

Positions of Afghanistan and Pakistan on the “Durand Line”

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Abstract: This article provides a detailed examination of the border dispute between Afghanistan and Pakistan concerning the “Durand line”. The article also analyzes the approaches of Afghanistan and Pakistan to this line based on historical, ethnic, and legal factors, and thoroughly discusses the official positions of Kabul and Islamabad.

Keywords: Durand line, “Afghan Pandora’s Box”, Loya Jirga, Taliban Movement, “Pashtunwali” Code, *uti possidetis juris*, ASEAN.



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INTRODUCTION

After the establishment of Pakistan in 1947, new problems arose regarding the demarcation of the border between the two countries, and this has been ongoing for almost a century. The “Durand line” established by Great Britain, remains the main source of border issues between the two countries. It should be emphasized that this border conflict is not only a territorial problem between the two countries but also a cause of ethnic conflicts and separatism. Therefore, resolving this problem and finding an acceptable solution is crucial for both sides and for ensuring the security of the entire region. Indeed, the two neighboring states have several grounds to support their positions on this issue. It is appropriate to consider this problem from two different approaches. The first is the historical approach, in which the parties claim to define the boundary on a historical basis. The second is the ethnic approach, which puts forward the principle of self-determination of peoples or nations. In this context, based on the analysis of the expert on Afghanistan studies Suhrob Buronov, it is relevant to state that the approaches of the two sides are distinguished by historical, legal, and ethnic factors.

LITERATURE ANALYSIS AND METHODS

As the article focuses on security issues between Afghanistan and Pakistan, particularly the “Durand line” problem, the research conducted by a scholar on Afghanistan studies Suhrob Buronov in this field and the scientific-analytical opinions presented in his works are extremely relevant. Notably, the scholar's assessment of the “Durand line” as the main “key” to solving the Afghan problem and his interpretation of this line using the term “Afghan Pandora’s Box” have opened new horizons for future researches on Afghanistan studies. In his scientific research, S.Buronov analyzes the positions of Afghanistan and Pakistan regarding the “Durand line” and

concludes that resolving this issue would lay the foundation for lasting peace in Afghanistan. Such considerations are also reflected in the scholar's "*Geopolitics of Uzbekistan in the Processes of Establishing Peace and Stability in Afghanistan*" monograph. The information presented in this monographic study plays a significant role in the in-depth examination of Pakistan's influence on the political situation in Afghanistan, the ethno-territorial issues related to Pashtuns, and the reasons behind the emergence of the Taliban movement on the Afghan political scene.

It should be noted that S.Buronov's monograph "The Influence of the Taliban Factor on the Regional Security of Central Asia" is considered an important source that proposes new theories and approaches in the field of Afghanistan studies. Furthermore, this scientific work is a major work that comprehensively analyzes the formation of the Taliban movement in Afghanistan and the role of this movement in the policies of major and regional states. In this book, the scholar provides detailed information on the differences and similarities between the "Taliban 1.0" and "Taliban 2.0" governments, the establishment of the "Durand line" and the impact of the "Pashtunistan" factor on Afghanistan-Pakistan relations, the current state of relations between the two countries, and the influence of terrorism and extremism threats on regional security. One of the scholars who studied the "Durand line" is Sahak Nabi (currently a US citizen), who is originally from Afghanistan. S.Nabi's doctoral dissertation, titled "The Origin of Anglo-Afghan Relations: Clarifying the Political Status of the Durand line (1893-2021)," is directly relevant to our research. This dissertation thoroughly analyzes the historical, legal, and political aspects of the disputed border between Afghanistan and Pakistan – the "Durand line." It also notes that this line was established based on an agreement between the historical figures mentioned above, resulting in Afghanistan losing approximately half of its Pashtun population and significant territories in areas such as Swat, Bajaur, Waziristan, Chagai, and the Khyber Pass. According to the scholar, the "Durand line" remains an "unsolvable knot" due to legal ambiguities, ethno-national claims, and geopolitical rivalries. S.Nabi recommends reassessing existing approaches.

This article employed root cause, retrospective, and content analysis methods.

