RECOGNIZING THE DURAND LINE

A WAY FORWARD FOR AFGHANISTAN AND PAKISTAN?

EastWest Institute
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30 YEARS

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Brad L. Brasseur

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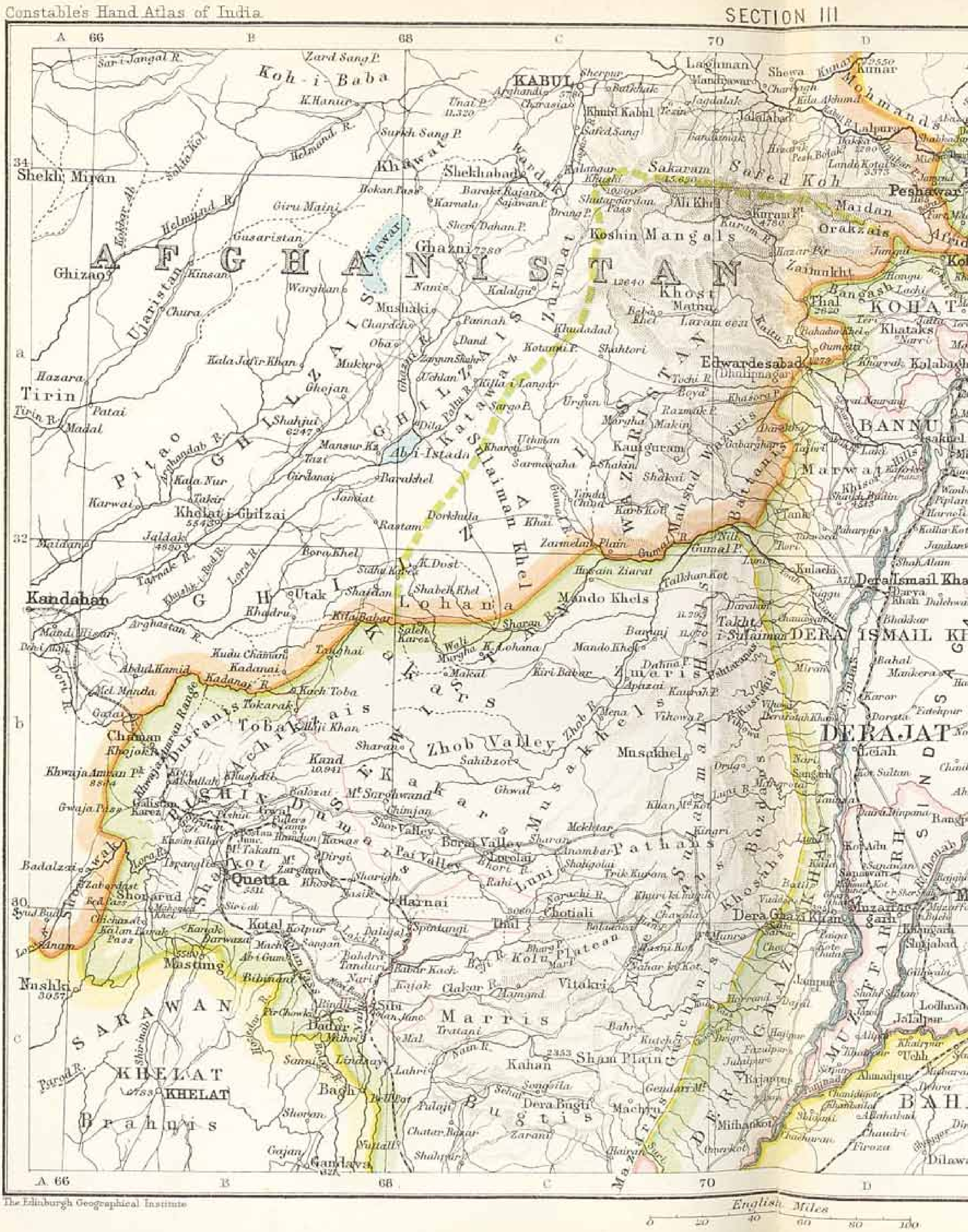
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INTRODUCTION

The Durand Line was drawn up in 1893 as the border between Afghanistan and British India after intense negotiations between the founder of modern Afghanistan, King Abdur Rahman Khan, and the British Foreign Secretary of India, Sir Henry Mortimer Durand, after whom the line was named. Since then, there have been endless debates on every aspect of the 1893 agreement among politicians, intellectuals and media on both sides of the Durand Line – debates that have further complicated the already difficult relationship between Afghanistan and Pakistan. While Pakistan recognizes the Durand Line as its official border with Afghanistan, consecutive Afghan governments so far have refused to acknowledge the Durand Line as Afghanistan's border with Pakistan.

The author is fully aware that the recognition issue continues to constitute a highly sensitive topic. Yet the author feels the time has come for a constructive debate on the recognition issue in light of the challenges the region will face in coming years. Obviously the debate on Durand Line recognition will require time and prudence, but the author is convinced such debate should begin.

