

RESPONDING TO DURAND LINE RECOGNITION

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Brussels-New York-Moscow-based EastWest Institute is “a global think tank” founded in the 1980, at a time when globalization was taking off. Its mission is (a) to “focus on the most pressing challenges facing global peace and security” and (b) to “forge collective action for a safer and better world.” A young researcher of this institute has written an article: ”Recognizing the Durand Line”. Its author “argues that the Durand Line should constitute the legal border and as such recognized by both countries,”[namely: Afghanistan and British-Pakistan]. What for? Because “The security situation on both sides of the Durand Line remains of great concern not only to both countries but also to the international community,” [apparently: USA and NATO]. The letter below, along with two complementary attachments, is our response to Ambassador Guenter Overfeld (former German ambassador to Pakistan and current Vice President and Director of Regional Security/EastWest Institute). Exactly 118 years had passed since the Durand Line was imposed by then global power and icon of capitalism, Britain, under the guise of security. Today the conscienceless global capitalism is using the same terminology and pretext—security for themselves—to impose their agenda on the Pashtun people. However, we have news for them, this graveyard of empires would bury both the old and new empires together for perpetuity.

Your Excellency Ambassador Guenter Overfeld:
East West Institute - Brussels Office, Belgium

We have received and reviewed Brad Brasseur’s paper on the Durand Line at the following link:
<http://www.ewi.info/recognizing-durand-line-way-forward-afghanistan-and-pakistan>

We find it hard to believe the future of the Pashtun nation has become such an exercise for the West in general that individual Westerners from the laypersons to the academics to the individual states and organizations provide their unique recipe for the future of this nation. Some of these recipes tend to take the form of outright genocide in the form of the usage of uranium munitions and other exotic weapons of microwave bombs and energy beams at exterminating this nation [www.afghanistanafterdemocracy.com/page10.html] while others take more mundane form similar to your proposal. It is this calculated campaign by Western imperialist forces undermining the Pashtun nation that compelled me with collaboration from other intellectuals to form the ‘All Afghanistan National Accord’ aimed at Pashtuns’ defense and ultimate unification [See attachment].

I, as the architect of the All Afghanistan National Accord, and my colleagues notably Dr Zirakyar consider the defense and unification of the Pashtun nation as our ultimate goal. This ‘Accord’ has millions of followers on both sides of the wretched Durand Line and they stand firm on the set goals. This Line is no different in terms of substance to the current onslaught imposed on the Pashtun people on both sides of the colonial Durand Line. Your formulation is an extension of a number of proposals set

forth by various people debating the future of Afghanistan. It was not long ago when some former US officials exercised their opinions though oblivious of Afghan history by proposing the division of Afghanistan along ethnic lines. Those exercises in futility have passed on and so would your proposal of recognizing the Durand Line.

You need to understand that those so-called “Afghan leaders” such as Abdurrahman Khan [1880-1901] lacked legitimacy by accepting British designs. Abdurrahman Khan delegated Afghan foreign policy to the British unwillingly and without the support of the population; hence, any action that served detrimental to the future of that land in the absence of institutional and popular support is illegitimate. The Afghans have a long established institution, the Loya Jerga, which is convened in hard times when national issues require special consideration. A similar Jerga was never convened in this case. Thus, the actions of Abdurrahman Khan lacked any national support.

Moreover, what you call a bilateral agreement was in reality an imposition since King Abdurrahman Khan had stated in his note that he hoped his descendents would bring dignity to Afghanistan. This assertion by the King was quite explicit admission that the treaty was imposed on him [For his delaying tactics see attached research paper by Dr. Zirakyar]. Meanwhile, when you wrote that since the Afghan King accepted money and munitions and whatever else, thereby, you alleged that the King must have signed the agreement willingly. However, this is invalid since every agreement imposed or otherwise has a set of incentives and detriments and this agreement was no exception. What was the legal function of these bribes? It had a set of incentives provided to the Afghan King necessary to remain in power and continue his campaign of national pacification in order to ensure local stability. As to the issue of bilateralism in the agreement, it was an intentional flaw by excluding the Baloch nation. The Baloch people should have been party to this agreement. This factor alone is enough to invalidate the agreement even if everything else were in order. If we look at this exclusion in the framework of international law, international law requires all parties that are affected by any agreement wherein border demarcation are set to be party to the agreement. Otherwise, the agreement does not hold legality.

In this light, we need to take into account that any action that does not have legitimate foundation in regards to the national institution of a nation state is devoid of the needed legitimacy to be taken seriously for any subsequently related agreements. Thus, any agreement that materialized in the 20th century is void in light of the illegitimate action perpetrated during the reign of Abdurrahman Khan.

