

**THE DURAND  
LINE IN**

**INTERNATIONAL  
LAW**

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- History of Durand Line
- Afghan Objections to the Durand Line
- Recognition of Durand Line
- Fencing the Durand Line
- Easement Rights





**HISTORY OF**

**DURAND LINE**

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- The Durand Line Agreement, named after Sir Mortimer Durand, was formed after the agreement of British-India and Afghan Government.
- It was negotiated and concluded in Kabul, between the British-India representative Sir Mortimer Durand and Amir Abdur Rehman, in 1893.





- The Durand line is Pakistan's longest border
  - It runs approximately 2,450 km from Sarikol Range in the north to the Iranian border to the southwest
  - The Amir while signing the agreement held a durbar, which included two of his elder sons and high military and civil officers.
  - They agreed and approved of it according to the accounts of Sir Mortimer and personal memoirs of the Amir
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- In 1919, after the death of the Amir Abdur Rahman's successor, Amir Habidullah, the forces of both sides of the border started fighting again and so need arose for a new treaty:
    - The Rawalpindi Treaty 1919 and its successor treaty the Anglo-Afghan Treaty 1921. Both these treaties recognized the Durand Line Agreement.
  - As Pakistan emerged as an independent state, it inherited the Durand Line Agreement as well as all subsequent agreements.
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- Following a *Loya Jirga*\*, on 26<sup>th</sup> July 1949, the Afghan government declared the Durand line an imaginary line and all previous agreements void



*\*A special type of Jirga that is mainly organized for choosing a new head of state in case of sudden death, adopting a new constitution, or to settle national or regional issue such as war.*

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**AFGHAN**

**OBJECTIONS**

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## Afghanistan's Objections to the validity of the Durand Line:

1. Afghanistan does not recognize Pakistan as “successor” state but rather a “clean” state (a “clean” state does not inherit the treaty obligations of the colonial power)\*
  2. Opponents believe that the agreement was between Amir Abdur Rehman and the British India Government and dissolved with the Amir's death.
  3. Some contend that it was never intended to divide the border physically.
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However:-

- As per International Law Pakistan qualifies as a successor state and this has been legalized by the Indian Independence Act 1947 and the United Kingdom Government in 1950.
  - The Amir as the Head of State was legally competent to enter into treaties on behalf of Afghanistan
  - Article 4 of the Agreement states the need for fixing the boundary along the frontier. The intended purpose was the formulation of the border without the need for a physical occupation.
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**RECOGNITION OF**

**THE DURAND LINE**

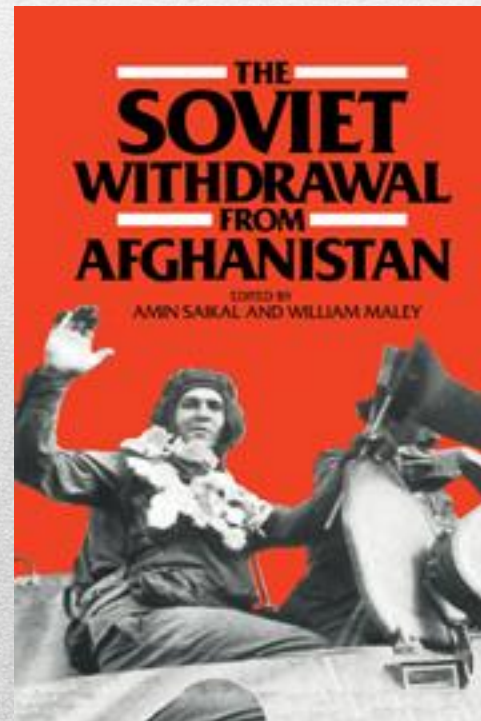
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- Afghanistan routinely, when issuing visas and transits and permits for transport of goods and for trade purposes, recognizes it as a border.





- Afghanistan, along with Pakistan, USA and USSR, has recognized the Durand Line as an international border under the Geneva Accords, 1988.



- International Court of Justice (ICJ) recognized the Durand Line as a border between Pakistan and Afghanistan in Aerial Incident of 10<sup>th</sup> August 1999.
  - At the RECCA Afghanistan demonstrated its acceptance of the border when it agreed to use modern border management for increased security.
  - The US armed forces were ordered to stay on the Afghan side of the Durand Line when they went into Afghanistan in 2001.
  - The UNSC\* resolutions fully recognize it as an international border between Pakistan and Afghanistan, the international law principle of non-intervention fully applies.
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- The Bonn agreement and the International Conference on Afghanistan (2010) also recognizes it as a border.



- The Durand Line was re-affirmed as an international border in 1956 during a meeting of Southeast Asia Treaty Organization (SEATO).
  - Ambassador Marc Grossman, who was a UN Special Envoy for Pakistan and Afghanistan, recognized Durand Line as an international border. (October, 2012)
  - UNHCR starts its assessments when the citizens of one crosses the border.
  - NATO documentation and deployment of the security forces and its material presumes it as a border between Pakistan and Afghanistan.
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**FENCING THE**

**DURAND LINE**

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- Due to its porous nature Pakistan may fence the border for its national security and integrity.
- Pak-Afghan border has been a way for human trafficking and bringing narcotics into Pakistan.
- This has made it hard for Pakistani forces to work effectively in stopping many crimes, specially in Khyber-Pakhtun Khuwa.



