

Afghanistan–Pakistan relations: border controversies as counter-terrorist impediments

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When the Taliban regime was overthrown in Afghanistan in late 2001, there was much optimism that, with the anticipated and unprecedented economic, political and military engagement of the international community with Afghanistan, the country would become stable. However, resurgent violence indicates that this is not happening. An important reason for the continuing instability lies in the fact that the international effort has failed to address longstanding disagreements between Afghanistan and Pakistan—the Durand Line border dispute and the Pushtunistan issue—which in turn impairs the two countries’ cooperative capacity in the anti-Taliban campaign. Resolution of these disputes would go a long way to help the situation. This article analyses the dynamics of the border dispute, the Pushtunistan issue and the Taliban insurgency as an outgrowth of long-standing historical disputes between Afghanistan and Pakistan.

The stabilisation of Afghanistan, to a very large extent, depends on the nature of that country’s relations with its southeastern neighbour, Pakistan. The Afghan leadership has on many occasions accused Pakistan of harbouring the Taliban and called on the United States to tackle terrorism at its source—Pakistan—rather than its manifestation in Afghanistan. In an interview at the Council on Foreign Relations during his recent visit to the US, President Hamid Karzai was asked to comment on why, in his view, President Pervez Musharraf would not want to go against the Taliban. Karzai intimated that there was a connection between the historical roots of troubled relations between the two countries, and Pakistan’s current tendency to use terrorism as an instrument of foreign policy against Afghanistan (Council on Foreign Relations 2006). A lively debate has since ensued in Afghanistan and abroad about the need to resolve the longstanding border dispute and the Pushtunistan issue, in order to improve the prospects of counter-terrorism cooperation between the two countries. Members of the *Shura-i-Milli* (Afghan parliament), sections of the Afghan media and international experts all agree that an amicable resolution of the Durand Line dispute and the Pushtunistan issue will go a long way to help the campaign against terrorism inasmuch as it would allay Pakistani fears that a strong Afghanistan would revitalise past claims on the

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Pushtun regions of Pakistan (Grare 2006; Qassem 2006; Registani 2006; Rubin and Siddique 2006; Tarzi 2006).

Nevertheless, an important aspect of the twin issues of the Durand Line and Pushtunistan, which sustains discord between the two nations, is a lack of sufficient information among the general population and at the leadership level of both countries (*DAWN* 2005). In Afghanistan, this has led to a widespread sense of national self-righteousness which places Afghan leaders in a difficult position should they want to compromise. Most scholarly material about the border and Pushtunistan focus on the fact that these issues have long poisoned relations between the two countries. However, little attempt has been made to critically study, in a consolidated way and in the light of the evolving body of international law, the exact themes of argument that Afghanistan employs.

This article represents an attempt to fill this gap in academia as well as among the leadership and policy-making circles in both Afghanistan and Pakistan. It draws on Afghan as well as British official sources. It argues that Afghanistan's stance on the Durand Line does not fully accord with the relevant provisions of international law. Further, it reveals that Pushtunistan nationalism was originally invoked by the British colonial authorities, and the Afghans' position is not borne out by the relevant historical records.

Research also sheds light on how the border dispute and the Pushtunistan issue inform the current Pakistani regime's inclination to promote Islamic radicalism in Afghanistan and Pakistan. The discussion of radical Islamism versus Pushtun nationalism questions the merits of the proposed *jirga* between the Pushtun representatives from both sides of the Afghanistan–Pakistan border, an idea which emerged out of the tripartite meeting between Karzai, Musharraf and George W. Bush in Washington recently.

Was the Durand Line agreement time-bound?

The first factor that makes most Afghans and their leaders question the continued legitimacy of the Durand Line as an international frontier is the notion that the Durand Line agreement, signed in 1893 between Sir Henry Mortimer Durand, the British Foreign Secretary to India, and Emir Abdul Rahman, was valid for only 100 years (Massoud 2006). Accordingly, the legality of the Afghan–Pakistan border should have lapsed in 1993, 100 years after the signing of the agreement.

However, no document has ever been produced to substantiate this claim. There is absolutely nothing in the Durand Line agreement or in the subsequent documents between the British and Afghan Boundary Commissions which completed border demarcations until 1896, to indicate that the border was determined for only 100 years (Aitchison 1933: documents XII–XVI, XIX).

