



Kerry-Lugar Act (S-1707): Uncut



South Asian Strategic Stability Institute Aims and Objectives

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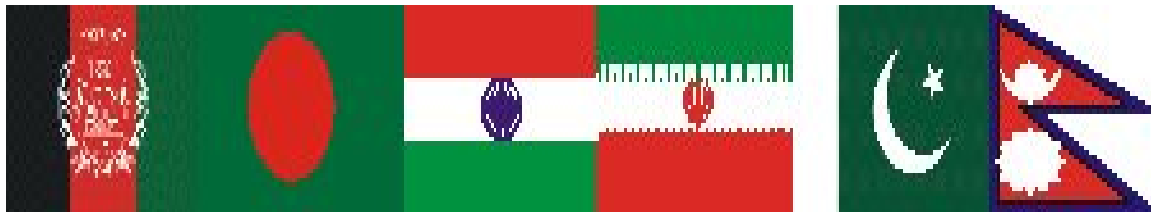
SASSI also conducts regular meetings and seminars of renowned academicians, policymakers and re-searchers, so creating an intellectual environment. It is establishing close liaison with similar institutes at the national and international level.

The South Asian Strategic Stability Institute aims at making a leading contribution about the South Asian security problematic. The institute focuses primarily on the nuclear and strategic stability debate in South Asia. The work and the studies carried out by SASSI are intended to bring together various schools of thought ranging from the social and natural sciences as well as the policymakers, journalists and academia.

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- * Promote innovative ideas to reduce tension and build trust and cooperation in the area of weapons of mass destruction (WMD);
- * Contribute to academic and policy processes for establishing an arms control regime for South Asia;
- * Facilitate South Asian scholars in the development of security research capacity in the field of WMD;
- * Provide an independent and neutral platform on which South Asian scholars and other interested parties can meet to engage with South Asian strategic stability issues;
- * To network and cooperate with individuals and organisations across the world with shared objectives.

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Production and Design: Nick Robson, Published by: South Asian Strategic Stability Institute (SASSI)

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Preface

The Kerry-Lugar Bill also known as Enhanced partnership with Pakistan Act 2009 (S. 1707) is apparently a non-military assistance bill but its conditions apply equally on both military and non-military aspect. The assistance given through this act is on a year-by-year basis and the U.S. President in the light of certifications provided by the Secretary of State and Special Representative for Pakistan-Afghanistan, will have to certify that Pakistan is fighting effectively against Taliban and Al-Qaeda and then the waivers will be issued accordingly. This strategic brief provides an uncut analysis of the provisions of the Act, by highlighting the threat and conditions imposed by the Americans through the Act from the Pakistani government as the title of the brief suggests. This strategic brief is divided into three sections. The first section presents the summary of S.1707 by highlighting clearly the areas of concern for the Pakistan. The second section gives a comparative analysis of the Act with that of the joint Explanatory Statement forwarded by the U.S. Congressmen. The final section concludes how the narrative of the Act threatens the sovereignty of the state of Pakistan and hence what must be done to prevent impairment. Further, it lays out a few policy recommendations.

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Introduction

Enhanced partnership with Pakistan Act 2009 (S.1707) commonly referred to as the Kerry-Lugar Bill has been and still remains a subject of deep concern for the future of the state of Pakistan. Different versions of this act have been passed by the two houses of the US Senate and the final version S.1707 which is a merger of the two bears an overwhelming resemblance to the House version.

The original intent was to provide Pakistan with non-military assistance in order to develop a long term Pakistan US relationship which is not based on transactional, short term goals aimed at limited objectives. The total benefit cited is that of a total US aid of 7.5 billion dollars over next five years and 1.5 billion dollars per annum. Unfortunately the understanding of the long term relationship is based on the bringing of a structural change in the Pakistani institutions, state mechanisms and the development of foreign and domestic policy objectives.

This Act outlines the basis of US monitoring and ingress into four major functions of the Pakistani state and government i.e. the sovereignty of the state, the need to maintain the nuclear deterrent capability; autonomy of decision in the military decision making, foreign policy and the law making capacity of the state. US interference and the conditions put in place are tantamount to the micro management of the Pakistani policy decisions, national security needs and the sovereignty of the Pakistani state institutions while demanding structural changes in the state institutions, governance mechanism and most significantly a trade on the nuclear weapons programme.

This strategic brief is aimed at providing an uncut analysis of the provisions of the Act, by highlighting the threat and conditions imposed by the Americans through the Act from the Pakistani government as the title of the brief suggests. It aims at bringing forth the actual thrust of the entire act and how the Act is significantly different from the original intent.

It is divided into three sections. The first section lays down the summary of S.1707 by highlighting clearly the areas of concern for the Pakistani state. Next section gives a comparative analysis of the Act with that of the joint Explanatory Statement forwarded by the US Congressmen. And the final section concludes how the unfolding of the Act threatens the state sovereignty of the state of Pakistan and thus what must be done to prevent damage and therefore gives out policy recommendations.

Summary of Enhanced Partnership with Pakistan Act 2009 **(S.1707)**

This part of the brief highlights the key points and the main provisions laid down in the Act that directly or indirectly have a bearing on Pakistan's national security interests. Under each heading it is stated what interests and areas are being affected and how the effect comes about. And later the actual provisions and clauses are mentioned to give the reader a clear picture of how this analysis has been arrived at.

This Act is affecting three targeted areas specifically and 20 generic areas. The first three areas that this Act aims to target are nuclear establishment, the military and domestic governance.

