

## **EXPERT DECLARATION OF JONATHAN L. CRISTOL**

### **I. Introduction and Qualifications**

1. My name is Jonathan L. Cristol, Ph.D. I am submitting this declaration in my capacity as an expert consultant to the Plaintiffs in *Smith/Soulas v. The Taliban* (aka. The Islamic Emirate of Afghanistan). The facts and opinions stated in this report are based on my research, expertise, observations, and professional experience.

2. I am the Interim Director of International Studies at Adelphi University in Garden City, NY. I am an adjunct assistant professor of political science at Yeshiva University in New York, NY. At both institutions I teach courses including: “American Foreign Policy”; “International Security”; “Middle East Politics”; and “Terrorism and Asymmetric Conflict,” among others. I am also a senior fellow at Bard College’s Center for Civic Engagement in Annandale-on-Hudson, New York.

3. I have studied the Taliban and the concepts of “effective control,” “sovereignty,” and “diplomatic recognition” for more than twenty years. I am the author of the 2019 book *The United States and the Taliban before and after 9/11* (Palgrave), and more than fifty articles on a range of topics pertaining to international security. I frequently offer expert commentary in global media and regularly act as a regional subject-matter expert on topics related to this motion in the US intelligence community. In addition, I have attended closed meetings related to the Taliban both in the United States and in Qatar.<sup>1</sup>

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<sup>1</sup> Note: This document does not contain classified information. I am not required to submit my work for prepublication review.

4. I received a B.A. in Political Studies from Bard College, in Annandale-on-Hudson, NY, and an M.A. in International Relations from Yale University, in New Haven, CT. I earned my Ph.D. in Politics and International Relations from the University of Bristol, in Bristol, United Kingdom.

5. My doctoral dissertation focused on the diplomatic practice of the USG when new states are created and/or new regimes take power through irregular means— The non-recognition of the Taliban government was a primary focus of my doctoral research.

6. I have been asked to provide an expert opinion regarding facts relevant to the determination as to whether Da Afghanistan Bank (DAB) is under the “effective control” of the Taliban. As a result of my professional experience, I am able to offer expert opinion on both the Taliban and Taliban governance and on the nature of “effective control.”

## **II. The Taliban**

### **A. The Taliban have “effective control” of Afghanistan.**

7. “Effective control” is a prerequisite for sovereignty under both customary international law and the standard diplomatic practice of the United States. A political entity cannot rightly be said to be a sovereign power if it does not establish and maintain effective control over its territory.

8. The prevailing standard for what constitutes “effective control” is that a political entity must: 1) be “in actual control of the administrative machinery of the state”; 2) perform “normal

governmental functions”; and 3) not be met “with open resistance to its authority.”<sup>2</sup> The Taliban clearly meet the prevailing standard for “effective control” over the internationally recognized territory of Afghanistan.

9. The Taliban control the administrative machinery of the state. On 7 September 2021, the Taliban appointed 53 cabinet officials and announced the establishment of a “caretaker government.”<sup>3</sup> The Taliban appointed an additional 38 high-ranking government officials on 4 October 2021.<sup>4</sup> These appointments are not only in areas of defense, foreign, and economic policy; but include an Acting Head of the National Olympic Committee and an Acting Director of Central National Statistics. The overwhelming majority of appointments to managerial positions have been of Taliban members; those that are not themselves Taliban are sympathetic to the Taliban. These appointments and the continued functioning of government agencies show that the Taliban have asserted control over the administrative machine of the state—and I have absolutely no doubt that the Taliban do control the administrative machinery of the state.

10. The Taliban are performing normal governmental functions. Since retaking control of Afghanistan the Taliban have reopened cabinet agencies and government offices. The Taliban have: exerted authority over the education system;<sup>5</sup> enacted and enforced local laws;<sup>6</sup> and defended

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<sup>2</sup> Fenwick, C.G. 1944. The Recognition of New Governments Instituted by Force. *The American Journal of International Law*. 38 (3): 448–452.

<sup>3</sup> Bahiss, I. 2021. Afghanistan’s Taliban Expand Their Interim Government. *International Crisis Group*. 28 September 2021. (<https://www.crisisgroup.org/asia/south-asia/afghanistan/afghanistans-taliban-expand-their-interim-government>) Accessed: 1 May 2022.

<sup>4</sup> N.A. 2021. Taliban appointments add to all-male Afghan government team. *Associated Press*. 4 October 2021. (<https://apnews.com/article/business-taliban-zabihullah-mujahid-afghanistan-government-kabul-f087fcd995431f3ae430ded3b0b7a937>) Accessed: 3 May 2022.

<sup>5</sup> Qazizai, F. 2022. Taliban reverses decision, barring Afghan girls from attending school beyond 6th grade. *All Things Considered*. National Public Radio. (<https://www.npr.org/2022/03/23/1088202759/taliban-afghanistan-girls-school>) Accessed: 2 May 2022.