Another aspect of the agreement which renders it time-bound can be found in the history of British–Afghan relations after Emir Abdul Rahman's death in

1901. Soon after Habibullah ascended the Afghan throne, the British Viceroy, Lord Curzon, pressured him to visit India for discussions including renegotiation of the Durand Line agreement. Habibullah did not want to visit India, pleading that he was content with all the treaties his father had signed. But Curzon insisted that the previous treaties had been signed with the person of Abdul Rahman, and therefore had to be renewed by the new Emir. Finally the Afghan Emir agreed to receive a British envoy, Sir Louis Dane, in late 1904 with a draft treaty to renegotiate. Habibullah produced a draft treaty of his own which merely reaffirmed the previous understandings of his father. The treaty was signed by both sides, part of which reads as follows (Ewans 2001: 81–2):

His said Majesty [Habibullah] does hereby agree to this that, in the principles and in the matters of subsidiary importance of the treaty regarding internal and external affairs and of the engagements which His Highness, my late father ... concluded and acted upon with the Exalted British Government, I also have acted, am acting and will act upon the same [Durand Line] agreement and compact, and I will not contravene them in any dealings or in any promise (Aitchison 1933: document XXI).

Thus, by Britain's own admission, the Durand Line agreement was valid only during the lifetime of Emir Abdul Rahman. The document was renewed, however, with the person of Emir Habibullah in 1905, remaining valid until the Third Anglo-Afghan War in 1919.

In the aftermath of the Third Anglo-Afghan War, an Afghan Peace Delegation visited Rawalpindi and signed the Treaty of Rawalpindi—a 'Treaty of Peace between the Illustrious British Government and the Independent Afghan Government'—on 8 August 1919 (Aitchison 1933: document XXIII; Ewans 2001: 90; Grasmuck and Adamec 1969: 21). This treaty and its Annexure recognised Afghanistan's independence but held it responsible for the 'aggression', confiscated subsidy arrears owed to Habibullah, discontinued payment of any further subsidies and cancelled all the previous British–Afghan agreements including the ones that allowed Afghanistan to freely import arms through British India territory. More importantly, article five of the treaty stated: 'The Afghan Government accepts the Indo-Afghan frontier accepted by the late Emir [Habibullah]'. As such, for the first time the status of the Durand Line as an international frontier was transformed, from being temporarily valid during the lifetime of each consenting Emir, to one of a permanent border between two sovereign independent countries.

The Treaty of Rawalpindi was merely a peace agreement to affect cessation of hostilities and to regulate immediate relations between the two countries. It was followed up by a renewal of talks leading up to the dispatch in January 1921 of a British mission to Kabul under Sir Henry Dobbs, 'charged with the task of negotiating a treaty which would place future relations between Britain and Afghanistan on a permanent foundation' (Fraser-Tytler 1953: 198).

Thus a new agreement between the two countries titled ‘Treaty between Great Britain and Afghanistan establishing Friendly and Commercial Relations’, superseding the Treaty of Rawalpindi, was signed on 22 November 1921 in Kabul—ratifications were exchanged in Kabul on 6 February 1922. In this agreement, the Afghan government again recognised the Durand Line as a permanent international border. Article II of the agreement stipulates: ‘The two High Contracting Parties mutually accept the Indo-Afghan frontier as accepted by the Afghan Government under Article V of the Treaty concluded at Rawalpindi on the 8th August 1919’ (Aitchison 1933: document XXIV). It is noteworthy that Article XIV of the 1921 agreement rendered it liable to unilateral renunciation by either of the parties anytime after the expiry of three years from the date of its signature and subject to a one-year grace period from the date of its refutation (Aitchison 1933: document XXIV). Yet Afghanistan under King Amanullah never denounced the agreement. Subsequently, in fact, King Mohammad Nadir’s regime also reaffirmed it on 6 July 1930 through an exchange of diplomatic notes in London between Shah Wali Khan, the Afghan Minister, and Arthur Henderson, the British Foreign Secretary (Aitchison 1933: document XXVI).

An attachment to the Anglo-Afghan Treaty of 1921, containing a letter from the British Representative to the Afghan Foreign Minister, acknowledges the interest which Afghanistan had in the affairs of the tribes beyond the Durand Line. This has prompted some scholars to maintain that the attachment gave justification to Afghanistan to interfere in the affairs of Pushtun tribes east of the border (Fraser-Tytler 1953: 262–4; Dupree 1980: 561–5). However, when juxtaposed beside many firm rebuttals which Britain always served to the Afghan government on account of its interference across the border, it becomes evident that by no means did the attachment entitle Afghanistan to have claims on those territories. The text of that letter conveys no more than an expression of goodwill and courtesy by the British representative towards the Afghan rulers’ affinities with the Pushtun tribes outside Afghanistan’s sovereignty (Aitchison 1933: document XXIV).

