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Preface

The Durand Line is a major issue in the relations between Pakistan and Afghanistan and it is said that the motive behind Pakistan's interference in Afghanistan is the recognition of the Durand Line. This Line has divided the Pashtun ethnic group into two parts and was drawn in the late 19th century.

The issue is now, once again, raised after the Vice President of the European Parliament wrote a piece about it. But the question is can this issue be resolved in current situation? In this regard what are the historical reasons and proves? Why Afghans do not recognize this line? What are the impacts of this line on the relations between the two countries? In this regard you would read in the first part of the Weekly Analysis of the Center for Strategic and Regional Studies (CSRS).

In the second part of the analysis, you would read about the torture in the Afghan prisons in the past one and half decade and during the National Unity Government. The UN Committee against Torture released a report last week which accused the Kandahar Police Chief of ill-treating and torturing the prisoners. UNAMA has also released reports about torture in Afghanistan, the most recent of which was released one month ago. The report shows that the torture continues in Afghanistan. In the second part of the analysis, we have assessed the situation of torture in Afghanistan and the reports regarding torture.

The Durand Line; its background and impacts on Pak-Afghan ties



The monthly magazine of (EP Today) has published a piece written by the Vice President of European Parliament Ryszard Czarnecki under the title of “Time to revisit the Durand Line” last week. The magazine publishes the articles written by the members of European Parliament about the issues that they regard as important at the time and issues that they contemplate needs to be focused on.

Czarnecki states in his article that the West must now take a hard look at the issue of Durand Line and restore to Afghanistan its territory. “In order to put an end to terrorism, now is the time to correct the mistake in drawing the Durand Line and restore the natural and historical frontier between the two countries,”¹ he writes.

After the formation of the National Unity Government, it is the first time that the foreigners raise the issue of Durand Line. Inside the country, the issue of Durand Line was highly discussed after the Afghan President Ashraf Ghani traveled to Pakistan and met the Pakistani Chief of Army Staff in “GHQ”, Rawalpindi which

¹ EP Today, “Time to Revisit the Durand Line”, May 18, 2017, see it online: <http://eptoday.com/time-to-revisit-the-durand-line/>

followed with the signature of an agreement between ISI and Afghan Intelligent services.

Czarnecki's piece was highly welcomed in the Afghan media, and once again raised the issue of Durand Line. What is the importance of the Gandumak and Durand line? In this regard what are the arguments that Afghanistan and Pakistan make? Whether or not the settlement of the Durand issue at present is in the best interest of Afghanistan? Is the biggest problem in the Pak-Afghan relations is the issue of Durand Line? With the solution of the Durand issue, will Afghanistan's problems be solved? These are the questions that are analyzed here.

Gandumak and Durand; treaties imposed on unrepresented nation

In the 19th century, the great game between Tsarist Russia and British India began in Afghanistan. At that time, both empires were pursuing the "forward" policy. Russia was occupying the Central Asian Muslim Emirates one after another. The British India, on the other hand, commenced to satisfy its colonial ambitions beginning from Bengal and, based on the "forward" policy, was advancing towards the northwest India and at the end of the 19th century reached Afghanistan's frontiers. At that time the "forward" policy of both colonial powers had scared each other. Therefore, during all the 19th century, Afghanistan was the battleground for the two powers' rivalry, called the great game.

The British signed the Gandumak treaty with Amir Mohammad Yaqub Khan in 1879. Before and during Anglo-Afghan war, Amir Shir Ali Khan, the King of Afghanistan and Yaqub's father, had imprisoned Yaqub. Most of the historical books say that while signing the treaty, Yaqub was abnormal and had signed the agreement during the military presence of the British and in the meanwhile, it has to be said that after the British had retreated from Afghanistan, they took Yaqub with themselves to India and was kept in house arrest. During the second Afghan-Anglo war, Amir Mohammad Yaqub Khan did not represent Afghans; the whole nation was engaged in independence war.

In addition, in 1893, the Durand Treaty was signed with Abdul Rahman Khan while he had gout illness and Russia had accepted Afghanistan as British's sphere of

influence. Furthermore, British had kept Sardar Mohammad Ayub Khan and 800 Ghaljai leaders in India, fearing that the British would urge them to rise against him, Abdul Rahman Khan agreed on Durand line.

