

ANALYSIS OF DURAND LINE MANAGEMENT MECHANISM

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Abstract

Being a gate way to Central Asia, the geo- strategic setting of Pakistan and Afghanistan delivers a shortest and most cost effective course for routing vast energy reserves of Central Asia to the outer world. . It is a serious stumbling block in the way of their affable relationship which is impeding development and affluence not only in their bilateral interactions but in other fields as well. Both the countries should comprehend the urgency of settlement of this issue so that they can utilize their vitalities to other aspects of mutual interests. It is the time to evaluate border management between Pakistan and Afghanistan with a vision to propose sustainable mechanism to end cross border terrorism, smuggling and illegal border immigrations. Afghanistan ought to accomplish its historical obligations and adhere to the rules of international law. On the other hand Pakistan should strive for diplomatic resolution of outstanding disputes with Afghanistan. This paper examines the border management between Pakistan and Afghanistan, contemporary models of border management and way forward on border management between Pakistan and Afghanistan. To analyze border management between Pakistan and Afghanistan with a view to suggest sustainable mechanism to help in stopping cross border terrorism, smuggling and illegal border immigrations.

Key words

Border management, Afghanistan, Pakistan, The Durand Line, terrorism, transit trade

Introduction

Historically, Afghanistan has remained astride the expedition route from central Asia into the Indian subcontinent. It was also the shortest course from central Asia to the Indian Ocean. The Himalayas block entrance from central Asia to the Indian subcontinent and to the Indian Ocean. Their western most expansion, the Hindu Kush, is accessed by the Salang Pass, which divides northern Afghanistan (and

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Central Asia) from the rest of Afghanistan, and the Khyber Pass via the Spin Ghar



Mountains between Afghanistan and Pakistan, in turn an extension of the Hindu Kush. For ages, Afghanistan has been attacked over by conquerors, both for its mineral reserves and also due to its strategic position at the junction of central and south Asia. Even in the technologically steered world of the twenty-first century, geography still matters. Afghanistan became a hostage between the Russian Empire and Great Britain in “*the Great Game*” for control of central Asia. In an endeavor to secure command of the strategic Khyber Pass, in 1893, Great Britain sent a British diplomat, Mortimer Durand, to discuss an agreement to allocate the border between the Emirate of Afghanistan and British India. The ensuing accord resulted in a frontier that ran from the Karakoram Range in the northeast coursing south through the Spin Ghar peaks (*Safed Koh and Toba Kakar Ranges*) before hitting west along the Chaghi Hills to the border with Iran. The initial pact was only a page long. The agreement was composed in English with copies in Dari and Pashto. The newly formed state of Pakistan inherited the borderline defined by the 1893 Durand pact and endorsed by the succeeding treaty of Rawalpindi (1919) that concluded the Third Anglo-Afghan war¹. The government of Afghanistan on the other hand had, later, declined to acknowledge that the borders signified by the Durand Line were legitimately binding. Pakistan has always looked towards Afghanistan as a potential ally in the region, recognizing that landlocked Afghanistan is economically reliant on Pakistan, and give that both states are Muslims, Pakistan considers Afghanistan as her natural friend and expects to give up its impractical territorial assertions and preserve friendly cordial and equally beneficial relations. International borders are geographic

distinctions between the nation states. Borders take the form of physical land frontiers, maritime boundaries or air edges. However, the land boundaries, more than air and sea, classically demonstrate the territorial appearance of a state. Pakistan shares 7,092 kilometers edging with its neighboring states which includes 2,611 kilometers with Afghanistan. Eleven out of the 34 provinces of Afghanistan share a boundary with Pakistan¹. Ever since the independence of Pakistan in 1947, the Afghan Government has time and again professed that it doesn't acknowledge Durand Line as International border between both the countries. Afghanistan was the solitary state which voted against Pakistan's admission into United Nations in 1948. Peace and constancy in Pakistan has been frequent victim of detrimental mindset of insolence by Afghan Governments since 1951².

Pakistan has been accommodating Afghan Refugees for the last thirty five years which has added as a major factor into prevailing lawlessness, drug / weapon culture, terrorism and endless illegal border crossings from Afghanistan. Pakistan launched Operation Zarb-e-Azb in June 2014 and accomplished unparalleled success against terrorists by pull to bits their infrastructure and jettisoning them from their hideouts in Federally Administered Areas (FATA). Yet, Afghanistan due to her peripheral motives machinates against Pakistan on every international forum. Sporadic Border defilements by Afghan Law Enforcement Agencies and assaults / fire raids by Terrorists from Afghanistan side into Pakistan are on rise. Regardless of Pakistan's solemn efforts and exceptional sacrifices to support Afghanistan for corroborating peace, hostile supported and confrontational statements / blame game are persistent from the highest level of Afghan Government.

