
The Durand Line – A razor’s edge between Afghanistan & Pakistan

Introduction

When Sir Mortimer Durand outlined the margins between Afghanistan and British India in 1893, he might have satisfied the British Empire by endorsing and effectuating their interests, but today the existence of a boundary that bisects the Pashtun region, which divides the indigenous people and squeezes them between two adversarial forces, has not only given rise to serious military hostilities, socio-economic issues and geo-political clashes between Afghanistan and Pakistan, but has also let the territory become a hub for terrorist outfits, violent insurgent groups and criminal organizations, which in return nourishes the state of instability and promotes an arms race between the two neighbours.

The Durand Line stretches from the Pamirs in the north to the Arabian Sea in the south, covering a distance of 2,430-kilometres. It starts from the snow capped mountains in the north, passes through the fertile mid territories, leading to the dry and barren south areas. The Durand Line cuts through the Pashtun tribal areas and further south through the Baluchistan region, politically dividing ethnic Pashtuns, as well as the Baluch and other ethnic groups, who live on both sides of the border. It demarcates Khyber Pakhtunkhwa, the Federally Administered Tribal Areas, Baluchistan and Gilgit-Baltistan (Part of Jammu & Kashmir) of northern and western Pakistan from the north-eastern and southern provinces of Afghanistan.

Geo-political and geo-strategic analysts have characterised it as one of the most perilous hot spots in the world, stained with a long history of bloodshed and war. In addition, the origins of the Durand Line still remain one of the most under-researched aspects of the border dispute. Illuminating those details would help clarify the contradictory claims of both Afghanistan and Pakistan. This paper will explore thoroughly the historical background, which gave birth to the 2,430 km border, since legacy is an essential factor which affects the nature of foreign relations of countries altogether with domestic and external variables. The complexities surrounding the legitimacy of the Durand Line could be better understood in terms of the history, ethnicity and culture of its demographics. This paper will further juxtapose Afghanistan’s narrative based on the support of the native Pashtun population, which refutes the legality of the border, with Pakistan’s narrative constructed around national sovereignty and colonial heritage, which defends the existing demarcations. It will explore and evaluate the *raison d’être* on which the two powers rest their contentions, while also articulate the standpoint of the indigenous people, whose voices have been silenced, while their land, language, resources, honour, cultural-social norms and values have been subjects of undue encroachment. Ultimately, one of the main arguments of this paper will be that since the frontier has not been demarcated by the local ethnic tribes, but by colonial powers, nobody can insist on its inviolability. Nineteenth-century border arrangements of an Empire can no longer provide a stable foundation and respond to the current twenty-first-century realities. Furthermore, Pakistan’s standpoint, that is based on the

principles of International Law will be questioned. Since on numerous occasions senior Government officials publicly disavow International Law as a Western concept alien to Pakistan's values, and often impertinently act against it, this paper will claim that '*International Law*' for the Pakistani Government seems to be merely a term of convenience used to legitimize the stance it wishes to take.

Hence, the international community must review the current Pak-Afghan border and facilitate the processes of reconciliation; otherwise, the region faces the risk of escalating into a dangerous flashpoint. The myriad of serious challenges the AfPak border is facing, appears as an alarming call for Islamabad and Kabul that is high time to re-establish their relationship and resolve those issues together, rather than remaining hostages to the embittered conflicts of the past. The solution for contested borders like the Durand Line does not lie in the continuation of confrontational policies, but in new strategies in order to foster cooperation. The two countries must formulate guidelines for promoting the peaceful and prosperous future of the region, collaborate on counteracting the violent non-State and State actors operating at the border and aim on safeguarding the interests of the local population in order to reach a comprehensive settlement.

The Great Game

Growing Russian expansionism and influence in Central Asia during the nineteenth century induced anxiety in British authorities in India and prompted many political and diplomatic confrontations between the two Empires, which later became known as '*The Great Game*'. The construction of the Trans-Caspian railway and particularly the extension built in 1890, that was reaching the Afghan border at Gushgy was a further source of concern for the British Government of India, as it enabled Russia to bring large forces to Afghanistan. Russia was fearful of British commercial and military raids into Central Asia, while Britain was worried of Russia adding the '*jewel in the crown*', India, to its vast territory. As a result, an atmosphere of suspicion, distrust and permanent fear of war between the two Empires emerged. Although, the Russians never actually intended to occupy the entire territory of Afghanistan and a Russian invasion of India was considered unlikely by most British political strategists, the British feared that even a small-scale advancement in northern Afghanistan would put on display the British shortcomings and therefore trigger internal unrest in British India. It was also thought that Pashtuns might be susceptible to Russian manipulations and administer assaults on their behalf, which would amplify British India's security and defence apprehensions. Moreover, there were also economic and cultural considerations at stake: Russian incentives in Afghanistan could obstruct British plans to control trade with Central Asia and contravened with British expansionist ideas.

