistani Taliban" and "JeM is Pakistan's program for bringing errant terrorists back into the fold of 'good terrorists.'"¹⁶⁷

¹⁶² Fair, C.C. Jamaat ud-Dawa: Converting Kuffar at Home, Killing them Abroad. Hudson Institute, September 07, 2017. <https://www.hudson.org/research/13874-jamaat-ud-dawa-converting-kuffar-at-home-killing-them-abroad>

¹⁶³ On January 31, 2017 Saeed and four aides were placed under house arrest by Pakistani officials. So far, this house arrest has been prolonged several times but Saeed and his aides have not been tried in court.

¹⁶⁴ Verma, R. Pakistan, Masood Azhar and Terrorism. Institute for Defence Studies and Analyses, 15 May, 2017. https://idsa.in/idsacomments/pakistan-masood-azhar-and-terrorism_rverma_150517

¹⁶⁵ Fair, C.C. Jamaat ud-Dawa: Converting Kuffar at Home, Killing them Abroad. Hudson Institute, September 07, 2017. <https://www.hudson.org/research/13874-jamaat-ud-dawa-converting-kuffar-at-home-killing-them-abroad>

¹⁶⁶ In an interview with Deutsche Welle Dr. Wolf dwelled on China's incentives for its veto: "China's protection of Masood Azhar is only one component of the Chinese campaign to provide Pakistan its diplomatic support, which includes informal "lobbying work" to prevent Pakistan from being listed as a state that sponsors terrorism. The possible sanctions would not only have immense political and economic implications for Islamabad, they would also reflect poorly on Beijing as Pakistan is widely seen as a close China ally. Therefore, Chinese authorities try to undermine all Indian attempts to officially name Pakistan as a state sponsor of terrorism on international platforms like BRICS or the Heart of Asia conference" Shams, S. Why is China protecting the the Pakistan-based Jaish-e-Mohammad militant group? Deutsche Welle, February 08, 2017. <http://www.dw.com/en/why-is-china-protecting-the-pakistan-based-jaish-e-mohammad-militant-group/a-36974181>

¹⁶⁷ Fair, C. C. Bringing back the Dead: Why Pakistan used the Jaish-e-Mohammad to attack an Indian Airbase. Huffington Post, January 07 2016. https://www.huffingtonpost.com/c-christine-fair/bringing-back-the-dead-wh_b_8955224.html

Raj Verma, from the IDSA provides more information pertaining to the ISI's increasing involvement with JeM:

Azhar has close links with religious organisations, radical political parties such as Jamiat-i Ulema i-Islam Fazlur Rehman faction (JUI-F) and numerous terrorist organisations operating in Pakistan such as Sipah-e-Sahaba, Lashkar-e-Jhangvi and Harkat ul-Mujahideen. JeM is also a member of the United Jihad Council (UJC). UJC, which is sponsored by the ISI, is an umbrella organisation of 13 to 16 militant outfits that operate in Kashmir. There are concerns in Pakistan that if the military-security establishment is unable to prevent Azhar's designation as a terrorist, the host of terrorist organisations may turn their guns against the Pakistani state and might also hurt Pakistan's interests in Afghanistan.¹⁶⁸

The detrimental impact of this reinvigorated Pakistan-JeM nexus became evident during the attacks in Pathankot and Uri and the ensuing investigations in 2016.

The terrorist attack on the Pathankot Air Force Base on January 02, 2016 was a carefully planned and orchestrated attack carried out by six attackers dressed in Indian military uniforms that led to the death of seven Indian security personnel, one civilian and all attackers. The fact that the Indian consulate in Mazar-e-Sharif in northern Afghanistan was attacked the following day reveals how concerted these attacks are and that they are part of a broader agenda.¹⁶⁹

SADF policy brief no. 3 provides a detailed analysis of the political rationale behind the Pathankot attack and highlights how the JeM-ISI link was established during the investigations:

The timing of the Pathankot attacks is significant as it came just about a week after Indian Prime Minister Narendra Modi's surprise visit to Lahore for a meeting with his counterpart.

¹⁶⁸ Verma, R. Pakistan, Masood Azhar and Terrorism. Institute for Defence Studies and Analyses, 15 May, 2017. https://idsa.in/idsacomments/pakistan-masood-azhar-and-terrorism_rverma_150517

¹⁶⁹ Wolf, S. O. Pakistan and State-Sponsored Terrorism in South Asia, in: Terrorism Revisited - Islamism, Political Violence and State-Sponsorship, Casaca, P; Wolf, S.O. (eds), p.138.