1. Nuclear establishment

Several clauses laid down in the Act aim to freeze/ cap the Pakistani nuclear program as they clearly state that Pakistan should:

- a) Not use its own financial resources for the development of the nuclear weapons program.
- b) The clause clearly emphasizes the term "acquisition;" (acquisition from supplier networks) so that Pakistan is unable in the future to buy nuclear technology from any of Pakistan's defense contractors, past, present and future. The clause also gives explicit access of these supplier networks to the Americans and will include all individuals including people who have been associated in any manner with the nuclear weapons program of Pakistan. It is a violation of Pakistan's national security.
- c) One of the clauses is also aiming at counter-proliferation¹ that means that it will use all measures including preemption to counter nuclear terrorism as well as expansion of Container Security Initiative to various ports. In addition the budget function 050² clearly links the program to Nunn-Lugar Cooperative Threat Reduction program which had aimed at securing and neutralizing erstwhile Soviet Union/Russia's nuclear weapons program under the rubric loose nukes.

Relevant sections of the Act having above implications for the nuclear establishment are:

SEC. 4. STATEMENT OF PRINCIPLES

1-(L) To achieve full cooperation in matters of counter-proliferation of nuclear materials and related networks;

¹According to the US the threat from the weapons of mass destruction represents the most dangerous, direct threat facing the United States, this was stated by the US Secretary of Defense Les Aspin in 7 December 1993 when he announced a new Defense Counter proliferation Initiative (DCI). This was contrasted to the old nuclear danger of a massive Soviet first strike with that of "perhaps a handful of nuclear devices in the hands of rogue states or even terrorist groups. The engine of this new danger is proliferation." He also stated that "with this initiative, we [at the Department of Defense (DOD)] are making the essential change demanded by this increased [proliferation] threat. We are adding the task of protection to the task of prevention. . . . At the heart of the Defense Counter proliferation Initiative, therefore, is a drive to develop new military capabilities to deal with this new threat" (emphasis added). Stated in the speech made by the Secretary of Defense Les Aspin, to the National Academy of Sciences, Washington, D.C., 7 December 1993, The counter proliferation has been supported by successive US administrations and the US president especially president Clinton and president Bush which have also included active defense and the coalition of the willing as the new yard stick for soliciting support for countering the threat before it realizes itself with preemptive strategy becoming a corner stone of the new US strategy.

²The National Defense function includes the military activities of the Department of Defense (DoD), the nuclear weapons-related activities of the Department of Energy (DOE) and the National Nuclear Security Administration, and the national security activities of several other agencies such as the Selective Service, Coast Guard, and Federal Bureau of Investigation. Under it, programs such as the Cooperative Threat Reduction program are given greater priority and higher funding.

SEC. 203.LIMITATIONS ON CERTAIN ASSISTANCE.

d) Certification- The certification required by this subsection is a certification by the Secretary of State, under the direction of the President, to the appropriate congressional committees that—

- (1) the Government of Pakistan is continuing to cooperate with the United States in efforts to dismantle supplier networks relating to the acquisition of nuclear weapons- related materials, such as providing relevant information from or direct access to Pakistani nationals associated with such networks;*

SEC. 302.MONITORING REPORTS.

(12) a detailed description of Pakistan's efforts to prevent proliferation of nuclear-related material and expertise;

(13) an assessment of whether assistance provided to Pakistan has directly or indirectly aided the expansion of Pakistan's nuclear weapons program, whether by the diversion of United States assistance or the reallocation of Pakistan's financial resources that would otherwise be spent for programs and activities unrelated to its nuclear weapons program;

2. Military

The second targeted area of the Act s.1707 is the military and the security agencies. That sets open benchmarks without criteria based approach as:

a) The Act asserts that Pakistan is a center of global terrorism as referenced in the "Sense of the Congress" in the text of the Act. Such a statement is a legal indictment against Pakistan. One it requires access to all security forces and transfers the burden of proof of innocence to the respective agencies. Terrorism related clauses are used to create this effect.

b) The term "sanctuary" implies that Pakistan has accepted the terms of reference of a failing state as included in intelligence reforms and Terrorism Prevention Act 2004.(Detailed reference to this has been given later in the brief) Then it also included non-interference in judiciary and the civil democratic process as a benchmark for deciding whether military is playing its role right or not.

c) This Act takes away the designated and institutional rights of the military to the civilian leadership with structural changes brought about by the Americans. Here reference is to civilian involvement in the national security and guidance.

d) It allows for the civilian leadership to interfere in the promotion process of the security forces as well. Last but not the least, it allows for irregular forces to be used for or in the support of US combat operations in Pakistan for terrorism as stated under Ronald Reagan Act 2005, Duncan Hunter Act of 2009 which have been given a due waiver under the discretion of the US Secretary of State.

Relevant sections of the bill having above implications are:

SEC. 302.MONITORING REPORTS.

(15) an assessment of the extent to which the Government of Pakistan exercises effective civilian control of the military, including a description of the extent to which civilian executive leaders and parliament exercise oversight and approval of military budgets, the chain of command, the process of promotion for

senior military leaders, civilian involvement in strategic guidance and planning, and military involvement in civil administration.

3. Domestic Governance

The third targeted area is the area of domestic governance. US is requesting access to and the right to bring about structural changes in nineteen designated areas of the Federal government, a right clearly resting with the government of Pakistan as a sole sovereign.

- (1) Civil liberties.
- (2) Political rights
- (3) Voice and accountability
- (4) Government effectiveness
- (5) Rule of law
- (6) Control of corruption
- (7) Immunization rates.
- (8) Public expenditure on health.
- (9) Girls' primary education completion rate.
- (10) Public expenditure on primary education.
- (11) Natural resource management.
- (12) Business start-up.
- (13) Land rights and access.
- (14) Trade policy.
- (15) Regulatory quality.
- (16) Inflation control.
- (17) Fiscal policy.
- (18) Judiciary
- (19) Core Curricula

Preconditions in the Kerry-Lugar Bill:

The president is not the giver of the aid to Pakistan rather he is only authorized to give aid by the Congress which might change its mind at any point of time.