The British strategy towards Afghanistan has been prominent with its rotating policies of forwardness and passivity. Yet, when Central Asia Persia increasingly fell under Russian influence, British objectives developed a clear outline. By the end of the 1850s, the regions of Punjab and Sindh had been annexed by the British, who were able to determine the perimeters of the border and establish it at the foothills of the mountains inhabited by Pashtun tribes. In the following years, the British annexed further territory, which allowed them to control and fortify the hills.

Since they failed on two occasions to impose a direct control over Afghanistan - in the first (1839–1842) and second (1878–80) Anglo-Afghan Wars - they settled the issue by turning the country into a buffer state. In order to fulfil that plan, the British Government supplied the Afghan Amir Abdur Rahman, with military weapons and equipment in order to defend Afghan northern areas from the Russian influence they were fearing. The British further supported the Pashtun colonization of northern Afghanistan as British Major Charles Yate has summarized it: *“Only the non-Pashtun tribes have any contact and interactions with the Russians, thus surrounding these tribes with Pashtuns would end these tribes’ interactions with the Russians”*.

Since none of these strategies were secure or promising enough, as part of their desire to control Afghan foreign policy, the British believed it was of vital importance to define Afghanistan’s external borders. While the borders in the north and west had the purpose of ceasing any Russian advancement, the aim of the southern border was to retain the Pashtun tribes which occasionally entered northern India. Another reason was the need to protect the territory of British India from the rising Jihad, which had the potential of inciting tribal unrest. Demarcating the frontiers would also hinder Russian attempts to use the tribes to weaken the British control in India, to collect and send intelligence on their behalf or to sabotage the main British routes into Afghanistan. Before giving rise to the 1893 Border Agreement, the British aimed to annex as much territory as possible in order to meet their economic, geo-political and strategic needs, stripping Afghanistan from most of its land and leaving it with weaker administrative control over what was remaining.

The justification behind this grand-scale invasion of territories is well captured by Lord Lansdowne, the Viceroy of India between 1888 and 1893, who stated that *“In political geography nature abhors vacuum and any space left vacant upon our Indian frontiers will be filled up by others, if we do not step in ourselves”*. During that time the Afghan Amir Abdur Rahman moved towards Asmar, Chageh, Bajaur, Dir and Chitral districts in order to prevent further occupations, yet his movements were considered by the British not as defensive but as inexcusable provocations.

[The 1893 Border Agreement](#)

Sir Mortimer Durand arrived in Kabul on the 2nd of October 1893, to start negotiations with the Amir of Afghanistan, Abdur Rahman on demarcating the southern border of Afghanistan. Afghanistan’s eastern border was settled on 12th of November 1893, after intricate disputations between the Foreign Secretary of the British Government in India and the Amir. The latter opposed Britain’s proposed Afghan-Indian border that would coerce him to abandon his formal sovereignty over the Pashtun tribes, which would remain outside the Afghan border. The desire of Abdur Rahman to object the audacious division of Pashtuns should not be downplayed. Historically, the idea of being *‘Afghan’* was associated to being from the Pashtun ethnic group. Ultimately, the Durand Line divided half of a population intimately related by culture, history, and blood.

Persuading Abdur Rahman to give up Pashtun territories was very difficult. Furthermore, it seems that the British could not really grasp the rationale behind the Amir’s reluctance, since they

perceived him as very irrational and selfish. Historians provide an insight into Durand's correspondence and illustrate how, while he was negotiating with the Amir, he was baffled by the Amir's disagreement of ceding Pashtun territories. When Durand asked him why he wanted to keep Waziristan, which was very poor on natural resources and was scarcely populated, Abdur Rahman answered with one word: '*nam*' (honour). The British looked upon such reasoning in a very condescending manner, after all, *nam* was just an exotic element of what was seen at the time as the irrational Orient. As Durand commented in a letter to Lord Lansdowne, "*His jealousy as to our interference in his internal affairs amounts to insanity*".