Thus, the Durand Line was recognised as a permanent border between Afghanistan and British India. Indeed, it was a necessary price that Afghanistan had to pay to gain independence (Gregorian 1969: 227–31).

The question of coercion

The second most important factor which, in Afghans’ eyes, cuts through the Durand Line’s legitimacy is a pervasive perception among Afghans that the 1893 agreement was forced on Abdul Rahman under threats of war and blockade (Ghubar 1983: 687–99; Farhang 1992: 404; Ghaus 1988: 16). This assertion, however, has been challenged by many others who maintain that the Afghan Emir had been fearful of a steady British push into Afghan territory by

means of road and rail construction pointing towards Qandahar and Kabul. Hence, the delimitation of the border was welcomed because it would stop further British encroachment (Ewans 2001: 76–9).

Moreover, the Afghan Emir made favourable references to the Durand Line agreement in his memoirs which does not support the contention that he signed the agreement in fear of British threats. In fact after signing the agreement he held a huge royal court for Kabul notables and government officials, in which he extolled the agreement as an achievement for Afghanistan (Rahman 1893). The agreement was apparently endorsed by the Afghans who attended the occasion, where Durand was also present. Some Afghan historians, nonetheless, have rejected the speech and the Afghans' response as being stage-managed (Ghubar 1983: 687–99; Kakar 2006: 181–2).

In view of the above, the notion of the Durand Line being imposed against the Afghan Emir's will is at best contestable. Even if the Afghans' claim could be substantiated, it may not necessarily detract from the legal status of the Durand Line as a legitimate international frontier. At a minimum, there could be two lines of argument against Afghanistan's claim.

First, contrary to popular misperceptions, the 1893 agreement was not the only relevant document concerning the status of the border between Afghanistan and British India. Any dispute about the legality of the Durand Line would have to reckon with the relevance of at least four other agreements signed successively in 1905, 1919, 1921 and 1930, where Afghanistan repeatedly undertook to recognise the Durand Line as its international frontier. It would be difficult to dismiss all these agreements as being forced on Afghanistan.

Second, the political history of the establishment of modern nation-states teaches us that a certain measure of pressure and coercion is inherent in the origins of almost all the national borders in the world. If unilateral revisionist aspirations of every nation based on the role of outside coercion in delimiting their borders in the past were to be afforded recognition, the world would plunge into turmoil.

Finally, Afghanistan needs to remember that no other country, not even India or the former Soviet Union, has ever taken the Afghans' position on the Durand Line seriously. On the contrary all the major countries and international organisations—including the US, the United Kingdom, the United Nations, and the Muslim world in general—recognise the Durand Line as a legitimate international frontier subject to international law (Caroe 1958: 465–6; Jafri 1976: 88; Dupree 1980: 485–94; Ewans 2001: 538–54; Mahmood 2005: 23–5).

Partition of British India

A third pillar on which Afghanistan relies to reject the legitimacy of the Durand Line is the claim that, with the partition of British India in 1947, all the agreements with that country became null and void. This position of the Afghan

government was officially communicated to the British government shortly before Pakistan was created, and since then the argument has been used persistently (Mansergh 1983: document 384; Pazhwak 1960).

However, it would be very difficult for Afghanistan to sustain such a position credibly under the evolving body of international law. The Vienna Convention on Succession of States in Respect of Treaties (VCSST) recognises the permanency of borders in state successions. Article 11 on boundary regimes states: 'A succession of States does not as such affect: (a) a boundary established by a treaty; or (b) obligations and rights established by a treaty and relating to the regime of a boundary' (VCSST 1978: Article 11).

Of course the VCSST was written in 1978, and entered into force only in 1996, long after Pakistan was born. Article 7 of the Convention concedes that it is not retroactively applicable. Nor is Afghanistan a signatory to this Convention. However that does not impinge on the validity of the VCSST as a codified body of international law, ratified by a sufficient number of nations to make it applicable. The fact that the VCSST has been codified attests to the presumption that its provisions do not contravene the discernible rules of customary international law, which continues to govern all questions related to the succession of states not regulated by the VCSST.

