

# ***Pakistan and Afghanistan's Claims over Durand Line: An Analysis***

**Quratulain Jafeer\***  
**Sadia Saeed\*\***

## **ABSTRACT**

*Durand Line is a long border between Pakistan and its North western neighbour Afghanistan. This boundary was demarcated in 1893 but is still a contested issue. Pakistan believes that it has the rightful claim over the land as she has inherited this part of land from its colonial master, on the contrary Afghanistan presents that the area belongs to her as it was taken by the British under duress. In this article an attempt is made to theoretically analyse the justifications of the claims of different parties of this dispute. The border dispute between Pakistan and Afghanistan is analysed with the International Law doctrine of "Uti Possidetis Juris". The objective of the present study is to evaluate the legal standing of the Durand Line as a demarcated boundary amid Afghanistan and Pakistan using authentic secondary sources. The present research will help understand the contentious issue in a historical perspective.*

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\* M. Phil Pakistan Studies, National Institute of Pakistan Studies, Quaid-i-Azam University, Islamabad.

\*\* Assistant Professor, Department of Sociology, Quaid-i-Azam University, Islamabad.

## Introduction

Indian sub-continent and Afghanistan are historically linked with each other as they both were parts of many empires that ruled this area under different times in history. During the centuries old rule of Muslims in this part of the World the present Pakistan was under Mughal control whereas Afghanistan was divided under Persian and Mughal rule. Mughal rule at the time of its decline started to disintegrate into small principalities and the Afghan territories were brought under his control by Nadir Shah. He then extended his rule to other areas of collapsing Mughal Empire. The successor of Nadir Shah, Ahmed Shah further stretched his rule to Qandhar and founded the state of Afghanistan in 1747.<sup>1</sup> Some parts of present Khyber Pakhtunkhwa region and Durand line territories were under the auspices of Afghan Amir till 1773. These included the areas of Dera Ismail Khan, Kohat, Peshawar, Pezu, Swat, Bolan, Hazara, Waziristan, Dir, Gomal, Tirah, Dera Ghazi Khan, Kohistan, Malakand, Bajaur, Khyber, Buner and Bannu. Similar sources also point out that Pashtun tribes, mainly Mandokhel in the Shorani tribe live in south and north as well as Kahari, Dunar also live in some parts of Baluchistan.<sup>2</sup>

Hence Afghanistan vindicates her prerogative of these areas on the basis of this historical account. Conversely, Pakistan announces the Durand Line as her official International Border. Moreover, Pashtuns, of Khyber Pakhtunkhwa, Tribal Agencies, as well as the people of Baluchistan have joined Pakistan according to their collective will in a democratic manner, and are therefore, integral part of Pakistan. The rulers of Afghanistan when failed to exercise their control over these Pashtun territories they started to turn this dispute in another direction as evident from their point of view that, the two central arguments of conflict between

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1 Iftikhar Ahmed Yousafzai and Himayatullah Yaqubi, "The Durand Line: It's Historical, Legal and Political Status," *Journal of Research Society of Pakistan* 54, no. 1 (January-June 2017): 89.

2 S. M. M. Qureshi, "Pakhtunistan: The Frontier Dispute between Afghanistan and Pakistan," *Pacific Affairs* 39, no.1/2 (Spring-Summer, 1966): 99.

Afghanistan and Pakistan are: (i) the Pashtuns living across the border are not a part of Pakistan, and, hence, they are independent to declare themselves a separate nation for themselves and (ii) also the Durand Line is not an authentic demarcated border between them.<sup>3</sup>

### Durand Line

A regional conflict can better be understood in terms of its history and culture.<sup>4</sup> Durand line is also one such conflict amid Afghanistan-Pakistan that needs to be comprehended in historical background in order to endorse the validity of the claims by both the countries. Durand Line is a border that was settled in 1893 by Sir Mortimer Durand and Amir Abdur Rahman.<sup>5</sup> The purpose of this demarcation was to clarify British's administrative and political sphere of influence on the North-West Frontier of India.<sup>6</sup> The status of the territories (the present Khyber Pakhtunkhwa and some part of Baluchistan) which were demarcated can be one dimension of analyzing the soundness of the said agreement. These territories historically were part of Mauryan, the Kushan, the Mughal and the British empires and they also came under the influence of the rulers like Mahmud of Ghazni, Timur and Nadir Shah Afshar whose hold on them was anything but permanent.<sup>7</sup> They were also part of the vast empire of Ahmad Shah who became the first Afghan king of a united and independent Afghanistan. The territorial hold of Ahmed Shah became a reference point for his successors, especially the later day rulers and it also explains the Afghan

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3 Qureshi, "Pakhtunistan," 107.

