

The changing character of the Durand Line

Amina Khan and Christian Wagner *

Abstract

The contentious status of the Durand Line border between Afghanistan and Pakistan is a symbol of both the problems of state and nation building and their conflict prone relationship. First, the unresolved border of the Durand Line was a tool in the process of nation building by successive Afghan governments, whose demand until the 1970s was for a greater 'Pashtunistan' which challenged the territorial integrity of Pakistan. Secondly, in the 1990s, the Durand Line acquired a regional dimension when Pakistan's military linked Afghanistan to its conflict with India over Kashmir. Finally, after 9/11, the Durand Line suddenly acquired a global dimension due to the War on Terror. The solution for contested borders like the Durand Line does not lie in the continuation of confrontational policies as in the past, but in new strategies in order to foster cooperation. The pooling of sovereignty along the Durand Line was already being discussed in the 1930s and 1940s. Such concepts, which could include joint management of common cross border issues, would in essence be useful in transforming the contested line into an area of cooperation rather than confrontation.

Introduction

The contentious status of the Durand Line between Afghanistan and Pakistan is a symbol of both the problems of state and nation building and their conflict-prone relationship. But the nature of the Durand Line has undergone various changes since the refusal of the Afghan government to accept the colonial border as a national boundary towards the newly created state of Pakistan in August 1947.

At least three phases can be differentiated. First, until the 1970s, successive Afghan governments promoted the idea of a 'Greater Pashtunistan' that should include the Pashtun parts of Pakistan. The unresolved border of the Durand Line was a tool in the process of nation building that challenged the territorial integrity of Pakistan.

* Amina Khan is a Research Fellow at the Institute of Strategic Studies, Islamabad. Christian Wagner is the Head of Research Division, Asia at the SWP Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs).

Secondly, in the 1990s, the Durand Line got a regional dimension when the Pakistani military linked Afghanistan to its conflict with India over Kashmir. The undeclared border made it easier for the Pakistani military to envision Afghanistan only as a hinterland in the overall context of its strategic depth paradigm.

Finally, after 9/11, the Durand Line suddenly received a global dimension in the War on Terror. In particular, Pakistan's Federally Administered Tribal Areas (FATA) became a safe haven for various militant groups that challenged the United States and the West (e.g. Al Qaeda), the newly formed government in Kabul (Afghan Taliban) as well as the Pakistani state and society (Pakistani Taliban).

This article will elaborate the changing character of the Durand Line. The first part will focus on the relations between Afghanistan and Pakistan till the 1980s. The second will deal with Pakistan's policy since the 1990s and, finally, the implications of 9/11 will be analysed.

1. The national dimension: the Durand Line and Pashtun nationalism

When the independence of British India dawned, Afghanistan raised territorial claims on the Pashtun areas – present day Khyber Pakhtunkhwa¹ on the basis that they had belonged to Afghanistan for a short period of time in the 18th century. However, already in 1893, an agreement between the British, led by Sir Mortimer Durand, Foreign Secretary of the British Indian government, and the then ruler of Afghanistan, King Abdur Rehman Khan, had been signed. The Durand Line demarcated the 2,640 km (1,610 miles) border² between British India and Afghanistan. In the mid 1940s, the Afghan rulers refused to accept the treaty and played the nationalist card of 'Greater Pashtunistan' which also included Dir, Swat, Chitral, Amb, Balochistan and the princely states of Kalat, Kharan, Makran and Las Bela.³

Subsequently, there was also a quest for Pashtun independence in the North West Frontier Province (NWFP) in British India that was not necessarily aligned with the Afghan demands. Local leaders like Ghaffar Khan and his Khudai Khidmatgars ("Servants of God") movement campaigned for an independent Pashtun state. Khan propagated a strategy of non-violence and was called the "Frontier Gandhi". But the option of independence was not accepted by the British and therefore not included in the referendum of July 6-17, 1947.⁴

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Although Ghaffar Khan and his followers boycotted the referendum, more than 50 per cent people voted for the accession of NWFP to Pakistan.⁵

Similarly, a Jirgah was held in the Tribal Agencies of Pakistan (Federally Administered Tribal Areas – FATA) in which the tribal leaders declared their support for Pakistan. When the tribals agreed to join Pakistan and swore allegiance to the state, Muhammad Ali Jinnah, the founder of Pakistan, agreed to let them live under the same administrative structure with their special status and royalties, but with eventual integration into the rest of the country.⁶