The security situation on both sides of the Durand Line remains of great concern not only to both countries but also to the international community. With the upcoming withdrawal of coalition forces from Afghanistan in 2014 and the full handover of security responsibility to Afghanistan's National Security Forces, creating conditions for sustainable stability between Afghanistan and Pakistan based on the principles of non-interference, good neighborliness and mutual respect is of utmost importance.

Against this backdrop, this paper argues that the Durand Line should constitute the legal border and as such be recognized by both countries. In fact, as this paper outlines, the Durand Line can already be considered a border under international law. International practice amounts to de facto recognition, as is explained in this paper.

Recognition could be a major step toward sustainable trust building between Afghanistan and Pakistan. In addition, formal recognition of the border and efficient border management that makes good use of 21st century tools are mutually dependant. Recognition would not only facilitate the establishment of a more secure environment, but also speed economic development for the Pashtun tribes who live on both sides of the Durand Line.

The paper argues that formal recognition of the Durand Line must, however, be accompanied by determined Pakistani efforts to assure much better security, governance, and economic development in the Federally Administered Tribal Areas (FATA). To support this effort, the international community should use a "carrot approach," guaranteeing increased investment in the border region after border recognition is achieved.

Recognizing the Durand Line

Afghanistan's handling of the border issue has been contradictory: while not recognizing the Durand Line as the formal border with Pakistan, it has undertaken numerous steps that amount to de facto recognition.

I.

After many years of difficult negotiations on his country's eastern border with the British Empire, the Afghan King Abdur Rahman, appeared quite satisfied with the result that was achieved. He noted in his diary:

> "At the time when I was occupied in breaking down the feudal system of Afghanistan and moulding the country into a strong consolidated Kingdom, I was not unaware nor neglectful of the necessity of defining my boundaries with the neighbouring countries. I well knew that it was necessary to mark out the boundary lines between my dominions and those of my neighbours, for the safety and protection of my Kingdom, and for purpose of putting a check on their advances and getting rid of misunderstandings and disputes."[1]

The King's remarks make it difficult to follow any reasoning of several generations of Afghan leaders that the Durand Line was forced upon the country by a colonial power. Moreover, Afghanistan has reconfirmed the Durand Line Agreement after the death of King Abdur Rahman and his successors three times: in 1905 (Anglo Afghan pact), 1919 (Treaty of Rawalpindi) and 1921 (Anglo Afghan Treaty).[2] In addition, the Durand Line Agreement of 1893 led to continued annual payments and shipments of weapons by the British to the Afghan King until the 1920's, which makes it difficult to follow any reasoning that the Durand Line was signed under duress.[3]

An argument put forward by some that the agreement of 1893 should have expired in 1994 — exactly one hundred years after it was negotiated, like the British agreement on Hong Kong — does not take into account that unlike the British–Chinese agreement on Hong Kong, no expiry date was ever written on the official Durand Line treaty.[4]

The history of de facto recognition of the border by Afghan leaders themselves puts into question the country's formal stance against recognition:

- The government accepted annual subsidy payments in exchange for signing the original Durand agreement for over twenty years after it was signed. [5]
- Afghanistan has continuously treated the border as the de facto international boundary in terms of tran-

1 S. Fida Yunas. "The Durand Line Border Agreement: 1893." University of Peshawar (November 2005): 4.

2 Dr. Sultan-I-Rom, "The Durand Line Agreement (1893): Its Pros and Con." Valley Swat, Vol. 1, (2004), http://www.valleyswat.net/literature/papers/The_Durand_Line_Agreement.pdf. 11.

3 Ibid.

4 Afghan Mirror, "Facts on the Durand Line." (2006), Accessed April 15th 2011, http://afghanmirror.tripod.com/id25.html.

5 Aga Amin. "Resolving the Afghan-Pakistan Border Question." Afghanistan Study Centre Kabul.(June-August 2004). Accessed April 15th,2011, http://www.scribd.com/doc/21715514/Durand-Line

sit, trade and visas for international travelers.

- More recently, in the Third Regional Economic Cooperation Conference on Afghanistan (RECCA) meeting in 2009, Afghan leaders agreed to work on an efficient, integrated, and modern border management mechanism to promote security and development. Afghan leaders also announced that they would update their customs law to conform to World Trade Organization (WTO) and World Customs Organization (WCO) international requirements.[6]

In sum, Afghanistan's handling of the border issue appears contradictory to say the least: While not recognizing the Durand Line as the formal border with Pakistan, it has undertaken numerous steps that amount to de facto recognition of the Durand Line as an international border.

II.