4 Mukesh Kumar Kayathwal and Mukesh Kumar Kayathwal, "Pak-Afghan Relations: Durand Line Issue," *Indian Journal of Asian Affairs* 7, no. 2 (December, 1994): 37.

5 Yousafzai and Yaqubi, "The Durand Line," 83.

6 P. M. Sykes, "Sir Mortimer Durand, G.C.M.G., K.C.S.I., K.C.I.E.," *The Journal of the Royal Asiatic Society of Great Britain and Ireland* no. 3 (July, 1924): 504.

7 Brig. Gen. Percy Sykes, *A History of Afghanistan*, Vol. 1 (London: Macmillan and Co. Ltd, 1940), <https://archive.org/details/historyofafghani031155mbp/page/n11>

demand for Pashtunistan. Ahmad Shah's empire started disintegrating during his life time and his successors failed to stop that decline.<sup>8</sup> By the time Dost Muhammed became the Amir in 1826; his effective control over Afghanistan was confined to 100 miles around Kabul.<sup>9</sup> The Peshawar valley had been ceded to the Sikhs in 1823 by his predecessor, which was later on taken over from them in 1849 by the British as a result of Anglo-Sikh wars. Amir Yaqub Khan lost his hold on the areas of Pishin, Kurram, Sibi as well as he also surrendered Khyber and Michini passes to the British through the Treaty of Gandamak signed in 1879.<sup>10</sup> Subsequently when a repudiation of these territories took place in favour of the British through the Durand Agreement, Amir Abdur Rahman was not losing any area which belonged to him. They were already part of the British Indian Empire.<sup>11</sup>

### ***Uti Possidetis Juris* (as you possess under Law)**

*Uti Possidetis Juris* is an International Law principle which is applied for the purpose of demarcation of state territories. In most of the legal dictionaries, *Uti Possidetis Juris* comes in force when a colonial empire is disintegrated and transferred into newly independent states where *Uti Possidetis Juris* declares the previously existing administrative borders into the internationally recognized boundaries of the newly created states.<sup>12</sup> Brian Taylor Sumner presents this

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- 8 Major Jason A. Yanda, "Governance in Afghanistan: Context and Possibilities," (School of Advanced Military Studies United States Army Command and General Staff College, 2011), <https://pdfs.semanticscholar.org/63f5/078d1f523bbce7a6366f58a439cd872b4664.pdf>
- 9 Ijaz Hussain, "The Durand Agreement in the Light of Certain Recent International Conventions," *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 18, no. 3 (1985): 260.
- 10 Elisa Giunchi, "The Origins of the Dispute over the Durand Line," *International Asian Forum*, 44, no.1-2 (2013): 28.
- 11 Hussain, "The Durand Agreement in the Light of Certain Recent International Conventions," 260.
- 12 Farhad Sabir Mirzayev, "Historical Background of the Principle of *Uti Possidetis Juris*," *Moscow Journal of International Law* 96, no. 4, (2014): 56.

International Law principle as such that it was applied to delimit postcolonial boundaries in, Asia, Africa and Latin America. Moreover it is a principle under which newly established states receive the managerial boundaries as they existed in the time of their colonial dominance. Hence those administrative borders turned into frontiers between the states when they got independence from their colonizers. Malcolm N. Shaw mentions *Uti Possidetis* to be a principle that was developed to debar the territorial disputes that may arise during the process of decolonization of the states in order to preserve the territorial inheritance of nascent states at their independence by transferring prevailing lines into international borders. *Uti Possidetis Juris* emphasizes on territorial factors and acts in comparison to other legitimizing principles, like historic, religious and ethnic affinities.