The hope was that as the state progressed, FATA would be mainstreamed and integrated through social, economic and political development. However, successive Pakistani governments have lacked the will and political sagacity to focus on the tribal areas and their integration into the state. The status and structure of FATA has remained largely unchanged and it continues to operate under the same principles of administration as prescribed by the British. This means recognizing the autonomy of the tribes and retaining the Frontier Crimes Regulation (FCR) enacted in 1901, in which the writ of the government and Pakistani law does not apply.⁷

Hence, with partition in August 1947, the disputed and contested areas by Afghanistan became legal parts of Pakistan's territory.⁸ After Pakistan's creation, the Afghans continued to challenge the Durand Line, with the exception of Nadir Shah and to a certain extent King Zahir Shah who had begun to acknowledge the legality of the Durand Line as well as the NWFP and FATA as parts of Pakistan's territory.⁹ Some of the objections that emanate from the Afghan side regarding the validity of the Durand Line are that the agreement was forced upon the Afghan King, Abdur Rahman Khan, after negotiations with the British government in 1893; that it was signed only for a period of 100 years and hence expired in 1994; and that the agreement was made with the British Government and not with Pakistan, and so in essence, it can be regarded as invalid.¹⁰

However, Pakistan has always upheld the norms of international law and has maintained the position of a successor state to the rights and duties inherited from the British government in India. Pakistan's stand on the Durand Line has been that it is "a valid international boundary recognized and confirmed by Afghanistan on several occasions; that the Durand Line terminated Afghan sovereignty over the territory or influence over the people east of [the] Durand Line; and finally that Pakistan, as successor state [to British India], derived full sovereignty over this area and its people and had all the rights and obligations of a successor state."¹¹

The British have on several occasions endorsed this stance. In fact, in 1950, Philip Noel-Baker, the British Secretary of State for Commonwealth Relations, with reference to the then NWFP territory, stated: “It is His Majesty’s view that Pakistan is in international law, the inheritor of the rights and duties of the old government of India, and of his Majesty’s government in the United Kingdom, in these territories, and that the Durand Line is the international frontier.”¹² This stance was upheld and reiterated by the British Prime minister in 1956 before the British Parliament.¹³ Pakistan’s position was also supported by its international allies such as the members of the Southeast Asia Treaty Organization (SEATO). In their ministerial meeting held in Karachi in March, 1956, “the Council declared that their governments recognized that the sovereignty of Pakistan extends up to the Durand Line, the international boundary between Pakistan and Afghanistan.”¹⁴

Non-acceptance of the Durand line from the Afghan side was witnessed once again when on October 21, 2012, the U.S. Special Representative for Pakistan and Afghanistan, Marc Grossman, in an interview to a private television channel in Kabul stated that the U.S. “recognized the Durand Line as the international border between Pakistan and Afghanistan”.¹⁵ However, the Afghan Ministry for Foreign Affairs, responded by saying that the government “rejects and considers irrelevant any statement by anyone about the legal status of this line.”¹⁶

The Durand Line and the Pakhtunistan question continued to remain the most dominant and contentious bilateral issue until the 1970s. In 1948, when Pakistan joined the United Nations, Afghanistan was the only country that voted against it. In 1950, there were violent clashes in the border region between Pakistan and Afghanistan.¹⁷ The incursions by Afghan forces from Afghanistan into Bajaur, one of the agencies in FATA, led again to clashes in September 1960, this time with the Pakistan army.

The tensions were followed by a breakdown of diplomatic relations between both the countries in spring 1961 which were restored only in 1964. In the 1960s, governments in Kabul continued to celebrate a ‘Pashtunistan Day’ and tried to internationalize the Pashtunistan issue. The Afghan government brought the issue to the International Islamic Economic Conference and raised it in the United Nations.¹⁸ However, successive Afghan governments have failed to gain the desired international support and recognition for their stance regarding Pashtunistan.