1. Erstwhile to military operations in FATA, Kabul was charging Islamabad for partaking terrorist havens in the tribal areas³. At the same time it is not compassionate of joint rheostat on border to buttress these illegal border crossings. Relatively, Afghanistan has asserted that tribal militants are absconding to its side due to Operation Zarb-e-Azb. Hamid Karzai, the then Afghan President, termed General Pervez Musharraf's offer of building a wall and a enclosure along the border '*untenable and opposed to ease of movement of tribesmen*'⁴
2. Recently, tensions reinforced between Pakistan and Afghanistan when Kabul demurred to the border fencing within the Pakistan domain and officially remonstrated to Pakistan over the dispute and Afghan troop's commenced firing on the Pakistan posts and civilian population in

Landikotal. Due to the inimical actions, Pakistan was coerced to send more troops to the border. It has irrationally protested to Pakistani endeavors to put into effect biometric identification system at the border, building of fence wire inside Pakistan's own land and erection of ditch in Baluchistan.

3. The easy entrée through the unfortified porous border arrange for an opportunity to miscreants to trigger terrorism acts inside Pakistan. For effective counter terrorism measures, a sturdy border control management is imperative at the Pak-Afghan border to accomplish durable reconciliation and stability in the region.

Border Management between Pakistan and Afghanistan

Border Management is crucial for national and regional stability, economic evolution and defense. Borders, around the world, are physically controlled by the border police or paramilitary forces and in undeniable incidents by the armed forces, in concurrence with immigration departments. Nevertheless, it is a convoluted national responsibility encompassing a host of agencies. It also comes around for effectual communication with the corresponding organizations of the neighboring countries.

The border with Afghanistan is exceptional from many angles. A total of 11 out of 34 Afghan provinces affix three federating units of Pakistan to include Baluchistan, Khyber-Pakhtunkhwa and Federally Administered Tribal Areas (FATA). Ethnically, the Pashtun population straddles the Pakistan-Afghanistan border. Moreover, there are 23 divided villages, six in FATA and Khyber-Pakhtunkhwa and 17 in Baluchistan. An operational border management would undoubtedly profit both the countries in all fortes such as political, socio-economic and security.

In addition to the routes supplying the three trade corridors, there are about 100 frequented and unfrequented routes. Many of these routes are susceptible to smuggling. Some 10,000 to 30,000 people cross the Chaman and Torkham border points per diem, which includes legal immigrants, traders, personnel from Non-Governmental Organizations (NGOs) and North Atlantic Treaty Organization (NATO) assets. Besides, 5,000 to 6,000 illicit crossings take place daily via both frequented and unfrequented routes. There are hundreds of border posts secured by Pakistan's security forces on the Pakistani side of the border and a few by the Afghan National Army (ANA) and Afghan Border Police⁵ (ABP).

Pakistan's Stance over Border Management with Afghanistan

It is the right of every sovereign state to put into effect the right to identify and permission under any International law. However, countering to Afghan opposition to construct gate at Torkhum Post, the Pakistani Foreign Office spokesperson Nafees Zakaria said⁶ *“We’ve continued to make sincere and serious efforts for bringing peace and stability to Afghanistan. The Afghans are being misguided by those who are not interested to see peace in Afghanistan. Pakistan believes that effective border management serves mutual interests”*. *“We’ve repeatedly made it clear that these border management activities are basically to address the concerns of both the sides and the concerns directly relate to terrorism”*. *“This is a start and gradually we will establish border management infrastructure at many other crossings,”* *We seek cooperation from the Afghan side”*⁷.

Tighter corroboration procedures of visas and passports, introduction of biometric machines, FIA launching arrival and departure booths, commencement of passport scanning machines, scrutinizing cargo vehicles and placing a master computer linked with the Pakistan's National Database and Registration Authority (NADRA) and the interior ministry's data bank were not channels that deserved a vehement Afghan military reaction. By firing mortars at such border formations, the Afghan government is not serving its people⁸.