It has a close connection to the principle dealing with the boundaries' stability as Oppenheim pointed out its role as a notable doctrine which reinforces the principle of the permanence of state boundaries. Thus, both of these principles are linked with many other principles of International Law, which range from consent and acquiescence to territorial integrity. The principle of stability of boundaries is integral to maintain peace and security in the international society as prima facie of the International Law is still the territorial sovereignty. For the establishment of any boundary the consent of the involved states is mandatory and they are independent to decide how this action may be performed. The simplest way for this is to make an agreement by signing a treaty where they will describe their relevant boundary line. This boundary will then be internationally recognized and assumes finality and permanence. The attitude which the states depict on demarcation of boundary by whatever means they agreed upon is equally important while discussing the validity of the boundary lines. If the boundary once established was recognized and applied by both the parties then it is not questioned on the contrary if some part of the boundary is rejected at the time of decision and was not effectively

applied in later conduct then that boundary can be set aside to the extent of non-application in accordance with the International Law.

*Uti Possidetis Juris* principle was used during nineteenth and twentieth century when decolonization process was at its peak. The demarcation of boundaries among different states was a crucial phenomenon that had to be properly legalized so as to maintain the territorial sovereignty of the new independent states. While applying *Uti Possidetis* the actual possession of territories at the time of decision was considered. Shaw for instance gave the example of European colonization of Africa where ethnic concerns were completely set aside while delimiting boundaries, furthermore; the demarcated boundaries mostly divided the tribes in different jurisdictions. Shaw also quotes Brownlie in his work who illustrated that the general principle, that boundaries of divisions under administrative control of colonial powers that existed before independence all remain intact, is in agreement with good policy and has been implemented by governments and courts dealing with boundaries in Africa and Asia.

### **Use of *Uti Possidetis Juris* in Asian Context**

When considering the use of *Uti Possidetis Juris* in Asia, there existed certain peculiarities due to diverse history of colonization and the protection of state traditions. In Asia, the boundaries delimited by colonial states (France and Britain) mostly, were the colonial state agreements that were left intact. Therefore, as a result of liberation, these countries received state borders of prior existing authorities with protracted state traditions.<sup>13</sup> *Uti Possidetis Juris* was used in regional disagreement between Thailand and Cambodia. Cambodia applied to International Court of Justice that Thailand has violated her territorial integrity in Preah Vihear region. On the contrary, Thailand objected to the appeal by stating that the disputed territory was her integral part from

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13 Enver Hasani, "Uti Possidetis Juris: From Rome to Kosovo," *Fletcher Forum of World Affairs* (Summer/Fall, 2003): 3.

the times the Franco–Siamese treaty was signed, when both the parties of dispute belonged to a single state with shared borders. Both the countries presented their arguments, based on the existing treaties, geography, culture and the concept of effective control, history. Thailand presented that the disputed region was under her effective control.<sup>14</sup> However; the Court rejected Thailand's claims and presented that:

It is mutually agreed by both the countries that the current contention has its origin in the boundary arrangements made during the years 1904-1907, amid France-Thailand specially that the authority over Preah Vihear relies on a boundary agreement made on 13 February 1904, and also on events succeeding to that date.<sup>15</sup>

The Court presented her decision on the account that the boundary between Thailand and Cambodia was delimited in 1904 and maps were prepared which were adopted for fifty years. Thailand had not objected to that map for some fifty years which means she had recognized it thus the demarcation line that was depicted on the map. Malcolm N. Shaw mentions that the Court considered that the approval of the map by both the parties make it an important part of the treaty settlement. Though *Uti Possidetis Juris* principle is not clearly mentioned here however, it is evident that the Court and both the countries followed this doctrine. It was acknowledged that the borderline which previously existed between the two States at the time of liberation of Cambodia (since Thailand had always been independent), still exists and that it was drawn from a series of Franco-Siamese treaties, as understood in the light of particular practice.

### **Pak-Afghan Durand Line Dispute**

During the nineteenth century, British made the Durand line a borderline amid British India and Afghanistan. It covers

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14 Malcom N. Shaw, *International Law*, 4<sup>th</sup> ed., (New York: Cambridge University Press, 1997), 105.