During the 1970s, Pakistan’s Prime Minister Zulfikar Ali Bhutto sought a rapprochement with Afghanistan in order to defuse the bilateral tensions. In

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1973, he recognized the new government of Mohammed Daoud after the coup in Kabul. But Daoud had been a strong supporter of the idea of Pashunistan. During his reign between 1973 and 1978, he continued to promote this idea and supported tribal insurgencies in Balochistan and the NWFP. In return, Pakistan supported the Afghan opposition against Daoud and facilitated his cousin King Zahir until he sought asylum in Italy.¹⁹

In 1975, Bhutto gave secret support for an insurrection by Islamist radicals. After its failure, some of the leaders found refuge in Pakistan and later turned into Mujehideen in the fight against the former Soviet Union.²⁰ The visit of the Mohammed Daud to Pakistan in March 1978 seemed to open a new era in the bilateral relations.²¹ But the domestic turmoil in Afghanistan and the invasion of the former Soviet Union in December 1979 ended the process abruptly.

Afghan demands for a separate state of Pashtunistan have seldom found adequate support among the majority of Pashuns in Pakistan.²² Pashuns are traditionally the majority population in Afghanistan but are only a minority in Pakistan. But, in absolute figures, there are more Pashuns living in Pakistan than in Afghanistan.²³ After the creation of Pakistan, Pashun organizations that promoted independence like the Khudai Khidmatgar movement were banned in 1948. Successor parties like the National Awami Party (NAP) which was formed in 1957 and headed by Abdul Wali Khan, the son of Ghaffar Khan, remained “on the borderline between autonomy and independence.”²⁴

The NAP was banned because it supported the demands of the Awami League in East Pakistan for greater regional autonomy. It was allowed to contest the first elections in 1970 and won the largest number of seats in NWFP and Baluchistan. The Pakistan People’s Party (PPP) under the leadership of Zulfikar Ali Bhutto and regional parties like the NAP reached a consensus after the civil war in 1971 and the independence of East Pakistan so that a new constitution could be passed in 1973. However, due to internal power struggles, the consensus broke down and the NAP was banned again in 1975. Within the Pashun community, a radical section under the leadership of Ajmal Khattak fled to Afghanistan and tried to start a rebellion for an independent Pashun state. The leadership of the NAP that was not arrested like Wali Khan established the National Democratic Party (NDP) which rejected the idea of an independent state of Pakhtunistan.²⁵

The war in Afghanistan during the 1980s, the presence of three million Afghan refugees in the former NWFP, as well as the financial and military support for Pakistan for the training of Jihadi groups, weakened the support for

regional Pashtun parties like the NDP with its traditional pro-Moscow stance.²⁶ Religious parties like the Jamiat-ul-Ulema-e-Islam (JUI) benefited from these changes as also from the support they received from Zia's military rule against Pashtun regional parties.²⁷

The demand for independence waned among Pashtuns in Pakistan. They got integrated into the military and bureaucracy and became part of the Pakistani state. Although the Punjabis remained the dominant and most influential ethnic group, the Pashtuns were successfully integrated politically, economically, socially, and culturally as compared to the other ethnic groups. Pashtuns have held high positions in the military and in politics with two presidents so far. The positive integration of Pashtuns was also officially recognised by Wali Khan in a written statement to the Supreme Court in 1975 in which he "admitted that the Pashtuns were disproportionately highly represented in both the armed forces and the civil services."²⁸

In 1986, the Awami National Party (ANP) was founded as the main political representative of the Pashtuns. In 2008, it won the provincial elections and successfully lobbied for the renaming of NWFP into *Khyber Pakhtunkhwa (KP)* which was finally achieved in 2010. The ANP also became a coalition partner of the PPP government at the centre which also underlined its commitment to the Pakistani state and its institutions.

Until the late 1970s, the open question of the Durand Line was mostly exploited by various Afghan governments to threaten the territorial integrity of Pakistan. The instrumental character of the Durand Line in the context of the Pashtunistan issue is also obvious when looking at Afghanistan's other borders. Afghanistan's boundaries with Russia (now Turkistan and Uzbekistan) and Persia (now Iran) were also demarcated by the British, and neither Afghanistan nor the successor Central Asian States of Tajikistan, Turkmenistan and Uzbekistan have challenged or questioned the validity of the border.²⁹

The quest itself was problematic because the concept of Pakhunistan included parts of Balochistan and it did not get full support from the Pashtuns in Pakistan. Segments of the Pashtuns were demanding national independence but the majority preferred to stay within the context of the Pakistani state even if there was an ongoing struggle between the centre and the provinces over the question of autonomy.