The British could not understand that the concept of '*nam*' was closely related to power politics. Afghanistan has always been dominated by Pashtun, the Amir himself was Pashtun, and therefore giving away Pashtun territories would have increased the claim of other actors to political power and would have meant losing the support of Pashtun tribes which had backed the Amir against other tribes and non-State and State actors. Moreover, although the British considered the tribes independent from Kabul, while being free and autonomous in their daily lives, they were actually highly reliant on the Afghan Government in relation to welfare and protection against external enemies.

Historians and scholars still debate on what were the Amir's and Durand's exact reasons behind signing the agreement. Some argue that they were standing on very divergent grounds. Abdur Rahman, for instance, influenced by notions of administering authority and governance over tribal areas, might have perceived the Line as merely delimiting zones of dominion and responsibility, while Durand, acting according with modern ideas of sovereignty, was planning on establishing an international border. Other historians claim that the Amir clearly understood the nature of the border and himself promoted the idea of a Nation-State that has clearly delineated frontiers, yet the fact that he continued being involved in the tribal territories south of the Durand Line after 1893, appeared to consolidate the argument that the border was neither entirely settled nor absolute. According to Sykes, Durand's biographer, the intentions of the British were not in administering tribal territories, but merely exerting political control; hence, the Durand Line sought to outline the limits of their respective spheres of influence.

This statement is supported by a quote by Durand himself, who after the negotiations said: "*The tribes on the Indian side are not to be considered as within British territory. They are simply under our influence in the technical sense of the term, that is to say, so far as the Amir is concerned and as far as they submit to our influence or we exert it*".

Similarly, the Viceroy, Lord Elgin, writing in 1896, said: "*The Durand Line was an agreement to define the respective spheres of influence of the British Government and of the Amir. Its object was to preserve and to obtain the Amir's acceptance of the status quo*".

The argument of Afghanistan's Government that the line is not a legitimate border, since it was intended to be merely a line of control, which for the sake of security, divided the area into zones of influence, seems solidified by these claims. Another assertion on behalf of Kabul, which disclaims the legitimacy of the frontier is that the Border Agreement was signed under duress.

Although many historians provide proof that the Amir was fully aware of the content and the consequences of the Agreement, one should not fail to admit that Abdur Rahman was forced to sign it under the threat of an economic embargo. He relied on British subsidies, arms and ammunitions to maintain his central Government's control, and was especially in need of them when the border was established because he was engaged in warfare against the Hazaras at the time. Furthermore, Abdur Rahman wanted to avoid war between Britain and Russia on his territory, which would have inevitably had disastrous consequences for Afghanistan. The country had little space for negotiations when facing the pressure of a global Superpower such as Britain and as a result, the Durand Line Agreement was signed, yet until present day Afghanistan does not accept the legitimacy of the border.

Under the agreement, British India kept most of the Pashtun territories, which they had already occupied, namely, the frontier tribal areas of Swat, Bajaur, Chitral, Chageh, Buner, Dir, Kurram, part of Waziristan, Chagai and the Khyber Pass. In some areas, tribes such as the Waziri and Mohmands were virtually bisected. The reason the Amir was allowed to keep the Wakhan corridor - a narrow strip of land in northeaster Afghanistan, which currently separates Tajikistan from Pakistan and Gilgit-Baltistan (Part of Jammu & Kashmir) – was because the British utilised it as a preventative strategy against the Russians. The tribes that became administered by the British were kept quiet through a combination of semi-autonomy, agreements with and subsidies paid to their tribal leaders, as well as coercive means such as punitive measures and collective punishments.

Although the British expected that the Durand agreement would commemorate the end of an era of uncertainties, mutual distrust and suspicion, the border remained troublesome largely due to its arbitrary self-imposed character. The Amir warned the British concerning not including the hill tribes within his borders, which became true: *"If you should cut them out of my dominions, they will never be of any use to you nor to me. You will always be engaged in fighting or other trouble with them, and they will always go on plundering."*

As a result, the Durand Line was established without any consideration of the ethnicity, language, values and desires of the tribal population. The British Empire technically further contributed towards the present-day hostilities and skirmishes between the two South Asian countries.