15 Shaw, *International Law*.

about 1500 miles, extending from the Pamir mountain range in the North, to the Arabian Sea in the South, in the mountainous northern and central sectors cutting through and dividing tribal regions.<sup>16</sup> In Pakistan, this demarcated line includes Baluchistan, Khyber Pakhtunkhwa, and tribal agencies of the federally administrated tribal area, whereas the Afghani side includes frontier areas of Niomruz in the south-west to Nooristan province in the north-east. However, she has certainly not recognized the Durand Line as an established boundary and always remarked it as “imposed”.<sup>17</sup> Afghanistan raises four main objections on the Durand Line .i.e. that the agreements related to Durand Line were enforced upon Afghanistan under duress so it is not valid boundary under Vienna Convention of the Law of Treaties 1969;<sup>18</sup> its legitimacy period has ended; the agreements concerning it relinquished under doctrine of *rebus sic stantibus* (changed circumstances) when the British shifted rule to Pakistan. Besides these objections there are other objections put forward by Afghanistan; the original agreement in 1893 was not meant for division of sovereignty between two adjacent countries; Pakistan does not have the status of successor state of British India hence it is not incumbent on her to fulfill the rights and obligations under treaties made by British India.<sup>19</sup>

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16 Zarena Aslami, “The Second Anglo-Afghan War or The Return of the Uninvited,”. Accessed on 10 Nov, 2018.

[http://www.branchcollective.org/?ps\\_articles=zarena-aslami-the-second-anglo-afghan-war-or-the-return-of-the-uninvited#targetText=The%20Durand%20Line%20extended%20for,and%20central%20parts%20of%20Afghanistan](http://www.branchcollective.org/?ps_articles=zarena-aslami-the-second-anglo-afghan-war-or-the-return-of-the-uninvited#targetText=The%20Durand%20Line%20extended%20for,and%20central%20parts%20of%20Afghanistan)

17 M. Saleem Mazhar and Naheed S. Goraya, “Border Issue between Pakistan and Afghanistan,” *A Research Journal of South Asian Studies* 24, no. 2, (July-December, 2009): 205.

18 Fawad Poya, “The Status of Durand Line under International Law: An International Law Approach to the Pakistan-Afghanistan Frontier Dispute,” *Journal of Borderland Studies* (2019): 4.  
<https://doi.org/10.1080/08865655.2019.1646147>.

19 Bijan Omrani, “The Durand Line: Analysis of the Legal Status of the Disputed Afghanistan-Pakistan Frontier,” *Miami Int’l & Comp. L. Rev.* 75, 26 (2018): 102.



Majority of Afghan population believes that the agreement of Durand Line was signed only for hundred years and this period has ended in 1993. This means that the agreement no longer is valid to demarcate the boundaries between the two states. The underlying reason behind this perception is that some of the political elite as well general public in both Pakistan and Afghanistan do not know about many of the peculiarities and minutes of the actual Durand Line agreement. As this contentious boundary dispute is a very delicate topic, it has not been fully elaborated. Albeit many governmental records subsists in Pakistan which might have discussed this topic .Several among these sources are relegated; thus, much of the subsisting information is beyond the reach of the researchers .Moreover, the other factor which increases the confusion is the prejudiced nature of Pak-Afghan writers on the topic, who try to protect their respective state narratives. This study has utilized the resources which were somewhat neutral in their stance and have analytically presented the issue by keeping in mind all the considerations related to the conflict irrespective of the state narratives.

The present research has explored that what is true nonetheless is that the authenticity of the Durand Line is incontestable by many factors including International Law as well as other historical and cultural factors. The first among them is related to the period of expiry which is believed to have completed in 1993.<sup>20</sup> There are certain agreements and treaties which further endorsed the validity of the Durand Line even after its perceived expiry year. Initially, it was believed that the Durand Line was a kind of personal settlement between the British Government in India and Amir Abdur Rahman which would expire with the demise of Amir.<sup>21</sup> When Amir Habib Ullah Khan ascended to the throne of his father he had to renew the previous agreements to

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20 Buranov Suhrob, "The Durand Line-Key of the Afghan Problem," *International Journal of Scientific and Technology Research* 9, no. 2, (February, 2020): 1316.