Without a doubt, the impromptu visit was a diplomatic move intended to break the stalemate in India-Pakistan relations and make genuine efforts towards a more peaceful relationship (...) Conversations took place with relatives of the attackers as well as with ring leaders connected to the terrorist organisation Jaish-e Mohammad. The analysis of the phone calls, allowed police to clearly establish that Maulana Masood Azhar, chief of Jaish-e-Mohammad (JeM), and his brother Abdul Rauf Asghar, were among the four organisers of the attack, and that the attack was directed from the vicinity of Lahore. (...) Indian Security establishment officials said the terrorists were trained in either Lyallpur or Chaklala air base in Pakistan, and knew exactly what - aircraft, hangers, ammunition depots, fuel dumps etc. - to look for to destroy.¹⁷⁰

Although investigations had implicated Masood Azhar's involvement in the attacks, and Pakistani authorities had vowed to support Indian investigations, they did not detain or persecute him. While there were conflicting reports if Azhar had been detained, he resurfaced in Pakistan occupied Kashmir around October 2016 where he addressed supporters in Muzaffarabad, the capital of Pakistan-occupied Kashmir.¹⁷¹ This failure to prosecute Azhar is reminiscent of how Pakistan allowed the LeT, its front organisations, NGOs and Hafiz Saeed to continue operations and reinforces the notion that Pakistan is unwilling to crack down on jihadist elements.

On September 18, 2016 well-trained JeM assailants dressed in official Indian uniforms penetrated the Line of Control (LoC) and attacked an administrative camp of the Indian Army in Uri killing 19 soldiers and injuring several dozen others.¹⁷² In an op-ed for the 'National Interest' Sumit Kumar outlines how the Uri attack is embedded within a broader anti-India strategy:

The Uri terrorist attack on the Indian Army base (...) once again brought to the fore Pakistan's continued use of terrorism as state policy against India According to the latest reports, all four terrorists involved in the Uri attack came from a terrorist training camp

¹⁷⁰ SADF. Pakistan's cross-border terrorism: The Pathankot attack. SADF Policy Brief no. 3, 30 August, 2016. <http://sadf.eu/new/wp-content/uploads/2016/08/POLICY-BRIEF.N.3.PAKISTAN-CROSS-BORDER-TERRORISM-1.pdf>

¹⁷¹ The Hindu. The 1267 Committee, China's hold and Masood Azhar: A short story. February 23, 2017. <http://www.thehindu.com/news/international/the-1267-committee-chinas-hold-and-masood-azhar-a-short-history/article17353817.ece>

¹⁷² Gokhale, N. A. The Inside Story of India's 2016 'Surgical Strikes'. The Diplomat, September 23, 2017. <https://thediplomat.com/2017/09/the-inside-story-of-indias-2016-surgical-strikes/>

*situated in Pakistan-occupied Kashmir. Consequently, the attack has underscored the fact that Pakistan is in no mood to reciprocate India's efforts to develop at least a working relationship, thereby promoting a peaceful security environment in the South Asia region.*¹⁷³

In a piece for the Diplomat Kunwar Khuldune Shahid describes how both the attack in Pathankot and Uri aim at destabilising Indo-Pak rapprochement:

*Both the Pathankot and Uri attacks were designed to bring the world's attention to Kashmir amidst Indo-Pak cozying up, and escalation of violence in the valley, respectively. Kashmir being brought to the global limelight falls perfectly in line with Pakistan's long peddled stance on the disputed territory, contrary to India's preference of bilaterally dealing with the issue if not maintaining the status quo.*¹⁷⁴

Regional Push Back

Only a few days after the attack in Uri, India, Bangladesh, Afghanistan and Bhutan jointly pledged to boycott the next regional SAARC summit in Pakistan. The foreign ministries of Afghanistan, Bangladesh and Bhutan joined India's criticism by accusing Pakistan of "increasing cross-border terrorist attacks and growing interference of the internal affairs of member states."¹⁷⁵

One of the most substantial shifts regarding the condemnation of Pakistan occurred at the last BRICS summit in Xiamen China in September 2017. In a joint BRICS leaders statement, all states including Pakistan's 'all-weather ally' China, urged its members to combat terrorist groups linked to Pakistan. In addition, for the first time a BRICS declaration incorporated the concept of state-sponsored terrorism:

¹⁷³ Kumar, S. Why India finally attacked Pakistan. The National Interest, October 06, 2017.
<http://nationalinterest.org/feature/why-india-finally-attacked-pakistan-17958>