Why is not the Durand Line acceptable?

The Afghan side has some reasons that are not responded convincingly by others. Also, Pakistan and some other countries have some reasons, for which the Afghan side has not provided satisfying answers.

Some of these reasons are as:

First; the Afghan historian Hassan Kakar, who has deeply researched the issue in Delhi, London, and Kabul's archives, has not found such Persian or English text which is signed by Amir Abdul Rahman Khan.

Second; based on the historical records, Amir Abdul Rahman Khan has edited a map of the Durand Line but has not signed it.

Third; between 1895 and 1897, Abdul Rahman Khan has repeatedly sent letters to British India in which he has expressed his disagreement about some of the places where the Durand Line crossed and has questioned it.

Fourth; if the Durand Treaty was signed in accordance with the conventional norms, why was it not approved by the British parliament or Afghan Parliament (at that time Loya Jirga)?

Fifth; if the Durand Treaty was a permanent agreement, why the British would take the approval of Afghan Kings separately?

Sixth; it was only an agreement between Amir Abdul Rahman Khan and the British to determine their sphere of influence, not to determine the border, because the British, at that time, was concerned about a Russian invasion and Amir Abdul Rahman Khan's interference in the tribal areas.

Seventh; from the second Anglo-Afghan war until the independence war, based on the Gandomak treaty, Afghanistan was a protectorate state, and its foreign policy was controlled by British. Therefore, at that time, Afghanistan was not an

international personality and, therefore, did not have the authority to sign such an accord.

Eight; at that time, Afghanistan had a weak government, which could not represent the whole Afghanistan. Therefore, even if such a treaty was found with Abdul Rahman Khan's signature on it, it could not account for the will of the entire Afghanistan.

Ninth; after the withdrawal of British Empire from India, the Indian Subcontinent was divided into two parts; Pakistan and India. Hence, Pakistan is not a successor of the British India and, therefore, even if such a treaty was signed, it cannot convey any legal right to Pakistan.

Tenth; after the formation of Pakistan, the referendum, which was held in the northwest frontier province (current Pakhtunkhwa), was malformed. Therefore, first; from the people who had the right to vote, only 51% had voted and that was without refinery of the fabricated votes. Second, at that time, most of the Hindus in this region had migrated to India. Third, in the provincial elections between 1939 and 1945, the Congress and Khudaye Khedmatgar group under the leadership of Doctor Khan had won in the elections and Muslim League had lost the elections.

What is the main problem in the Afghan-Pak relations?

Is the settlement of the Durand line in the current situations in the best interest of Afghanistan? If one evaluates the Afghan foreign policy during the cold war, one will find out that during that time, Kabul always wanted to negotiate the Durand Line but Pakistan, on the contrary, did not want the negotiations over the issue and in the meanwhile wanted Kabul to recognize the Durand Line. Even such demands were followed in the post-cold war era during the Taliban regime.

Another reason why the Durand issue cannot be settled at present times is that on the one hand the Afghan government is weak and on the other hand the recognition of the Durand Line will not resolve the Afghan issue and the on-going crisis. Because:

First, currently, the Durand Line is under the control of Pakistani military. According to the new Pakistani border management policy, Pakistan will not allow anyone, without a visa to enter Pakistan's soil. Most of the Pakistani army are settled in the tribal areas. Therefore, whether the Durand Line is accepted or not will make no difference for Pakistan (however, the recognition of Durand Line by Kabul will end their concerns in this regard.)

Second, the main issue for Pakistan in Afghanistan is to have a pro-Pakistani government in Afghanistan, in other words, strategic depth. Thus, Pakistan would be able to control Kabul's relations with India and compared to Kabul-Islamabad ties; the Kabul-Delhi ties would be deteriorated.

Therefore, even if Kabul recognized the Durand Line, who will guarantee that Pakistan will not interfere in Afghanistan?