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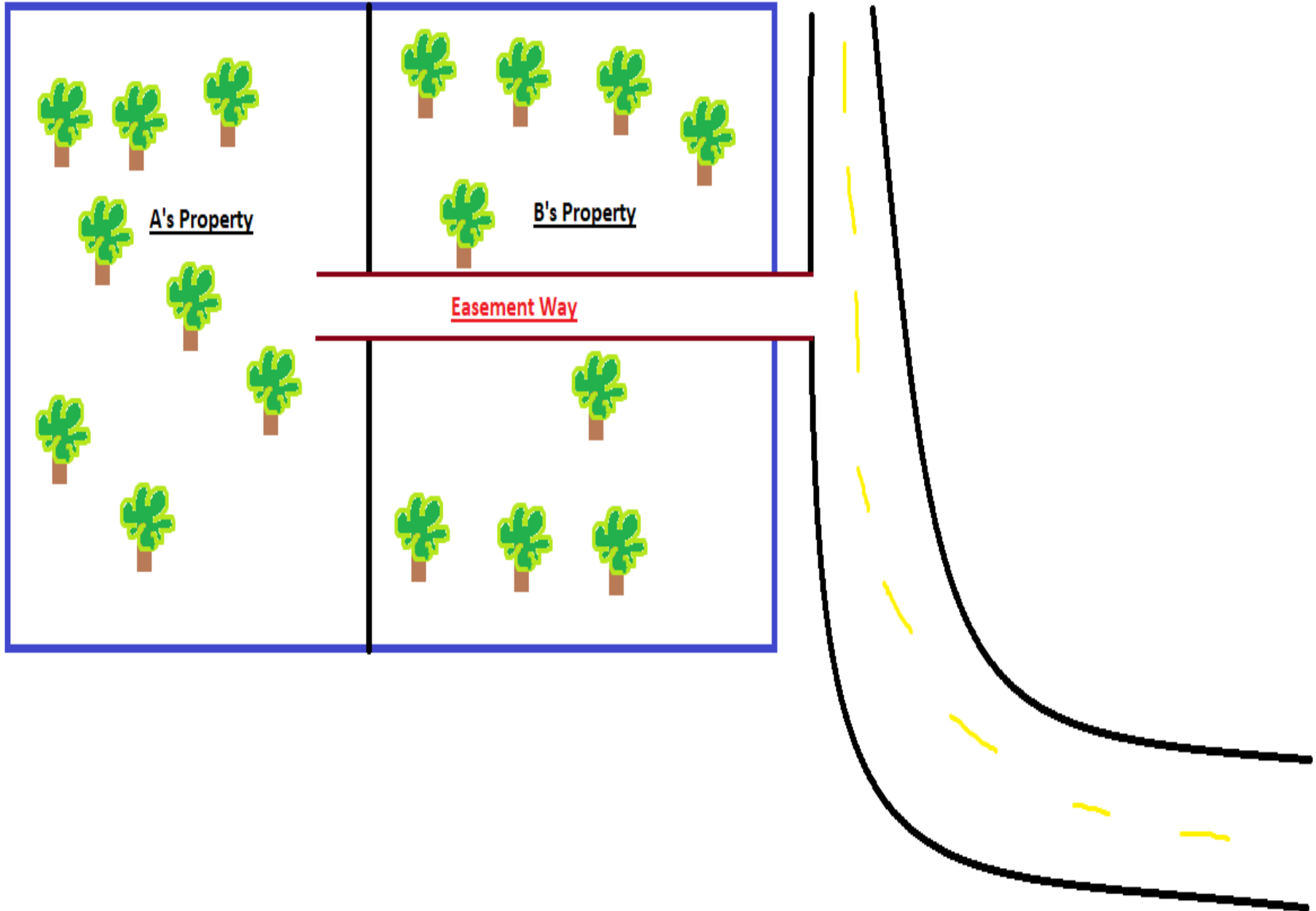
- Pakistan is bound by the United Nations Security Council Resolution 1373 to “deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe haven” and “prevent those who finance, support, facilitate, or commit terrorist acts from using their respective territories for those purposes against other states or their citizens.”
  - But Pakistan can build a fence unilaterally along the entire or parts of the border in order to keep its national security and integrity in place. Just like USA did with Mexico-US border in 2006 (Secure Fence Act 2006)
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**EASEMENT**

**RIGHTS**

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- Easement is a right of use over a property of another. They frequently arise among owners of adjoining parcels of land.\*
  - Pashtun and other tribes live on both sides of the Durand line who were historically allowed to cross the border.
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- The common misconception is that the Agreement grants easement rights however it has not been mentioned or implied.
  - The Agreement permits Pakistan to rightfully stop and check people crossing the Durand Line.
  - Universal International Law principle of non-intervention applies. This is abided by the fact that easement rights are only exercised by members of the tribes divided by the Durand Line and not other nationals.
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**THANK YOU!**

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**QUESTIONS?**

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