<sup>6</sup> Padshah, S. and Gibbons-Neff, T. 2022. Taliban Outlaw Opium Poppy Cultivation in Afghanistan. *New York Times*. 3 April 2022.

Afghanistan's borders;<sup>7</sup> to name just a few of countless examples. The nature of the Taliban's actions in this regard is not relevant; and I have absolutely no doubt that the Taliban are performing normal governmental functions— though their specific actions in this regard range from the ill-advised to morally repugnant.

11. The Taliban are not meeting open resistance to its authority. Street protests against Taliban policies, even violent protests, do not constitute "open resistance" for the purpose of establishing "effective control." The relevant fact is that there is no other entity that both possesses and asserts political authority in Afghanistan. A recent Congressional Research Service (CRS) report on the Taliban government discusses the *possibility* of armed, organized resistance to the Taliban in purely hypothetical terms.<sup>8</sup>

12. The Taliban's primary domestic opposition is "Islamic State Khorasan" (IS-K); but IS-K cannot be considered a political rival for effective control of "Afghanistan" as it hopes to eliminate Afghanistan as a distinct political entity: "IS-K disregards international borders and envisions its territory transcending nation-states like Afghanistan and Pakistan."<sup>9</sup> It is my expert

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<sup>7</sup> The Taliban and Iranian forces have exchanged fire across the internationally recognized Afghanistan/Iran border on multiple occasions since 7 September 2021. See: Motamedi, M. 2021. Iran and Taliban forces clash in border area. *Al Jazeera*. 1 December 2021. (<https://www.aljazeera.com/news/2021/12/1/iran-and-taliban-forces-clash-in-border-areas>); N.A. 2022. Taliban, Iranian Border Guards Exchange Fire. *Radio Free Europe/Radio Liberty*. 8 March 2022. (<https://gandhara.rferl.org/a/taliban-iranian-border-guards/31742788.html>); and Anadolu Agency. 2022. Iran closes Afghan border crossing after skirmishes with Taliban. *Daily Sabah*. 23 April 2022. (<https://www.dailysabah.com/world/mid-east/iran-closes-afghan-border-crossing-after-skirmishes-with-taliban>); all accessed 2 May 2022.

<sup>8</sup> "[The] existence of resistance factions, in Panjshir or elsewhere, could serve as a rallying point or galvanize Taliban opponents nationwide, who might then make additional appeals for U.S. or other international assistance. It is not clear how likely this prospect is." Thomas, C. 2021. Taliban Government in Afghanistan: Background and Issues for Congress. Congressional Research Service. 2 November 2021. pp. 14.

<sup>9</sup> Sharb, C. 2018. Islamic State Khorasan (IS-K). Center for Strategic and International Studies. (<https://www.csis.org/programs/transnational-threats-project/past-projects/terrorism-backgrounders/islamic-state-khorasan>) Accessed: 2 May 2022.

opinion that the Taliban face no serious “open resistance” to its authority and are highly unlikely to face any such resistance for the foreseeable future.

13. It is my expert opinion that the Taliban have established effective control of the internationally recognized territory of Afghanistan. Moreover, the USG acknowledges the Taliban’s effective control of the internationally recognized territory of Afghanistan: “the Taliban appear to effectively control the entire country.”<sup>10</sup>

**B. The Taliban are the *de facto* sovereign power in Afghanistan.**

14. The Taliban became the *de facto* sovereign power in Afghanistan when it announced the formation of a new government on 7 September 2021.<sup>11</sup> The Taliban both possess and assert all three attributes of sovereignty necessary to be considered the *de facto* sovereign in Afghanistan: 1) control over international borders; 2) a monopoly on the use of force; and 3) the ability to conduct an independent foreign policy.<sup>12</sup>

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<sup>10</sup> Thomas, C. 2021. Taliban Government in Afghanistan: Background and Issues for Congress. Congressional Research Service. 2 November 2021. pp. 13.

<sup>11</sup> The Taliban’s announcement of a “caretaker government” on 7 September 2021 is a necessary assertion of sovereignty and marks that date as the formal start of Taliban rule in Afghanistan. However, it should be noted that the Taliban achieved effective control at some point between 15 August 2021 when it entered Kabul and 31 August 2021 when the USG completed its withdrawal from Afghanistan.

<sup>12</sup> These are the attributes applicable to an unrecognized government and to *de facto* sovereignty. See: Cristol, J. 2012. American Diplomatic Recognition and Classical Realist International Relations Theory. University of Bristol, UK. Ph.D. Diss. Chapter One.