DISCUSSION

Afghanistan's approach

Historical factor. The primary reason Afghan politicians, scholars, and experts do not recognize the Durand Agreement is that it was concluded with the British government, not with Pakistan. Consequently, the agreement can be considered essentially invalid[1]. This is further confirmed by Aziz Arianfar, an Afghan diplomat and director of the Center for Afghan Studies in Germany, who states: "The Durand line agreement was concluded not with an independent Pakistan, but with British India, and this factor nullifies all previous agreements"[2]. In the initial years following Pakistan's establishment, Afghanistan opposed the recognition of the "Durand line" as an international border, and the Afghan government even voted against Pakistan's admission to the UN in September 1947[3]. Subsequently, after Pakistan became a full member of the UN, Afghan representative Hussein Aziz explained Kabul's official stance on the situation at the UN General Assembly: "We will not recognize the North-West Frontier Province as Pakistani territory until the peoples of the North-West Frontier Province are given the opportunity to be free from any external influence"[4]. On July 26, 1948, the Afghan government officially annulled all existing treaties concerning the Afghan-British India border[3]. Following the bombing of an Afghan village by the Pakistani Air Force in 1949, the Afghan government immediately convened the Loya Jirga (Grand Assembly) and firmly declared its refusal to recognize the "Durand line" and any previously signed agreements[4]. This position has remained unchanged regardless of who has held power in Afghanistan[5]. Therefore, Kabul's official position regarding the "Durand line" is that Afghanistan does not recognize it as an international border[6].

Indeed, the official recognition of the “Durand line” as the border between Afghanistan and Pakistan is perceived as a matter of life and death for the Pashtuns who have governed Afghanistan. A striking example of this is Muhammad Najibullah’s refusal, as the President of Afghanistan, to sign a document that would recognize the “Durand Line” as the official and permanent border between Afghanistan and Pakistan. At the time, he had been captured by an armed Taliban group that stormed the UN mission building and was holding him in a residence that had belonged to Afghan intelligence until 1992, but was later taken over by Pakistani intelligence. Najibullah, along with his brother Shopur Ahmadzai, was brutally murdered by the Taliban in a manner that shocked all Afghans when he refused to sign a special document presented by Pakistani intelligence officials and attempted to escape from his guards[7]. In 2017, then-President of Afghanistan Hamid Karzai also declared that Afghanistan would “never accept” the “Durand line” as an international border between the two countries[8]. According to this position, the “Durand line” is considered a “disputed border demarcation.” The unilateral border barriers initiated by Pakistan provoked strong official protests from the Afghan government.

For instance, Afghan Vice President Amrullah Saleh wrote the following on his personal Twitter page: “No Afghan politician can ignore the issue of the ‘Durand line.’ This is a matter that requires discussion and resolution. It’s unrealistic to expect us to simply give it away. Peshawar was the winter capital of Afghanistan.[3]” It can be noted that through these statements, A.Saleh revealed the true intentions of the Afghan political elite.

In summary, neither the Taliban movement, which governed the country from 1996 to 2001, nor the post-Taliban governments of Hamid Karzai and Ashraf Ghani accepted the “Durand line” as a legal boundary[9]. Furthermore, the position of the Taliban representatives, who regained power in Afghanistan in August 2021, regarding this line remains unchanged to this day.

Legal factor. The Afghan government claims that the “Durand line” was established under pressure[1]. According to Article 52 of the 1969 Vienna Convention on the Law of Treaties, a treaty is invalid if it is concluded by means of the threat or use of force in violation of the principles of international law. The term “force” usually includes economic and political pressure. Based on this rule, the Durand Agreement has been deemed invalid by Afghan sources[12]. Furthermore, Article 50 of the same convention clearly states that any treaty concluded as a result of bribery or corruption is invalid. The Amir was supposed to receive annual payments of £60,000 and military aid after signing the treaty[13]. Another noteworthy aspect of the matter is that Amir Abdurrahman, after signing the “Durand line” agreement, sent numerous letters declaring its invalidity and attempted to annul it[14].

According to renowned Afghan scholar Hasan Kokar, the “Durand line” agreement, signed in 1893, lost its validity 100 years later, in 1993. Additionally, Afghanistan claims that the Anglo-Afghan Treaty of 1921 has also lost its force due to the cessation of British rule in India[10]. Indeed, not only has more than a century passed, but Afghanistan has also experienced several changes in government. This, in turn, necessitates the implementation of policies that take into account the specific positions of each group that has come to power.