Meanwhile, international law is a very selective tool for the West in general. We do not need to go into too far past to realize the hypocrisy of the Western institution. When it comes to the interest of Western powers, international law becomes readily available and the righteousness of their values takes center stage. However, when it comes to the outright violation of other people and nation-states, the international law becomes irrelevant. Where was the international law in the invasion of Afghanistan and Iraq? Where were Western values to condemn global violators of law such as Bush and Blair? It was amusing when the Nobel Peace Committee granted President Obama the Nobel Peace Prize when he actively pursued the mass murder of Afghans and Iraqis alike. It is easy for the so-called international institutions to indict people worldwide while Western leaders convicted of war crimes and genocide in absentia walk free.

The invasion of Afghanistan was totally illegal according to the very law that you so adamantly advocate; however, since the Western media was running the entire show, no one bothered to question it.

You see the disaster living up by Afghans on daily basis has its roots in the illegal invasion of Afghanistan by the United States and NATO in 2001. The underling justification for the US to invade Afghanistan was their response to the attacks of September 11, 2001. Moreover, the attacks of 911 have also shaped the American sense of morality for feeling righteousness by referring to the war in Afghanistan “a just war” as President Obama has shamelessly proclaimed in his acceptance speech of the Nobel Prize for “Peace” in Oslo, Norway. The truth, however, is otherwise. The invasion of Afghanistan was illegal if we use International Law as the underlying standard of legitimacy. However, there has been a lot of disinformation about the legality of the war when the so called experts refer to UN resolutions as basis of their argument in favor of the legality of the war in Afghanistan.

If we study the UN resolution subsequent to the attacks of September 11, 2001, none of the resolutions advocates war or aggression against Afghanistan. In fact, every resolution reiterates the significance of the UN Charter in any international effort. If we look at the UN Security Council Resolution 1368, which was adopted on September 12, 2001, a day after the attacks in New York and Washington DC, it affirms the following proclamations:

Reaffirming the principles and purposes of the Charter of the United Nations, Determined to combat by all means threats to international peace and security caused by terrorist acts, Recognizing the inherent right of individual or collective self-defence in accordance with the Charter.

Among the above-mentioned three affirmations, the third one “Recognizing the inherent right of individual or collective self-defense in accordance with the Charter” is construed by those individuals either ignorant or hypocrites as the green light to invade Afghanistan. However, they tend to forget the details in each of these affirmations. The crucial addition to each of these affirmations is the notion of compliance with the UN Charter. It may only be a phrase for the untrained eye or intentional disregard by those advocating US’s global agenda; nonetheless, it is a legal and moral impediment that should not be taken lightly.

Equally, if we refer to the Security Council Resolution 1373 adopted on September 28, 2001, Security Council Resolution 1377 adopted on November 12, 2001 and Security Council Resolution 1378 adopted on November 14, 2001, each of these resolutions affirms that every action must be within the confines of the UN Charter. Furthermore, Security Council Resolutions 1373, 1377 and 1378 reaffirm Security Council Resolution 1368, which affirms without any qualifications the “principles and purposes of the Charter of the United Nations”. This brings us to one basic fundamental principle of the Charter of the United Nations, Article 2 of the UN Charter. The Article 2 of the UN Charter forbids any nation state from the unilateral use of force:

All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The fundamentals of legality and moral superiority enshrined in the Article 2 of the UN Charter are sufficient in their own right to put to rest any claim of legitimacy of the invasion of Afghanistan.

However, there are three exceptions to the Article 2 of the UN Charter: action authorized by the UN Security Council; Article 51 of the UN Charter--the State's right of self-defense; and action by regional bodies with authorization from the UN Security Council.

The first exception to Article 2 of the UN Charter would have been authorization of an attack by the UN Security Council; however, as discussed above, none of the Security Council Resolutions authorizes the use of force. All of the Security Council Resolutions, 1368 and 1373 adopted before the invasion and Security Council Resolutions 1377 and 1378 adopted shortly after the invasion affirm the UN Charter. What this means is that each of the resolutions mandates conformity to the UN Charter in particular Article 2 of the UN Charter.