Moreover, the Afghans need to understand that the Durand Line is the only Afghan border that came into existence as a result of direct bilateral negotiations between Britain and Afghanistan. Originally all the northern borders of Afghanistan were bilaterally determined by Russia and Britain without Afghanistan's participation in the relevant processes (Maley 2002: 7). If the Afghans seriously believe that the partition of British India annulled the Durand Line, then they could also argue about the legitimacy of their borders with Tajikistan, Uzbekistan and Turkmenistan because the Soviet Union disintegrated in 1991. However, although the origins of the northern borders are even more open to criticism, Afghan rulers have never questioned their validity. In the context of the domestic ethno-linguistic politics of the country, challenging the legitimacy of the borders with Central Asia brings no political advantage to the ruling elites of Afghanistan.

In view of the above discussion, the Afghans' argument appears precarious once again. International law does not support the concept of revision of international borders on state successions. Moreover, Afghanistan's inconsistent behaviour in regard to its boundary regimes in Central Asia calls into question its true motives.

Division of the Pushtuns

The fact that the Durand Line runs through the Pushtun heartland has been a major source of criticism by Afghans as well as many foreign authors (Pazhwak 1960: 25). The border is alleged to have arbitrarily separated the Pushtun

nation without much regard for their strong ethno-cultural and linguistic affinities. As such the moral legitimacy of the border between Afghanistan and Pakistan has been challenged.

However, this argument seems insecure for a number of reasons. The notion that the Pushtuns form a single nation has been strongly challenged on historical grounds. For most of their history, the Pushtuns are said to have been divided on many levels. Even before the advent of British colonialism in the Indian subcontinent, the western Pushtuns tended to be generally associated with and ruled by Safavid Persia, while the eastern Pushtuns had been ruled by Mughal India (Caroe 1958: xviii, xx, 381–3, 419, 436). Moreover the many Pushtun tribes and sub-tribes have never been united sufficiently to form a single nation. Apparently the only period when the great mosaic of the Pushtun tribes achieved a semblance of unity was during Ahmad Shah Abdali's rule (1747–72), under whose strong and charismatic leadership they managed to form a type of Pushtun confederation unprecedented in their history (Saikal 2004). However, the precarious Pushtun unity during this period owed its existence as much to Ahmad Shah's strong leadership as to the many campaigns he launched to subdue India and other non-Pushtun adversaries (Aslanov and Gafferberg 1969: 19).

Moreover the Durand Line is said to have broadly followed tribal boundaries, separating those tribes that had economic links to cities and towns in Afghanistan from those with links to cities and towns in today's Pakistan. According to Sir Olaf Caroe, only in two cases—the *Mohmands* and the *Waziris*—was a tribe divided. The *Mohmands* were divided even before the Durand Line. Many of the upper section *Mohmands* were more affiliated to Lalpura and Jalalabad than to Peshawar. These sections were given to Afghanistan. In the *Mohmand* case, a further offer was later made to the Afghan government with a view to a definition of the Durand Line more in its favour, but the offer was never taken up. In regard to the *Waziris*, only a small portion living in Birmal is left on the Afghan side of the Durand Line, but the great bulk of them remain in Pakistan (Caroe 1958: xviii, xx, 381–3, 419, 436, 466).

The Pushtuns are not the only ethnic group that has been divided by its boundary regimes. The Tajiks, Uzbeks and Turkmens have also been divided along the northern borders of the country. Nor are Afghanistan's borders unique in cutting through ethno-cultural and linguistic affinities. There are many other socially and racially cohesive groups in the world that have been divided as such along national frontiers.

The Pushtunistan issue

Pushtun nationalism emanating from Afghanistan is another interrelated major issue which, from the very beginning of Pakistan's existence as an independent

nation, has poisoned the two countries' relations. The argument is that all the Pushtun regions of Pakistan belong to Afghanistan simply because these regions formed part of the erstwhile Durrani Empire and that the Pushtuns form a nation. A more expansive variant of the argument includes the Baluch regions of Pakistan as well, because that would link Afghanistan directly to the Indian Ocean.

In line with this argument, the Afghan government rejected the legality and fairness of the procedures which the British authorities adopted in 1947 to partition British India. Thereafter, from the 1940s until the 1980s, support for Pushtunistan was a central theme of Afghanistan's foreign policy. Afghanistan actively incited militancy and sent combatants across the border to participate in subversive activities against Pakistan.