Although Pashtuns do live on either side of the border, they are still separated by tribal structures and hence are not as closely united as often

perceived or expressed by Pashtun nationalists from Afghanistan. Also, keeping in mind the deep ethnic strife that has always existed in Afghanistan between the Pashtuns and the other ethnic groups who have resisted and opposed Pashtun dominance, continuously raising the ethnic card of Pashtunistan could become detrimental for these groups. If a 'greater Pashtunistan' would become a reality, that would lead to even greater Pashtun dominance and further marginalization of the other ethnic groups in Afghanistan.

2. The regional dimension: the Durand Line and strategic depth

After the former Soviet invasion in 1979, Pakistan became a frontline state of the United States. In the 1980s, America provided substantial financial and military aid to Pakistan in order to fight the former Soviet Union in Afghanistan under the banner of *Jihad* (Holy War). The Pakistani Inter-Services Intelligence (ISI) trained the Mujahedin from Afghanistan and volunteers from the Arab world in the tribal areas along the border with Afghanistan.

After the withdrawal of the former Soviet Union in 1989, the triangle between Pakistan, Afghanistan and India underwent a fundamental change. The Durand Line and the open border with Afghanistan now turned into an instrument for Pakistan's foreign policy. Till then, Pakistan's relations with India and Afghanistan had remained largely independent of one another. Aslam Beg who followed Zia-ul Haq as Chief of Army Staff (COAS) outlined Pakistan's new regional strategy. Afghanistan should be transformed into Pakistan's hinterland in order to secure "strategic depth" in the conflict with India. A "friendly" government in Kabul would allow Pakistan to gain a better strategic position. First, Afghanistan was to serve as a backyard and safe haven for militant groups which could be used against India in the Kashmir conflict.³⁰ Second, it should help counter the demands for a "greater Pashtunistan" from Pashtun nationalist groups in Afghanistan.

The concept of strategic depth linked Pakistan's dispute with India to Afghanistan. It was not surprising that the Pakistani military played the religious card. Domestically, Zia ul Haq had already started a process of Islamization after a staged a coup and assumed power in 1977. On the regional level, the main lesson from the Afghanistan war seemed to have been that if the strategy of *Jihad* was successful to defeat a super power like the former Soviet Union, it could also be used against the arch-enemy India.³¹

Former Mujahedeen from Afghanistan were sent to Kashmir to support the local rebellion against the rigged assembly election that in 1987. But the Islamist

militants also turned against the supporters of the Jammu & Kashmir Liberation Front (JKLF) that demanded national independence and not accession to Pakistan. The strategy of the Pakistan military was partly successful. In the 1990s, Kashmir became a hot spot and was perceived as ‘the most dangerous place’ in the world, but it failed to bring about another international intervention in favour of Pakistan. Instead, it led to the birth of violent militant groups like the *Lashkar-e-Tayyaba* (LeT) and the *Harkat-ul-Mujahideen* (HUM) that have proved to be detrimental for Pakistan.

Following the Soviet withdrawal from Afghanistan in 1989, the country faced a multitude of problems. Various groups struggled for power with the result that the country fell into a civil war during the 1990s. Initially, Pakistan supported its traditional allies from the Mujahedeen camp like Gulbuddin Hekmatyar and his Hezb-e Islami. However, as he failed to achieve a prominent position, the Taliban, a local group from Southern Afghanistan, became Pakistan’s most important partner. In 1994, the Taliban took control over Khandahar and Pakistan started to support the movement militarily and logistically. The extensive support was documented by many reports and made Pakistan the “godfather of the Taliban”.³² Religious students had been educated and trained in madrassas in Pakistan since the Afghan war. The non-existence of a border made it easy for them to move into Afghanistan and join the ranks of the Taliban.