¹⁷⁴ Shahid, K. K. Uri Attack: Why Pakistan needs to denounce armed Jihad. The Diplomat, September 21, 2016.
<https://thediplomat.com/2016/09/uri-attack-why-pakistan-needs-to-denounce-armed-jihad/>

¹⁷⁵ Boone, J; Safi, M. Pakistan humiliated by South Asian countries' boycott of summit. The Guardian, 28 September, 2016.
<https://www.theguardian.com/world/2016/sep/28/pakistan-humiliated-by-south-asian-countries-boycott-of-summit>

We, in this regard, express concern on the security situation in the region and violence caused by the Taliban, ISIL/DAISH, Al-Qaida and its affiliates including Eastern Turkistan Islamic Movement, Islamic Movement of Uzbekistan, the Haqqani network, Lashkar-e-Taiba, Jaish-e-Mohammad, TTP and Hizb ut-Tahrir. (...) We reaffirm that those responsible for committing, organizing, or supporting terrorist acts must be held accountable. Recalling the primary leading role and responsibility of states in preventing and countering terrorism, we stress the necessity to develop international cooperation, in accordance with the principles of international law.¹⁷⁶

The resistance against Pakistan's support for cross-border terrorism has been on the rise in South Asia, but has also gained traction beyond the subcontinent. The link between Pakistan's security apparatus and Jihadists has become intolerable and above all undeniable. Pakistan has not only increased instability and violence in the region it has also undermined and jeopardized the commitment of the international community to combat terrorism. Pakistani clandestine support for and inaction against terrorist groups active in India and Afghanistan is still unabated today. The EU's hopes of pulling Pakistan into the fray against terrorism have not materialised. The intrinsic logic of Pakistan's fear of being encircled by India and its allies has not been altered, and remains at the core Islamabad's foreign policy and is thus a persistent threat to regional security and democratization. The pressure being applied by stakeholders in the region is amounting to Pakistan's isolation. If Pakistan fails to abandon its strategy of instrumentalising jihadist groups, if it continues to offer safe havens to groups that have killed hundreds of innocent civilians as well as soldiers, and does not cease to provide them with financial, logistic, tactical and material support, then this trend is unlikely to change.

¹⁷⁶ BRICS Leaders Xiamen Declaration. Xiamen, China, September 04, 2017, Recital 49-50.
https://www.brics2017.org/English/Documents/Summit/201709/t20170908_2021.html

5. Pakistan and the mid-term review

In accordance with Article 40 and Recital 34 of Regulation (EU) No. 978/2012 the EU Commission created a roadmap for the interim evaluation of the current GSP regulation, which is due on November 21, 2017. In this roadmap the Commission reiterates the goal of the mid-term evaluation, namely to “provide an evidence-based report which assesses the performance of Regulation (EU) No. 978/2012” in order to allow for an assessment of whether the “present (substantially reformed) GSP has been delivering on its objectives and of whether any adjustments to its legal basis are needed. Depending on the conclusions of that assessment, the present evaluation will provide a source of evidence for a possible impact assessment of any proposal to renew and/or modify the current GSP scheme, which according to the GSP regulation will expire in 2023.”¹⁷⁷ The roadmap lists specific operational objectives for the mid-term assessment report. One of these objectives is to “develop credible and efficient procedures for temporary withdrawal of the preferences and procedures for renewal of the preferences.”¹⁷⁸ Both the roadmap that derives procedural objectives from the current Regulation (EU) No. 978/2012 for the mid-term assessment and the Regulation itself specifically emphasise the importance of addressing the issue of terrorism within the scope of GSP. Thus one of the core mandates of the mid-term report is to provide a coherent and extensive analysis of the issue and map out how the Commission should address the growing menace of international terrorism.

The Commission hired an external contractor ‘Development Solutions’ (DS)¹⁷⁹ to support the mid-term evaluation process through the publication of a study.¹⁸⁰

Chapter 5 will evaluate if the Final Interim Report of DS thoroughly addresses the implications of Recital 34, particularly regarding the fight against terrorism. In addition this section of the policy

¹⁷⁷ European Commission. 2016. Roadmap: Interim Evaluation of the Regulation (EU) No. 978/2012 on a scheme of generalised tariff preferences (GSP Regulation). http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_trade_021_evaluation_gps_regulation_en.pdf

¹⁷⁸ Ibid., point 5, operational objectives (B1, Subject area).