Afghanistan's Reluctance to implement its Commitments

Afghanistan has been uncovered to its own assurance and agreement held on 13 – 14 May 2009 known as Islamabad Declaration during third *Regional Economic Cooperation Conference on Afghanistan*⁹. Following are the relevant excerpts reciprocally decided upon are:-

- a. Efficient, incorporated and modern border management mechanisms are indispensable for encouraging security and development. Countries in the region should embrace explicit confidence building measures with a vision to promoting efficient border supervision. To foster revenue collection and bring together intelligence on contraband items, Afghanistan and its neighbors approve to share customs information electronically at authorized border crossing points. A new Customs Academy is being inaugurated in Afghanistan and will be connected to similar institutions in the region to share proficiency and best practices on customs collections and systems.

Afghanistan and Pakistan have also come to an agreement to modernize border management infrastructure at Torkham and Weish on an importunate basis¹⁰.

- b. Collaborative efforts will be made to recuperate the security and integrity of national borders by introducing integrated modern border management regimes and consolidating and coordinating counter narcotics, law enforcement and customs strategies¹¹.

Afghan Refugees

Refugees are never welcomed by host states. An exemplification of this is the evacuation of Syrian refugees and the unwelcome reaction they have received in Europe. The destitutions that the Syrian refugees face currently are the same hardships that the Afghan refugees confronted when they left their war-torn country and relocated into Pakistan in the 1980s. Unlike the conduct meted out to Syrian refugees by some European countries, however, Pakistan hailed the Afghan refugees with open arms. The world endorsed Pakistan for accommodating the largest number of refugees worldwide.

As per Afghanistan Migration Profile Prepared for the International Organization for Migration (IOM) by UNHCR over 3 million Afghans resided in Pakistan in 2005. Of these migrants 51 per cent were male and 49 per cent female. The greater part of Afghans in Pakistan (2,485,120 people, 81.5%) were ethnic Pashtuns. The majority of inhabitant Afghans (82.6%) revealed having no intention to return to Afghanistan. Leading reasons for not returning to Afghanistan comprised the absence of shelter and livelihood prospects in origin communities¹².

There is no operative system of preserving record on inter border crossers. As per survey carried out by IOM while official records stated that 150 people traversed the border at Torkham on 11 September 2008, the tallying exercise discovered 12,934 border crossings on the same day. High variances between official records and those collected by the research team were also witnessed on other days of data collection. Based on these inconsistencies, it can be ascertained that the border police and passport office at the Afghanistan-Pakistan border are not able to satisfactorily control or document the nature and size of definite cross border movements¹³. The major issues area include following:-

- a. **Cross-Border Attacks and the Foreign Terrorists.**

During the last few years, this has transpired as one of the most grave border issues. The terrorists from Tehrik-e-Taliban Pakistan (TTP) are shrouding in and operating from their havens in Kunar and Nuristan provinces of Afghanistan since 2010. The nuisance is not receding anyway and demands austere action by the Afghan government and the Afghan National Security Forces (ANSF).
- b. **Drug Trafficking.** One of the critical threats along the Pakistan-Afghanistan border is from the interchange of drug traffickers. Whereas Pakistan is a poppy-free country since long, narcotics almost make up for 50 percent of Afghanistan's GDP according to international sources. About 2.5 million Afghans are subject directly to the narcotics production and trafficking. Round about 94 percent of world opium production transits the region, Afghanistan being the central source. It proffers a health security threat not only to the Pakistani general population but other countries beyond Pakistan, too.
- c. **Pak-Afghan Politico-Military Communication.**

Despite security challenges tarnished by the terror acts on both peripheries due to the nature of border, Pakistan and Afghanistan must evolve a functional sense of bilateralism which is missing right now particularly after Torkhum incident.
- d. **Operation Zarb-e-Azb and the Border Management.**

Operation Zarb-e-Azb is significant in the context of border management from many perspectives. The Pakistani government had already asked the Afghan government to seal the escape routes from North Waziristan into Afghanistan but she did not shield the border. Rather the escaping terrorists as a result of Operation Zarb e Azb were welcomed and given shelter / guard in Afghanistan to be used in alternative against Pakistan. NATO and ISAF share this responsibility. Second, Mullah Fazlullah, the topmost leader of the TTP, along with some of his companions,

is living in Afghanistan. He has extensive liberty to move around in Afghanistan and plan and steer terror acts in Pakistan. The Afghan government needs to record all those moving across the border in any of the two directions¹⁴.