Ethnic factor. Most Afghans emphasize that all Pashtuns around the “Durand line” and in the North-Western Frontier Province (NWFP) are Afghans, not Pakistanis, and they cannot distinguish between Afghan and Pakistani Pashtuns. Rea Abraham, a researcher at the Center for Air Power Studies in New Delhi, writes important quotes in her article that highlight the ethnic factor: Pashtuns adhere to the “Pashtunwali” code. This is a set of ethical rules that is considered superior to any state law. For Pashtuns, despite changes in politics, ethnic origin is even more important than religious beliefs[2]. Based on this factor, Afghanistan encourages Pashtuns in Pakistan to utilize the principle of self-determination of peoples or nations in international law. In particular, the map of ethnic community distribution in the regions shows that the Pashtun population is significant not only in Afghanistan but also in Pakistan. Furthermore, in the lower

part of the “Durand line,” in Afghanistan and especially in the southern regions of Pakistan, the Baloch also constitute a majority.

Political factor. Sher Mohammad Abbas Stanikzai, then Deputy Foreign Minister of the Taliban-led Interim Government of Afghanistan, stated, “The Durand line is not only a problem for the government but for the entire nation. We entrust the responsibility to the nation, therefore the nation will make the decision.” Naturally, his reference to the “entire nation” alluded to the Pashtuns living on both sides of the “Durand line.” In essence, this implies the nullification of the border’s legitimacy from the Afghan perspective[15]. Zabihullah Mujahid, the spokesman for the Taliban-led Interim Government of Afghanistan, declared that “the issue of the Durand Line remains unresolved, but the construction of fence barriers along the border by Pakistan will cause conflicts within the nation on both sides of the border, which is equivalent to dividing the nation in two”. He was also referring to the Pashtun communities, which constitute the largest ethnic group in Afghanistan and the second largest in Pakistan[16].

It should be particularly noted that recently, Pashtun and Baloch separatists have strongly opposed the installation of fenced barriers along the border by Pakistan, considering it an insult to their nationalities. Afghanistan denies Pakistan's claims that installing a fence would prevent terrorists and smugglers from crossing the border.[17] Despite changes in the state structure and form of government in the country, as well as transitions of power, it can be observed that the policy of non-recognition regarding Afghanistan’s position on the “Durand line” still continues. For example, at a meeting held in Logar in February 2024, commemorating the 35th anniversary of the withdrawal of Soviet troops from Afghanistan, the former Deputy Minister of Foreign Affairs of the Taliban-led Interim Government of Afghanistan, Sher Mohammad Abbas Stanikzai, emphasized this issue in his speech: “We have never recognized and will never recognize the ‘Durand’. Today, half of Afghanistan is on the other side of the ‘Durand line’, separated. ‘Durand’ is a ‘line’ drawn by the British into the hearts of Afghans. Today, our neighboring country is ruthlessly deporting refugees and telling them to return to their homeland”[18].

Additionally, during his visit to the Torkham border crossing point in January 2024, Nurullah Nuri, the acting Minister of Border and Tribal Affairs of Afghanistan, stated in a media interview: “We do not have an official border with Pakistan. This (‘Durand line’) is an imaginary line between us”[19], thus reiterating the Taliban’s position on this line.

Based on the above, it should be emphasized that all forces in Afghanistan, particularly the former Presidents and government representatives of the Islamic Republic of Afghanistan, and especially the representatives of the Taliban movement, which had close ties with Islamabad, during their first period in power (1996-2001) and from August 15, 2021 to the present day, have not officially recognized the “Durand line” as the border between Afghanistan and Pakistan. Even the parties that fought each other in Afghanistan between 2001-2021 held the same position on this issue. This clearly demonstrates the attitude not of the entire Afghan society, but specifically of the ethnic Pashtuns who have been in power in Afghanistan to this day, towards the border problem.