¹⁷⁹ Description derived from website: “Development Solutions (DS) is a leading consultancy specialised in the delivery of technical assistance projects to support EU external policies in strategic partner countries and emerging markets”. <http://www.development-solutions.eu/>

¹⁸⁰ For a project timeline of Development Solution GSP evaluation see: <http://www.gspevaluation.com/>

brief will scrutinize the study's Pakistan chapter.¹⁸¹ Focus will be laid on the study's interpretation of the interplay between terrorism and Pakistan as well as the country's performance regarding GSP+ conventions.

The mid-term report evaluation of Pakistan

The analysis of the biennial 2014-2015 report exhibited Pakistan's GSP+ related shortcomings. Pakistan's initial reservations to some of the 27 UN conventions call into question the legitimacy of granting Pakistan GSP+ status in the first place. The illegitimacy of remaining a beneficiary GSP+ country is invigorated by Pakistan's glaring deficiencies in the effective implementation of GSP+ related UN conventions.¹⁸²

The first biennial report of the commission was published on January 01, 2016. The final interim report was published roughly 18 months later in September 2017. Has this additional time frame led to a substantial change of Pakistan's GSP+ related performance? The short answer is no. Pakistan has still not withdrawn its reservations to the 'International Covenant on Civil and Political Rights (ICCPR), 'International Covenant on Economic, Social and Cultural Rights' (ICESCR),¹⁸³ 'Convention on the Elimination of all forms of Discrimination against Women' (CEDAW) and the 'Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment' (CAT).¹⁸⁴ According to the mid-term evaluation the reservations are in congruence with Pakistan's Constitution and mainly stem from gender and religion related issues.¹⁸⁵

This lack of basic compliance is aggravated by the fact that Pakistan's implementation of conventions, especially regarding Human and Political Rights,¹⁸⁶ has been non-existent or at best

¹⁸¹ "The evaluation covers every aspect of GSP, including all arrangements (general GSP, GSP+, EBA) and all beneficiaries, for the period since the entry into force of the present GSP Regulation".
http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_trade_021_evaluation_gps_regulation_en.pdf

¹⁸² See chapter 3.

¹⁸³ The mid-term report uses the abbreviation 'CESCR'.

¹⁸⁴ See graph in chapter 3.

¹⁸⁵ Development Solutions. Mid-Term Evaluation of the EU's Generalised Scheme of Preferences, Final Interim Report, September 21, 2017, p.139.
http://www.gspevaluation.com/wp-content/uploads/2016/12/tradoc_156085.pdf

¹⁸⁶ For a summary of shortcomings regarding the other GSP+ related conventions see: *ibid.*, p.124-148.

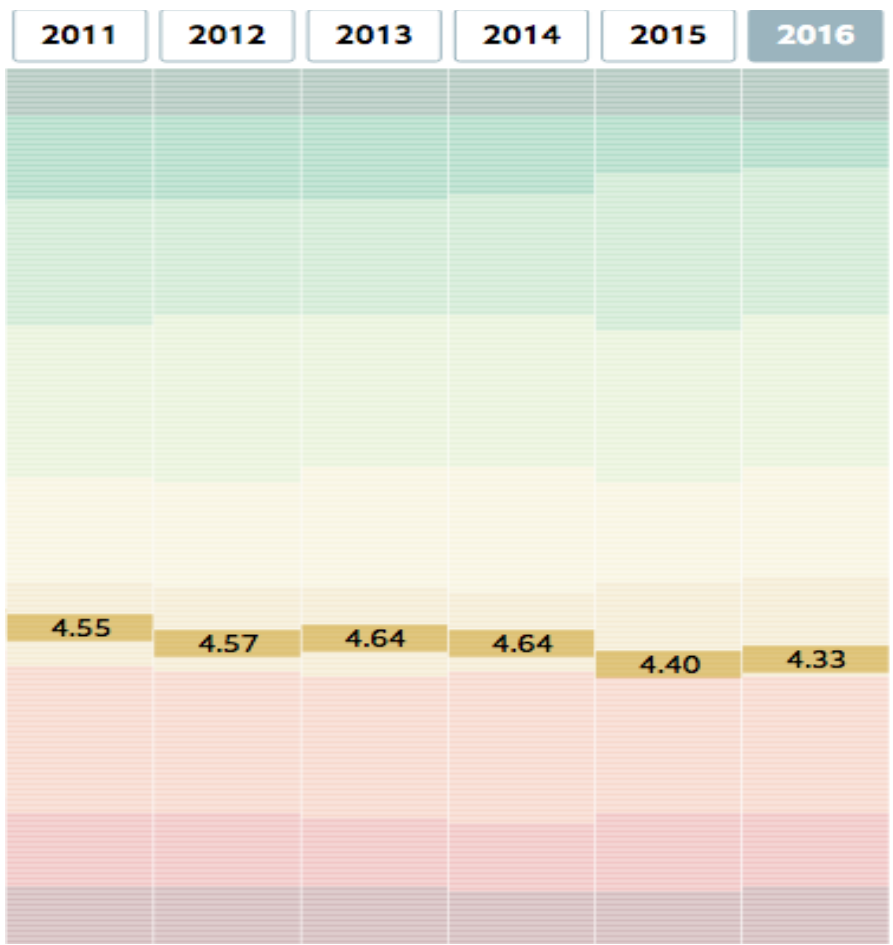
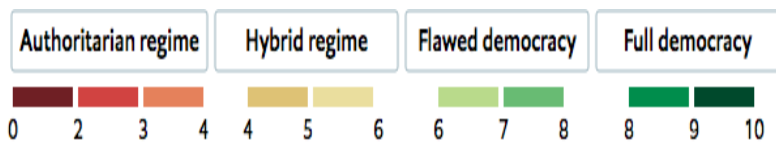
severely ineffective. The mid-term reports a fundamental disconnect between some of the UN conventions' provisions and Pakistan's legislation and legal code on the other:

The effective implementation of the ICCPR is limited by violations of the right of life and security by the criminalisation of abortion, the reintroduction of the death penalty and enforced disappearances by law enforcement officials, military and security forces. Additionally, there are reports of torture and ill-treatment, bonded labour and human trafficking. Lastly, there are limits to civil liberties, such as the right to privacy, the freedom of expression and religion, the right to a fair trial and the freedom of movement. (...) In terms of elimination of discrimination against women, the provisions of the CEDAW are not sufficiently integrated in national and provincial legislation. Additionally, there is a lack of prevention, investigation and punishment of gender-based violence by non-state actors in conflict areas. (...) The main issue related to the implementation of the CAT is that the domestic penal code does not define torture in line with the convention's definition. Secondly, legislation to effectively implement the CAT's provisions has not yet been enacted. Various civil society organisations have reported that torture and cruel, inhuman and degrading treatment and punishment persists in the country, in particular during investigative processes.¹⁸⁷

One of GSP's core goals is to initiate a process that improves good governance, human and political rights as well as civil liberties. This has not been the case in Pakistan, quite the contrary. The graph below¹⁸⁸ depicts Pakistan's Democracy Index between 2011 and 2016 and highlights that Pakistan's performance has witnessed a decline in 2015 and 2016. This implies that the general state of democracy in Pakistan is now worse than it was before Islamabad was granted GSP+:

¹⁸⁷ Ibid., p.140-141.

¹⁸⁸ The Economist Intelligence Unit's Democracy Index. Pakistan, 2011-2016 (based on 60 indicators). <https://infographics.economist.com/2017/DemocracyIndex/>



Three years after passing the ‘National Commission for Human Rights Act’, Pakistan established a so-called ‘National Commission for Human Rights’ (NCHR). This institution was set up in order to monitor human rights’ violations, to ensure that detainees are treated according to law, and to develop a national plan for the promotion and protection of human rights.¹⁸⁹ While the International Commission of Jurists welcomed the introduction of the new Commission, it criticised that the mandate was very restricted, especially regarding the ability to raise awareness of violations committed by Pakistan’s security apparatus:

¹⁸⁹ For a complete overview of the NCHR’s mandate and mission statement see NCHR website: <http://nchr.org.pk/enGenericText.aspx?id=4>

The law specifically states that the functions of the Commission do not include inquiring into the act or practice of the intelligence agencies. (...) The Commission's restricted mandate over the armed forces, and especially the intelligence agencies, is of grave concern given that Pakistan's military and intelligence services are accused of perpetrating gross human rights violations, including enforced disappearances, extrajudicial killings, and torture and ill-treatment "A human rights commission that does not have jurisdiction over abuses by these actors risks being toothless and ineffective – and worst, a cover for continuing government inaction in response to these violations. (...) With these exceptions in place, it seems questionable that the Commission will get accreditation by the International Coordinating Committee of NHRIs, which is a requirement for a National Human Rights Institution to be recognized internationally. (...) The Pakistani government should ensure that the Commission complies with international standards so it can help protect and promote the rights of all people in Pakistan."¹⁹⁰