Durand Line Myths and Reality

Durand Line is the 2611 kilometers border between Afghanistan and Pakistan, from Wakhan-GB-Xinjiang Confluence (*where Pakistan, Afghanistan and China meet*) in the North to Chagai-Nimroz-Zahedan confluence in the South (*where Pakistan, Afghanistan and Iran meet*)¹⁴. The border was mutually drawn up in the 1893 between the Government of British India and Afghanistan, corresponding to the terms of the Durand Line Agreement. The Durand Line Agreement was inked between Sir Henry Mortimer Durand (*on behalf of British Indian Government*) and Ameer Abdul Rahman (*Ameer / King of Afghanistan*) on 12 November 1893 at Kabul, Afghanistan.¹⁵

According to the prominent international law expert, Ahmer Bilal Soofi, it is a miscalculation that the text of the Durand Line Agreement permits easement rights, thereby facilitating cross border movement at will. *“These easement rights have nowhere been expressly mentioned or implied in the Agreement but have evolved outside its framework through practice by tribes divided by the Durand Line.”*¹⁶

As per the international law principle of *uti possidetis juris* – directly relevant in the perspective of decolonization – Afghanistan and Pakistan like other newly decolonized states are obligated to have the similar borders that their preceding determined area had before their independence¹⁷.

Therefore, both sides need conjointly agreed legislation, which can characterize easement rights along with issuance of exceptional ‘easement right user IDs’ to tribesmen. Furthermore, the two states can espouse templates like Integrated Border Management of the European Union of physical fencing as built along the US -Mexico border¹⁸.

While the Durand Line founds the legal border between Pakistan and Afghanistan under International Law, the legal procedures of ‘easement rights’ to the various Pashtun and other tribes along its sides has come to be misconstrued as facilitative of cross border movement at will. The easement rights have nowhere been explicitly stated or implied in the Durand Line Agreement of 1893 but have

grown outside its framework through practice by tribes alienated by the Durand Line¹⁹.

For their part, the Afghan side exhibits several arguments to support their view on the issue. Assessment of each argument needs to be analytically scanned on the basis of facts.

a. Argument 1. (Durand Line Agreement had a life of 100 years, so it expired in 1993)

- (1) **Fact:** This is simply not true. Text of the original 'Durand Line Agreement shows that, there is section that formulates it time-barred.

b. Argument 2. (Durand Line Agreement was signed by Ameer Abdul Rahman Khan against his resolve (under duress & British army pressure) and without accessing the other Afghan government representatives).

- (1) **Fact No.1** Durand Line Agreement was signed on 12 November 1893 but it was essentially a short-lived 'principal document' with a few paragraphs (without any detailed surveys and real-time differentiation of the long border). The real demarcation was approved by four commissions organized for the purpose jointly by the British Indian government and Ameer of Afghanistan²⁰:-

- (a) Hindukush Commission (Wakhan to Khyber)
- (b) Kurram Commission (Kurram region up to Tochi)
- (c) Waziristan Commission (Waziristan region up to Gomal)
- (d) Balochistan Commission (Gomal to Pak-Afg-Iran Tri-Junction)

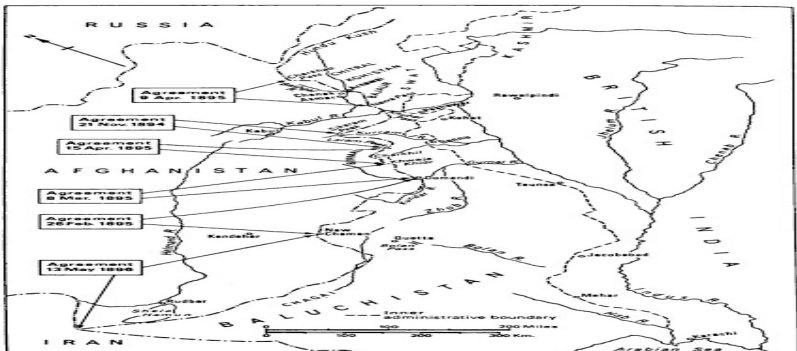


Figure 1 Courtesy; Durand Line: Myths and Facts [Web Blog Post]. Retrieved from <http://zalmayx.blogspot.com/2016/6/durand-line-myths-and-facts-.html>