Pakistan’s approach

Historical factor. According to evidence presented by Pakistani expert Muhammad Jamil, Pakistan, as the successor state of British India, has full sovereignty over the territories and their inhabitants located east of the “Durand line” and possesses all the rights and obligations of the successor state. Pakistan rejects claims that the treaty was forcibly signed, since it was signed in Afghanistan and ratified in subsequent pacts of 1905, 1919, and 1921. Moreover, Muhammad Jamil writes that nowhere in the treaty was it stated that it was concluded for 100 years[2]. Indeed, several sources mention that official Islamabad defends its position on the “Durand Line” based on four treaties signed after the Durand Agreement in 1905, 1919, 1921, and 1930[4]. The international community also approves of Pakistan’s approach to the “Durand line.” In particular,

British officials have repeatedly supported Pakistan's position. For example, in 1950, the British Secretary of State for Commonwealth Relations, Philip Noel-Baker, citing the views of the King of Great Britain, stated that Pakistan is the heir to the rights and obligations of the British Indian government under international law, and that the "Durand line" is considered an international border[21]. Furthermore, discussing the position of the Pakistani elite on the issue of the "Durand Line," Pakistan's Foreign Minister from 1997-2000, Shamshad Ahmad, emphasized that this agreement defined the border between British India and Afghanistan and was internationally recognized. According to the spokesperson of Pakistan's Ministry of Foreign Affairs, Muazzam Khan, Pakistan considers the issue of the "Durand line" to have been resolved after Pakistan and India gained independence in 1947[22].

According to Pakistani historian Lutfur Rahman, the "Durand line" treaty was intended to be permanent and had already established the border between Afghanistan and British India. Consequently, under international law, it cannot be unilaterally abrogated. Amir Habibullah, who succeeded Amir Abdur Rahman, also signed an agreement with the British Raj in 1905, which defined the "sphere of influence" of that time. Using rare original map copies found in Pakistan, L.Rahman emphasizes that the entire Pakistan-Afghanistan border, with the exception of a 22-kilometer area, was demarcated by border commissions established after the signing of the treaty[24].

Legal factor. Pakistan's official position on the legal status of the "Durand Line" is based on the assessment that this line is an international border separating the sovereign territories of Afghanistan and Pakistan. This position is even expressed in the Constitution of Pakistan[1]. Pakistan's approach is also supported in international law and practice[2]. Pakistani scholar Tahsin Usman cites the norms of the Vienna Convention on Succession of States in respect of Treaties as evidence from international law. After 1947, the Kabul government appealed to Pakistan with a demand to alter the "Durand line" to prevent the division of Pashtun tribes. This proposal was rejected by Pakistan on the grounds that it was impossible to restructure or nullify the border, as this convention had unanimously approved the principle of "uti possidetis juris". In this case, the rights to bilateral treaties with or between colonial powers are transferred to their successor sovereign states. Afghanistan is unable to reconstruct or modify the "Durand line"[2]. Furthermore, Pakistan (representatives) categorically rejected the Afghans' claims, emphasizing that the treaty is legally binding and cannot be reviewed. Pakistan stressed its inheritance of British India's authority, noting that its claim was based on the principles of international law regarding territorial succession. The United States, Commonwealth countries, and Great Britain also recognized this treaty (referring to the "Durand line" agreement) as legal[25].

In 1956, this position of official Islamabad was also supported by its allies in the international arena, such as members of the Southeast Asian Treaty Organization (SEATO; English: South-Eastern Asian Treaty Organization). At the Organization's Council, member states declared that they would continue to recognize the "Durand line" between Pakistan and Afghanistan as an international border[21]. This, in turn, served to further strengthen Pakistan's position from a legal standpoint.

Ethno-religious factor. Besides Pashtuns, other tribal ethnic groups also reside along the borders of Afghanistan and Pakistan. Furthermore, both Afghanistan and Pakistan are Islamic states. Another Pakistani scholar, Azmat Hayat Khan, pays special attention to Pakistan's stance on the ethno-religious factor through some official information regarding the border between the two countries. Pakistan's former Foreign Minister Hussain stated that religion was the primary means of integrating Pashtuns into Pakistan[2]. According to the Pakistani historian Juma Khan Sufi, the center of Pashtun culture and history was not Kabul, but the Peshawar Valley[23]. Officials in Islamabad argue that if Afghanistan invokes the principle of self-determination under international law for Pashtuns, it could backfire against itself. There are more Pashto speakers in Pakistan than

in Afghanistan. According to estimates, Pashtuns do not constitute more than half of Afghanistan's total population; the rest are Afghan Tajiks, Hazaras, Afghan Uzbeks, and Afghan Turkmens. However, if this principle were applied to Afghanistan itself, it would threaten its statehood, as it would then have to cede its territories to neighboring states[2]. Indeed, while the northern part of Afghanistan is mainly inhabited by Uzbeks and Tajiks, many Balochis populate its southern borders.