Pakistani governments, on the other hand, have continuously maintained that the Durand Line is the legal border between the two countries, despite the fact that Pakistan was only established as a sovereign country after the partition of India, 54 years after the Durand Line Agreement. **For this position, Pakistan has the legal argument on her side:**

- The international law principle *uti possidetis juris* enshrined in the Vienna Convention, states that newly formed sovereign states should have the same borders that they had as colonial states; Pakistan thus does not need to conclude a formal agreement with Afghanistan to keep the disputed territory.[7] The Vienna Convention on Succession of States on Respect of Treaties (VCSSRT) upholds *uti possidetis juris* that binding bilateral agreements are handed down to successor states. Therefore even though Pakistan was established in 1947, several decades after the original Durand Line Agreement, it is still party to that agreement.
- International courts have universally upheld *uti possidetis juris* and thus any binding bilateral agreement with or between colonial powers are "passed down" to independent successor states. A unilateral declaration by one party, such as Afghanistan's disavowal of the Durand Line, has no effect to the contrary, because boundary changes must be made bilaterally.[8]

With regard to international practice, Pakistan can claim that:

- In 1949, the British House of Commons officially reconfirmed their original position of 1893 on the Durand Line as the legal border between Afghanistan and Pakistan. In 1950, the Queen of England subsequently recognized that Pakistan is, according to international law, the inheritor of the rights and duties of the old Government of India and that the Durand Line is its international western border.[9]
- The secretary-general of the United Nations is the official depository of the Vienna Convention on Succession of States that proclaims *uti possidetis juris*. Although the United Nations has not made any formal statement about the Durand Line, its approval of this principle implies an acceptance for that particular border.[10]

Pakistan's claim that the Durand Line is an official border is supported by international law and practice.

6 RECCA II. "Centre for Regional Cooperation Directorate General of Economic Affairs Ministry of Foreign Affairs of Afghanistan."Accessed January 29th, 2011, http://www.pakboi.gov.pk/Press/PDF/May_2009/RECCA_09.pdf

7 United Nations. "Vienna Convention on Succession of States in respect of Treaties 1978." Treaty Series, (1946), Accessed May 18th 2011, http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf

8 United Nations. "Vienna Convention on Succession of States in respect of Treaties 1978." Treaty Series, (1946), Accessed May 18th 2011, http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf

9 Aga Amin. "Resolving the Afghan-Pakistan Border Question." Afghanistan Study Centre Kabul.(June-August 2004). Accessed April 15th,2011, http://www.scribd.com/doc/21715514/Durand-Line

10 Muhammad Saleem Mazhar, Naheed S. Goraya. "Border Issue Between Pakistan & Afghanistan." South Asian Studies. vol 24, No.2, (July- December 20): 204-220.

Recognition of the Durand Line should not be simply a decision by the central governments. The Pashtun tribes and clans that live along the Durand Line must develop ownership of the recognition.

- The United States, a country outside the region with important strategic interests in Pakistan and Afghanistan, has treated the Durand Line as a de facto border, notably because the U.S. Army has ordered its forces not to cross the Durand Line during operations against the Taliban.[11]

Despite the many very legitimate questions about Pakistan not exercising authority and good governance in the FATA, the Pakistani state's deficiency in governing the territories does not take away from the legality of its claim.

In sum, Pakistan's claim that the Durand Line is an official border is supported by international law and practice. There is no formal legal need to re-negotiate any further agreements on the Durand Line, and Afghan leaders' objections to the Durand Line do not find legitimate support under international law and practice.

III.

The heart of the Durand Line controversy is not a legal issue but the fact that Pashtun tribes live on both sides of this boundary. Pashtun elites argue that the line splits up their tribes and that 21st century border management would threaten their way of life. During Partition, Pashtuns were given a limited choice: to join either Pakistan or India.[12] As a result, time and time again, Pashtun leaders have cited the violation of the "right to self-determination" of Pashtuns on both sides to argue against the line's legitimacy. This argument deserves careful examination:

- Today Pashtuns are not only clustered around the Durand Line. They are possibly the largest tribal society in the world, with a population of more than 42 million people in several countries, comprised of an estimated 60 distinct tribes with approximately 400 sub-clans.[13]
  Even the Pashtuns that live along the Durand Line are organized in many separate tribes and clans, and are not as closely knit as often stated. A prominent example is the Turi tribe, a Shiite Pashtun tribe in the FATA. The Turis represent an island of Shiite Pashtuns surrounded by Sunni Pashtuns. The Turis have been continuously fighting the majority Sunni Pashtun Taliban members in Kurram Agency for many years.[14]
- Throughout Pashtun history, power and influence have always resided with a select few wealthy tribes, while other tribes have been marginalized both in Pakistan and Afghanistan.
- The Durand Line in reality has only split some Pashtun tribes, notably the Mohmand, Wazir, Shinwari, and Gurbaz tribes.[15] In this context, it is worth noting that many members of the Mohmand tribe live far from the Durand Line in Pakistani cities such as Quetta, Karachi, and Lahore.[16] Other prominent Pashtun tribes scattered throughout Pakistan include the Lodis and Yusufais.
- In fact, the largest concentration of Pashtuns (according to official figures) is quite far from the Durand Line, in Karachi, Sindh Province. The number of Pashtuns there is officially estimated to be around 7 million.[17] Unofficial counts are much higher.