The ICCPR's monitoring Body shared these concerns in August 2017. In addition to its depiction of severe violations of ICCPR in the realm of non-discrimination, violence against women, the death penalty, enforced disappearances and extrajudicial killings, the 'Anti-Terrorism Act', military courts, torture, deprivation of liberty, freedom of movement, right to fair trial and administration of justice, freedom of religion, conscience and belief, freedom of assembly and association, early and forced marriage and protection of children, the ICCPR also highlighted how Pakistan hampered and restricted the work of its own institutional body, the NCHR:

While welcoming the establishment of the National Commission for Human Rights in 2015, the Committee is concerned that the Chairman of the Commission reportedly did not receive the required authorization to travel to Geneva to meet with the Committee and that there are indications that the Commission is not fully independent. The Committee is also concerned that, according to its constitutive status, the Commission is prevented from fully cooperating with United Nations human rights mechanisms, cannot inquire into the practices of the

¹⁹⁰ International Commission of Jurists (ICJ). Pakistan: New National Human Rights Commission welcome but may be 'toothless' at birth, June 08, 2015: <https://www.icj.org/pakistan-new-national-human-rights-commission-welcome-but-may-be-toothless-at-birth/>

*intelligence agencies and is not authorized to undertake full inquiries into reports of human rights violations by members of the armed forces.*¹⁹¹

Freedom of expression in Pakistan witnessed another severe setback with the introduction of the ‘Prevention of Cybercrime Law’, which “allows government authorities to access data of internet users without judicial review or oversight. ”Furthermore blasphemy laws are still in force and the Ministry of Religious Affairs has established a special monitoring cell to monitor websites containing blasphemous, objectionable, (...) biased, anti-state, sectarian content on the internet.”¹⁹² In addition Pakistan’s largest Human Rights NGO has reported cases of NGO intimidation on the basis of a new policy Pakistan introduced in 2015 to regulate international NGOs.¹⁹³

In June 2017, in a joint motion for resolution focusing predominantly on ICCPR violations, the European Parliament reiterated the UN’s concerns regarding blasphemy laws, the death penalty, military courts, severe human and political rights violations and made direct reference to GSP+:

*Whereas Pakistan entered the GSP+ scheme on 1 January 2014; whereas this scheme should provide a strong incentive to respect core human and labour rights, the environment and good governance principles. (...) Recalls that the granting of GSP+ status is conditional and that the effective implementation of international conventions is an essential requirement under the scheme; urges the Pakistani Government to make strong efforts to implement the 27 core conventions and demonstrate progress.*¹⁹⁴

The link between Pakistan and terrorism

The analysis of the 2014-2015 biennial report and the mid-term review final interim report of DS reveals several similarities. Both are relatively thorough in their depiction of severe shortcomings

¹⁹¹ Human Rights Committee, International Covenant on Civil and Political Rights (UN). Concluding observations on the initial report of Pakistan, 23 August, 2017, point 9.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssymRLSm3gUSDIntv8Slm%2f%2bjSkxSILEnCLYiaWS2Zt2ITQfT1lhv40HhjfTMf8Nky906kLKaSHalcX%2byl7%2ftFUPrUqGm8FbOBvJ6oGjzqpQw>

¹⁹² Development Solutions. Mid-Term Evaluation of the EU’s Generalised Scheme of Preferences, Final Interim Report, September 21, 2017, p.137.

http://www.gspevaluation.com/wp-content/uploads/2016/12/tradoc_156085.pdf

¹⁹³ Ibid.

¹⁹⁴ European Parliament. Joint Motion for a Resolution on Pakistan, notably the situation of human rights defenders and the death penalty, June 14, 2016.

<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2017-0419&language=EN>

regarding the effective implementation or even ratification of GSP+ relevant UN conventions. They also demonstrate that Pakistan has been violating human and political rights within the scope of its anti-terrorism laws and policies. However, both reports fail to provide a fully-fledged picture of terrorism in Pakistan.

The mid-term report fails to provide information on, or at least highlight the impact of Pakistan's state-sponsored terrorism. While the mid-term report does acknowledge the detrimental impact of Pakistan's counter-terrorism practices on civil society it creates the image of a state that is merely a victim of terror that overreacts in its combat against terror:

Pakistan has been the ongoing victim of numerous devastating acts of terrorism and violence, which are targeted at nearly every sector of Pakistani society, including schools and religious sites. Terrorism has also had an effect on the Government and political environment, as terrorists try to intimidate the politicians. Widespread terrorism has had a significant impact on human rights, and has led to instances of arbitrary detention, torture and the de-facto reinstatement of the death penalty. There are reported violations of human rights, including an excessive amount of executions and death row prisoners, non-transparent transfers from civilian to military courts, non-transparent hearings or convictions based on confessions obtained through torture, death penalty for children and lack of access to legal aid for death row prisoners.¹⁹⁵

While Pakistan is politically not monolithic, and there are voices of discontent that want to alter the current support of terrorist outfits,¹⁹⁶ the decade-long modus operandi of state-sponsored terrorism has remained intact.