Then it is projected that there is nothing related to micromanagement of affairs and programs pursuant to this bill by the US but as given below the bill provides all the segment of Pakistani society where US gets the rights to interfere on the basis conditions imposed under the Kerry-Lugar Bill. It is important to see that all the clauses below are meant either to support or promote

the following segment, but nothing in the Act what is meant by supporting the issues or portions of the Pakistani society that have nothing to do either with terrorism or foreign policy thereby not relevant to the US national interests in any way. All these areas are actually a part of the strategy to bring about structural changes in Pakistan considering more than half of its territory as terrorist sanctuary as per the Intelligence Reform and Terrorism Prevention Act Of 2004.

As given in the Act under SEC. 101 a complete list of areas is provided where the US gets the right to interfere in the domestic areas of Pakistan so as to bring about structural changes in Pakistan. (for details see Annex A). The President is encouraged to utilize Pakistani firms and community and local nongovernmental organizations in Pakistan, including through host country contracts, and to work with local leaders to provide assistance under the same section i.e. Sec 101. Under this section it is also directed that the United States should have a coordinated, strategic communications strategy to measure the success.

As given in the Act, section 101 clause C (4) (d):

(d) Notification- For fiscal years 2010 through 2014, the President shall notify the appropriate congressional committees not later than 15 days before obligating any assistance under this section as budgetary support to the Government of Pakistan or any element of the Government of Pakistan and shall include in such notification a description of the purpose and conditions attached to any such budgetary support.

In the above-referenced clause it is important to note that the president has to notify the appropriations committees about the purposes and conditions of the budgetary support to Pakistan. In such a situation there may be conditions attached by the Congress to the aid given to Pakistan, without providing a proper framework of how and when those conditions might be imposed. It would therefore be impossible to say that there are no conditions imposed on the government of Pakistan vis-à-vis the aid given.

To conclude it in a nutshell, the single most important concern is the fact that non-military assistance that is to be given via this Act neither aims at non-military security nor gives Pakistan access to improve its defense structure or capability to combat terrorism as Pakistan is not allowed to buy any defense articles without the due approval of the President of the US, Secretary of State or the Secretary of Defense of the US.

\$860³ million will go back to the US under the understanding of primary security related assistance and the rest of the \$614⁴ million is to be distributed between various NGOs, community leaders etc and the government of Pakistan. In short, this amount of aid will neither improve Pakistan's fiscal standing nor its security apparatus. Further, the biggest threat in this situation is that it does not debar the US "coordinated strategy, communication strategy" and the use of all elements of US national power i.e. diplomatic, economic, and military and intelligence etc in the aim of clearing Pakistan from terrorism "sanctuaries" within.

The Act defines terrorist or counter terrorism as acts or actions done to counter acts of terrorism conducted against US only and does not refer to the acts of terrorism against Pakistan. In order to question Pakistan's counter terrorism strategy there are explicit statements/ emphasis on maintaining human rights that may later become a grey area for countering terrorism in Pakistan by Pakistan. The Act needs to be rejected as it is an infringement on the territorial integrity and sovereign rights of the Government and the people of Pakistan.

³ These amounts and figures have been arrived at by the SASSI team as a part of their analysis of the calculations of figures given in the Act. The detailed analysis is given in Annex II of this brief.

⁴Ibid.

Comparative Analysis of ‘Joint Explanatory Statement’ with Kerry-Lugar Act ‘S-1707

A joint explanatory statement was released by the Senate Foreign Relations Chairman John Kerry, House Foreign Relations Chairman Howard L. Berman and Pakistani Foreign Minister Qureshi to accompany Senate Bill 1707, the Enhanced Partnership with Pakistan Act of 2009 in lieu of the resentment shown by some concerned segments of Pakistani citizens. The purpose of this Joint Explanatory Statement was to facilitate accurate interpretation of the text and to ensure faithful implementation of its provisions in accordance with the intentions of the legislation. However, this explanatory statement presents only a selective picture of the Act and does not cover controversial clauses that have led to Pakistan’s opposition to the Act. The text of the congressional explanatory note for the Kerry-Lugar bill is insufficient and partial as it highlights only the encouraging clauses of the bill while ignoring completely the points of controversy. The definitions the congressional findings are also selective and biased.

i. Comparison with section 1-4 of the Act

The sections 1-4 are significant since they lay down the parameters of how the bill is going to unfold.

As according to the explanatory statement:

The Sections 1-4 strengthening a Relationship Founded on Mutual Respect.

These are the sections that establish the framework and context for the legislative provisions that follow. The Findings and the Statement of Principles as given in the Act demonstrate an unequivocal appreciation for the friendship of the Pakistani people, and for the sacrifices made by the Pakistani security forces and people in fighting extremism.

The reflection of the Act in the explanatory note is very positive but when one reads the entire Act itself it is very difficult to match the context given above. Throughout the Act certifications are required to convince the US congress that the act is helping to protect US national security interests. However it does not include an appreciation of Pakistan’s sacrifices or Pakistan's national security interests. The stating of the US Pakistan partnership in the Global War on Terror is positive, but there are no provisions for the furtherance of Pakistan’s national security interest and there are no provisions that speak directly about providing monetary aid to the Pakistani government or the people of Pakistan.

The section in the Act including definitions is completely missing in the explanatory note, even though the definitions provide the parameters by which the Act is to be evaluated and implemented. There are a few controversial definitions included in the Act such as, "counter terrorism, counter insurgency and the operations research."

