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The Afghan Refugees in Pakistan

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There are always two competing ethical perspectives at play when dealing with conflict-induced refugee situations. The first is purely humanitarian, entirely divorced from political considerations. The second is a political and military perspective, which considers the refugee problem as an integral part of the larger political issue, in which the host country may share part of the responsibility. Actual policies must of course take into account the two sides of the problem and provide safety and security to the refugees without furthering the political and military goals of the parties in conflict, including those of the host country.

The Afghan refugee problem in Pakistan is no exception. Pakistan has always proved both truly generous and ambivalent in its relations with Afghan refugees. According to the United Nations High Commissioner for Refugees (UNHCR), about 1.9 million registered refugees were present in Pakistan in January 2011, the vast majority of whom were from Afghanistan.¹ Moreover, since the first half of 2009, Pakistan has had to face the additional burden of about 2 million internally displaced persons (IDPs), due to the military operations in Khyber-Pakhtunkhwa (formerly North-West Frontier Province (NWFP) and the Federally Administered Tribal Areas (FATA)). This burden would be considered unbearable in many developed countries. Pakistan's continued acceptance of the additional Afghan refugee caseload is therefore all the more remarkable.

Exactly who, among the Afghan population in Pakistan, is a refugee, remains a matter of debate.² Many Afghans still cross the border on a regular basis, not out of fear of the war but in search of work.³ Yet notwithstanding the difficulty of assessing the exact scope of the refugee problem, issues such as security, care and maintenance of the refugees and, more broadly, all aspects of the management of their presence have to be weighed against the careful consideration of Pakistan's own responsibility for the continuation of the conflict and therefore the root causes of their presence on its soil. The political manipulation of the Afghan refugees and the recruitment of the Mujahidin and later the Taliban from within their ranks have always been part of Islamabad's Afghanistan's policy. The subsequent impact on the Afghan war has in turn prevented the return of the refugees in Afghanistan and, at times, reversed the flow towards Pakistan.

¹ 2011 UNHCR country operations profile- Pakistan, <http://www.unhcr.org>.

² See Daniel A. Kronenfeld, "Afghan Refugees in Pakistan: Not All Refugees, Not Always in Pakistan, Not Necessarily Afghan?" *Journal of Refugee Studies*, Vol. 21, No.1 (March 2008), pp. 43-63.

³ A recent study by Altai Consulting commissioned by UNHCR found an estimated 380,00–400,000 and 180,000–225,000 people crossing the border per week in Torkham and Spin Boldak, respectively (includes both directions) in 2008. Altai Consulting, *Study on Cross Border Population Movements between Afghanistan and Pakistan* (Kabul: Altai Consulting, June 2009).

The present paper argues therefore that best refugee management practices have to be identified that take into account these two sets of humanitarian and political considerations. The adherence of Pakistan to international conventions relating to the status of refugees would constitute the best guarantee for refugees, not because of the moral rights they define, many of which are *de facto* accepted and practised by Pakistan, but because they would create legal obligations which, although they would not eliminate the strategic considerations of the Pakistani state when dealing with the Afghan refugees, would force it to bear fully the responsibility of its own policies by preventing it from using the threat of forcible repatriation of refugees as an adjustment variable. This would create an obligation which would not eliminate the role of the international community in dealing with the issue but would strengthen its hand in dealing with the Pakistani authorities.

Background of Pakistan's Afghan Refugees Management Policy

Afghans started fleeing their country in 1978, following the communist takeover by the People's Democratic Party of Afghanistan (PDPA). By June 1979, 109,000 Afghans had already received asylum in Pakistan. Following a second, "internal" communist coup on September 14, 1979, led by then Prime Minister Hafizullah Amin, the refugee figure in Pakistan increased to 193,000. The figure more than doubled in the following three months.