Despite all the issues mentioned above, it does not mean that, based on the Durand problem, Afghanistan and Pakistan must maintain tenuous relations with each other. There are many countries in the world that have temporarily put aside the important conflicting issues between them and have extended warm relations with each other. For instance, China and India, both have active trade, and economic ties and the border issues have not primarily affected this aspect of their relationships.

Torture and violence against prisoners in Afghanistan



In its recent report, the US Committee against Torture (CAT) has accused Kandahar Police Chief General Abdul Razeq of torturing prisoners, executions without trial and having secret prisons. General Razeq, on the other hand, denies all these accusations.

Approximately one month ago (24 April 2017), a report, published by United National Assistance Mission in Afghanistan (UNAMA) and UN human rights office, shows that prisoners in Afghanistan are still being tortured and are victim of violence and maltreatment.

The background of torture in Afghanistan, the country's anti-torture laws, the current situation of torture in the Afghan prisons and the government initiatives to prevent torture are the issues that are analyzed here.

Torture in Afghanistan

Ill-treatment and torture has a long history in our country and almost all the governments and armed groups have tortured their oppositions in private or government prisons, detentions centers and even out in public, the incidents of which, according to the reports, have increased after 1357 (solar year).

During the communist regime in Afghanistan, between 1357 and 1358 (solar years), thousands of people are imprisoned and tortured by communist intelligence services under the name of Ikhwani, Ashrar and Afghan Milat, most of whom have lost their lives under torture. A list of 5000 of them was published by the Netherlands government in September 2013 and a list of 12000 of others will be released soon. Communists at that time used tortures such as electricity shocks, breaking bones, depriving of sleep, food and water, psychological tortures (verbal abuse and prostitution), nail dragging and closing the door on prisoners' fingers, etc.

During the Mujahedin regime, especially during the civil war, the groups used to torture the members of their opposition groups. Each group had its prisons in particular places for torturing. Beating, hammering nails into peoples' heads, dragging nails, mutilation was among the most heinous methods of torture. Later, the Taliban, which was largely a dictator regime, also tortured people and have used various methods including beating and other types of torture.

After 2001, and with the formation of the new government, which claimed to respect human rights and implement law in the society, these tortures continued. However, the 29th article of the Afghan constitution states that "persecution of human beings shall be forbidden. No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished."² In addition, the Article 275th of Afghanistan's penal code states, "if a public servant tortured or ordered torturing the accused individual for the purposes of getting confession, he/she

² The Afghan constitution, Second Chapter, Article 29, 1382:

<http://www.aihrc.org.af/media/files/Laws/Dari/Constitutional-law.pdf>

shall be sentenced to long-term prison time.”³ However, due to various reasons, in the past one and a half decade, the government has failed to implement the law and the people who have committed the crime of torturing are not prosecuted and even they are not relieved of their duties.

Torturing prisoners after 2001

After the fall of the Taliban regime and the establishment of the new government in Afghanistan and the presence of international forces in this country, a horrible stream of torture by these forces commenced as well. Seeing the violation of the human dignity by the foreigners, the people forgot the previous atrocities and tortures by former governments and armed groups.

Torture by government officials; in recent years, Afghanistan is highly criticized by human rights organizations for the systematic tortures carried out by its security officials. Since the past one and a half decade, the Taliban members make the majority of prisoners in Afghan prisons. From time to time, the Taliban have spoken about the torture in Afghan jails. For instance, in a statement in March 2015, the Taliban had said that the Taliban prisoners had been vigorously tortured in Afghan prisons.⁴

In 2011, UNAMA released a report confirming torture and violence in the Afghan prisons.⁵

In its report in 2014, UNAMA, once again, expressed its concerns about torture in Afghan prisons. In February 2015, UNAMA released its third report on torture in Afghan jails. In this report, UNAMA had interviewed 790 prisoners in 2013 and 2014. The findings of the report showed that the level of torture had been dropped 14% compared to the past years but overall people were tortured and the immunity of the people who carried out the tortures from punishment was

³ The Afghan Penal Law, Article 275, 1355:

http://aburayhan.edu.af/AburayhanLinks/Afghanistan_Law.pdf

⁴ read online: http://www.bbc.com/persian/afghanistan/2015/03/150309_k04_taliban_claim_torture