15. The Taliban control Afghanistan's borders and act to defend those borders.<sup>13</sup> CRS reports that in July 2021, "the Taliban began seizing border crossings with Tajikistan, Iran, and Pakistan."<sup>14</sup> The Taliban took control of the border with Uzbekistan in early August 2021.<sup>15</sup> A Council on Foreign Relations map (Appendix A) shows that by 15 August 2021 the Taliban were in almost complete control of Afghanistan's borders.

16. The Taliban have a monopoly on the use of force in Afghanistan and there are no domestic rivals to Taliban rule.<sup>16</sup>

17. The Taliban have the ability to conduct and do conduct an independent foreign policy. The Taliban regularly negotiate with recognized governments and international institutions, including the United States and the European Union. The Taliban maintain an official office in Doha, Qatar and Taliban representatives regularly travel internationally to conduct official business. The Taliban do not take direction from any other state or non-state actor.

18. It is my expert opinion that the Taliban are the *de facto* sovereign power inside the internationally recognized territory of Afghanistan.

**C. The Taliban are not the recognized government of Afghanistan.**

19. The Taliban are not the recognized government of Afghanistan. The United States does not recognize the Taliban (or any other actor) as the government of Afghanistan. The Taliban are

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<sup>13</sup> See Footnote 7.

<sup>14</sup> Thomas. 2021.

<sup>15</sup> N.A. 2021. Taliban seizes Afghan borders with Tajikistan, Uzbekistan: Russia. *Al Jazeera*. 11 August 2021.

<sup>16</sup> See Para. 12-13.

not recognized as the legitimate government of Afghanistan by any United Nations (UN) member state, nor does the Taliban government represent Afghanistan in any international institution.

20. The establishment of “effective control” is necessary, but not sufficient, for recognition. It is possible to have *de facto* sovereignty without recognition— as has been the case vis-a-vis the United States and Taiwan since 1979.

21. Recognition may only be granted after certain conditions are met; but the standard practice of the United States is to treat recognition as a political decision and not an acknowledgment that a state has met objective criteria.<sup>17</sup>

22. The POTUS has sole constitutional authority to recognize new states and new governments. Unless and until the POTUS recognizes the Taliban as the legitimate government of Afghanistan, the Taliban, its representatives and its agencies (including DAB), are not entitled to any legal protections, guarantees, or immunities afforded exclusively to recognized governments. Moreover, unless and until the POTUS recognizes the Taliban as the legitimate government of Afghanistan, it remains a terrorist entity, and *all* federal government agencies (including DAB) in Afghanistan can rightly be considered an agency or instrumentality of the Taliban.

**D. The Taliban are a terrorist entity.**

**i. Status of the Taliban under US law.**

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<sup>17</sup> See: Coggins, B. 2006. *Secession, Recognition and the Politics of Statehood*. Ph. D. Diss. Ohio State University; and Geldenhuys, D. 2009. *Contested States in World Politics*. New York: Palgrave Macmillan.

23. The USG has acknowledged the existence of the Taliban as a distinct political entity for at least 27 years.<sup>18</sup> The Taliban is currently designated as a Specially Designated Global Terrorist entity (SDGT) as defined by Executive Order 13224. There are more than 70 Afghan-based individuals and organizations currently subject to sanctions as Specially Designated Global Terrorists — and there are many other Taliban-linked individuals and organizations designated as SDGTs that are based outside of Afghanistan. The Office of the Director of National Intelligence’s National Counterterrorism Center includes the Taliban in its list of “terrorist groups.”<sup>19</sup>

24. The Taliban is not designated as a Foreign Terrorist Organization by the Department of State because such a designation would preclude direct talks between the USG and the Taliban. Afghanistan is not designated as and cannot be designated as a “State Sponsor of Terrorism,” because the USG does not recognize the Taliban government as the *de jure* sovereign power in Afghanistan.

## ii. The Taliban/Al Qaeda Relationship.<sup>20</sup>

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<sup>18</sup> Smyth, W.H. 1994. New Fighting and New Forces in Kandahar [from US Consulate Peshawar to Secretary of State Christopher]. 3 November 1994. US Department of State, document accessed at the National Security Archive, Washington, DC.

<sup>19</sup> N.A. Undated. “Afghan Taliban.” *Counter Terrorism Guide*. National Counterterrorism Center. Office of the Director of National Intelligence. ([https://www.dni.gov/nctc/groups/afghan\\_taliban.html](https://www.dni.gov/nctc/groups/afghan_taliban.html)) Accessed: 4 May 2022.

<sup>20</sup> This section draws heavily on: Cristol, J. 2019. *The United States and the Taliban before and after 9/11*. New York: Palgrave



25. The Taliban were formed by Mullah Mohammad Omar and Ehsanullah Ehsan in Afghanistan in 1994.<sup>21</sup> One 1995 USG diplomatic cable described the Taliban as, “Well-armed, militarily proficient, and eager to expand their influence” and to take control of “as much of the rest of Afghanistan as possible.”<sup>22</sup> The Taliban took Kabul on 27 September 1996 and toppled the internationally recognized government of Afghanistan.