The "Durand line" plays a crucial role for Pakistan, as it encompasses over 60% of its borders with neighboring countries and serves as a factor in maintaining the country's territorial integrity[22]. From this perspective, the Pakistani government has been striving to implement several practical measures to alleviate tensions along the border, including the installation of fencing along the "Durand Line." In 2006, the Pakistani government proposed to Kabul the installation of fence barriers on the mountainous border, but Islamabad's proposal was rejected[26]. Pakistan's fencing of the Afghanistan-Pakistan border with a barrier wall has been a central project in the security policy of the Pakistani Army Chief, General Qamar Bajwa, for the country's western border. Although this project has been very costly for Pakistan, with nearly \$532 million spent on it, Pakistan's actions had two main political objectives:

- 1) to control the flow of migrants and the smuggling of illegal goods across the border;
- 2) to propose the implementation of border demarcation, which had been rejected by previous Afghan governments;

Although the movement of illegal goods did not slow down, the movement of civilians and migrants was mainly limited to authorized border crossing points[27]. To combat terrorism and the cross-border flow of narcotics, Pakistan began constructing a border wall along the "Durand line" in 2018. According to the Pakistani side, the barrier will improve the security environment in both Pakistan and Afghanistan. A high-ranking Pakistani army officer explained that "the wall greatly helps to stop the cross-border movements of terrorists"[28]. By 2019, approximately 900 km of this wall had been completed[29]. Even during the pandemic, work on the barrier continued uninterrupted for 5 years. Apparently, Islamabad's approach was intended to strengthen the "Durand line" with nearly 1000 fortresses built along the border and barriers controlled by armed garrisons, and most importantly, to restrict all Pashtun threats[30]. However, the situation in this area began to escalate further.

Following the border shooting incident on October 27-28, 2019, the Ministry of Foreign Affairs of Pakistan issued the following statement: "We consider the Pakistan-Afghanistan border to be the officially recognized international border between the two countries in accordance with all relevant international laws and conventions. Afghanistan's position on this matter is unfounded"[9]. In this context, it is appropriate to cite the opinion of the renowned Russian scholar V.Belokrenskiy: "The complexity of the balance of regional and bilateral forces makes it impossible to predict how the 'Durand line' issue will develop. The legality of this border may remain a contentious issue for a long time"[22]. Indeed, even today, the conflict over the official recognition of this border line continues to serve as a factor cooling Kabul-Islamabad relations.

In the current developments in Afghanistan, one can observe Islamabad emerging as a moderator. This necessitates that Pakistan's geostrategy effectively utilize the aforementioned interests. Otherwise, there is a possibility that the Taliban factor could become a threat to Islamabad[31]. It should be noted that for a long time, Pakistan's military-political establishment used Pashtuns as a means of influencing Afghanistan. Naturally, there were reasons for this related to the prospects for Pakistan's territorial integrity, but after the establishment of the "Taliban 2.0" government, conversely, the Pashtun issue is becoming a factor influencing Pakistan itself[7].

CONCLUSION

In general, Afghanistan and Pakistan provide historical, legal, ethnic, and geopolitical justifications for their positions on the “Durand line.” The “Durand line” issue is characterized by its scale and complexity, as it not only affects the national and regional security of Afghanistan and Pakistan but also may become a crucial foundation for ensuring security in the South Asian region and even globally. The fact that this problem has remained unresolved for over a century has led to the emergence of extremist and terrorist groups in these territories, the proliferation of drug trafficking, the generation of refugee flows, ethnic and inter-tribal conflicts, and frequent separatist actions by tribes living on both sides of the border. Therefore, resolving the “Durand Line” issue through political negotiations serves as a guarantee for development and stability throughout the South Asian region.

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