21 Giunchi, "The Origins of the Dispute over the Durand Line," 32.

enjoy the subsidy from the British Government. Hence, both the countries confirmed the already existing treaties in a new agreement signed by them on 21 March 1905. Moreover, Amir Habibullah Khan after signing the agreement wrote a letter to the then Foreign Secretary of India, Mr. Dane who was also the head of the Indian Mission sent to Afghanistan, and inform him that he would also deal with the frontier tribes according to the principles set by his father.<sup>22</sup> Hence, the Durand Line agreement, after losing its legitimacy at the demise of King Abdur Rahman, recovered it in 1905 and remained functional till the British-Afghan War in 1919. After this war, a peace mission which was led by Ali Ahmad Khan, the then interior minister of Afghanistan came to Rawalpindi and signed a peace agreement amid British and Afghans on August 8, 1919 where Great Britain accepted the independent status of Afghanistan as well as legitimacy of the Durand Line was also preserved. Hence, for the first time, the Durand Line was released of any personal undertaking by the rulers, and both countries confirmed it as a perpetual boundary between them.<sup>23</sup> Similarly there were many other agreements between Afghanistan and British Indian government which endorsed the validity of Durand Land i.e. the Anglo-Afghan Treaty of 1921, the Trade Convention of Kabul 1923 and finally agreements made by King Nadir Shah in May 1930.<sup>24</sup> Thus, all these agreements are clear evidence of the relevance of the Durand Line agreement till 1930s. Previously, there was no such repudiation of the agreement on the part of Afghanistan but soon after the deserting of British power from India and its transfer to India and Pakistan, she started to raise objections. Afghans wanted to regain the territories which

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22 Hussain, "The Durand Agreement in the Light of Certain Recent International Conventions," 274.

23 Institute of Policy Studies, "Pak-Afghan Relations :The Durand Line Issue," accessed on: Nov 4, 2018, <https://www.ips.org.pk/pak-afghan-relations-the-durand-line-issue>

24 Yousafzai and Yaqubi, "The Durand Line," 86.

they had given to the British government under the aforementioned agreement.

The other claims presented by Afghanistan were challenging the legitimacy of the Durand Line. In order to address those claims it is paramount here to first prove the Durand Line to be an administrative and political border between India and Afghanistan. Afghanistan was founded by Ahmed Shah Abdali in 1747 but his successors were not competent enough to consolidate his rule. The internal impotencies of the empire never let them have an independent foreign policy in their dealings with British and Russia; the two great powers in their proximity. Furthermore, there were no well identified borders of Afghanistan till the end of nineteenth century. The borders when demarcated they were either by arbitration or by agreements between the neighbours and Afghanistan only had to comply with those decisions. The settlements between England and Russia secured northern and northwestern frontier of Afghanistan. The boundary on Afghanistan's southwest frontier was delimited by British settlement in 1872 and 1875. Furthermore, the parameters of Afghan authority in the east and southeast of Afghanistan were enforced by the British in 1877 when the ruler of Afghanistan Amir Sher Ali, was simply told by the Government of India that he can no longer have control of Chitral, Dir, Swat and Bajaur. The official international border amid Afghanistan and British India was established in 1893 as a result of negotiations between Sir Mortimer Durand and Amir Abdur Rahman.<sup>25</sup> By the Durand Line agreement; British wanted to have their strong hold in those areas which could act as a support in times of war and will act accordingly to contain USSR. Likewise, the territories neighbouring northern areas which were next to Balochistan also came under British stronghold. Hence, Frontier Crimes Regulations (FCR) were enforced on the areas which

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25 Qureshi, "Pakhtunistan," 102.

appeared to be the most appropriate in those circumstances.<sup>26</sup>

Keeping in view aforementioned details Afghanistan's apprehension that the Durand Line was not the 'division for sovereignty' can be better comprehended. The Durand Line was meant for the demarcation of sphere of influence of British India and Afghanistan in hill tribes. The British did not consider these territories as part of their Empire as they were ruled differently as compared to the rest of India. These areas were to be brought under control when full authority can be exercised. This was the common practice for acquisition of territories in colonial period. Afghanistan's rule was weakened much before 1893 and Kabul was not in a position to exercise control over these hill tribes. Lindley, a renowned International Law jurist, posits that under such agreements any party can acquire legal title over their area of influence hence the territories demarcated under the Durand Line agreement were legally valid by International Law.<sup>27</sup>