[Pakistan's claim over the Durand Line](#)

Pakistan inherited the 1893 agreement and the subsequent 1919 Treaty of Rawalpindi after the partition of British India in 1947. There has never been a formal agreement or ratification between Islamabad and Kabul of these agreements. Furthermore, when the British plan for partition was accepted and put into action, the Pashtun leader Khan Abdul Ghaffar Khan declared that his people did not want to join Pakistan and should be permitted to decide their future through a referendum. The resulting referendum offered the choice only of joining Pakistan or India—but not of independence or union with Afghanistan—so Khan's party decided to establish a separate state for Pashtuns. The combination of strong pressure from the British and the

Muslim League and a very limited electorate vote among the Pashtuns, resulted in a pro-Pakistan vote by a narrow margin.

Pakistan further upholds the norms of International Law and believes that under the international convention of *uti possidetis juris* it automatically inherits the border and does not need an agreement from Afghanistan. Indeed, courts in several countries around the world and the Vienna Convention have universally upheld *uti possidetis juris*, which claims that newly formed sovereign States should have the same borders that their preceding dependent area had before their independence; hence, binding bilateral agreements are '*passed down*' to successor States. Therefore, a unilateral declaration by one party has no effect; boundary changes must be made bilaterally. The British have on several occasions endorsed this stance. For instance, in 1950, Philip Noel-Baker, the British Secretary of State for Commonwealth Relations stated: "*It is His Majesty's view that Pakistan is in international law, the inheritor of the rights and duties of the old government of India, and of his Majesty's government in the United Kingdom, in these territories, and that the Durand Line is the international frontier.*" Pakistan's position was also supported by its international allies such as the members of the Southeast Asia Treaty Organization (SEATO), which in 1956, said that "*The Council declared that their Governments recognized that the sovereignty of Pakistan extends up to the Durand Line, the international boundary between Pakistan and Afghanistan*".

This paper does not refute the principles of International Law; on the contrary, it fully supports them. However, it aims to expose the '*cherry-picking*' approach of Pakistan when the latter uses the doctrines of International Law in order to either validate or disprove a certain stance that suits or does not suits its self-interests.

[Parallels with the Jammu & Kashmir Conflict](#)

One could take as a very clear example from the Jammu & Kashmir conflict. On the 22nd of October 1947, Pakistan invaded Jammu & Kashmir provinces from the north after having signed a '*Stand-Still Agreement*' with the legal ruler of the State of Jammu & Kashmir. The invaders comprised hordes of tribesmen from Pakistan's North West Frontier Province (NWFP) and regulars from its Army. The invaders were organized in company-level units and armed with lethal weapons. Houses were burnt, property looted and destroyed and large scale rapes and abductions of women took place. The panic-stricken Jammu & Kashmir Maharaja Hari Singh made an appeal to India to come to its rescue, to which India agreed, asking the Maharaja to sign an Instrument of Accession. Yet, Pakistan till present day denies the legal status of the Instrument of Accession at numerous occasions, which can be explained since if it would acknowledge the legality of the accession, it would admit to their own illegal occupation of the territory of Jammu & Kashmir.

According to Article 257 of the Pakistani Constitution, which is a provision related to the State of Jammu and Kashmir defining the relation between the State of Jammu and Kashmir and Pakistan, the State of Jammu & Kashmir is not part of Pakistan. It states, "*When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the*

State shall be determined in accordance with the wishes of the people of that State". Any unilateral alterations, without that possible accession, have to be examined in the backdrop of this constitutional provision, which by definition makes the abrogation of the State Subject Rule in Gilgit-Baltistan, the Gilgit-Baltistan Empowerment and Self-Governance Order and the proposed transformation of Gilgit-Baltistan into a province of Pakistan, illegal. It also comes as a great contradiction to the 'Azad Jammu and Kashmir Interim Constitution Act of 1974', the Constitution which governs part of Pakistan Administered Jammu & Kashmir, which clearly states that, "No person or political party in Azad Jammu and Kashmir is permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State's accession to Pakistan". It further states that, "No person can assume office unless he/she takes the oath of Jammu and Kashmir's accession to Pakistan and nobody can be appointed to any government job unless he/she expresses loyalty to the concept of Jammu and Kashmir's accession to Pakistan".