- (2) **Fact No. 2** The four commissions defined Seven different sections of the Durand Line from 1894 to 1896 as under²¹:-
- (a) Sir Richard Udny (British Side) and SardarGhulamHaider Khan (Afghan side) demarcated the border from Charkhao Pass (Chitral) up to Nawa Pass (Bajaur) through an accord dated 9 April 1895. (Note: The region from Nawa Pass via Mohmand up to Sikaram top remained dubious and was reconciled by the Rawalpindi Anglo-Afghan Agreement of 1919).
 - (b) J. Donald and SardarShireenDil Khan demarcated the frontier from Sikaram peak to Laram peak (Tochi) by an agreement dated 21 November 1894.
 - (c) H.A Anderson with local Afghan Chiefs recommended by the Ameer demarcated two fragments of the boundary; from Laram peak to Charkhil and ahead to KhwajaKhidr (Birmal) via two distinct agreements both dated 15 April 1895.
 - (d) L. W. King with local Afghan Chiefs nominated by the Ameer demarcated the boundary from KhwajaKhidr to Domandi (Gomal) through an accord dated 8 March 1895.
 - (e) A. H. McMahan with SardarGul Muhammad Khan demarcated the border from Domandi to New Chaman via an agreement dated 26 February 1895.
 - (f) A. H. McMahan with Sardar Muhammad Umar Khan established the boundary from New Chaman to Koh-i-Malik Siah at the tri-junction with Iran by a deal dated 13 May 1896.
- (3) **Fact No. 3** The effort of these boundary commissions (*comprising dozens of high-ranking Afghan government representatives and tribal chiefs*) spanning 2-3 years do not even distantly look like the Durand Line Agreement was done '*under duress by a solo Ameer without taking his government onboard*'.
- (4) **Fact No. 4** The Afghan Ameer acquired an *annual allowance of Rs 1.8 million* from the British government as a consequence of the Durand Line Agreement²². This sum was contentedly received year after year, by Ameer after Ameer until 1919, when the grant was ended by British government, as a penance for commencing the 3rd Anglo-Afghan War. It can be debated that one cannot be 'happily paid' (and claim on being paid) for 26 long years for a contract one signs '*under duress*'.
- (5) **Fact No. 5** As an alternative of duress/forced signature, the Afghanis truly acquired thousands of square km area that

didn't belong to them prior to 1893. Afghanistan got the formerly autonomous Kafiristan region (North of Kunar, upto Badakhshan). Ameer Abdul Rahman seized this area after Durand Line settlement; force-converted its population to Islam and called the region Nuristan.

c. **Argument 3. (*Durand Line Agreement was a 'short term' agreement made by Ameer Abdul Rahman with the British rule and it perished with his death in 1901.*)**

(1) **Fact** Durand Line Agreement was endorsed by succeeding Afghan rulers after Ameer Abdul Rahman, as under:-

(a) After death of Ameer Abdul Rahman, his son Ameer Habibullah Khan and British envoy Sir Louis Dane reiterated the agreement by signing 'The Treaty of the Mole' (also known as Dane-Habibullah agreement), on 21 March 1905, at Kabul²³.

(b) After 3rd Anglo-Afghan War, Afghan government mission steered by Interior Minister Ali Ahmad Khan signed the 'Rawalpindi Agreement' on 8 August 1919 which reasserted the Durand Line Agreement. Parenthetically, it was first time that the Afghan Government (not Ameer in personal competence) sanctioned the Durand Line Agreement²⁴.

(c) On 22 November 1921, the 'Kabul Agreement' was signed by British Representative Sir Henry R.C Dobbis and Afghan government minister Mahmood Tarzi, which again re-affirmed the Durand Line Agreement²⁵.

d. **Argument 4. (*Durand Line Agreement was between British India and Afghanistan. With the partition of British India in 1947 (into Pakistan and India), the held agreement also terminated.*)**

(1) **Fact No.1** The "Vienna Convention on Succession of States in Respect of Treaties (VCSST)" deals with disputes belonging to the succession of countries. Article 11 of this convention evidently states that *succession of states cannot impact*:-²⁶

(a) International border settled upon in effect of an agreement.

(b) Rights and obligations regarding international border established due to an agreement.²⁷

(2) **For their part**, the Afghan side comes up with two pleas, saying VCSST can't be relevant in the Pakistan-Afghanistan milieu because:-

(a) Afghanistan is not a signatory to VCSST.

- (b) VCSSRT (drafted 1978 and enforced 1996) is not enforceable in retrospect so it pre-dates Pakistan's foundation.
- (3) *Nevertheless, these justifications don't have much weight for the following reasons:-*
- (a) It is irrelevant whether a country come to an understanding to a convention or not. VCSSRT has been approved by various countries containing Pakistan and is an appropriate international protocol on the subject.
- (b) VCSSRT unambiguously states that issues outside its scope (e.g. those pre-dating its implementation) will be dealt with in accordance with the conventional international law which in turn does not maintain Afghanistan's position that the Durand Line becomes unacceptable after the creation of Pakistan. The same has been specified in clear terms by world powers like USA, UK, China and EU at various times²⁸.