These are defined as following in the Act:

SEC 1(2) COUNTERINSURGENCY-

The term ‘counterinsurgency’ means efforts to defeat organized movements that seek to overthrow the duly constituted Governments of Pakistan and Afghanistan through violent means.

If counter insurgency is to be looked at through the prism given above it means the current acts of terrorism against Pakistan are actually insurgency backed by Taliban and aiming to the overthrow of the central government of Pakistan. It is also an anomaly, that why counterinsurgency

in Afghanistan is being linked to Pakistan in a completely Pakistan specific Act. It may hold implications when they start linking up the Taliban in Afghanistan with Taliban in Pakistan and try to find a common strategy to counter both through same means

SEC 1(3) COUNTERTERRORISM-

According to the Act the term 'counterterrorism' means efforts to combat al Qaeda and other foreign terrorist organizations that are designated by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), or other individuals and entities engaged in terrorist activity or support for such activity.

Thus the Act defines terrorist or counter terrorism as acts or actions done to counter acts of terrorism conducted against the US only and do not cater for the acts of terrorism against Pakistan as stipulated in the Act, as the secretary of state by the Immigration and Nationality Act (8 U.S.C. 1189), can designate only those individuals or groups as terrorist who threaten the US national interests only. Further in the text the Pakistani government is bound to follow the internationally recognized human rights. This provision does not ask the US to be sensitive of the basic human rights of Pakistani citizens who may be victims of drone attacks. It also creates a grey area in the future to question Pakistan's counter insurgency activities in Pakistan and by Pakistan.

SEC 1(9) OPERATIONS RESEARCH-

According to the Act, the term 'operations research' means the application of social science research methods, statistical analysis, and other appropriate scientific methods to judge, compare, and improve policies and program outcomes, from the earliest stages of defining and designing programs through their development and implementation, with the objective of the rapid dissemination of conclusions and concrete impact on programming.

It is ambiguous as to what is meant by appropriate scientific methods. This definition is important and threatening because it allows the US to use all the instruments of National Technical Means including intelligence gathering and allows room for an undue access to information. Operations research basically includes using personnel to observe the changes that are occurring in and through the given program during all the stages of development.

SEC 1(11) SECURITY-RELATED ASSISTANCE-

According to the Act, The term 'security-related assistance'--

(A) means—

(i) grant assistance to carry out section 23 of the Arms Export Control Act (22 U.S.C. 2763); and

(ii) assistance under chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et. seq); but

(B) does not include—

(i) assistance authorized to be appropriated or otherwise made available under any provision of law that is funded from accounts within budget function 050 (National Defense); and

(ii) amounts appropriated or otherwise available to the Pakistan Counterinsurgency Capability Fund established under the Supplemental Appropriations Act, 2009 (Public Law 111-32).

The security related assistance as per the Act is grant assistance that authorizes the US president to finance procurement of defense related articles, services or credits, provide contracts to the US companies with due submission of reports to the Congress. And the security related assistance as in the Act is not the budget appropriations funded under the budget function 050 for national defense. But in Section 205 b (1) a waiver can be given related to non-security related assistance, as defined above SEC 1(11) b, if the secretary of state finds it necessary for the US national interest. The process to bring Cooperative Threat Reduction (CTR)⁵ in Pakistan is emerging because the waiver to be granted by the US president with reference to the Budget Function 050 is about giving the monetary aid directly to the Pakistani non-civilian authorities (military or the nuclear establishment). The aid referred to in Budget Function 050 is actually the money at the discretion of Department of Defense, Department of Energy, and National Nuclear Security Agency etc relating to the aids or grants given for nuclear energy , safety and security and other military activities, while in Budget Function 050 assistance related to CTR is given special preference. Thus the act makes first exception to the budget function 050 to be used in Pakistan but later suggests that it may be utilized as a result of the waiver; this if incorporated would mean that US nuclear establishment people could be placed as part of the Kerry Lugar bill related monitoring team to ensure and use both US national technical means (intelligence) and scientific methods to monitor the progress made in the demands for the Nuclear front. In addition this function makes a strong reference to the Cooperative threat reduction programme which is the Nunn Lugar act and had serious connotation's if applied on Pakistan's nuclear programme.

The most crucial clauses of Section 3 as cited below have not been at all discussed in the explanatory note:

SEC 5(6) Despite killing or capturing hundreds of al Qaeda operatives and other terrorists--including major al Qaeda leaders, such as Khalid Sheikh Muhammad, Ramzi bin al-Shibh, and Abu Faraj al-Libi--the FATA, parts of the NWFP, Quetta in Balochistan, and Muridke in Punjab remain a sanctuary for al Qaeda, the Afghan Taliban, the Terikh-e Taliban and affiliated groups from which these groups organize terrorist actions against Pakistan and other countries.

Interpretation of the term Terrorist Sanctuary⁶ as defined by the Intelligence Reform and Terrorism Prevention Act Of 2004 puts the US intentions in perspective.

⁵The Cooperative Threat Reduction (CTR) Program (occasionally known as Nunn–Lugar based on a 1992 U.S. law sponsored by Senators Sam Nunn and Richard Lugar) is an initiative housed within the Defense Threat Reduction Agency (DTRA). It assists the states of the former Soviet Union in controlling and protecting their nuclear weapons, weapons-usable materials, and delivery systems. To aid in the implementation of arms control agreements, CTR also contributes to the dismantling and destruction of a number of nuclear weapons and their associated delivery systems.

⁶Section 7102 of **US intelligence Reform and Terrorism Prevention Act2004** clearly defines what a terrorist sanctuary is and thus highlights the legal connotations of this term for the state of Pakistan.

SEC. 7102.TERRORIST SANCTUARIES.