In addition, Pakistan continues to show no compliance with the United Nations Charter and its resolutions drafted in order to mediate the dispute of Jammu & Kashmir between Indian and Pakistan. In pursuance to the resolution of UN Security Council (August 13th, 1948) signed by both countries, Pakistan is legally (in terms of International Law) obliged to withdraw its military forces out of the region first and yet, failed to do so till date which meant that the United Nations Commission for India and Pakistan was unable to communicate to India ratification of implementation of the truce arrangements set forth in Parts I and II of the Commission's resolution of 13th of August 1948, which stated that the withdrawal of Pakistani troops from the State of Jammu & Kashmir was the first step in implementing the other sub-sequential articles of the UN Resolutions. In accordance with this condition, the UN Security Council foresaw a Plebiscite to determine the future of the territory, but because of non-compliance of the truce arrangements by Pakistan, the question of a possible Plebiscite fell through and was never revived at the UN level. The invasion led by Pakistan on Jammu & Kashmir was against all canons of International Law and a clear contravention of the UN Charter. In July 1948, the Pakistani Foreign Minister admitted complicity but cited fear of Indian aggression as a main reason behind Pakistan's actions, of which there were no evidences. However, under the United Nations Charter, Pakistan had '*no right of self-defense in the absence of an armed invasion or attack on its territory*'. Complicity of the Pakistani State was later reconfirmed by General Akbar Khan, then Brigadier, in his book, '*Raiders in Kashmir*', who led the attack.

Furthermore, the current building of the multibillion-dollar infrastructural project of the China Pakistan Economic Corridor, which passes through the disputed territory of Gilgit-Baltistan - a region of Jammu & Kashmir under the administration of Pakistan - comes as a direct violation of the doctrines of International Law. China has no legal right to build in an occupied territory, the same way Pakistan does not have the right to sell territories, which does not belong to it. The implementation of the project is being enforced violently, leading to the large-scale displacement of the local population from their homes and farmlands in several areas of Gilgit-Baltistan in order to make the land available for the construction of the corridor. Moreover, the indigenous people will be completely excluded from the high profits that the multibillion-dollar project will bring,

which is a direct violation of their human rights, which further will have severe negative impacts on the ecology of the region. A large number of political and human rights activists from Pakistan Administered Jammu & Kashmir, Gilgit-Baltistan, Baluchistan and Sindh have been facing sedition charges for opposing the Chinese-Pakistani project. Many of them have been charged under Pakistan's Anti-Terrorism Act, which legally does not have any jurisdiction in Gilgit-Baltistan and Pakistan Administered Jammu & Kashmir, and are languishing in prisons across Pakistan. Evidently, it shows how the people of Jammu & Kashmir have experienced the dreadful consequences of Pakistan's illegal annexation of their territories, unlawful sale deal to China, and steps in contravention of the same International Law, which the State invokes vis-à-vis the Durand Line.

The Pashtun

The fate of the Pashtun population, which lives on both sides of the Durand Line, resembles the day-to-day struggles the Kashmiris face. Yet, unlike in the situation of Jammu & Kashmir, Pakistan abides to the international legal provisions in regards to the 1893 Border Agreement, because it fits with its self-interests of maintaining the territories annexed by the British Empire, and if Islamabad happens to acknowledge the right of self-determination of the local tribes and scrape away the Durand Line, it will automatically make its standpoint on the legality of the Line of Control void. The same way, the day of Independence when the British Raj left the subcontinent, meant nothing close to liberation and right of self-determination for the Kashmiri population, the Pashtun people are currently left Stateless and divided.

Meanwhile, the Pashtun population has a very distinctive culture and characteristics. Originating from what is today southern Afghanistan, the Pashtuns form the world's largest (patriarchal) segmentary lineage ethnic group, sharing a common ancestry and historical background, and having a very prominent moral code, rules of behaviours and a sense of spiritual and communal identity. Pashtuns' patrimonial ethical code of conduct is called Pashtunwali or Pakhtunwali. It is a system of governance and jurisprudence that is preserved to present day times, mostly in the rural tribal areas. In addition to being practiced by members of the Pashtun population, it has been adopted by some non-Pashtun Afghans and Pakistanis that live in the Pashtun regions or close to the Pashtuns, who have gradually become '*Pashtunized*' over time. Pashtunwali promotes self-respect, independence, justice, hospitality, love, forgiveness, bravery, righteousness, revenge, tolerance toward all (especially to strangers or guests) and protection of women, honour and land. It is a personal responsibility of every Pashtun to discover and rediscover Pashtunwali's essence and meaning.