Contemporary Models of Border Management Mechanism

From the viewpoint of power of control, there are three foremost types of borders in the world as follows: 15 - 28 countries (8 - 14 percent) have open borders (the European Union is the best specimen); 88 - 75 countries (45 - 39 percent) have synchronized or controlled borders; and 42 countries (22 percent) have shielded or militarized boundaries. There could be a mix of two or more features e.g. open but guarded such as the US and Canada, controlled as well as locked such as the US and Mexico, and protected and closed such as North Korea and South Korea²⁹.

a. Colombia and Venezuela Border

Both countries share 2,200 kilometers extensive and porous boundary between each other³⁰. The Venezuela–Colombia emigrant crisis refers to a diplomatic and humanitarian crisis that happened in mid-2015 following the killing of three Venezuelan soldiers on the Venezuela–Colombia border that left them wounded. Venezuela has expelled thousands of Colombians on account of illicit immigrants and control of crimes³¹.

b. India – Pakistan Border

India and Pakistan distribute a border having different class like working boundary, Line of Control, Line of



Figure 2. Venezuelan troops close the Venezuela-Colombia border in Boca de Grita, Tachira state, on August 21, 2015 (AFP Photo/George Castellanos)



Figure 3: http://zeenews.india.com/news/india/india-says-border-disputes-only-with-china-pakistan_1830251.html

Actual Contact and International Border. India has fenced its max length to regulate crossing. The fence, built by [India](#), generally remains about 150 yards on the Indian-controlled side. Its stated drive is to eliminate arms smuggling and intrusion. The fence itself consists of double-row of barrier and [concert wire](#) and is [electrified](#) and linked to a system of motion sensors, thermal imaging devices, CCD cameras, Laser sensors, lighting systems and sirens. They operate as "fast alert signals" to the Indian troops who can be warned and trap the infiltrators trying to creep in. The small reach of land between the rows of railing is mined with thousands of [landmines](#). The [European Union](#) has verified India's view calling the fencing as "*improvement in technical means to control terrorists' infiltration*".³²

c. Turkey and Syria Border

As Syrian [Arab Spring](#) demonstrations turned into an all-out [civil war](#), the thousand miles extended Syrian–Turkish boundary became the prospect of minor military conflicts between the



Figure 4
DHA photo <http://www.hurriyetdailynews.com/in-numbers-turkeys-syrian-border-security-.aspx?pageID=238&nid=92233>

Turkish army and various parties in the war to the south³³.

Flux of Syrian Refugees into Turkey is to some extent alike Afghan

Refugees entering Pakistan. Turkey has initiated various procedures for effective management of refugees by their biometric registration, retaining separate camps, issuance of ID cards etc.

d. US and Mexico

The two states share a 2,000-mile border, and bilateral relations between the two have a direct influence on the lives and livelihoods of millions of people³⁴.



The Border Liaison Mechanism between both countries

Figure 5 Samantha Sais / Reuters file

functions on principal of cooperation whereby ten US and Mexican border states actively participates in regular coordination meetings³⁵.

Chaired by consuls from both states, Border Liaison Mechanisms work in "sister city" pairs and have demonstrated to be an effective

channels of dealing with a variation of local disputes including border infrastructure, accidental abuse of sovereignty by law enforcement officials, accusations of mistreatment of foreign residents, and cooperation in public health affairs³⁶.



Figure 6.

Photograph by Diane Cook and Len Jensch. <http://ngm.nationalgeographic.com/2007/05/us-mexican-border/bowden-text>

e. North & South Korea

The Korean Demilitarized Zone (DMZ) is a belt of land passing across the [Korean Peninsula](#). It was developed at the end of the [Korean War](#) along 38th Parallel to work as a [buffer zone](#) between [North](#) and [South Korea](#). It was established by an agreement between North Korea, China and the United Nations in 1953. The DMZ is 250 kilometers (160 miles) stretched, and about 4 kilometers (2.5 miles) broad. Within the DMZ is a meeting-point between the two states in the small [Joint Security Area](#) near the western end of the zone, where talks take place. There are three villages inside DMZ who have been conferred the right to live by UN. The villagers are direct progenies of people who possessed the land prior to (1950–53) Korean War³⁷.



Figure 7.