11 Report of Conference, "The Durand Line: History, Consequences, and Future" American Institute of Afghanistan Studies and the Hollings Center, (2007). Accessed March 15th 2011, http://www.bu.edu/aias/reports/durand_conference.pdf

12 Xinhua News Agency," Karzai Opposes Pakistani Suggestion of Fencing Border."(December 29, 2006). Accessed April 2nd 2011, http://www.china.org.cn/english/international/194349.htm

13 Robert Nichols, "A History of Pashtun Migration.1775 - 2006." Oxford University Press, Pakistan, (2008).

14 BBC News, "The Pakistani tribe that is taking on the Taliban."October 2010, Accessed May 3rd, 2011, http://www.bbc.co.uk/news/world-south-asia-11486528

15 Syed Junaid Ahsan. "The Pathan tribes along the Durand Line"(2009):22.

16 Ibid.

17 Sharmeen Obaid-Chinoy, "Pakistan: Karachi's Invisible Enemy City potent refuge for Taliban fighters." Public Broadcasting Service, (July 2009),Accessed June 1st 2011, http://www.pbs.org/frontlineworld/rough/2009/07/karachis_invisi.html.

Tribal areas

Durand line

The Pashtuns have been heavily involved in Pakistani politics and business throughout the country's history. Four of the eleven chiefs of the Pakistani army were of Pashtun descent and two of these army chiefs eventually became President of Pakistan.

While it is understandable that Pashtuns living in the areas along the Durand Line are concerned that a secure border managed by 21st century tools and structures might threaten the livelihood and general interconnectedness of their families, economic research shows that proper border management contributes to economic development in border regions through tax and tarrif revenues and increased security. It leads to growth of the formal economy at the expense of the informal sector and smuggling. The Word Trade Organization (WTO) and International Labour Organization (ILO), among others, have outlined in several studies that a strong informal economy obstructs a country's possibility to benefit from trade.[18] The Pakistani government, according to World Bank figures, supposedly lost over $35 billion in revenue from 2001-2009 because of smuggling.[19] One can assume that the Afghan state also loses significant income — funds that could be used to promote investment and sustainable development in the border region.

The local people are understandably concerned about their ability to move freely between settlements on both sides of the Durand Line — mobility that is essential for securing relations between family and friends. But modern management of movement across borders, for instance using special residence cards and selected crossing points, can effectively address such concerns. Still, these concerns show that the local population has to be included in the recognition process, which must address such legitimate local concerns in a constructive manner to gain acceptance.

Recognition of the Durand Line should not be simply a decision by the central governments. The Pashtun tribes and clans that live along the Durand Line must develop ownership of the recognition. Tribes, clans, and their leaders need to be involved in the border recognition process from the beginning. This is all the more relevant, as some tribal representatives are profiting from and have a strong vested interest in maintaining the current situation.

IV.

Many Afghan and Pakistani Pashtuns that live along the Durand Line believe that they should be together in "Pashtunistan," a country to be made up of the Pakistani province Khyber Pukhtoonkhwa, the seven FATA territories, and certain Pashtun-dominated provinces in Afghanistan along the Durand Line. However, Pashtuns should not fall victim to this idea of "Pashtunistan," as understandable as it might appear at first sight.

Pakistan may be dominated by the Punjab ethnic group, which comprises almost 45 percent of the total population and holds a great deal of the power in Islamabad, but it is important to realize that the Pashtuns represent an ethnic group in Pakistan that is well enshrined in the country's political, economic and cultural spheres.[20] [21] The majority of Pashtuns in the world — around 28 million[22] — actually reside in Pakistan, compared to around 12 million[23] that live in Afghanistan and 2 million in other countries.

The Pashtuns have been heavily involved in Pakistani politics and business throughout the country's history.[24] Four of the eleven chiefs of the Pakistani army were of Pashtun descent and two eventually became President.[25] In Karachi, Pakistan's largest city and economic capital, Pashtuns play an impor-

18 World Trade Organization. "Informal employment curbs trade benefits for developing Countries."October 12, 2009. Accessed July 11th 2010, http://www.wto.org/english/news_e/pres09_e/pr574_e.htm.

19 Khalid. "Smuggling Effects in Pakistan Economy." November 2010, All Pakistani News. Accessed August 2011 from www.allpakistaninews.com/smuggling-effects-in-pakistan-econ

20 Central Intelligence Agency, "Pakistan-People.", The World Fact Book, Accessed April 12th, 2011, https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html

21 The Pashtuns are not the only minority ethnic groups that flourish in Pakistan as the Sindhs and Baluch's also play a important role in the country.