¹⁹⁵ Development Solutions. Mid-Term Evaluation of the EU's Generalised Scheme of Preferences, Final Interim Report, September 21, 2017, p.136.
http://www.gspevaluation.com/wp-content/uploads/2016/12/tradoc_156085.pdf

¹⁹⁶ "Pakistan's Foreign Minister Khawaja Asif has caused a political storm in his country by suggesting that Islamist groups like the Jamaat-ud-Dawa and the Haqqani Network have become a liability for authorities. Asif's statements prompted opposition politician Imran Khan to call the foreign minister an "enemy" of the country." Satar, K. Ignoring US pressure, Pakistan mainstreams jihadi groups. Deutsche Welle, September 29, 2017.
<http://www.dw.com/en/ignoring-us-pressure-pakistan-mainstreams-jihadi-groups/a-40748547>

It is surprising that the mid-term report does not mention collusion between Pakistan's security apparatus and jihadist groups, especially because recent UN monitoring bodies have unequivocally implicated Pakistan in providing sanctuary to the Afghan Taliban, Haqqani Network, Lashkar-e-Taiba and Kashmir-based jihadist groups. Furthermore, the UN CAT monitoring reports criticise Pakistan's unwillingness to prosecute members of these groups:

The Committee had been presented with very troubling statistics suggesting that the military and intelligence agencies had been implicated in a significant number of cases of suspected enforced disappearances and extra-judicial killings involving torture. The Committee was further concerned that Pakistan was not adequately exercising due diligence to prevent violence, including torture, by members of extremist groups, while its intelligence agencies had been accused of providing sanctuary to the Afghan Taliban, Haqqani Network, and Kashmir-focused armed groups.¹⁹⁷

The Committee is concerned about reports of violence against and inadequate efforts by the State party's authorities to protect vulnerable individuals, particularly members of Shia, Christian and Ahmadiyya communities and individuals accused of blasphemy, from violence by non-State actors. The Committee is also concerned by reports that the State party's authorities have sometimes refrained from promptly investigating reports and prosecuting perpetrators of activities including abduction for ransom by groups including the Haqqani Network and Lashkar-e-Tayyaba.¹⁹⁸

Furthermore, in July 2017 the EU Council Conclusions on Pakistan reiterated concerns of terrorist financing and terrorist safe havens:

In particular, the EU underlines the importance of combating the financing of terrorist activities, including by ensuring full compliance with the UN Sanctions List concerning terrorist financing.

¹⁹⁷ OHCHR. Committee against Torture examines initial report of Pakistan, April 19, 2017. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21514&LangID=E>

¹⁹⁸ Human Rights Committee, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN). Concluding observations on the initial report of Pakistan, June 01, 2017. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgtfJm%2bHg0ISmJyv0jaC3TzAJeutm6yrgXJIVjuF22ng8BZ7wV1kAzb7NUPDGkasYZmwEakxcWxJLHQpl07R4Vt5Zh2ids2P%2bUSoPSydL0LF>

*The EU calls on Pakistan to continue and step up its efforts to ensure that its territory is not used for the preparation of terrorist activities.*¹⁹⁹

While the mid-term review provides a thorough account of several technical and economic changes between the previous and current GSP regulation, it fails to highlight the impact of the most substantial political shift. The mid-term review does not have a section or sub-chapter that elaborates on the new implications of Article 19(c)²⁰⁰ of Regulation (EU) No. 978/2012, namely that the failure to comply with international conventions on anti-terrorism may now lead to a temporary withdrawal of GSP. Furthermore, the DS report does not provide any insight on recital 34, nor develop a way forward for the Commission to take into account the combat against terrorism within GSP.