When the Taliban gained power in Kabul in 1996, Pakistan was one of three countries that recognized the new regime diplomatically.³³ Despite the fact that Pakistan did favour the regime of the Taliban, since having a friendly government inside Afghanistan would secure and protect Pakistan’s interests both on its eastern and western flanks, the reality turned out to be different. Again, Pakistan’s strategy was only a partial success. Although the Taliban suited Pakistan’s interest, the relationship remained difficult. The Taliban were for instance neither willing to recognize the Durand Line as an international boundary nor to hand over Osama bin Laden to the United States or to stop the destruction of the Buddha statues in Bamiyan.

3. The global dimension: the Durand Line and 9/11

After the attacks of 9/11, Pakistan was forced to abandon its support for the Taliban in Afghanistan under heavy American pressure in order to secure its national interests, especially vis-à-vis India.³⁴ After the military intervention of ISAF/NATO forces in Afghanistan at the end of 2001, thousands of fleeing Taliban members and foreign militants including al-Qaeda operatives poured into

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Pakistan's tribal areas as well as Balochistan. The tribal areas became a safe haven for foreign militant groups and served as a base for al-Qaeda and Afghan Taliban, who use the porous border to attack Western forces in Afghanistan.

Although Pakistan became a part of the U.S.-led intervention in Afghanistan and was even enhanced to the status of a 'major non-NATO ally' for its role in supporting the military intervention to ouster the Taliban, the Afghan government as well as Western forces began to accuse Pakistan of not only allowing but supporting militant groups as well as cross-border attacks, thus further straining relations between Afghanistan and Pakistan and heightening their distrust of each other.

Again due to U.S. pressure, the Pakistani army started large scale military operations in FATA in 2003/2004. In reaction, militant tribal groups took up arms against the Pakistani state and the military because they opposed the close cooperation with the United States in the War on Terror and wanted to transform Pakistan into a Taliban state. After the violent end of the siege of the Red Mosque in Islamabad in July 2007, more than 40 different militant tribal groups formed the Tehrik-i-Taliban Pakistan (TTP) under the leadership of Baitullah Mehsud in December of the same year.³⁵

But Pakistan was not willing to give up its strategic interests vis-à-vis Afghanistan, especially after the Taliban resurgence in 2007. Again, although India was the main reason, the motivation had changed from strategic depth to the prevention of an Indian encirclement.³⁶ Following the international support for Afghanistan, India became the biggest non-Western donor and enjoyed a high reputation among the Afghan population after the fall of the Taliban regime.³⁷ India expanded its influence and made considerable and influential inroads into Afghanistan through its 1.5 US\$ billion aid package, engineers, IT specialists as well as developmental assistance by building roads, communication links, schools and hospitals. Even under the stern Taliban regime, India's soft power image continued to play an informal role in Afghanistan by means of its culture and film industry.

Hence, India's growing political and economic presence with its consulates in Jalalabad, Herat, Mazar-e-Sharif, and Kandahar, and its high popularity among the Afghan population was a major strategic defeat for Pakistan. Despite Pakistan's political, economic, and moral support to Afghanistan, the country has not been able to achieve its strategic goals in Afghanistan vis-à-vis India and Pashun nationalism with the Afghan Taliban groups.

In order to prevent illegal crossing of militants and also to put an end to the continuous accusations leveled at Pakistan by Afghanistan and the Western alliance of allowing cross-border infiltration of the Taliban from Pakistan and allowing and supporting Taliban militants to conduct attacks in Afghanistan, Pakistan decided to fence parts of the 2,640 km (1,610 miles) border in 2006.³⁸ However, this initiative too was met with strong opposition from the Afghan side, which noted that the line would only lead to dividing and separating the ethnic tribes on both sides of the border. Although a mere unarmed fence may not be as effective as hoped, it will, if nothing else, limit the number of militants crossing over. Earlier, Pakistan had already strengthened the border with more than 180 border posts to contain the infiltration into Afghanistan after 2001/2002.³⁹

In another effort to monitor and not prevent or divide the ethnic tribes crossing the border, the Pakistani authorities installed a biometric system at the Chaman border crossing 'Bab-e-Dosti' (Friendship Gate) in Balochistan, in January 2007 with eight computerized doors, six for pedestrians and two for vehicles. However, that too was opposed by the Afghans to such an extent that on the second day of its installation, angry protestors attacked the border gate and the system had to be done away with. Although the biometric system was installed on an experimental basis, its purpose was to replace the previous permit system by issuing border passes on the basis of computerised national identity cards issued by the National Database Registration Authority. Contrary to what many Afghans thought, this was in no way meant to divide the people or stop them from crossing – both measures were tools to monitor the border and influx of militants.