22 Central Intelligence Agency, "Pakistan-People.", The World Fact Book, Accessed April 12th, 2011, https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html

23 Central Intelligence Agency, Afghanistan-People.

24 Hassan Adams, "Musharraf Contends with the Pashtun Element in the Pakistani Army." Jamestown Foundation. (November 2006),Accessed June 1st 2011, http://www.jamestown.org/programs/gta/single/?tx_ttnews[tt_news]=953&tx_ttnews[backPid]=239&no_cache=1

25 Ibid.

tant role. They dominate the city's clothing retail industry and have a near monopoly on the transport business throughout Pakistan.[26]

The role of Pashtuns in Pakistan's political, social, and economic life was reflected by the recent renaming of the North West Frontier Province (NWFP) by the Pakistani government to "Khyber Pukhtoonkhwa."[27] The word "Pukhtoonkhwa" literally translates into "the land of the Pashtuns," in Pashtu. This name change therefore has led to speculation on the current relevance of the establishment of "Pashtunistan" and Pakistan's commitment to the Pashtun cause.

However, the name change seems to have been driven by the wish to highlight the relevance of Pashtuns inside Pakistan. The renaming of NWFP had a Pashtu nationalist undercurrent, but seemed more aimed at underlining the role of Pashtuns in Pakistan rather than towards promoting the idea of a "Pashtunistan."

Pashtun influence in **Afghanistan** historically has also been strong. A leading Pashtun tribe, the Durranis, have held the Afghan king's throne for around two centuries.[28] The power and wealth of certain Pashtun tribes is also reflected in Afghanistan's current government, with President Karzai and his family belonging to the Popalzai tribe, which traditionally has had a firm grasp on the wealth and power in Afghanistan.[29]

When Ahmad Shah Durrani, the founder of modern Afghanistan, became the leader of the most powerful groups of Pashtun tribes, he immediately weakened the other Pashtun tribes that threatened his hold on power. For instance, he ordered the Barakzai tribe to migrate to separate regions of Afghanistan.[30] Key leaders of many Pashtun tribes that potentially threatened the monarch's authority were also relocated to other parts of Afghanistan.[31]

Pashtun tribes that were marginalized in the past by their own "Pashtun brothers" both in Pakistan and Afghanistan continue to be marginalized today. While keeping the border issue open benefits some of the Pashtun elite, it does not generally benefit the Pashtun people living along both sides of the Durand Line. Those tribes would be well advised to pursue their economic and social well-being in the globalized world of the 21st century rather than a "Pashtunistan" myth that, in all likelihood, would hold little benefit for them should it ever be realized.

The Pashtuns' hold on power in Afghanistan has often led the Kabul government to ignore other ethnic groups' interests. Pashtuns have often put their interest in a Pashtun-dominated state ahead of the vision of an integrated nation and state that gives equal opportunity to all ethnic groups.

The recognition of the Durand Line by a Pashtun Afghan President might ease concerns of other ethnic groups about Pashtun dominance and contribute to a healthier, more stable domestic environment in Afghanistan. Afghan Pashtuns and all other ethnic groups should strive to build a nation in which tribal affiliations play less of a role in establishing identity and safeguarding socioeconomic security.

V.

The Durand Line cannot be discussed without taking into account the close relationship between Afghanistan and India. There are those that argue that both Afghanistan and India are motivated to keep the recognition issue open as a means to maintain strategic leverage over Islamabad.

The relationship between India and Afghanistan is deeply rooted in history. It was the Mongol leader Babar, descendant of the great Mongol conqueror Timur, who, after his conquest of what today forms large parts of Af-

The recognition of the Durand Line by a Pashtun Afghan President might ease concerns of other ethnic groups about Pashtun dominance and contribute to a healthier, more stable domestic environment in Afghanistan.

26 Ibid.

27 Dawn News, "NWFP officially renamed as Khyber- Pakhtunkhwa."(April 2010).Accessed March 2nd 2011, http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/editorial/renaming-nwfp-730

28 Tribal Analysis Center, "Pashtun Tribal Dynamics."(October 2009), Accessed March 3rd 2011, http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf.

29 The Guardian. "US embassy cables: President Karzai's half-brother is 'kingpin of Kandahar". (December 2nd 2010). Accessed June 1st, 2011, http://www.guardian.co.uk/world/us-embassy-cables-documents/238320

30 Tribal Analysis Center, Pashtun Tribal Dynamics.

31 Ibid.

ghanistan, became the first Mughal emperor in India. After his victory over Ibrahim Shah Lodi, at the First Battle of Panipat in 1526, he established the Mughal dynasty, which ruled in India until the early 18th century.

Today, Afghan leaders see India as an important ally against Pakistani influence and interventions in Afghanistan, the history of which concerns Afghan elites. These elites have had not only political but also close personal relationships with India. For example, many Afghan officials were educated and trained in Indian universities, including President Karzai, who obtained his master's degree in Shimla, a city in northern India.