However, the last doctrine of Pashtunwali, '*Hewaad*'- (*Country*) - *A Pashtun is obliged to protect the land of the Pashtuns. Defense of the nation means the defense of Pashtun culture, countrymen, and the self*, creates a paradoxical situation where one of the core rules for the Pashtun people is to defend their land, while they are virtually Stateless. The Line splits numerous villages in half and divides others from their agricultural territories; it cuts tribes and tribal groups in half. As Sir William Kerr Fraser-Tytler, a British soldier and diplomat has evaluated the demarcation of the border: "*Illogical from the point of view of ethnography, strategy and*

geography". Louis Dupree, another Afghan scholar, commented that, "It was a classic example of an artificial political boundary cutting through a culture area".

Moreover, because the border goes through many mountainous territories, which tend to be in a distant proximity from big urban areas, it is particularly difficult to police and control the flow of people, especially when family groups and tribes are on both sides and there is a constant influx and cross overs. Particularly in Waziristan, there are many passes through which it is easy to move from Pakistan into Afghanistan and vice versa.

Terrorism

Undoubtedly, the existence of such porous border creates a favourable environment for the flourishing of terrorist and criminal groups. Moreover, the failure of Pakistan to fully integrate into its national policy, the Pashtun population, which is prominent with its very distinctive ethos and mindset, explains the problems it suffers from uncontrollable State actors. Until the border dispute is not settled, effective border management will continue lacking. Neither country currently has managed to apply a substantive control over the territories around the Durand Line. Instead, both have 'ceded' control to militants and organized crime.

The fall of the Najibullah regime in 1992, and the subsequent chaos, which gave green light for the rise of the Afghan Taliban in 1996, has also enabled the Inter-Services Intelligence (ISI), Pakistan's powerful intelligence agency, to emerge as a power-broker, since it became the Taliban's principal financial, military, and diplomatic patron. The Taliban were the ultimate ISI 'strategic assets' in its campaign to secure control in Afghanistan. During their rule over Afghanistan, the Pakistani military establishment believed that the Taliban would not only recognize the Durand Line, but would also curb ongoing Pashtun nationalism in the northwest frontier, thus providing an outlet for Pakistani Islamists. The actual outcome was, exactly the opposite, since not only did the Taliban refuse to recognize the border, but also further fostered Pashtun nationalism. The Taliban aggravated exactly the problems, the ISI were hoping to solve. The overthrow of the Taliban following the U.S. invasion in 2001, additionally transformed the nature and dimension of Pakistan's Afghan policy. Pakistan's pro-Taliban policy resulted in the loss of the loyalty and support of many Pashtun and non-Pashtun tribes in Afghanistan.

In Pakistan, the Pakistani Taliban or Tehreek-e-Taliban Pakistan (TTP) has also profited from the situation. It has used South Waziristan as a safe haven in the last couple of years to expand its presence. The TTP network has expanded in Khyber Pakhtunkhwa and has included many local militants throughout the disputed border region of Pakistan. The overall lack of harmonization on border patrols and cooperation in intelligence-sharing has contributed to the resurgence of the Taliban. Police on both sides has been mostly ineffective. The insurgents in these provinces have benefitted tremendously from the support of networks in Pakistan that need not fear any effective border control. Militants from both countries frequently cross the border illegally due in large part to the lack of communication and intelligence sharing between border troops on both sides of the Durand Line. Ultimately, such border skirmishes lead to the killing of innocent tribal people and the resurgence of tensions between Afghanistan and Pakistan, highlighting the

importance of resolving the issue. The pressing need for stable relations between the two countries illustrates the importance of reaching a final agreement on the Durand Line.

Yet, Pakistani reluctance has been a major factor in the failure to launch joint patrols; the Government in Islamabad wants a greater commitment from Afghan leaders before acknowledging that such operations might be successful. On the other side, the lack of security, sound governance and effective control in the tribal territories of Pakistan is a legitimate and serious concern for Afghanistan. Comprehensible policy and clear-cut steps towards reforms in those tribal areas are essential factors in resolving the issues between the two countries. While international law holds that the tribal territories belong to Pakistan, Islamabad has not demonstrated that it can deliver even the most basic governance in the those tribal territories and thus take adequate care of them. The old administrative border structures put in place by the British Empire are no longer sufficient and cannot prevent the growth of extremism or contribute to sustainable development in the border region. Furthermore, the Pakistani proposition for building a razor wire fence alongside the frontier will not address the real drivers of terrorism and will further alienate the local population. The barrier will increase the resentment between the two countries and deteriorate their already sore relationship. As the Afghan President Ashraf Ghani, responded to this ludicrous plan: "*Nobody can change the course of history by erecting a barbed wire fence. Our blood and love are inseparable.*"

The Vice President of the European Parliament, Ryszard Czarnecki also claimed in a recent meeting in Brussels, in May 2017, that: "*As long as this demarcation, which was initially drawn to mark areas of influence rather than as an international border, is given sanctity by the international community, Pakistan will continue to play its own 'great game' in this area, even if it is at the cost of peace in the region*".