Domestically, Pakistan's political, military, and economic strategy in FATA has not been successful so far. Various peace agreements signed with militant groups, for instance in North Waziristan in September 2006, have failed. Pakistan's counterinsurgency strategy has also not been very successful. Because of its long-standing conflict with India, the military is neither trained nor equipped for guerrilla warfare. The army has suffered higher casualties than the NATO forces in Afghanistan. The army has also achieved to 'clear' territory but has been facing challenges to 'hold' and 'build' owing to the lack of civilian capacities.

Moreover, the use of airpower and artillery has caused many civilian casualties.⁴⁰ Economically, substantial financial support both by the Pakistani government and the United States sought to improve the infrastructure in the region, which is among the least developed parts of Pakistan. Politically, the

FATA reforms of 2011 allowed activities of political parties in the tribal area and brought improvements in the Frontier Crime Regulations.⁴¹

Again, like in the case of Kashmir, the support of militant groups for foreign policy interests has become counterproductive for Pakistan. The creation of the TTP whose ideology is inspired by Al Qaeda and the Afghan Taliban has brought another violent conflict to the Pakistan mainland.⁴² The TTP is held responsible for many attacks against civilian and military installations in Pakistan. For instance, the attack of the military headquarters in Rawalpindi in October 2009 or the attack on the Mehran naval base in Karachi in May 2011, and for the assassination of Benazir Bhutto in December 2007 and Shahbaz Bhatti in March 2011. Moreover, the TTP seems to have established links which militant Sunni groups like Lashkar-e-Jhangvi (LJ) which is held responsible for many attacks against religious minorities in Pakistan and Afghanistan.

4. Prospects: the open nature of the Durand Line

The use of an open, undeclared border like the Durand Line as a foreign policy tool for tactical or strategic political gains has failed both for Afghanistan and Pakistan. Playing the ethno-nationalist card like Afghan governments have done since the 1940s with their agitation for 'Greater Psthunistan' has not brought any significant result. Playing the religious card, like the Pakistani military did in the 1990s in order to achieve 'strategic depth', has not brought any success for its foreign policy agenda either. What seemed to be a clever strategy in the beginning, turned into a nightmare for its protagonists, whose societies have to bear the brunt in form of increasing levels of nationalistic and religious violence. Moreover, both strategies have increased the mistrust against the motives of the other which is now constraining any noticeable rapprochement.

Today, most states are not ethnically unified entities and religion has also failed to be the sole basis of modern statehood. In the era of globalisation, open borders are often regarded as a symbol of trade, development and mobility. The solution for contested borders like the Durand Line does not lie in the continuation of confrontational policies like in the past but in new strategies to foster cooperation. The pooling of sovereignty along the Durand Line was already discussed in the 1930s and 1940s.⁴³ Such concepts which could include joint management of common cross-border issues would be helpful to transform the contested line into an area of cooperation rather than confrontation.

Keeping in mind the upcoming US/NATO withdrawal in 2014, managing the border is an issue that is of pivotal importance to both states particularly due to the increase in cross-border attacks from both sides as well as the presence of the Tehrik- e –Taliban (TTP) on the Afghan side of the border in the provinces of Kunar and Nuristan that border Pakistan.⁴⁴ Moreover, for Pakistan, it is more of an issue of concern because as Afghan Security Forces (ANSF) are assuming greater responsibility for the security of its state (including areas that border Pakistan), there has been a sharp rise in cross-border attacks. Also in border clashes between Pak-Afghan security forces, such as the recent incident in May 2013 on the Pak- Afghan border which erupted when Pakistani forces tried to repair a gate at Pakistan's Gursal military post (near the Afghan district of Goshta in the Nangarhar province) which the Afghans claim 'encroaches' on Afghan territory – again highlighting the fact that if no formal recognition is attained from Kabul, the border is an issue that will come up in the near future between both sides to further strain the already fragile relationship between Pakistan and Afghanistan.

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- ⁴⁴ "Border incursions: Suspicions grow about Afghan support for TTP", *The Express Tribune*, September 11, 2011.