26. Osama bin Laden (OBL) moved to Afghanistan on 19 May 1996 and gave the Taliban an initial \$3 million donation.<sup>23</sup> In January 1997 the Taliban acknowledged to John Holzman, a US diplomat serving in Pakistan, that OBL was their “guest.” Taliban officials told Holzman that Al Qaeda terrorist training camps in Afghanistan could remain open. Holzman concluded that, “The Taliban appears to have concluded that it is in their interest to give [bin Laden] refuge.”<sup>24</sup>

27. Between 1997 and 2001 USG and Taliban representatives held dozens of meetings in Afghanistan, Pakistan, and the United States.<sup>25</sup> To the best of my knowledge, I have read every declassified document about these meetings. The Taliban/Al Qaeda relationship was raised in *all* of these meetings. The CIA concluded that Mullah Omar “is formally committed to bin Laden’s

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<sup>21</sup>“Mullah” is an amorphous term that indicates the person is a learned religious person or cleric. In this report I use it only in reference to Mullah Mohammad Omar, as the standard practice is to refer to him as “Mullah Omar.” I do not use “Mullah” or any other honorific in reference to anyone else in this report.

<sup>22</sup> Holzman, J. 1995. The Taliban: What We’ve Heard [from US Embassy Islamabad to Secretary of State Christopher]. 26 January 1995. US Department of State, document accessed at the National Security Archive, Washington, DC.

<sup>23</sup> LeVine, S. and Bonner, R. 1998. Doubts Grow That Taliban Would Give up Terrorist Mastermind to the U.S. *New York Times*. 25 August 1998. p. A6.

<sup>24</sup> Hanson, B. 1997. Afghanistan: Taliban Agree to Visits of Militant Training Camps, Admit Bin Ladin Is Their Guest [from US Consulate Peshawar to Secretary of State Albright]. 9 January 1997. US Department of State, document accessed at the National Security Archive, Washington, DC.

<sup>25</sup> In conducting research for Cristol 2012 and Cristol 2019, I attempted to count all known US/Taliban meetings; but I stopped counting when the number reached into the thirties.

continued stay in Afghanistan” and that if half his country “had to be destroyed to protect bin Laden, then so be it.”<sup>26</sup>

28. The USG clearly acknowledged that the Taliban and al Qaeda had a close relationship. The historical record clearly indicates: that the USG believed that the Taliban had the capacity to shut down Al Qaeda operations in Afghanistan but refused to do so; and that the Taliban had the capacity to detain OBL and transfer him to USG custody but refused to do so.

### **iii. The Taliban and terrorism today.**

29. The Taliban today are not the same as the Taliban who had effective control of Afghanistan from 1996-2001— They are worse. “Many of the moderate members of the Taliban, who opposed the tacit alliance with Al Qaeda, either left the country or changed sides at the time of the initial invasion. The Taliban today is more unreasonable, intransigent, ideological, and extremist [than they were in 2001].”<sup>27</sup> I wrote those words before the US withdrawal from Afghanistan and, unfortunately, subsequent events bare that out.

30. The Taliban are now one of the most deadly terrorist groups in the world. The Global Terrorism Index (GTI)— generally considered to be highly accurate— records 9,473 fatalities from Taliban terrorist attacks between 2007 and 2021. In the past two years, the Taliban conducted 474 terrorist attacks, including 11 suicide bombings. The 2022 GTI notes that: in 2021, the Taliban “was the most active terrorist group in Afghanistan”; “the Taliban recorded IED attacks with mobiles and uploaded them on Twitter to recruit, raise funds and build morale”; and

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<sup>26</sup> Filkins, D. 2001. The Legacy of the Taliban Is a Sad and Broken Land. *New York Times*. 31 December 2001. pp. A1, B4.

<sup>27</sup> Cristol, J. 2019. *The United States and the Taliban before and after 9/11*. New York: Palgrave. pp. 102.

indicates that, “global jihadi terrorist groups may once again find a safe haven [in Afghanistan].” These brief quotes indicate that: 1) the Taliban continue to carry out terrorist attacks; 2) the Taliban glorify terrorist attacks; and 3) the Taliban may allow Afghanistan to be used as a base for other terrorist groups.<sup>28</sup> I agree with this assessment.