In the nineties, India was a staunch ally of the Northern Alliance in Afghanistan, the sworn enemy of the (mostly) Pashtun Taliban who, in turn, were supported at the time by Pakistan's military intelligence agency (ISI). ISI supported insurgent groups in Kashmir to promote Pakistani interests in its long-term territorial dispute with India. This contest has led to two wars fought between India and Pakistan and strained the two countries' relationship since Partition. It cannot come as a surprise, given this history, that Afghan-India relations post September 11, 2001, are very strong. India has spent more than $2 billion in aid money for Afghanistan since 2001 and cooperates closely with the Afghan government on intelligence issues as well as the buildup of Afghan security forces.[32]

For India, a close relationship with Afghanistan, above all, reflects national security interests perceived as vital. This national security interest is essentially defined in terms of military security, which is characteristic of the thinking on the entire sub-continent and in wider Southwest Asia. This thinking is a legacy of the colonial past and has hampered the development of the region's stability and economy. A shift from this mindset focused on categories of classical military thinking can only take place gradually, but will be of fundamental importance for future stability and development.

India, Pakistan, and Afghanistan must come to an understanding of their interests that goes beyond strictly military thinking, taking into account issues of development and economic security. In these categories, all three countries would benefit from a stable and developed Afghanistan that has good neighborly relations with Pakistan — relations that, as is the norm throughout the world, are characterized by clarity on border issues.

An approach that considers security in broader economic and developmental terms would take into account the potential that good neighborly relations between Afghanistan and Pakistan could open up new trade corridors with energy-rich Central Asian states essential for the growth of India and Pakistan's rapidly expanding populations and economies. Pakistan and India would see the benefits of major energy projects, such as the Central Asia South Asia Electricity Trade and Transmission Project (CASA 1000) and the TAPI pipeline that would carry natural gas from Turkmenistan to India via Afghanistan and Pakistan.

At the same time, a relationship between Afghanistan and Pakistan, clarified and improved by recognition of the Durand Line, might well contribute to a stronger détente between India and Pakistan by easing Pakistani concerns about encirclement and the prospect of fighting a two-front war.

A relationship between Afghanistan and Pakistan, clarified and improved by recognition of the Durand Line, might well contribute to détente between India and Pakistan.

VI.

While the past years have seen several efforts to improve border management along the Durand Line, the full potential of cross-border cooperation can only be realized if there is a formal recognition of the Durand Line as a border. Most importantly, recognition of the border would be a major confidence-building measure and would represent a large leap forward in the bilateral relationship. Without a recognized border, neither Afghanistan nor Pakistan has the full incentive to engage in effective border management.

Recognition of the border would legitimize border management, in a much more sustainable way, as it would be an impetus to actually start managing the border with a long term and comprehensive perspective of creating security and economic development. Better border management would in itself help build trust between Afghanistan

32 Ramananda Sengupta, "Why Afghanistan is important to India."Rediff Special. (August 2005). Accessed April 4th, 2011, http://www.rediff.com/news/2005/aug/30spec4.htm

and Pakistan. Formal recognition and border management are mutually reinforcing.

The last decade has shown improvements with regards to Durand Line management that should be acknowledged:

- The introduction of a visa regime;
- Biometrics at the Chaman border crossing;
- Increased Afghanistan-Pakistan dialogue on management issues, as part of the Dubai Process;[33]
- Border Liaison Offices (BLOs) at key sites between Afghanistan and its neighbors;
- Introduction of community policing methods, including small-scale humanitarian assistance delivered by Afghanistan Border Police (ABP).[34]

Still, overall results have been limited because one vital precondition of border management — a recognized border — is absent. Neither country currently has substantive control of the territory around the Durand Line. Instead, both have "ceded" control to militants and organized crime.

In Pakistan, the Pakistani Taliban or Tehreek-e-Taliban-e-Pakistan (TTP) have profited from the situation. Those groups have used the safe confines of South Waziristan in the last four years to expand their presence.[35] The TTP network has expanded in Khyber Pukhtoonkhwa and includes many local militants throughout the disputed border region of Pakistan.[36]

The overall lack of harmonization on border patrols and cooperation in intelligence-sharing has contributed to the resurgence of the Taliban.[37] Despite some small strides in policing the border, police on both sides have been mostly ineffective. This is particularly evident south of Kabul in the Zabul, Kandahar. and Helmand provinces that border the FATA and Pakistani Baluchistan. The insurgents in these provinces have benefitted tremendously from the support of networks in Pakistan that need not fear any effective border control.[38] Militants south of Kabul 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.