<https://www.youtube.com/watch?v=4FF-M6qtHsE>

f. European Union Border Control Measures

EU countries are collaborating among each other through inclusive Integrated Border Management (IBM) regime. The purpose of border management is to guarantee that entry into and exit from the territory of Member States is made in a planned and systematic fashion³⁸. Management of the EU's external boundaries is founded on the principles of cohesion, mutual trust and co-responsibility with due reverence to human rights. The Border guards must be

specialized, accomplished professionals able to use reliable operational and professional control with following general aims:-

- (1) Addressing border management as part of the EUs All-inclusive strategy.
- (2) Facilitating movement of traffic and facilitate controls along border
- (4) Preventing breaches related to irregular immigrants and thwarting entry of persons who do not meet entry requirements.
- (5) Cooperating with nations of origin and transit for the recognition of immigration and return operations.
- (6) Serving as an instrument in the fighting against terrorism and systematic crime.

Need / Legality of Border Fencing

Due to absence of border management the Pakistan-Afghanistan boundary is commonly labeled as one of the most unstable and precarious places in the world mainly due to the presence of terrorist safe harbors and ease Governmental control. Various forms of unlawful movements such as smuggling of weapons, narcotics, vehicles, timber and electronic goods are routine matters. Terrorism, uncertainty in the region and drug spread are influencing not only Pakistan and the region but has become a worldwide phenomenon requires affective International support of Pakistani position of fencing it.

As a concern of international law, both Afghanistan and Pakistan are bound by United Nations Security Council Resolution 1373 to “*deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens*” and to “*prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other states or their citizens.*”³⁹

The growing menace of terrorism and uprising expedited by the permeable nature of the Durand Line needs an effective management of the cross-border activities. Pakistan can / should officially fence its side of the boundary without Afghanistan's agreement by following the precedence of the USA - Mexico border, which has been one-sidedly fenced by the USA under the Secure Fence Act 2006.⁴⁰ This has been considered lawful under international law since the USA as a sovereign State is authorized to protect its territory, integrity and national defense through the enactment of immigration policy.

Recommendations

Strategic Cooperation

- a. Continuation of *Strategic dialogue* with Afghanistan with importance that resolution to shared problems lays in cooperation / trust and not in hostility / mistrust. Dialogue should aim for constructing friendly relationship, observing to total non-interference, regard for sovereignty / regional and inclusive broad based commitment (no favorites).
- b. Focus on jointly beneficial development projects / reestablishment to improve reciprocal confidence. Likewise, focus on enabling and strengthening of ongoing transit trade via better Border Management techniques.

Legislation

The Government of Pakistan should ponder enacting a comprehensive legislation, which qualifies it to document persons crossing the Durand Line. In order to introduce an effective system of checks and balances along the Durand Line, the planned legislation should explain easement right users and issue special 'easement right user IDs' to individuals coming under this classification. Other key aspects of the proposed legislation should include:

- a. Introduction of a category of persons crossing the Durand Line into the territories of Pakistan as the Afghan refugees. The proposed law may offer that a refugee shall remain restricted to a designated premise, his/her data shall be documented by allotting a document identifying his/her refugee status and his/her movements shall be supervised.
- b. The law should spell out that those conferred with refugee status should not be spontaneously granted Pakistani nationality. Analytically, the length of stay of a refugee in Pakistan may not confer on him/her a right to assert on Pakistani credentials or citizenship status.
- c. The proposed law should also deliver the Federal Government or the Provincial Governments the power to deport the Afghan refugees for settlement in relatively stable provinces of Afghanistan.
- d. The proposed legislation should also provide for the legal and impartial basis of resettlement of Afghan refugees in other states such as Canada and Australia.

- e. The suggested law must comprise applicable sanctions if an Afghan refugee manipulates this refugee status and indulges in drug trafficking across the Durand Line or boosts militants and terrorists aiming state structures in both Pakistan and Afghanistan.
- f. Another category that should be well-defined and regulated in the suggested law is that of the 'asylum seeker.' If an Afghan refugee does not want to return to Afghanistan at all on the basis that he shall be tortured on his return and he is able to exhibit sufficient evidence in this respect, he should then be awarded with an 'asylum seeker' status, a distinct legal classification under international law.
- g. The law should embrace a broad category of unauthorized people crossing the Durand Line who fall in none of the aforesaid categories. They can be mutually referred to as 'non-state actors.' It shall however be obligatory to sub-classify them further, for example as 'enemy aliens,' 'foreigners' or 'unauthorized infiltrators.' The proposed law must deliver for the legal treatment of such unauthorized or undocumented non-state actors. It is somewhat astonishing that while Pakistan has ratified extensive legislation for transport of goods that cross the Durand line and yet it does not have an equivalent legal regime for individuals. There is an pressing need for such a legislation in order to rationalize, identify and account for individual movement across the Durand Line.