31. The Taliban work closely with other terrorist organizations. The Haqqani Network (HN), a designated FTO, is “allied with, and increasingly embedded in, the Taliban leadership structure.”<sup>29</sup> HN’s leader Sirajuddin Haqqani is the Interior Minister of the Taliban government. The Taliban government’s Minister for Refugees (Khalil-Ur-Rehman Haqqani) has “acted on behalf of Al-Qaeda... and has been linked to its military operations” and “provides support to the Taliban and the Haqqani Network.”<sup>30</sup> CRS reports that the Taliban government gives safe harbor to Tehrik-e-Taliban Pakistan and is “allied” with the Islamic Movement of Uzbekistan, both of which are designated FTOs.<sup>31</sup>

32. The Taliban are the *de facto* government of Afghanistan and an SDGT entity. The USG acknowledges that a *de facto* government can also be a terrorist entity. The USG acknowledges that a *de facto* government can even be an FTO— as is the case with Hamas and the Gaza Strip.

### III. Da Afghanistan Bank (DAB)

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<sup>28</sup> The information in this paragraph comes from: N.A. 2022. Global Terrorism Index 2022. Institute for Economics & Peace. (<https://reliefweb.int/sites/reliefweb.int/files/resources/GTI-2022-web.pdf>) Accessed: 4 May 2022.

<sup>29</sup> Smith, J. 2021. The Haqqani Network: The New Kingmakers in Kabul. *War on the Rocks*. 12 November 2021. (<https://warontherocks.com/2021/11/the-haqqani-network-afghanistans-new-power-players/>) Accessed: 4 May 2022.

<sup>30</sup> N.A. 2011. Khalil Ahmed Haqqani. 1988 Sanctions Committee. United Nations Security Council. 9 February 2011. (<https://www.un.org/securitycouncil/sanctions/1988/materials/summaries/individual/khalil-ahmed-haqqani>) Accessed: 4 May 2022.

<sup>31</sup> Thomas, C. 2022. Terrorist Groups in Afghanistan. *CRS in Focus*. Congressional Research Service. 19 April 2022. (<https://sgp.fas.org/crs/row/IF10604.pdf>) Accessed: 4 May 2022.

**A. DAB is the central bank of Afghanistan.**

33. DAB is the central bank of Afghanistan. DAB was established in 1939 and its main tasks, as described on DAB’s website, are those commonly associated with a central bank.<sup>32</sup>

34. DAB is recognized by the USG and the international financial institutions as the central bank of Afghanistan. President Biden’s Executive Order 14064 states that the “term ‘Da Afghanistan Bank’ or ‘DAB’ means the Central Bank of Afghanistan.”<sup>33</sup> The International Monetary Fund (IMF) refers to DAB as the central bank of Afghanistan and treats it as same.<sup>34</sup> The World Bank refers to DAB as the central bank of Afghanistan and treats it as same.<sup>35</sup>

**B. The Taliban control DAB.**

35. The Taliban control DAB. Taliban officials visited DAB soon after the Taliban assumed control of the administrative machinery of the state. The Taliban “immediately claimed a right to the money”<sup>36</sup> and appointed new leadership of DAB even before announcing the establishment of its “caretaker government.” The Sweden-based *Independent Persian* reports that DAB “is controlled by the Taliban and all management positions are held by Taliban members.”<sup>37</sup> That

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<sup>32</sup> N. A. About Us. Da Afghanistan Bank. (<https://www.dab.gov.af/about-us>) Accessed: 30 April 2022.

<sup>33</sup> Biden, J.R. 2022. Executive Order on Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan. 11 February 2022.

<sup>34</sup> N.A. Islamic Republic of Afghanistan. IMF Country Report No. 19/382. December 2019. (<https://www.imf.org/-/media/Files/Publications/CR/2019/1AFGEA2019003.ashx>) Accessed: 30 April 2022.

<sup>35</sup> N.A. 2021. *The World Bank Group in Afghanistan :Country Update (English)*. Washington, D.C. : World Bank Group.(<http://documents.worldbank.org/curated/en/451181617171930719/The-World-Bank-Group-in-Afghanistan-Country-Update>) Accessed: 30 April 2022.

<sup>36</sup> Savage, C. 2022. Spurning Demand by the Taliban, Biden Moves to Split \$7 Billion in Frozen Afghan Funds. *New York Times*. 11 February 2022.

<sup>37</sup> Vafae, M. 2022. Taliban Lobbies: Give Afghanistan's foreign exchange reserves to a Taliban-controlled bank. *Independent Persian*. 14 March 2022.

statement is accurate— but the situation is perhaps not as straightforward as reported in the popular press.