Past attempts by U.S. representatives to persuade both countries to conduct joint border patrols have failed due to a lack of trust. Pakistani reluctance has been the major factor in the failure to launch joint patrols; the government in Islamabad wants a much larger commitment from Afghan leaders before acknowledging that such exercises might be a success. In particular, leaders in Islamabad have said they are unwilling to discuss joint patrols until the Afghans come closer to establishing more posts on their side of the border. Currently there are 100 border posts on the Afghan side, compared with 1,000 on the Pakistani side.[39]

Border recognition would make it easier for Afghanistan and Pakistan to work together on strategic border patrols. Afghanistan and Pakistan would have a very different incentive to collaborate on joint training exercises and intelligence sharing. The finalization of the Durand Line as the officially recognized border could increase cooperation on policing, encourage the sharing of border intelligence reports, and improve the region's overall security.

Border recognition could also increase the harmonization of military operations between the ISAF, the ANSF, and the Pakistani military,

The overall lack of harmonization between both sides on border patrols and cooperation in intelligence-sharing has contributed to the resurgence of the Taliban.

33 Government of Canada, "Afghanistan-Pakistan Border." (April 7th 2011). Accessed June 1st, 2011, http://www.afghanistan.gc.ca/canada-afghanistan/priorities-priorites/border-frontiere.aspx?lang=eng

34 United Nations Office of Drugs and Crime, "Border Control Management."(2011). Accessed June 1st , 2011, http://www.unodc.org/afghanistan/en/border-control-management.html.

35 Andhra News, "About Tehreek-e-Taliban Pakistan (TTP)." (2010). Accessed June 1st, 2011, http://www.andhranews.net/Features/Organizations/Tehreek-e-Taliban-Pakistan.asp

36 Shuja Nawaz, "Fata- A Most Dangerous Place." Center for Strategic & International Studies. (January 2009), http://csis.org/files/media/csis/pubs/081218_nawaz_fata_web.pdf.

37 Ahto Lobjakas, "Afghanistan: Kabul Sharing Intelligence With Pakistan, NATO." Radio Free Europe Radio Liberty. (January 2011), Accessed April 13th , 2011, http://www.rferl.org/content/article/1074260.html

38 Martine van Bijlert, "The Battle for Afghanistan: Zabul and Uruzgan." New American Foundation, (September 2010), www.newamerica.net/publications/policy/the_battle_for_afghanistan_zabul_and_uruzgan.

39 Spencer Ackerman, "Ex-Pakistan Interior Minister Rejects Joint Border Patrols." The Washington Independent. (November 2008). Accessed June 1st , 2011, http://washingtonindependent.com/13460/ex-pakistan-interior-minister-rejects-joint-border-patrols

which would help decrease cross-border support for the insurgency in Afghanistan.

VII.

Pakistan must deliver a hugely expanded governance and economic effort in FATA and provide an alternative to the prevailing war economy by building up education, health care and infrastructure.

The administrative status, lack of governance, and generally dismal situation in the tribal territories of Pakistan is a legitimate and serious concern for Afghanistan. It must aim for better security and governance in the FATA. Clear steps towards reforms in the FATA are an important element to be addressed in the context of a recognition process.

Islamabad has not taken ownership of the controversial territories along the Durand Line. That is, 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 FATA and thus take adequate care of its own territory. In that regard, border recognition should bring the tribal territories closer to the center of Pakistan and finally lead Pakistan's government to take responsibility for the seven FATA territories.

Recognition should pave the way to reform the status of the FATA. The old administrative tribal 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. In a recognition process, Islamabad must be encouraged to provide much better governance to the frontier area. It must incorporate the FATA in a sustainable way into the federation of Pakistan. Such reforms would allow for the protection of the local population by allowing them to be governed under regular Pakistani law and judicial institutions.[40]

It is no coincidence that one of the highest poverty rates in all of South Asia is found in the FATA territories. Currently the FATA's approximate per capita income is a mere $250 annually, and approximately 60% of FATA's population lives below the poverty line.[41] The extreme poverty in the FATA has led about half of the population to live outside of the territories as migrant laborers or displaced persons.[42] The people that stay in the FATA (usually not by choice) have limited political rights and are isolated from Pakistani society. They are thus easy prey for radical militant groups and gangsterism.

Despite the infiltration of extremist groups, a public opinion poll conducted in the FATA in September 2010 by the New America Foundation demonstrated that local tribal people are as open for change as they are frustrated over their current conditions. The poll found that around 75 percent of residents do not support Al Qaeda's presence in their territory, while around 60 percent contested the Pakistan Taliban (TTP) and the Afghan Taliban.[43] More significantly, residents strongly supported Pakistani military intervention in the FATA, and firmly stated that aid packages for health care and education (even from the United States) would be strongly welcomed.[44]

Clearing the tribal territories of extremist and terrorist safe havens should be the first step toward reform, but true success also depends on implementing a comprehensive economic development plan. Pakistan must deliver a hugely expanded governance and economic effort in the FATA and provide an alternative to the prevailing war economy by building up education, health care, and infrastructure. A similar development effort must also be expanded on the Afghan side of the border with Pakistan, and improved security conditions on its side of the border are also necessary to make that possible.