Pakistan-Afghanistan Border Management System (PA-BMS)

Integrated Border Management (IBM) – a concept incorporated by the European Union (EU) – proposes a modern pattern for coherent and synchronized handling of border issues. This entails multi-agency assistance on both sides of the border. A border coordination mechanism based on IBM system can progress only through *political will, sound military planning and right execution on both sides of the border*. Levels of planning and execution are envisaged for PA-BMS as follows:

- a. **Political Level.** This may also be called the *decision* level. Success is subject to the political will displayed by both sides at this level. Mutual trust and credence in each other's sincerity is imperative to fetch the two polities to the table of unanimity to take and retake essential decisions. Lessening the

communication gap through recurrent interactions can be of great value in this regard. Pakistan and Afghanistan need to prevent foreign interference into their affairs. This can take place only if the notion of bilateralism thrives with trust at the political level.

- b. **Military Level.** This may also be entitled as the *planning* level. It is the level of collaboration between Pakistan Army and Afghan National Army (ANA). The decisions taken at the political level should be progressed into a functional border management approach at this level.
- c. **Operational Level.** This may also be known as the *coordination* level. It should work at the level of headquarters of formations and forces deployed on the border to include Pakistan Army and Afghan National Army, Frontier Corps Khyber-Pakhtunkhwa and Baluchistan, and the Afghan National Police (ANP) and Afghan Border Police (ABP). This level should ensure implementation of the border management strategy and steer the under command units.
- d. **Border Outpost Level.** This may also be called the *execution* level. Much of the disputes relating to border management can be settled and decided right at the point of incident on the border if the officials on the border outposts of the two countries are aware of the politico-military strategies and know as to what they require to do under what circumstances. This level should grasp guidelines from the operational level and get back to the same level for elucidation, yet without triggering delay or disruption to the routine management. It is at this level that numerous kinds of border violations must be avoided and, if not, at least correctly reported to the superior networks. The violations could be of kinetic nature such as terror attacks or movement of weapons or explosives across the border, or military infringements such as fire or movement across the border. Else, they could be non-kinetic such as the passage of drugs or illegal crossing by the masses.

Extension of Border Fence and Mandatory Infrastructure

The rising curse of terrorism and insurgency expedited by the porous nature of the Durand Line. It demands effective management of the cross-border movements. In order to prevent un-authorized border crossings to check terrorism, organized crime and accidental breach of sovereignty by law enforcement officials, Pakistan should go ahead with unilateral fencing and building of requisite infrastructure including

bio-metric enabled crossing sites, check posts, gates and roads etc. on its side of the border as per international practices in fashion (even without Afghanistan's consent).

Repatriation / Rehabilitation of Afghan Refugees

With gradual stability returning to Afghanistan, Pakistan should consult with UNHCR and other appropriate organization including Afghanistan for instantaneous repatriation of Afghan refugees building an atmosphere of cordiality. Efforts should be led by UNHCR and duly sponsored by Pakistan and Afghanistan governments for repatriation and rehabilitation of Afghan refugees to their motherland. Afghanistan government should take promising steps to re-integrate its displaced population with striking repatriation policy.

Affected tribal / border belt tribes during Operation Zarb-e-Azb be taken on board for any agreements related to border administration with Afghanistan. Instantly raising the stakes of locals by return of Temporary Displaced Persons and their rehabilitation, bringing regularity, economic development and mainstreaming them in the political / economic practice.

World organizations should comprehend the extent of Pakistan's sacrifices by relating supervising of Syrian Refugees by European Union (EU) and results of only six months of their hosting as compared to Pakistan accommodating much large no of refugees for over 35 years.

Conclusion

Pakistan and Afghanistan share religion, history, geography, ethnicity, culture, language, border and even sentiments. They share economic prospects, political future and thus the destiny. Pakistan and Afghanistan have been together all the way through the history of mankind, and would still be together long after the exit of Euro-American forces from Afghanistan. Thus, it is crucial for both nations to work mutually and learn to co-exist for security and stability in the region. Operative management of friendly borders with well-regulated human and material pour can promote a great deal towards begetting stability on both sides. Bilateralism and cooperation can deliver the best response for all kinds of regional situations and national objectives, border management being the basis for all.

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