(a) FINDINGS.—Consistent with the report of the National

Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Complex terrorist operations require locations that provide such operations sanctuary from interference by Government or law enforcement personnel.

(2) A terrorist sanctuary existed in Afghanistan before September 11, 2001.

(3) The terrorist sanctuary in Afghanistan provided direct and indirect value to members of al Qaeda who participated in the terrorist attacks on the United States on September 11, 2001, and in other terrorist operations.

(8) *On March 27, 2009, President Obama noted, 'Multiple intelligence estimates have warned that al Qaeda is actively planning attacks on the United States homeland from its safe-haven in Pakistan.' According to a Government Accountability Office report (GAO-08-622), 'since 2003, the [A]ministration's national security strategies and Congress have recognized that a comprehensive plan that includes all elements of national power--diplomatic, military, intelligence, development assistance, economic, and law enforcement support--was needed to address the terrorist threat emanating from the FATA' and that such a strategy was also mandated by section 7102(b)(3) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 22 U.S.C. 2656f note) and section 2042(b)(2) of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53; 22 U.S.C. 2375 note).*

Accepting Kerry-Lugar Bill inclusive of the up given clauses would be similar to conceding it as a fact that president Obama's concerns are justified regarding the safe havens/ terrorist sanctuaries in Pakistan. This would kick off a new US counter terrorism strategy against Pakistan employing all the elements of national power as the congress has asked for against terrorist sanctuaries anywhere in the world.

The explanatory note does affirm that Pakistan is a critical friend and ally to the United States, and the two countries share many common goals, including combating terrorism and violent radicalism, solidifying democracy and rule of law in Pakistan, and promoting the social and economic development of Pakistan. However, this note fails to take into account the actual points of conflict which in the form of clauses are given below:

Sec 4 [5] (E) To support the strengthening of core curricula and the quality of schools across Pakistan, including madrassas, in order to improve the prospects for Pakistani children's futures and eliminate incitements to violence and intolerance;

The development of core curricula is solely the discretion of the Pakistani state and this is an infringement of Pakistani sovereignty.

Again, according to the Act the aid is to help assist do the following in Pakistan:

Sec 4 [5] (I) to assist Pakistan's efforts to improve counterterrorism financing and anti-money laundering regulatory

(4) Terrorist organizations have fled to some of the least governed and most lawless places in the world to find sanctuary.

(5) During the 21st century, terrorists are often focusing on remote regions and failing states as locations to seek sanctuary.

(b) SENSE OF CONGRESS ON UNITED STATES POLICY ON TERRORIST SANCTUARIES.—It is the sense of Congress that it should be the policy of the United States—

(1) to identify foreign countries that are being used as terrorist sanctuaries;

(2) to assess current United States resources and tools being used to assist foreign governments to eliminate such sanctuaries;

(3) to develop and implement a coordinated strategy to prevent terrorists from using such foreign countries as sanctuaries; and

(4) to work in bilateral and multilateral for a to elicit the cooperation needed to identify and address terrorist sanctuaries that may exist today, but, so far, remain unknown to governments.

structure in order to achieve international standards and encourage Pakistan to apply for 'Financial Action Task Force' observer status and adhere to the United Nations International Convention for the Suppression of the Financing of Terrorism;
(J) To strengthen Pakistan's counterinsurgency and counterterrorism strategy to help prevent any territory of Pakistan from being used as a base or conduit for terrorist attacks in Pakistan or elsewhere

It was actually a provision of the PEACE Act (House version of the Act) sponsored by Congressman Howard Berman in which Pakistan was called upon to prevent terrorist activities against India and Afghanistan. The names have been replaced by the word “elsewhere”, which has similar implications as before.

ii. Comparison with TITLE I: Democratic, economic and development assistance for Pakistan of the Act:

This Title contains the core intention of this legislation.

As under the explanatory statement:

To make a long-term commitment to the people of Pakistan by tripling non-military assistance, free of any conditions on the Pakistani government. The purposes set forth for the \$7.5 billion that is authorized here are all intended to reflect the expressed priorities of the Pakistani people.

Section 101(a) provides that:

“The President is authorized to provide assistance to Pakistan to support the consolidation of democratic institutions; to support the expansion of rule of law, build the capacity of government institutions, and promote respect for internationally-recognized human rights; to promote economic freedoms and sustainable economic development; to support investment in people, including those displaced in on-going counterinsurgency operations; and to strengthen public diplomacy.”

The funds authorized under Title I are intended to be used to work with and benefit Pakistani organizations.

Section 101(c)(3) provides that the President is encouraged, as appropriate, to utilize Pakistani firms and community and local nongovernmental organizations in Pakistan, including through host country contracts, and to work with local leaders to provide assistance under this section.

Section 102 (a) makes clear that there are no conditions placed on the Pakistani government for delivery of the \$7.5 billion in assistance. The only accounting requirements are of the U.S. executive branch.

Section 102(d) makes clear that a long term commitment to increased civilian assistance for the people of Pakistan is envisioned by stating that it is the desire of Congress that the amounts authorized for fiscal years 2010-2014 shall continue from fiscal years 2015-2019.

*Section 103(b) authorizes establishment of field offices for Inspectors General to audit and oversee expenditure of this assistance. It is the intent of Congress that such offices would be established in consultation with **appropriate Pakistani authorities** for the purpose of ensuring optimal management of resources.*

The impression given in the explanatory note is such that the Pakistan government will be under no conditions after the acceptance of this Act; however the language of the text of the original Act sets forth many direct or indirect conditions on the Government of Pakistan, the non-compliance to which may lead to the discontinuance of the aid. Essentially speaking, they failed to address in this note the contentions as under section 101 (b) 1 A and 101 (b) 2 A and 101 (b) 4 A of the original text of the Act where lethal conditions have been put on the Government Of Pakistan which are crucial to the national security interest of Pakistan as have already been explained in the summary of the Act.