However, after the occupation of Afghanistan by the Soviet Union in late 1979 until the fall of the Taliban regime in late 2001, Pushtun nationalism was effectively 'drowned' by the pervasiveness of Islamic radicalism in Afghanistan as well as the Pushtun regions of Pakistan. Yet since the establishment of the Karzai administration, there are strong signs that Pushtun nationalism is again being revived by the current Afghan regime. On the other hand, the Pakistani military-intelligence establishment sees Islamic radicalism as a strong counterpoise against any reemergence of Pushtun nationalism not only in Afghanistan but also in Pakistan's Pushtun regions as well.

The main Islamist parties of Pakistan—*Jamaat-e-Islami* (JI) and the *Jamiat-ul-Ulama-i-Islam* (JUI), with whom most of the smaller, violent Islamist groups, including the Taliban, are closely associated—are led and primarily dominated by the Pushtuns of Pakistan. Since the 1980s, one or other of these political parties has acted as the 'big brother' patron of the most radical Pushtun Islamist forces in Afghanistan. The JI patronised the *Hezb-i-Islami* of Gulbuddin Hekmatyar and the JUI is the big brother organisation for the Taliban. This means that the prevalence of Islamic radicalism among the Afghan Pushtuns allows Pakistan to move the centre of Pushtun leadership away from Afghanistan to Pakistan. Whereas in the past the Pushtun nationalist forces revolved around Kabul for patronage, now the Pushtun radical Islamists revolve around Peshawar and Quetta.

It is in this context that suspicions about the current Pakistani regime's unwillingness to seriously tackle the problem of the Taliban on its soil should be understood. However, since the principal aim of this article is to study the merits of Afghanistan's stance on the issue of Pushtunistan, the above might suffice to drive home its relevance to the campaign against Taliban terrorism. Studying the merits of the Afghan position as such is important because it examines the strong sense of national self-righteousness which has led Afghanistan to be so uncompromisingly rigid in its support of Pushtunistan. Afghanistan's inflexibility, in turn, prompts Pakistan to do whatever it can to pre-empt any resuscitation of Pushtun nationalism on its soil. With this brief, we now turn to study the merits of longtime claims by Afghanistan on the issue.

Genesis of the Pushtunistan campaign

As early as 1944, when it was becoming increasingly evident that Britain would leave India, the Afghan monarchy initiated diplomatic presentations with the British authorities expressing its interest in the future of the Pushtuns of the North West Frontier Province (NWFP) in India. However the Afghan rulers were bluntly rebuffed by Britain on the grounds that it was an internal affair of India (Ewans 2001: 105–9). In the lead up to the partition of British India, the Afghan government redoubled its efforts to show concern about the fate of the Pushtuns in that country (Mansergh 1981: document 82). Accordingly, to the extent that it related to the political destiny of the Pushtuns after the partition of British India, the Afghan government objected to the arrangements and procedures which the British government instituted to transfer power from British jurisdiction to the indigenous peoples of the subcontinent.

The arrangements for the transfer of power were announced in a statement by Prime Minister Clement Richard Attlee on 3 June 1947 in the British Parliament. It came on the heels of the main Indian political parties' (Congress Party of India and the Muslim League Party) inability to work in unison within the Indian Constituent Assembly to draft a constitution for the whole of an undivided independent India. The Muslim League representatives did not join the Constituent Assembly since their demand was for a separate, Muslim nation. However, the representatives of the NWFP, who were allied with the Congress Party, *did* participate in the Constituent Assembly (Mansergh 1982: document 45).

Lack of participation by the Muslim League members meant that the majority of the representatives of Bengal, Punjab, Sind and Baluchistan would not join the Constituent Assembly of India. Consequently, the British government had to introduce a procedure to ascertain 'the wishes of the people of such areas' on the issue of whether their constitution was to be framed by the existing Constituent Assembly or a separate one consisting of the dissenting members. For this purpose, among the other provinces, the procedure for Punjab was such that its Provincial Legislative Assembly (excluding the European members) had to meet in two separate parts on the basis of Muslim majority and non-Muslim majority districts. If a simple majority of either part of the divided Legislative Assembly decided in favour of partition, the province would be divided. In the event of partition being decided upon, each part of the Legislative Assembly was to further determine, on behalf of the areas they represented, as to which Constituent Assembly their representatives should join. British authorities had already anticipated that Punjab would be divided. Therefore a provision was made in Attlee's statement for the NWFP to reconsider its decision to participate in the Constituent Assembly of India because a divided Punjab would ultimately cut it off from India (Mansergh 1982: document 45).