36. DAB governance is amorphous and opaque, but it can be understood. The Taliban do control DAB and it is clear that they intend to use DAB as an instrument to pursue their own goals. One of those goals is to show that they are capable of governing Afghanistan; another is to ensure Taliban control of current and future funds held by DAB— a Taliban goal since the 1990s.<sup>38</sup> It is important to the Taliban that DAB does not collapse or they will fail to achieve either goal. The Taliban thus need to balance loyalty and commitment to the organization with minimal competence and experience. It is my expert opinion that they have set up a system in which relatively competent non-Taliban advisors provide their expertise to Taliban decision-makers. Both groups act as frontmen depending on the intended audience— competent non-Taliban advisors and well-known Taliban figures handle outward-facing meetings and appearances, while lesser known or more extreme Taliban handle inward-facing meetings and appearances. It is my expert opinion that this type of governance is in keeping with past Taliban practice and indicates that the Taliban intend to operate DAB in accordance with their own interests and aims, and to do so indefinitely.

37. The particular job titles and formal roles within DAB shift frequently and without notice, but it is possible to show that Taliban managers, including SDGTs, control DAB. The following paragraphs provide brief profiles of senior DAB decision-makers and advisors. I have chosen to use a single job title for each person, but in every case the reader should assume that the titles are ever-changing, even if the nature of the position is constant.

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<sup>38</sup> See Cristol 2019, pp. 6, 99.

38. Taliban First Deputy Prime Minister Mullah Ghani Baradar Akhund (aka Abdul Ghani Baradar Abdul Ahmad Turk) has oversight authority of DAB. Baradar is the former head of the Taliban's political office in Doha and was the lead negotiator in talks with the USG. He helped Mullah Omar to found the Taliban and later married Mullah Omar's sister.<sup>39</sup> Baradar does not run DAB's day-to-day operations, but weighs in on matters of policy and even on seemingly mundane decisions.<sup>40</sup>

39. Gul Agha Ishakzai (aka Hedayatullah Badari) is the Taliban finance minister and is also in an oversight/supervisory role vis-a-vis DAB. Ishakzai is a member of the Taliban's Leadership Council<sup>41</sup> and "is renowned for organizing terror funding for suicide missions and was one of [Taliban founder] Mullah Omar's closest confidants."<sup>42</sup>

40. Mohammad Idris (aka Mohammad Idrees aka Alhaj Abdul Qahir) was appointed governor of DAB pm 7 September 2021 and Idris served in that position until 8 October 2021.<sup>43</sup> Idris was the Taliban finance minister and his primary financial experience is as the Taliban's chief

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<sup>39</sup> N.A. 2021. Profile: Mullah Baradar, new deputy leader in Afghan gov't. *Al Jazeera*. 7 September 2021. (<https://www.aljazeera.com/news/2021/9/7/profile-mullah-baradar-afghanistans-new-leader>) Accessed: 3 May 2022.

<sup>40</sup> Da Afghanistan Bank-Afghanistan. [@AFGCentral Bank]. 21 April 2022. The Economic Commission, headed by Mullah Abdul Ghani Baradar Akhund, the first deputy prime minister, said the scheme developed by Da Afghanistan Bank for money changers was feasible. The scheme is aimed at regulating money changers, obtaining work permits and preventing money laundering outside Afghanistan. [Tweet]. Retrieved from: <https://twitter.com/AFGCentralbank/status/1517047893676498945>. [Translated from Pashto by Google Translate]

<sup>41</sup> N.A. 2021. Profiles Of Afghan Taliban Ministers – Interior Minister Is On FBI's Most Wanted List, 14 Ministers Including Prime Minister Are On UN Security Council's Terror Blacklist. Middle East Media Research Institute. Special Dispatch No. 9566. (<https://www.memri.org/reports/profiles-afghan-taliban-ministers-%E2%80%93-interior-minister-fbis-most-wanted-list-14-ministers>). Accessed: 2 May 2022.

<sup>42</sup> Misra, A. 2021. Afghanistan: who's who in the Taliban's 'inclusive' new administration. *The Conversation*. 26 August 2021. (<https://theconversation.com/afghanistan-whos-who-in-the-talibans-inclusive-new-administration-166767>) Accessed: 2 May 2022.

<sup>43</sup> Despite official announcements that Shakir Jalali was the new DAB governor, Idris is still sometimes referred to as DAV governor and his formal title is unclear. However, it is clear that he still maintains managerial authority DAB.

money launderer. After Shakir Jalali was appointed governor of DAB, Idris became the “Acting General Manager.” Idris continues to chair meetings and to represent DAB in official settings—and indeed Taliban communication channels occasionally refer to him as the acting governor. After the 9/11 attacks, the CIA contacted Idris directly and asked for his assistance in detaining and extraditing Osama bin Laden—Idris declined.<sup>44</sup>

41. Noor Ahmad Agha (aka Ahmad Zia Agha) is the DAB First Deputy Governor. *The Wall Street Journal* reports that Agha, “is a senior Taliban military and financial leader sanctioned for allegedly managing funds intended for bombs and for distributing money to Taliban commanders and associates abroad.”<sup>45</sup> Agha was a Taliban finance officer whose responsibilities included both the distribution of funds to Taliban commanders and funding, “improvised explosive device (IED) operations.” He then became “the leader of the Taliban's military shura (council), which directed Taliban military operations in western Afghanistan” and was considered by the international community to be “a threat to the peace, stability and security of Afghanistan.”<sup>46</sup>

42. The current DAB Governor is Shakir Jalali, who was appointed to the position by the Taliban on 8 October 2022.<sup>47</sup> Jalali appears to have been chosen for his credentials; but after a thorough search of official DAB and Taliban spokesmen statements and Tweets, it is my opinion that Jalali acts in an advisory position without decision-making authority.