Considering Afghanistan's stance that all the agreements amid British India and Afghanistan also terminated with the withdrawal of British rule from India under the doctrine of *Rebus Sic Stantibus* needs to be revisited in reflection of International Law. Advocating the claim of Pakistan, it is mentioned that there exists a doctrine "*Uti Possidetis Juris*" which is applied in such circumstances when a colonial power transforms its rule to independent states; the administrative boundaries that were in practice during colonial times remain valid. Similar was the case with the Durand Line as it was demarcated for administrative purposes so the new independent state of Pakistan inherited this to be an established border between her and Afghanistan. Contrarily, Afghanistan's objections become null and void as *Rebus Sic Stantibus* applies when the

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26 Mazhar and Goraya, "Border Issue between Pakistan and Afghanistan," 206.

27 Omrani, "The Durand Line," 100.

change is of essential or fundamental nature. As far as the case of the Durand Line is concerned, Pakistan as a successor to British India had similar security risks and it validated and reinstated the similar relationship with tribal areas as it existed under British India. Thus, there had been no such fundamental or essential change which might be injurious to Afghanistan to validate her claims to declare the Durand Line null and void.<sup>28</sup>

Moreover, *Uti Possidetis Juris* also draws from certain other principles which reinforce the aforementioned doctrine. Consent of the parties involved in the agreement is one such principle. When the agreement was signed, it was purely with the compliance of the then Amir of Afghanistan contrary to the claims set forth by the present day rulers. There are certain historical accounts which provide with the concrete evidences related to the consent of Afghan Amir. In fact, some sources mention that Abdur Rahman himself asked British government to demarcate frontiers with Afghanistan. Amir himself presented his desire in this regard. He mentions that as he has settled the boundaries with all the other neighbours of Afghanistan including China, Persia and Russia, he also considered it extremely essential to demarcate the boundaries between Afghanistan and India. He further remarked that the delimited borderline should be clearly marked around the areas under his control hence making a strong wall of protection around his territory.<sup>29</sup>

Furthermore, some scholars present that Amir after signing the agreement called a meeting of *Loya Jirga* where he endorsed the contents of the agreement and also advised his people to remain loyal to British as this was in their best interests at that time. He mentioned that the Durand Line agreement has laid the basis for peace and prosperity for the forthcoming rulers of Afghanistan as they will not have to

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28 Omrani, "The Durand Line," 107-109.

29 Dr. Imrana Begum, "Durand Line: A Legacy of Colonial Rule 1893-1970", *Journal of Pakistan Historical Society* LXIII, no. 4 (October-December, 2015): 43.

waste their energies and time in settling borders with their neighbours.<sup>30</sup> The aforementioned details indicate that the Afghanistan's claim to challenge the validity of Durand Line under Vienna Convention of Law of Treaties 1969 (Durand Line as an imposed boundary established under coercion from the British Empire) is inappropriate as the enthusiasm of Afghan Amir and his speech before *Loya Jirga* present the reality to be otherwise.

The attitude which the states depict at the time of demarcation of any boundary is also an important point of reference in International Law. In the case of Durand Line agreement, there were some disagreements between Amir and British Indian government. The map defining the boundary amid British India and Afghanistan excluded the territories of Mohmand, New Chaman, Asmar, Bulund Khel, Waziristan, Chitral, and Chageh from Afghanistan.<sup>31</sup> He was very upset with this division and conveyed his reservations to the British. He warned them that if they deprive Afghanistan of the aforementioned territories that would be a two-edged sword for them. The people of those territories will always be on arms against the British as well as they will always create a law and order situation in the country. He tried to make the British realize that the cutting of the said frontier tribes from Afghan's dominion would be of no use to both the parties involved.<sup>32</sup>

The British administration paid no heed to the warnings of Abdur Rahman and remained adamant to their defined border. The border contention may be acknowledged to be true and fair, but it is still unsuccessful in denying its standing as an international frontier amid Pakistan and Afghanistan. There are two main factors behind this. Primarily, disagreeing to the general view, the Durand Line

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30 Yousafzai and Yaqubi, "The Durand Line," 83.