The concerns of Pakistan are not baseless. The greatest infringement is made on the state functions and the rights, from the government down to the local government level. All the clauses under section 101 where president is given authorization of assistance is basically giving the right to US to interfere on the basis of conditions imposed under the Kerry-Lugar Act. All the areas specified under this section are actually a part of the strategy to bring about structural changes in Pakistan and create issue of Domestic interference in this regards.

The language suggests recognition that Pakistan is a failing state ready for structural changes. Nothing substantial has been said in the note to cater Pakistan's concern with regards to the access to information. The use of this language does imply that the sovereignty of the state of Pakistan will be impinged upon. If 'impinging upon Pakistan's sovereignty' is not the desired intent of the US administration, then there's procedural ambiguity as to how exactly do they intend **establishing frameworks that promote government transparency and criminalize corruption in both the government and private sector; what do they mean by enhancing the capacity of committees to oversee government activities, including national security issues;** How will they **assist in the development of modern, nationwide school curriculums for public, private, and religious schools.**(for details see the Act sec 101 as given in Annex A) But by whatever means this is carried out, this is allowing the ingress of the US to micromanage everything in Pakistan through the economics of aid programs. Intruding on our sovereignty is by no means is the 'expressed priority of the Pakistani people'.

In order to question Pakistan's counter terrorism strategy there are explicit statements, such as emphasis on maintaining human rights what can become later a grey area for countering terrorism in Pakistan by Pakistan.

It is suggested in explanatory note that nothing is required of Pakistan in return for the 7.5 billion dollars in assistance except for the requirements of the US executive branch. Unfortunately in the original text in 102 (b) 1 B i, it has been categorically stated that not more than \$750,000,000 can be given to Pakistan unless the US special envoy makes a certification

that Pakistan is making reasonable progress towards achieving the principal objectives of US assistance to Pakistan.

In the explanatory note they have stated that the field offices for inspector generals will be established ‘in consultation with appropriate Pakistani authorities’ for the purpose of ensuring optimal management of resources. However, the original text has no reference to any consultations and that too with any Pakistani authority, whereas they should have used the term Government of Pakistan in place of any appropriate Pakistani authority. All the areas stated under this title are actually a part of the strategy to bring about structural changes in Pakistan considering more than half of its territory as terrorist sanctuary as per the Intelligence Reform and Terrorism Prevention Act of 2004.

iii. Comparison with ‘TITLE II--Security Assistance for Pakistan’ of the Act

The explanatory statement only highlights the favorable clauses of S.1707 Act irrespective of the objective of this Act which is to provide Pakistan with non-military assistance to help to strengthen a long term Pakistan US relationship. However the stated provisions of Title II of the Act will impinge on the national security interests and sovereignty of Pakistan as explained in the following paragraphs.

The section that is stated in the explanatory statement omits the remaining **clause of 201 (4) in which it talks about the control of military institutions by a democratically elected civilian government.**

The entire text of the clause as given in the Act is:

(4) to help strengthen the institutions of democratic governance and promote control of military institutions by a democratically elected civilian government.

In **section 203 (c)** the total contexts has been changed and uses the word ‘proliferation’ instead of the acquisition of nuclear weapons-related materials. Here it mentions the US executive branch regarding the certification but it’s not mentioned in the S.1707 Act. This section is significantly critical as; it is a direct intrusion into the Pakistan’s nuclear program and it conditions the aid to the follow clauses of the act which are not highlighted in the explanatory statement.

As stipulated in the first section of the act the framework of cooperation is counter proliferation which centres on active defense and physical use of force to deal with the threat of proliferation before it emanates as real threat. Secondly counter proliferation also contextualizes the next nuclear threat as that developing from the nuclear weapon technology from non - state actors and possibility of nuclear terrorism. In addition it defines that Pakistani efforts would be recognized only if it is based on full cooperation this could perhaps means increased US ingress in the safety and security mechanisms of Pakistan’s nuclear program as well as the counter terrorism (nuclear measures and practices of the nuclear establishment. And what would amount to full cooperation is not understood clearly for it can be anything from the transfer of information to the actual access to technological resources of Pakistan to combat the threat of nuclear terrorism in Pakistan and elsewhere it would also mean Pakistan may have to join the CP initiatives such as PSI etc or participate in their expansion such CSI’s expansion to various other pots of Pakistan

as a result of the aid package, for in the monitoring report this is cited as necessary condition for the fulfillment of the aid conditionality.

The Act fails to state that it expects cooperation from Pakistan on non-proliferation which is Pakistan’s official nuclear position and in line with thrust of Pakistan’s arms control policy enshrined in multilateralism.

This section in the Act grants direct access to intervene in Quetta and Muridke, which are nothing but interference into the domestic affairs and the sovereignty of the nation of Pakistan.