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<sup>44</sup> See Cristol 2019, pp. 96.

<sup>45</sup> Talley, I., Sun, M., and Stancati, M. 2022. Sanctioned Taliban Financier Holds Leadership Post at Afghan Central Bank. *The Wall Street Journal*. 11 March 2022.

<sup>46</sup> N.A. 2012. Ahmad Zia Agha. 1988 Sanctions Committee. United Nations Security Council. Permanent Reference Number TAI. 156. (<https://www.un.org/securitycouncil/sanctions/1988/materials/summaries/individual/ahmad-zia-gha>) Accessed: 3 May 2022.

<sup>47</sup> TOLONews. [@TOLONews]. 8 October 2021. Shakir Jalali was appointed by the Islamic Emirate as the head of the National Bank of Afghanistan. Zabihullah Mujahid, deputy minister of information and culture, says Jalali has completed his studies in Islamic banking. [Tweet]. Retrieved from: <https://twitter.com/TOLONews/status/1446404039172841510>.

43. Lutful Haq Noor Pasarli (aka Lutful Haq Noor Paserly aka Lutfulhaq Noor Paserly) is a senior economic advisor. Pasarli held similar positions under the previous government. He is not “career Taliban,” but is useful to the Taliban due to his international contacts— He recently represented the Taliban government in meetings with the European Union. Pasarli appears to have been chosen for his credentials; but after a thorough search of official DAB and Taliban spokesmen statements and Tweets, it is my opinion that Pasarli acts in an advisory position without decision-making authority.

44. It is my expert opinion that the Taliban control DAB and that the Taliban intend to use DAB as an instrument to carry out the Taliban’s agenda; and I believe that the current nature and structure of DAB governance is designed to present DAB as a “normal” central bank to outside observers, while simultaneously maintaining Taliban control over DAB strategy and funds.

**C. The USG acknowledges that the Taliban control DAB.**

45. The USG recognizes the Taliban as in control of DAB. Executive Order 14064 issued on 11 February 2022 blocks, “All property and interests in property of DAB that are held, as of the date of this order, in the United States by any United States financial institution, including the Federal Reserve Bank of New York.” This argument might seem tautological; but a White House statement says that the EO was designed to keep DAB assets “out of the hands of the Taliban and malicious actors.” The “malicious actors” likely refers to HN as the statement goes on to say that “the United States has sanctions in place against the Taliban and the Haqqani network.”<sup>48</sup> It is

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<sup>48</sup> N.A. 2022. FACT SHEET: Executive Order to Preserve Certain Afghanistan Central Bank Assets for the People of Afghanistan. The White House. 11 February 2022.



logical to infer that the USG believes that the Taliban control DAB and intend to use it for purposes outside the normal roles of a central bank.

#### **IV. Conclusion**

46. The Taliban are the *de facto* sovereign power in Afghanistan and have effective (and total) control of all Afghan government institutions, including DAB. The Taliban intend to operate, and are already operating, the totality of the Afghan government, including DAB, as an instrument to achieve organizational objectives. The Taliban have organized DAB in such a way as to obscure their true intentions, and have done so in a manner consistent with past practice.

47. The Taliban is both a Specially Designated Global Terrorist entity *and* the *de facto* government of Afghanistan. DAB is a government agency controlled by an SDGT and thus DAB serves as an arm and an instrument of an SDGT. The Taliban consistently sought access to and control of DAB assets in the 1996-2001 period. The Taliban again see access to and control of DAB assets as a priority goal— important enough to allow and encourage street protests to demonstrate that priority to an international audience. (Shaheen, S. [@suhailshaheen1]. September 2021). People in the capital city of Kabul took to the street, demanding immediate release of Afghanistan's central bank reserves. They were chanting, our people are facing hard economic situation, there is urgent need for unfreezing our asset to overcome the harsh poverty situation. [Tweet]. Retrieved from: <https://twitter.com/suhailshaheen1/status/1441388614810837000>.