31 Hamid Wahed Alikuzai, *A Concise History of Afghanistan in 25 Volumes: Volume 14* (USA: Trafford Publishing, 2013), 573

32 Sutlana-i-Rome, "The Durand Line Agreement (1893): Its Pros and Cons," *J.R.S.P.* XXXXI, no.1 (2004): 6.

agreement (1893) is not the only subject of consideration in border assessment. As mentioned previously, there are at least four other agreements (of 1905, 1919, 1921 and 1930), which were mutually agreed by both Pakistan and Afghanistan, must be consulted. Hence, Afghanistan is not in a position to put forward its claim that she was compelled to recognize these agreements, mainly the Kabul 1921 treaty for creation of amicable trade relations, which was signed as well as, was endorsed in 1922, and according to which instruments were traded by the states' representatives in Kabul.<sup>33</sup>

### Conclusion

Durand Line is no doubt a contentious boundary amid Pakistan and Afghanistan which needs to be recognized for amicable relations between both the states. Pakistan being the successor state of British government in India considers this as an internationally recognized boundary whereas Afghanistan rejects this demarcation that is dividing its ethnic kinsmen into two countries. She put forwards different justifications for her rejection of this boundary line. Those objections have to be properly addressed in order to convince the Afghani political elite for accepting Durand Line. One such attempt is made here to develop a comparative perspective of both the parties involved in this border dispute. *Uti Possidetis Juris* definitely serves as a viable account of the permanent nature of the Durand Line agreement of 1893, but that doctrine itself is under question when it comes to its application in the Asian context. Specially, the concept of 'administrative borders' is much vulnerable to criticism. European colonizers marked the administrative borders for defining their spheres of influence as there were more than one colonizers competing for the control of maximum resources.

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33 "Pak-Afghan Relations: The Durand Line Issue," Institute of Policy Studies, accessed Nov 4, 2018, <https://www.ips.org.pk/pak-afghan-relations-the-durand-line-issue>.

In Asia, specially in the case of Afghanistan and British Indian Government, the demarcation was a part of 'great game' in order to avoid direct encounter with USSR which was also expanding her control in the region. Afghanistan at that time was a weak state and was not in a position to be sandwiched between the two great powers so she accepted the delimitation of her borders by the other countries. Secondly, the borders mostly drawn by the colonizers were on geographic lines without keeping in consideration the social, ethnic and cultural realities of the territories involved. Durand line distributed Pashtuns into two countries and confined their movement thus limiting the intermingling of the tribes having shared language, culture and race. However, the reality is, the border has always been porous for the tribes and the people living on the border areas of both the countries seldom faced difficulties in movement. As far as the historical connection of Afghan rule is concerned, that needs serious scrutiny because the areas of Durand Line were not in the effective control of Afghan Amir.

Pakistan presents that the people of the north west frontier region have joined her by exercising their right to decide freely whereas Afghanistan instigates the people of the frontier to rise as they were not provided with their due right of territorial self determination when British were leaving India.

Durand Line is the border that was demarcated with the proper consent of Afghan Amir and through bi-lateral agreements. Under International Law, Afghanistan is never going to gain any support regarding her objections to the agreement. She is presenting some valid points in her defense of the claims but that cannot be applied as an exceptional case because that will affect the territorial integrity of many nations that have their boundaries settled using the same demarcating principles. However, the international community supports Pakistan's claim of Durand Line because of its legal standing. Afghan regime thus have the view that it is not the concern of the regime but that of the people of Afghanistan, especially those living in proximity



to the borders. After analyzing the perspectives of the parties involved in Durand Line issue it is suggested that there is a need to have an in depth and transparent study of the people who got divided both on Pakistani side of the border as well as on the Afghanistan side to have a clear picture of the grievances that needs to be resolved to establish cordial relations with the adjacent Muslim brother state.