The following table gives the clauses of explanatory note and that of the Act to highlight the differences between the language and context of the both:

Clause no.	Explanatory note	S.1707
203 (C)(1)	reflects our understanding that cooperative efforts currently being undertaken by the Governments of Pakistan and the United States to combat proliferation will continue.	Certification- The certification required by this subsection is a certification by the Secretary of State, under the direction of the President, to the appropriate congressional committees that-- (1) the Government of Pakistan is continuing to cooperate with the United States in efforts to dismantle supplier networks relating to the acquisition of nuclear weapons-related materials, such as providing relevant information from or direct access to Pakistani nationals associated with such networks;
203 (C)(2)	Section 203(c)(2) reflects the intent that U.S. security assistance is used in furtherance of the purposes set forth in Section 201 above, e.g., ensuring Pakistan’s security, winning the counterinsurgency within Pakistan, preventing territory from being used for terrorist attacks in Pakistan and elsewhere, and coordinating action against extremist and terrorist targets. This section requires a certification by the U.S. executive branch to Congress regarding the efforts and progress made in achieving these purposes, and includes a series of factors to be considered collectively by the Secretary of State in making this	(2) the Government of Pakistan during the preceding fiscal year has demonstrated a sustained commitment to and is making significant efforts towards combating terrorist groups, consistent with the purposes of assistance described in section 201, including taking into account the extent to which the Government of Pakistan has made progress on matters such as-- (A) ceasing support, including by any elements within the Pakistan military or its intelligence agency, to extremist and terrorist groups, particularly to any group that has conducted attacks against United States or coalition forces in Afghanistan, or against the territory or people of neighboring countries;

	assessment.	(B) preventing al Qaeda, the Taliban and associated terrorist groups, such as Lashkar-e-Taiba and Jaish-e-Mohammed, from operating in the territory of Pakistan, including carrying out cross-border attacks into neighboring countries, closing terrorist camps in the FATA, dismantling terrorist bases of operations in other parts of the country, including Quetta and Muridke, and taking action when provided with intelligence about high-level terrorist targets; and (C) strengthening counterterrorism and anti-money laundering laws; and
203 (c)(3)	includes a provision intended to express support for democratic institutions in Pakistan.	(3) the security forces of Pakistan are not materially and substantially subverting the political or judicial processes of Pakistan.
203 (e)	contains a waiver making clear that this certification could be waived if the determination is made by the Secretary of State in the interests of national security that this was necessary to continue such assistance.	(e) Waiver- (1) IN GENERAL- The Secretary of State, under the direction of the President, may waive the limitations contained in subsections (a), (b), and (d) for a fiscal year if the Secretary of State determines that is important to the national security interests of the United States to do so. (2) PRIOR NOTICE OF WAIVER- The Secretary of State, under the direction of the President, may not exercise the authority of paragraph (1) until 7 days after the Secretary of State provides to the appropriate congressional committees a written notice of the intent to issue to waiver and the reasons therefore. The notice may be submitted in classified or unclassified form, as necessary.

The section also accuses Pakistan’s military and, its intelligence agencies’ of involvement in terrorist activities whereas the role of non-state actors is clearly diminished, though Pakistan itself is being victimized by the insurgents either externally funded or by other non-state actors. Explanatory statement changes the language and the intent of the **section 203 C (3)** which stated that the security forces of Pakistan are not materially and substantially subverting the political or judicial processes of Pakistan. The **section 203 (e)** has not clearly stated the US national security interest as it was clearly mentioned in the S.1707 Act.

There are still ambiguities arising from many grey areas in this explanatory statement. Since it lacks the basic framework of the act and touches the sections superficially, and overlooks the **remaining sections of the TITLE II** that deals with the Authorization of Assistance, Pakistan counterinsurgency capability fund and Requirements for civilian control of certain assistance. Section 205 under this title is particularly important, essentially 205 (b):

(b) WAIVER:

(2) NON-ASSISTANCE PAYMENTS- The Secretary of Defense, in consultation with the Secretary of State, may waive the requirements of subsection (a) with respect to non-assistance payments described in subsection (a) funded from accounts within budget function 050 (National Defense) if the Secretary of Defense certifies to the appropriate congressional committees that the waiver is important to the national security interest of the United States.

According to the Act the funds may not be made available for certain payments that is the counter insurgency funds or non - assistance payments which are essentially about hiring irregular forces or special forces in support of US military combat operations against the terrorists . We are not sure how much funds will be made available though as currently the fund allocation is 4 billion dollars and the non - assistance payments are almost 20 million dollars.

iv. Comparison with TITLE III. ‘Strategy, accountability, monitoring, and other provisions’ of the Act

In the explanatory note, Title III has been summarized in a way such that the number of conditions/requirements there in the original Act has been conveniently missed out in the explanatory note.

In the new interpretation, it is stated that there would be no conditions on the Pakistani government whereas an executive branch will be gathering and submitting information to the US Congress; although, in the original text of this bill, there was no executive branch in charge of such responsibility. However, they have employed a new title known as the ‘Comptroller General of the United States’ who will be submitting another report after the submission of Pakistan Assistance Strategy Report to the appropriate Congressional committees regarding government accountability issues.(For details see title III section 302 of the Act as provided in the annex)

This section also highlights that the US wants to carry out assessment of performance of Pakistani government through evaluation in which they would be intruding into domestic affairs of the government in the name of transparency and accountability. No explanation has been provided regarding such evaluation in this note.

Moreover, in the explanatory note, it is stated that they only want to carry out inspection to have a transparency. But their requirements regarding several of reports in which they will be acquiring information of every single Pakistani citizen raises suspicions. There are plenty of descriptive reports/documents that have been stated in the original text that will have to be submitted to US.

Section 301 (a) (4) A description of the role to be played by Pakistani national, regional, and local officials and members of Pakistani civil society and local private sector, civic, religious, and tribal leaders in helping to identify and implement programs and projects for which assistance is to be provided under this Act, and of consultations with such representatives in developing the strategy.