His statement additionally illuminates the culpability of the global powers in exacerbating the animosity between the two neighbours via attempting to fulfil their own strategic objectives. Czarnecki added that the historical mischief committed by British colonial powers by dividing the Pashtun homeland, has been further perpetuated by the U.S. and other Western countries as they continue to ignore the conflict. According to him, the state of instability in the region must not be so easily neglected, since it has direct repercussions for the western world, as the continuous flows of Afghan refugees into Europe and terrorist incidents linked to the AfPak region illustrate. One of the strategies that must be adopted and would have a long-term positive effect in the war on terror is the revisiting of the Durand Line; otherwise, the safe sanctuaries of terrorist outfits in the region will continue to operate under a state of territorial ambiguity.

[Impact on Federally Administered Tribal Areas](#)

Another vivid example, which indicates the need for alteration of the current border arrangements, is the outdated judicial framework in the areas around the border. The Constitution of Pakistan governs the Federally Administered Tribal Areas through the same rules which were framed by the British in 1901 as Frontier Crimes Regulations (FCR). The law states that three basic rights are not applicable to the residents of FATA – the right to appeal, the right

to legal representation and the right to present reasoned evidence. The FCR has its origins in the Murderous Outrages Regulation, which was enacted by the British Empire to prosecute crimes in British India and was specifically devised to counter the opposition of the Pashtuns to British rule; Their main objective was to protect the interests of the British Empire. In 1947, Pakistan added the clause that residents can be arrested without specifying the crime. Furthermore, the FCR permits collective punishment of family or tribe members for crimes of individuals. It permits punishment to be given out by unelected tribal *jirgas* and denies the accused the right to trial by a modern State Judiciary, thereby violating the basic human rights of the population by such severe and outdated regulations. It gives the Federal Government the right to seize private property in FATA and to convict an individual without due process while it also allows the Government to restrict the entry of a FATA tribe member into a settled district in the rest of Pakistan.

When the line was drawn many of the British officials, such as Sir Denis Fitzpatrick, the Governor General of the Punjab, claimed that the Durand Line would develop into a proper international border only when they could get rid of the Frontier Crimes Regulation and regularise the status of the tribal areas. Yet, this oppressive and outdated set of laws is still in practice, which further questions the legality of the border. Not only are the people living under conditions of unjust treatment and control, but their socio-economic circumstances are also deplorable. The Federally Administered Tribal Areas are the most impoverished part of Pakistan, and have one of the highest levels of poverty in the world. With total population of 6.5 million, which makes up only 1.5% of Pakistan's economy and a per capita income of only \$250 per year, 65% of the households are under the poverty level. The extreme poverty in FATA has led about half of the population to live outside of the territories as migrant labourers or displaced persons. Those who stay, usually because they have no other choice, have limited political rights and are isolated from mainland Pakistani society. In this way, they become an easy target for radical militant groups, terrorist outfits and organised crime groups, who exploit and abuse them, or decide to recruit them forcefully. It is not surprising that the region has turned into a major hub for opium trafficking, arms trade, human trafficking as well as the smuggling of other contraband.

This generates a vice circle where obsolete laws, which are inherently based on the violation of human rights, create a favourable loop hole for terrorists to turn the war-torn region into a safe haven for the perpetration of their operations. Clearing the tribal territories of extremist and terrorist hubs should be the first step toward reform, yet this can only happen once the outdated colonial arrangements are revised. The international community must acknowledge that if it desires to put an end to terrorism in the region and ensure durable peace and stability, the Durand Line, which had been imposed on the Pashtuns living on both sides of the Line, and which serves as cancer for humanity of the entire region, must be reconsidered and amended. True success depends on the implementation of comprehensive and contemporary developmental plans, which are not based on nineteenth-century colonial ideas. Pakistan's double standards in relation to abiding to the principles of international law must also be reviewed, debated upon and revisited, otherwise that might give rise to the misinterpretation of and disobedience to

those principles by other States, which observe how certain countries receive preferential treatment.