The second exception to the Article 2 of the UN Charter is Article 51 of the UN Charter. Article 51 of the UN Charter gives a nation-state the right to self-defense as long as the attack is ongoing or imminent. Article 51 states that member states must report to the Security Council and the Security Council would take necessary measures to restore peace. The attacks were not ongoing and the response was not immediate. The US waited until October 7, 2001 to retaliate against Afghanistan. The US has reported the attacks of September 11, 2001 to the UN Security Council and the Security Council passed two resolutions and adopted measures to combat terrorism within the framework of the UN Charter. As mentioned above, none of the resolutions authorized the use of force. Furthermore, the Security Council measures included "legal suppression of terrorism, and its financing, and for co-operation between states in security, intelligence, criminal investigations and proceedings relating to terrorism." To this end, the Security Council had set up a monitoring committee to oversee the progress of measures proposed by the two resolutions and gave all states 90 days to report to the monitoring committee about the progress done in that regard. As we know of course, the US did not wait for 90 days or even a month and took matters in its own hands. The issue of self-defense in the International Law is very similar to the rationale of self-defense exercised within nation states. That is, when a person faces a threat from an attacker and there is no police to neutralize the danger faced by the victim, then the victim is entitled to self-defense. However, once the danger subsides, the would-be victim should not take the law into his own hands and become a vigilante.

If we look at Article 51 of the UN Charter within the confines of the International Customary Law prior to 1945, the Carolina incident of 1837 established three conditions that have to be met for any retaliation to take place. These conditions are immediate, proportionate, and necessary. The response of the US was not immediate since the attacks had stopped; hence, when the attacks stopped, the rationale for retaliation cease to exist. Moreover, the US lacked evidence to tie the attacks to anyone including Osama bin Laden. Meanwhile, the US had to wait for almost a month during which no other attack had taken place and then launched a full scale invasion of Afghanistan. This brings us to the issue of proportionality. The US has used massive amount of munitions both conventional and unconventional. The invasion not only toppled the Taliban regime, it has also killed thousands of innocent Afghan civilians and infested Afghanistan with uranium munitions that would haunt the population there for generations to come. To this end the issue of proportionality as stipulated by the International Customary Law also failed. The third condition is whether the invasion was necessary. The US claims that Taliban would not hand over Bin Laden to them; however, it fails to address the issue of evidence. Taliban had demanded evidence of Bin Laden's complicity in the attacks and then proposed legal proceedings for a trial wherein the evidence for Bin Laden's complicity would be weighed. [Major Nazi

war criminals was given a chance at Nuremberg Trials after World War II, but those accused of 911 attacks were excluded from a similar treatment?!!]

The third exception to the Article 2 of the UN Charter is the authorization of regional bodies by the UN Security Council. The 'regional bodies' here refers to NATO. Since NATO is subservient to the UN Charter, invoking Article 5 of the Washington Treaty, that an attack on one member of NATO is an attack on all members, does not constitute legality. To this end, the use of force by NATO of which the US is a member was illegal. Hence, all three exceptions to Article 2 of the UN Charter were not satisfied. Therefore, the invasion of Afghanistan was illegal according to the International Law and the UN Charter. Finally, it is worth mentioning that the plan to invade Afghanistan was formulated well in advance to the attacks on September 11, 2001. According to a former Pakistani diplomat, Niaz Naik, the US Government had formulated a plan for invading Afghanistan in mid-July, 2001. Niaz Naik told the BBC that the American officials in Berlin had told him that the planned invasion of Afghanistan had to start before the snowfall, and at the latest, it had to be in motion by mid October 2001 (George Arney, BBC report September 18, 2001). No wonder, it took only 25 days to set in motion a full scale invasion of Afghanistan, otherwise, logistically, it would be impossible for the US Government to invade a country half a world away in a timeframe of a little over three weeks. Steve Grey of the Independent Media Center reiterates the improbability of waging war in 25 days. By comparison, it took 4 1/2 months for the USA to wage war on Iraq in 1991. Planning is a process, not an event requiring multiple phases, especially against an elusive enemy like the Taliban and Al-Qaida. If we look at the planning process and stages or at the process and stages of policy making, we would come to a conclusion that preparation and implementation of invading a country is much more complex than planning for an organization, and requires a lot longer than 25 days to implement.

In light of the above-mentioned write up about the illegality of the invasion of Afghanistan, your position on the international law is quite weak to say the least. If the international law were a serious institution, the war in Afghanistan would not have occurred.

We consider those Afghan organizations and individuals that are fighting against any foreign domination and/or occupation in the exercise of their right of self-determination to be treated as liberation movement, not "insurgency" which represents Western/imperial point of view and camouflages the legitimacy of the movement. These Afghan forces also understand that this war has been a war of aggression against Afghanistan but also it is specifically geared to undermine Pashtuns on both sides of the imperial Durand Line. Peace in Afghanistan is virtually impossible without the resolution of the evil Durand Line and ultimate unifications of the Pashtuns. If Pakistan considers the Durand Line to be Holy, they could draw a line beyond the Indus River and call it the Durand Line. [Remember! Germany and Vietnam are not divided anymore.]

Pashtunfully yours,

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