The mid-term review process fails to address the implications and goals set by Recital 34 of Regulation (EU) No. 978/2012, and does not evaluate the five year performance of Regulation (EU) No. 978/2012 regarding the fight against terrorism. In addition, the mid-term assessment does not put forward an action plan that amounts to an effective strategy to strengthen the fight against international terrorism, and also clarifies the conditions under which the Commission may act to fulfil its obligations. Furthermore, DS does not provide solutions pertaining to comprehensive withdrawal procedures regarding violations of international anti-terrorism conventions, one of the mid-term review's core objectives.²⁰¹ Furthermore the report should encourage the Commission to set up independent terrorism and counter-terrorism monitoring bodies in GSP beneficiary countries in order to assess if the countries are in-line with globally agreed anti-terrorism approaches and countermeasures. The mid-term assessment of Development Solutions did not address these fundamental aspects of the review process and thus falls short of fulfilling the objectives pertaining to terrorism put forth by Recital 34 of Regulation (EU) No. 978/2012. It is paramount that the Commission acknowledges, and more importantly addresses and corrects these shortcomings in order to develop an effective and transparent modus operandi that tackles terrorism in a way that is line with the provisions of Recital 34.

¹⁹⁹ Council of the European Union. Council Conclusions on Pakistan, July 17, 2017.
<http://www.consilium.europa.eu/media/23946/st11160en17.pdf>

²⁰⁰ See chapter 1

²⁰¹ "Develop credible and efficient procedures for temporary withdrawal of the preferences and procedures for renewal of the preferences." European Commission. 2016. Roadmap: Interim Evaluation of the Regulation (EU) No. 978/2012 on a scheme of generalised tariff preferences (GSP Regulation), point 5, operational objectives (B1, Subject area).
http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_trade_021_evaluation_gps_regulation_en.pdf

6. Policy Recommendations

1. According to the letter and the spirit of the past and present European trade preferences legislation, the granting of EU trade preferences are conditional on the respect of core UN conventions, especially regarding human, political and civil rights, and money laundering, and aims to provide incentives for sustainable development and good governance. The 2012 regulation added complying of the UN conventions on terrorism as a major condition and, furthermore, set as one of the tasks of the mid-term review the implementation of the respect to terrorism conventions conditionality.

2. SADF's in-depth analysis of the European Union's GSP+ concessions to Pakistan demonstrates that the current regulatory framework lacks enforcement. In particular, we conclude that the European Commission's mid-term review, as it currently stands, ignores evidence (including the most recent European Council conclusions) pertaining to Pakistan's non-compliance with fundamental UN anti-terrorism conventions.

3. For the sake of clarity and to guarantee adherence and enforcement, it might be advisable for the Commission to provide a comprehensive overview of international UN anti-terrorism conventions in a separate annex, similar to Annex A and B of the current regulation.

4. Introducing measures within the scope of GSP that promote the international fight against terrorism would be welcome. The creation of independent bodies that monitor the counter-terrorism performance of GSP beneficiary countries, in particular, has a considerable potential for the implementation of these measures.

5. SADF applauds the Commission's commitment to end the over 20-year deadlock of the proposed UN 'Comprehensive Convention on International Terrorism'²⁰² treaty and encourages the

²⁰² For an overview of the current mandate, background and developments of the 'Comprehensive Convention on International Terrorism' see: United Nations. Ad Hoc and Special Committees, Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996
<http://legal.un.org/committees/terrorism/>

Commission to incorporate the principles of the adopted UN General Assembly Resolution ‘Measures to eliminate International Terrorism’²⁰³ within GSP regulation.

6. SADF supports the Council of Europe ‘Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism’²⁰⁴ and suggests it be incorporated into GSP.

7. SADF supports the Commission dedication to end the financing of terrorism in general and within the scope of the ‘Financial Action Task Force’ (FATF)²⁰⁵ and suggests incorporating FATF as one of the key GSP monitoring bodies.

8. SADF encourages the Commission to incorporate temporary GSP withdrawal procedures for cross-border terrorism.

9. SADF shares the EU’s concern regarding the independence, mandate and capacities of Pakistan’s ‘National Commission for Human Rights’ and calls on the Commission to apply pressure on Pakistan to ensure its legitimacy and functionality.

10. Given the evidence presented, SADF encourages the Commission to consider launching an investigation into Pakistan’s GSP status.

²⁰³ United Nations (General Assembly). 68/199. Measures to eliminate international terrorism, Resolution adopted by the General Assembly on 16 December 2013:
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/119

²⁰⁴ Council of Europe. Details of Treaty No. 198, Conventions on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, entry into force: May 01, 2008:
<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198>

²⁰⁵ “The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.” (The European Commission is a member of FATF).

Financial Action Task Force (FATF) Homepage:
<http://www.fatf-gafi.org/about/>

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