Conclusion

Frontiers are by nature contentious and divisive lines, often prominent with their bloodstained history. As Lord Curzon of Kedleston has said during a lecture in Oxford in 1907: *“Frontiers are the chief anxiety of nearly every Foreign Office in the civilised world..... They are moreover the razor’s edge on which hang suspended the modern issues of war or peace, of life or death to nations.”*

The Durand Line precisely embodies this description, since from the very first moment of its creation it has managed to generate problems of various types: legal, territorial, socio-economic, ethnographic, military and geopolitical. If one looks more carefully, it would be noticed that the conflict comprises of various State and non-State actors and does not involve merely the Governments of Pakistan and Afghanistan as the only two adversarial forces. There are many parties involved: the ISI, the Pakistani army, the tribesmen, the local notables, the insurgents, the terrorist outfits and the organised crime groups. There are smugglers and business interests at stake as well, which should further pinpoint the desire of the international community to resolve the dispute and establish a legitimate profit-making trade route.

The common people, especially the Pashtun, are eager for any positive, peaceful and developmental change to be brought. The international community must give them the fundamental right to be a civilized part of the global village, which would be only possible by revisiting the Durand Line. One of the steps towards finding a long-term peaceful solution to the conflict would be an increased sense of trust between the two powers, otherwise, any attempts of the international community to persuade the two adversarial forces on cooperating and reaching an agreement will continue to fail. Yet, this could only take place when both countries commit to work together on improvement of political and economic reforms and joint policing of the region. There needs to be an immediate collaboration between Afghanistan and Pakistan, with the assistance of regional powers, some means of demilitarisation of the Tribal Areas, and investment on both sides of the line. In addition, the double standards of Pakistan in regards to abiding to the principles of international law, especially with regard to the territories part of Jammu & Kashmir, must be brought to light, in order to open a dialogue for revision of its selective approach.

Lord Curzon’s speech at Oxford in 1907, was loaded with a feeling of positive assurances about the future of the world’s frontier zones: *“The evolution of Frontiers is perhaps an art rather than a science, so plastic and malleable are its forms and manifestations. But the general tendency is forward, not backward; neither arrogance nor ignorance is any longer supreme... Thus Frontiers, which have so frequently and recently been the cause of war, are capable of being converted into the instruments and evidences of peace”.*

More than hundred years later, the current realities ask for a more pragmatic approach. One solution, which this paper puts forward, is about the possibility of an open border between the

two countries, which will also benefit the entire region. Such a border would clarify that all Pashtuns have rights as citizens of whichever State they choose, and would enable them to communicate, trade, and develop both their economy and their culture in cooperation with one another. Such accord would finally provide Afghanistan with access to the sea, as well as facilitate Pakistan's connection with Central Asia. It would lessen the ethnic tensions between the two countries as long as they agree on putting an end to all hostilities, which has stained their long history of adversarial relations.

The major key to such strategic success will be the disrupting of the operations of terrorist and militant outfits with support from State actors like the Pakistan intelligence agencies. A resolution to the Durand Line dispute is fundamental to the War on Terror, since the existence of safe havens for the Taliban around the border, threatens international peace and security. Fencing the border is clearly not the solution since it further isolates the people around the border region socio-economically. Establishing a twenty-first-century border settlement will also require ending the nineteenth-century regime in the tribal areas. Pashtun nationalists are calling for the fast-paced economic development and reforms in FATA. The Frontier Crimes Regulations have remained virtually unchanged until present day and human rights activists and tribal members are urgently demanding its revision.

Overall, the Durand Line has estranged the two neighbours, exacerbating a sense of insecurity and incompleteness, while generating many complex identity issues in relation to the local Pashtun people, who have been left voiceless and Stateless. As a consequence, the political tensions have remained high and manifested itself through border skirmishes, wars, acts of terrorism and the destruction of lives and property within both the countries. The values of peace, protection of human rights and security are internal to the normative structure of international affairs, yet this can happen only through a comprehensive dialogue, when the parties agree on the benefits of peaceful coexistence rather than the continuation of conflict. In international relations parlance is often described as a '*rational calculation*'. It is high time for the two South Asian countries to resort to rational calculated dialogue and decision-making process rather than warfare.

Both countries need to cooperate to ensure an effective border settlement rather than undermining each other, which only benefits terrorist- and organised crime groups operating in the region. If they continue using strategies based on animosity and rivalry, repugnance and volatility will continue to plague the region only to the advantage of transnational militant networks.



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