It has been explained in the note that the purpose of monitoring is to ensure transparency and accountability in the way assistance will be spent. However, inclusion of a clause which talks about keeping information regarding people who will be receiving amounts more than \$100,000 in classified documents - supposedly for the sake of national security interests again raises huge doubts about the actual intent of the Act. This can be substantiated by the following clause:

Section 302 (a) (2) a list of persons or entities from the United States or other countries that have received funds in excess of \$100,000 to conduct projects under title I of this Act during the period covered by the report, which may be included in a classified annex, if necessary to avoid a security risk, and a justification for the classification;

The US has not provided any reason for assuming the right to interfere in the internal educational affairs of Pakistan as indicated in Section 302 (a) (11) (F) in the original text of the Act. The organization and planning for education either for public schools or for madrassas, is the responsibility and mandate of none but the Pakistani government. Following clause substantiates the US interest to micromanage the educational affairs of the state of Pakistan:

Section 302 (a) (11) (F) increase oversight over curriculum in madrassas, including closing madrassas with direct links to the Taliban or other extremist and terrorist groups;

Moreover, in Section 302 (a) (15) they have clearly asked the Government of Pakistan to get an effective control of military budget, promotion of military and strategic leadership about which they have not explained anything in this joint statement.

In this explanatory note, it is stated that there is no intention on part of US that there would be, any US role in micromanaging internal Pakistani affairs, including the promotion of Pakistani military officers or the internal operations of the Pakistani military. However, in the original text of the bill, it is stated that there would be an oversight assessment carried out by US of such issues as it is written in the Section 302

(a) (15).

Section 302 (a) (15) an assessment of the extent to which the Government of Pakistan exercises effective civilian control of the military, including a description of the extent to which civilian executive leaders and parliament exercise oversight and approval of military budgets, the chain of command, the process of promotion for senior military leaders, civilian involvement in

strategic guidance and planning, and military involvement in civil administration.

Further, the US again omitted an explanation in the note regarding the restriction indicated in Section 302 (a) (13) that Pakistan cannot re-allocate its own financial resources on its own nuclear weapons program.

Section 302 (a) (13) an assessment of whether assistance provided to Pakistan has directly or indirectly aided the expansion of Pakistan's nuclear weapons program, whether by the diversion of United States assistance or the reallocation of Pakistan's financial resources that would otherwise be spent for programs and activities unrelated to its nuclear weapons program;

The monitoring report further places conditions that no part of the given aid may be directed to develop the nuclear weapons program however it also stipulates that Pakistan's own financial resources may not be diverted for the development of the nuclear weapons program.

This if accepted would equate accepting a freeze on the nuclear weapons program and will result in the Pakistani nuclear deterrence as irrelevant for all future conflicts.

Policy Recommendations

1. Pakistan can and should reject the Act. This is the most preferred option.
2. US President can give an Executive Order that might override the Bill and would have the status as a law.
3. Limited aid should be provided by this Act and its allocation should be made transparent. There are several ambiguities arising from many grey areas in the Act. The Act basically provides an overarching framework and has as such no described/ internally discerning benchmarks, which are acceptable to both parties. If progress is to be made the controversial clauses can be renegotiated as the precedence exists in the shape of US aid to Egypt and the process which led to the removal of the controversial clauses from the aid bill.
4. Development projects for Nawab Shah, Larkana, Karachi and Multan and others may be deferred to two years, and the amount required is approx. 1.2 billion Rupees.
5. Save assets by reducing the quantity of foreign visits:
 - President's visits require approximately Rs 20 Crore.
 - Parliamentarian visits approximately Rs 25 Crore.

Conclusion

The foremost significant conclusion drawn is that the non- military assistance neither aims at non-military assistance and visible benchmarks nor gives Pakistan access to improve its defense structure or capability to combat terrorism as Pakistan is not allowed to buy any defense articles without the due approval of the President of the US, Secretary of State or the Secretary of Defense of US.

According to the analysis of the figures given in the Act (for details refer to Annex II) \$860 million will go back to the US under the understanding of primary security related assistance and the rest of the \$640 million is to be distributed between various NGOs, community leaders etc and the government of Pakistan. So not only does it affect our defense and security as a state, it provides no significant monetary benefits to the state of Pakistan as well. Rather it impinges Pakistan's right as a sovereign nuclear state for the Act clearly limits Pakistan's future nuclear weapons policy that it should have:

- 1) No expansion in the nuclear weapons program for the fear that the money may be diverted from the Kerry-Lugar disbursement to expand Pakistan's own financial resources.
- 2) The language of the Act shows an emphasis on getting access to acquisition rather than proliferation.
- 3) It requires access to Pakistani nationals and related individuals to supplier networks not on the basis of legal deference but because of principal of association.
- 4) It mandates Pakistan to fully cooperate in counter proliferation not non-proliferation.
- 5) It is against the constitutional and the civil rights of Pakistani nationals and officials as it basis itself on the assumption that the security forces of Pakistan are already assisting the terrorist activities.

In short, it will neither improve Pakistan's fiscal standing nor its security apparatus. And the biggest threat in the situation is that it does not debar the US "coordinated strategy, communication Strategy" and the use of *all elements of US national power i.e. diplomatic, economic, and military and intelligence etc* under the pretext of clearing Pakistan from alleged terrorism "sanctuaries" within Pakistani territory and countering "radical" elements in the Pakistani security forces and civil society. The Act needs to be rejected by the state of Pakistan as it is an infringement on Pakistan's sovereignty and territorial integrity and sovereign rights of the Government and the people of Pakistan. Along with that the text of the Act is also against its stated purpose that is to change the Pakistan US relations from transactional to a transformational relationship. A sturdy development can be both envisioned and achieved if it was based on negotiated settlement of differences between the two.

By conducting a cross-comparison of the recently issued Joint Explanatory Statement by senator Kerry and congressman Berman to accompany 'Enhanced Partnership with Pakistan Act of 2009', it is concluded that the US has not addressed the real controversial issues with which Pakistani military and strategic establishment have apprehensions. The explanation for the contentious clauses of the original text of the act have deliberately been skipped while emphasizing only on positive aspects and showing the US' goodwill for the people of Pakistan.