In regard to the future of the NWFP, the British authorities did not, however, sit idle and let events overtake them. In early 1947, not long after the Constituent Assembly of India had started its work, Caroe, the British Governor of NWFP (1946–47), urged Dr Khan Sahib's Congress government in NWFP and Abdul Ghafar Khan—leader of the Congress-aligned *Khudai Khidmatgar* Party and brother of the Chief Minister, Dr Khan Sahib—to call for the establishment of an independent Pushtunistan. This suggestion was made by Caroe with the clear knowledge that an independent Pushtunistan would be neither economically viable nor would it be supported by the British government.

Far from being a fan of Pushtunistan, however, the real intention of Caroe was to drive a wedge between the NWFP secular leaders and the Congress Party with a view to make the NWFP representatives withdraw from the Constituent Assembly of India. Caroe had presumably anticipated that in the event of withdrawal from the Constituent Assembly of India, a referendum in the predominantly Muslim NWFP would easily decide in favour of joining Pakistan. A confidential cable on 22 May 1947—not long before Attlee's statement—from Caroe to Sir David John Colville, the Governor of Bombay (1943–48), is instructive in this respect:

The interesting local development in the political field is that my Ministry and Abdul Ghaffar Khan have started propaganda on a theme which I advised them to take up some months ago: that of a Pathan national [North West Frontier] Province under a coalition if possible, and making its own alliances as may suit it. When I put it to them then they professed what amounted to fury at the mere suggestion. There is a good deal in the theme itself, and the appeal is a far more constructive one than that of Islam in danger. The switch-over has probably come too late, but to my mind it is a strength, and not a weakness, that Pathanistan cannot subsist financially or otherwise on its own legs. The weakness is that the Pathans have hitherto been too divided among themselves to set up a stable State, and where they have ruled they have ruled as conquerors of alien populations. They themselves had always been in a state of anarchy right through history until we came and put them in order. (Afghanistan is not really a Pathan State at all) (Mansergh 1981: document 512).

Thus was the call for Pushtunistan initiated, not necessarily as a spontaneous popular eruption of nationalist self-determination, but as a British scheme aimed at creating a viable Pakistan out of the Muslim majority states of former British India.

There is ample evidence to suggest that even as late as 10 May 1947 the Congress-aligned Pushtun leaders had largely gone along with the partition plan as proposed by the British (Mansergh 1981: document 384, 1982: document 65). But, the above letter explains why they suddenly argued that the restriction to only two alternatives in the Statement of 3 June was not acceptable to them.

The Pushtun leaders made a dramatic volte-face ‘against joining Hindustan [India] and issue for them [was] between (a) Independent Pathanistan and (b) joining new Constituent Assembly for Pakistan’ (Mansergh 1982: document 65). Thus the *Khudai Khidmatgar* pressed for the institution of a third constituent assembly exclusively for the NWFP.

The Pushtun leaders wanted to use the call for a separate constituent assembly as a bargaining chip to promote the cause of autonomy within Pakistan, rather than outright independence. In this spirit, two days after the Statement of 3 June the Chief Minister of the NWFP, Dr. Khan Sahib, met with the Governor-General (Viceroy) Lord Mountbatten, in which the former ‘stated categorically that the NWFP would never join Pakistan’. The Governor-General explained the impracticality of a third option for the NWFP and even Jawaharlal Nehru’s opposition to any special treatment of this province which would have opened a Pandora’s box of similar demands by other British Indian provinces. As the cost of his compromise, Khan Sahib requested the Governor-General to sack Caroe, because the *Khudai Khidmatgar* members did not trust his impartiality. They viewed him as a supporter of the Muslim League against the Congress Party of India. Similarly, since Khan Sahib did not trust the officials of the Indian Civil Service either, he welcomed the Governor-General’s earlier decision to appoint nine British officers of the Indian Army to help run the referendum. Towards the end of their discussion, Khan Sahib promised to do his best to cooperate in running the referendum (Mansergh 1982: documents 81, 96, 310; Jafri 1976: 88).