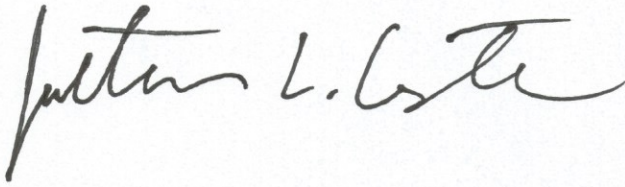
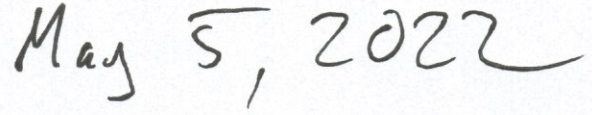


24 September 2021. [Tweet]. Retrieved: 5 May 2022). In my expert opinion, the Taliban government today pursues virtually identical goals, using virtually identical methods, using virtually identical language as it did in its first iteration.

48. The USG's non-recognition of the Taliban government has no bearing on the Taliban's effective control of Afghanistan or of DAB. The USG's non-recognition of the Taliban government has no bearing on the Taliban's status as the *de facto* sovereign power in Afghanistan. Recognition is a political decision. Effective control and *de facto* sovereignty are objective facts.

49. The USG's non-recognition of the Taliban government is important. It means that Taliban government agencies do not enjoy the immunities or other rights and privileges granted to recognized governments. The US Constitution grants the POTUS sole authority to recognize new states and new regimes; and while it is possible for an act of Congress to essentially reproduce that authority, no such act has been passed.

50. I declare that, to the best of my knowledge, this statement is true under penalty of perjury of the laws of the United States and provide within a reasonable degree of professional certainty.

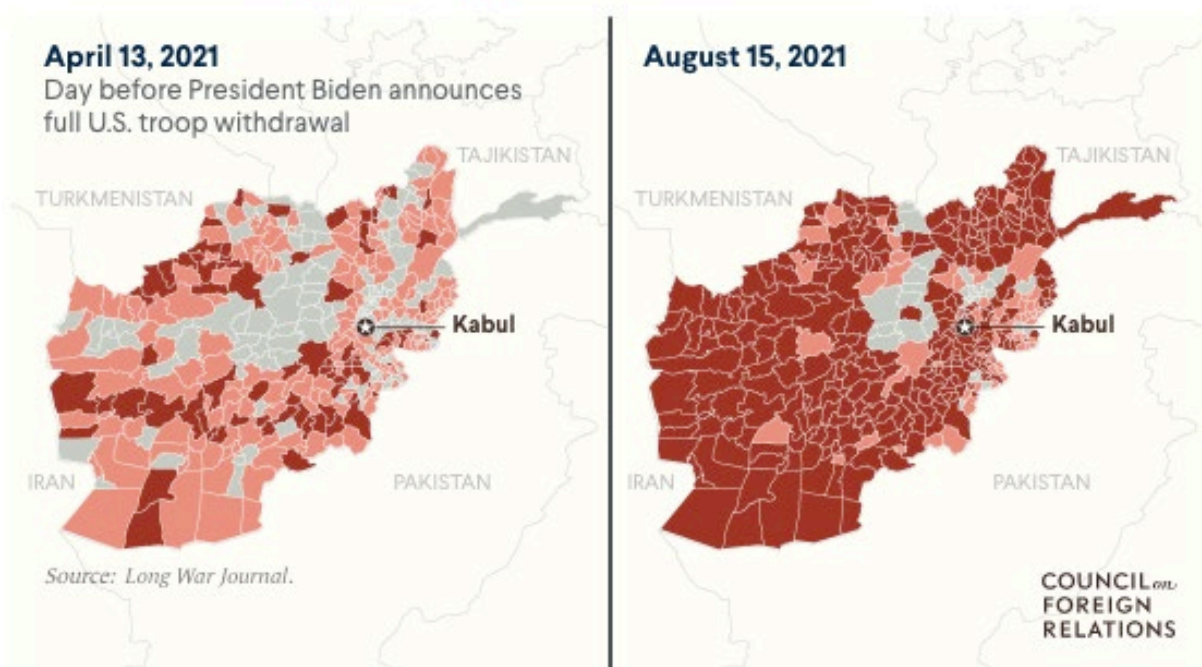
A handwritten signature in black ink, appearing to read "Jonathan L. Cristol". The signature is fluid and cursive, with the first name being the most prominent.A handwritten date in black ink, "May 5, 2022". The month and day are written in a cursive style, and the year is written in a more standard, slightly slanted font.

Jonathan L. Cristol, Ph.D.

5 May 2022

## Taliban Took Over as U.S. Pulled Troops

Control by district: ● Taliban ● Contested ● Government



### APPENDIX A.

Maizland, L. 2021. The Taliban in Afghanistan. *CFR Backgrounder*. Council on Foreign Relations. 15 September 2021. (<https://www.cfr.org/backgrounder/taliban-afghanistan>) (Accessed: 2 May 2022).