⁵ Read more here:

http://www.ohchr.org/Documents/Countries/AF/UNAMA_Detention_dari.pdf

said to be the reasons behind the continuation of torture and violence in Afghan prisons.⁶

In its most recent report, released on 24 April 2017, UNAMA has said that ill-treatment and torture of prisoners continued in Afghanistan. In this report, which has interviewed 469 prisoners in 62 prisons, the prisoners have said that under beating and torturing they were forced to confess. Some of these prisoners have stated that they were not even aware of the contents of their confession letters and some were even unable to read them. The report writes that torturing the prisoners of war will not maintain security in Afghanistan.⁷ However, the Afghan government have repeatedly rejected these reports and have denied the existence of torture in the Afghan prisons and detention centers.

Torture by foreign forces: In the presence of the foreign troops in Afghanistan, these forces built public and secret prisons. Most of the prisoners in these prisons were people who were arrested in the military operations particularly in the night raids. These prisoners were held either in Guantanamo, Bagram or other prisons. The followings are some examples of tortures carried out by foreigners in Afghanistan and abroad in Guantanamo prison:

- Lack of the rule of law;
- Punishments were contrary to human dignity;
- Tying ropes around the prisoners' necks and dragging them in the halls;
- Unclear fate of the detainees and their unclear future;
- Insulting their sanctities;
- Non-allowance to read books and lack of amusement;
- Insulting tortures such as taking off the prisoners' clothes and photographing them while they were nude;
- They would not adequately treat the ill prisoners so that he always be worried about his health;

⁶ read BBC's this report for further info:

http://www.bbc.com/persian/afghanistan/2015/02/150225_k03_unama_report_on_afghan_custoday_torture

⁷ UN News center, Conflict-related detainees in Afghanistan tortured, ill-treated in government facilities – UN, 24 April 2017, see it online:

<http://www.un.org/apps/news/story.asp?NewsID=56611#.WR2zO5J95dh>

- Depriving them of sleep which would result in psychological disorders;
- Giving incorrect news to prisoners about their family members which increased psychological pressure on them;
- Delay in submitting the letters they received from their families. In most of the cases, they would erase some parts of the letters so that the prisoners be worried about their families.

The National Unity Government (NUG) and the torture in the prisons

After the formation of the NUG, during a press conference President Ghani said, “When a human being is tortured in an inhuman way, the response will also be inhuman. Today there is no justification for such cruel deeds.” Furthermore, in an interview with the Human Rights Watch, Ghani said, “The Afghan government will not tolerate torture.” Hence, Ghani committed himself to investigate the torture cases.⁸

Despite the vows and some actions to prevent the torture, the Afghan government’s deeds in this regard are feeble. One of the government’s initiatives in this regard was issuing a decree regarding “prevention of torture” which had 20 articles. The decree was signed by the Afghan President on 4 March 2017. Also, based on the article 11th of the anti-torture law, the commission against torture was established on 17 April 2017 which would operate under the Independent Human Rights Commission

The Afghan government’s measures against torture were limited to rhetoric and issuing decrees. However, the reports of international institutions indicates the existence of torture in Afghan prisons as it is in the recent report published by the UN Committee Against Torture (CAT), General Razeq was criticized for ill-treatment and torturing prisoners. In this report, CAT has said that General Razeq has private prisons in Kandahar where he tortures, detainees and in some cases kills them and, therefore, the report says that he must be tried in court. Suffocation, hitting on the genitals and testicles, pressuring the abdomen by powerful water machines and electric shocks are the methods of tortures that the

⁸ read more here: <http://www.etilaatroz.com/47313>

report says are carried out in Kandahar.⁹ However, as before, both General Razeq and the Afghan government have rejected this report. Unless those who commit torture are prosecuted and punished, this situation will not become better.

The end

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Note: Please let us know your feedback and suggestions for the improvement of Weekly analysis.

⁹ Reuters, U.N. torture committee wants Afghan general prosecuted, 12 May 2017, see it online:

<http://www.reuters.com/article/us-afghanistan-un-idUSKBN1881QR>

and:

http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AFG/INT_CAT_COC_AFG_27463_E.pdf