Afghan government and official media reacted angrily to the British plan to hold a referendum in the NWFP. They complained that the ‘Afghans living between the Durand Line and River Indus’ had not, like other elements in India, been given the option of independence. The official *Anis* daily had suggested referring the case to the United Nations. There were a string of meetings between the Afghan Foreign Minister, Ali Mohammad, and the British representative in Kabul, as well as between the Afghan representative and the British Foreign Office officials in London, where the Afghans pressed for Pushtunistan (Mansergh 1982: documents 140, 309). However the British authorities were confident that the ‘Afghan Government [had] given no thought to political, economic or security implications of independent [Pushtunistan] or other alternatives’. They had asked the Afghans to come up with a specific official proposal so that it would be ‘given due consideration by HMG’ (Mansergh 1982: document 212).

The British believed that the Afghans’ assertions were merely irredentist claims unjustified on legal or rational grounds. They were convinced that the media campaign was officially-inspired, that the full scope of the Afghans’ territorial interest included all the territories between the Durand Line and the Indus River and that the Afghans’ real ambition was the amalgamation into Afghanistan, rather than any interest in political freedom, of these areas (Mansergh 1982: documents 395, 431, 453; Newell 1974: 76–88, Fraser-Tytler

1953: chapter 5). They also suspected that a diversionary ‘objective of Afghan government [was] to forestall public attention in Afghanistan from the internal situation’—the social, political and economic challenges which the government faced at the time. Thus, Britain firmly rejected the Afghan claims and regarded them as unwarranted interference by a foreign government over matters beyond its territorial jurisdiction.

The Afghan government invited the pro-Pushtunistan leaders from the NWFP to visit Afghanistan. This gave rise to British and Muslim League suspicions that the campaign was waged in collusion with the Congress Party of India (Mansergh 1983: document 321). Buoyed by the firm support from Afghanistan, the *Khudai Khidmatgar*’s charismatic leader, Abdul Ghaffar Khan, launched a large campaign urging people in large public gatherings to boycott the referendum. He bitterly criticised Mohammad Ali Jinnah and the Muslim League for taking ‘full advantage of the communal issues involved’ and complained against the Viceroy for his inflexibility to accommodate the option of a free Pushtunistan (Mansergh 1982: document 321).

The proposed referendum was held on 6 July 1947 in which an overwhelming majority of the participants in NWFP chose to join Pakistan. In accordance with Attlee’s statement, the referendum offered the choices of joining India or Pakistan to the Settled Districts, and the tribal areas were free to negotiate their future relations with the successor authority to British India. The *Khudai Khidmatgar* leaders as well as the Afghan government declared the referendum unsuccessful, but few people agreed with that. Louis Dupree (1980) notes that even Maulana Kalam Azad, who was a friend of the Khan brothers as well as a prominent member of the Congress Party of India, did not think that their boycott was successful.

In the referendum, despite the call for a boycott, over 55.5 per cent of eligible voters participated, out of which 55 per cent voted for Pakistan and 0.5 per cent voted for India. This figure could be more meaningfully understood if assessed against the background of voter turnout in the 1946 provincial elections of the NWFP, in which only 68 per cent of the eligible voters had participated (Dupree 1980: 485–94; Ewans 2001: 105–9). The referendum was conducted only among those who had been eligible to vote in the previous year’s provincial Legislative Assembly elections. Therefore, there was a decline of around 12 per cent in the referendum. Yet it cannot be argued that the referendum was not valid because, despite the huge campaign which the *Khudai Khidmatgar* and the Afghan government launched, the bulk of the Pushtun population in the NWFP chose to participate in it. Similarly, it would be difficult to reject the credibility of the referendum, given the fact that the British authorities went to great lengths to hold it objectively and in consultation with the Chief Minister of the NWFP, Khan Sahib.

The Tribal Agencies

The Statement of 3 June 1947 made a different provision for the Tribal Territories (Federally Administered Tribal Areas or FATA). It declared that the ‘agreements with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority’ (Mansergh 1982: document 45).

Following on the statement, the British authorities sponsored a *loya jirga* in the five Tribal Agencies where all the major tribes agreed to join Pakistan. The Afghan government objected to the procedure, stating that the choice for independence had not been given to the Tribal Agencies. It insisted that the Tribal Agencies should have been treated on par with the Princely States and allowed to opt for initial independence if they so desired (Dupree 1980: 485–94). The Indian Princely States outside British India were not directly affected by the statement of 3 June 1947 (Mansergh 1982: document 45). As a result, the 500 odd Native or Princely States outside British India—unlike the NWFP which was part thereof—had three alternatives, namely joining India, joining Pakistan or remaining independent for a short while until they could decide to join either India or Pakistan. Neither were the Princely States administered directly from Delhi, unlike the Tribal Agencies which came under direct jurisdiction of the Ministry of States and Frontier Regions of the central government in Delhi (Mansergh 1977: document 262, 1982: document 45).