40 Anita Joshua, " FATA a human right black hole: Amnesty." The Hindu. (June 2010),Accessed June 1st, 2011, www.thehindu.com/news/international/article452578.ece

41 Christine Fair et al "Pakistan: Can the United States Secure an Insecure State?" Rand Corporation . (2010). http://www.rand.org/pubs/monographs/2010/RAND_MG910.pdf. pp.66

42 Shuja Nawaz, "Fata- A Most Dangerous Place."Center for Strategic & International Studies. (January 2009). http://csis.org/files/media/csis/pubs/081218_nawaz_fata_web.pdf.

43 Peter Bergen & Patrick C. Doherty, "Public Opinions in Pakistan's Tribal Regions." New American Foundation. (September 28th, 2010). www.newamerica.net/publications/policy/

44 Ibid.

Federally Administered Tribal Areas (FATA)

Khyber-Pakhtunkhwa

VIII.

The international community should use a "carrot approach," guaranteeing increased investment in the border region after border recognition is achieved

The establishment of the Durand Line as the officially recognized border between Afghanistan and Pakistan will require substantial international assistance. The international community should actively promote border recognition, and international actors would benefit from a recognized border between Afghanistan and Pakistan. Currently, foreign assistance is focused on individual border initiatives that may have their benefits but cannot substantially improve the border situation. The international community should use a "carrot approach," guaranteeing increased investment in the border region after border recognition is achieved and offer additional aid money as an incentive for the establishment of an official legalized border. The international community should also set clear guidelines on intelligence sharing practices.

Piecemeal border management support has failed to address the substantive issue. Recent border management initiatives have fallen short on facilitating a framework that addresses grievances and distrust on both sides relating to the legitimacy of the Durand Line. One of the most prominent border management initiatives, the Canadian-led Dubai Process, may have produced better cooperation at the administrative level on border movement, but it has not addressed the root of the border problems. The Dubai Process has made strides in increasing legal border crossings by implementing 21st century biometric technology into a traditional tribal society, but in reality the process only focuses on the several hundred meters of the Chaman and Torkham crossings while ignoring thousands of miles along the rest of the line.

An official recognition on the Afghanistan-Pakistan border leading to increased security can increase the effectiveness of aid in the border region. A recent report by Refugee International, "Pakistan: Short-Sighted Policies Hindering U.S. Goals," emphasizes the reluctance of development agencies such as USAID to invest additional resources in the FATA because uncertain security conditions challenge the effectiveness of aid money.[45] [46] Border recognition followed by intensified cooperation on border control would show the international community that it can safely invest additional resources in the border region.

In 2010, the G8 Foreign Ministers announced plans to partner with the World Bank and the Asian Development Bank on the Afghanistan-Pakistan Border Region Prosperity Initiative, which aims to increase infrastructure projects on the border. In January 2010, the World Bank agreed to administer a Multi-Donor Trust Fund, supported by more than ten Western donor countries and the European Union and aimed at restoring infrastructure and vital services in the FATA, Khyber Pakhtunkhwa, and parts of Baluchistan.[47] [48] The Canadian government has also committed to investing in improving the Afghanistan-Pakistan border as a major priority until 2011.[49]

Despite the lack of action or results to date (notably with the G8-led initiative), these border initiatives show a true commitment by the international community to increase aid money in the border areas — especially if Afghanistan and Pakistan can work together on stabilizing the border.

45 Dawn News, "Fata development: US group opposes funding through military." (April 2010). Accessed March 1st, 2011, http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/local/peshawar/fata-development-us-group-opposes-funding-through-military

46 MSNBC, "U.S. aid under fire in Pakistan border area."(February 2009). Accessed March 1st, 2011, http://www.msnbc.msn.com/id/29415610/ns/world_news-south_and_central_asia/

47 Countries that support the Multi Donor Trust Fund on the border includes Australia, Denmark, the European Union, Finland, Germany, Italy, Sweden, Turkey, Finland, United Kingdom and the United States.

48 Ministry of Foreign Affairs of Denmark, "Multi donor Trust Fund." (March 2011). Accessed April 29th, 2011, http://www.ambislamabad.um.dk/en/menu/Development+Cooperation/PARTNERS/MultiDonor-TrustFundForNWFPFATAAreasOfBalochistan/

49 Government of Canada, "Afghanistan-Pakistan Border." Canada's Engagement in Afghanistan. (2001). www.afghanistan.gc.ca/canada-afghanistan/priorities-priorites/border-frontiere.as

Conclusion

Border skirmishes in July 2011, in which Pakistani rockets meant for militants killed innocent tribal people on the Afghan side of the Durand Line, led to a resurgence of tensions between Afghanistan and Pakistan, highlighting the importance of the recognition issue.

The bilateral relationship has taken many steps forward in past years. The improvement in Afghanistan-Pakistan relations, the prospect of an international troop withdrawal from Afghanistan in 2014, and the constant need for stable relations between the twocountries show the value of reaching a final agreement on the Durand Line.

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