Yet these obvious incongruities in the legal status of the NWFP and the Tribal Agencies versus the Princely States did not deter the Afghan government from demanding that they be treated on an equal legal footing.

Conclusion

In view of the above, Afghanistan’s position in regard to the two interrelated issues of the Durand Line and Pushtunistan boils down to four major claims. First, the Pushtuns formed a nation irrespective of which side of the border they lived. Second, the Durand Line was forced on Afghanistan. Third, Pakistan could not be a legitimate successor to British India in respect of the treaties pertaining to the status of the Durand Line. Fourth, the 1947 British-sponsored plebiscite and the subsequent tribal *loya jirgah* could not be valid since they did not include the options of independence and/or amalgamation into Afghanistan of the Pushtun regions of Pakistan.

As we have already discussed, all these claims were roundly rejected by Britain at the time, and subsequently by Pakistan. Neither international law nor the world community would lend much support to the Afghans’ claims against the Durand Line. Similarly it would be hard for Afghanistan to seriously challenge the validity of the 1947 plebiscite. Nor could Afghanistan seriously reject the validity of the tribal *loya jirga* since for all its inherent shortcomings as

an essentially parochial institution, it is what the Afghan state has historically used to validate its own decisions.

On the origins of the Pushtunistan call, it is interesting that the available literature has not as yet made the British connection in agitating it. It seems that the Afghans naively pursued a policy theme which originally was impelled, cleverly manipulated and ironically also opposed by the British in 1947 in order to make Pakistan a viable state out of the Muslim majority regions of British India.

The Durand Line is the only Afghan border determined bilaterally between Afghanistan and its erstwhile neighbour, yet ironically it is also the only boundary which Afghanistan disputes. As much as the exact legal status of this border has been a contentious subject, the foundations on which the Afghans base their arguments are precarious at best. Inaccessibility of relevant information about the legal circumstances of the boundary has contributed to a strong sense of national self-righteousness and self-assertion on the issue in Afghanistan. As a result, no Afghan leader has ever been able to deal with the problem on an objective basis, fearing public censure and disgrace where compromise is needed.

Within the myriad of agreements and understandings relevant to the status of the Afghan-Pakistan border, certainly there are some areas where Afghanistan can negotiate to its own benefit. For example, the obligation that former British India would facilitate free transit trade through its territory for Afghanistan is an essential theme which runs through virtually all the agreements pertaining to the status of the border. But in any such negotiations, however, Afghanistan needs to be mindful that as a matter of principle in international law, Pakistan has full sovereignty over its natural wealth and resources (VCSSRT 1978). This of course includes the right to withhold permission for facilitation of transit trade through its territory. Thus it is important that Afghanistan approaches the resolution of the border dispute with Pakistan with such an attitude that generates confidence and goodwill on the part of Pakistan rather than plunging into a process of legal point-scoring against it.

The resolution of the border and Pushtunistan disputes will significantly help the campaign against Taliban terrorism inasmuch as it would reduce Pakistan's vested interest in the promotion of Islamic radicalism as a counterpoise to Pushtun nationalism. Any initiative aimed at a permanent resolution of the issue, however, needs to be prefaced by such policies that would contribute to an increased public awareness about the legal obligations of Afghanistan as a responsible member of the world community. Declassification of the pertinent documents from the Ministry of Foreign Affairs would be a great help in this regard. Similarly it would be very helpful to Afghanistan-Pakistan relations if the Afghan government made a clean break with the legacy of Pushtunistan propaganda by officially deinstitutionalising the annual commemoration of Pushtunistan Day (31 August) and renaming places such

as *Charrabi-i-Pushtunistan* (Pushtunistan Square) and *Pushtunistan Wat* (Pushtunistan District) in Kabul.

Unless Afghanistan and the international community address the root causes of why Pakistan finds it necessary to encourage militant Islamism in Afghanistan, measures such as the recently proposed *jirga* between the Pushtun tribal leaders from both sides of the Afghanistan–Pakistan border will be in vein. It needs to be recognised that the currently belligerent Taliban are inspired by religious figures and institutions in Pakistan. They do not look up to the tribal leaders and/or tribal institutions such as the proposed *jirga* for inspiration and guidance.

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