The refugee influx accelerated significantly with the Soviet invasion of Afghanistan and was largely the result of deliberate Soviet strategies. By pushing the population beyond Afghanistan's borders, Babrak Karmal's Soviet-supported regime sought to make it difficult for guerrillas to operate from within populated areas. At the peak of the exodus, between January and December 1980, an estimated 80,000 to 90,000 refugees crossed the border every month.⁴ According to UNHCR statistics, the total number peaked at 3,270,000 in 1989, more than 3% of Pakistan's total population at the time. In fact, from 1980 to 2002 Afghan refugees in Pakistan constituted the largest single refugee population in the world.⁵

A large-scale return was initiated after the fall of Kabul to the *Mujahidin* in 1992. Approximately 1.2 million refugees left Pakistan over a six-month period during the spring, summer, and early autumn of that year. By the beginning of 1994, the refugee population in Pakistan had fallen from 3.2 million to 1.47 million.⁶ Due to the continuation of the civil war however, the surge in repatriation was short lived. In 1996 only 120,000 Afghans returned from Pakistan. The emergence of the Taliban regime and its commission of a number of gruesome massacres in particular served as a reminder that when a country has experienced

⁴ William Maley and Fazel Haq Saikal, *Afghan Refugee Relief in Pakistan: Political Context and Practical Problems* (Canberra, Working Paper, Department of Politics, University College, University of New South Wales, May 1986), p. 9.

⁵ For discussion of some of the complexities surrounding these numbers, see Nancy Hatch Dupree, "The Demography of Afghan Refugees in Pakistan," in Hafeez Malik, ed., *Soviet-American Relations with Pakistan, Iran and Afghanistan* (Basingstoke: Macmillan, 1987), pp. 366–395; Nancy Hatch Dupree, "Demographic Reporting on Afghan Refugees in Pakistan," *Modern Asian Studies*, Vol. 22, No. 4 (1988), pp. 845–865; Susanne Schmeidl and William Maley, "The Case of the Afghan Refugee Population: Finding Durable Solutions in Contested Transitions," in Howard Adelman, ed., *Protracted Displacement in Asia: No Place to Call Home* (Aldershot: Ashgate, 2008), pp. 131–179.

⁶ Peter Mardsen, *The Taliban: War, Religion and the New Order in Afghanistan* (Karachi: Oxford University Press, 1998), p. 37.

severe disruption, it is likely to take years to bring it back to the point where change for the better is fundamental and sustainable.⁷

With the overthrow of the Taliban regime in late 2001, the Government of Pakistan started advocating once again the return of all Afghans to Afghanistan. A tripartite agreement was signed between the Government of Pakistan, the Government of Afghanistan, and the UNHCR in 2002 according to which all returns had to be voluntary.

However, the Government of Pakistan began closing down camps in summer 2005. The closure of two refugee camps in South Waziristan was followed in Autumn 2005 by the shutting of camps in North Waziristan, Bajaur, and Kurram agencies. Some 200,000 refugees were displaced in the process, the majority of them choosing to return to Afghanistan.⁸ Two additional camps — one in Balochistan and the other in NWFP — were reportedly closed in March 2007.

In 2009, however, following the emergency in the NWFP and the FATA, leading to internal displacement, Pakistan’s priorities shifted to its own domestic concerns. Since March 2002, approximately 3.5 million Afghans have repatriated from Pakistan with UNHCR’s support. More than 270,000 returned in 2008 and about 50,000 in the first half of 2009 (see Table 1).⁹

Table 1: Refugee Returns since March 2002

Year	Number of refugees
2002	1,726,791
2003	386,191
2004	422,354
2005	464,255
2006	143,019
2008	270,000
2009	50,000 ¹⁰
Total	3,462,610

Source: UNHCR, Afghanistan Estimated Population 2008–2009 and Assisted Returnees 2002–2008, <http://www.unhcr.org/491866832.html>.

Law and Policy

As noted earlier, although overall Pakistan has been a generous host to Afghan refugees, its policy has been ambivalent. From 1978 to January 1980, the government of Pakistan supported the refugees only with its own resources. Beginning in 1979, several dozen camps were set up, most of them in the NWFP and a few in Balochistan. Moreover, the Afghan

⁷ On Taliban massacres, see William Maley, *The Afghanistan Wars* (Basingstoke: Macmillan, 2009) pp. 198–202.

⁸ Rhoda Margesson, *Afghan Refugees: Current Status and Future Prospects* (Washington, DC: Congressional Research Service, January 26, 2007).

⁹ 2010 UNHCR country operations profile — Pakistan, <http://www.unhcr.org>.

¹⁰ Approximate figure for the first half of 2009.

refugees in Pakistan did not suffer the problems that often plague large displaced populations, such as epidemics or malnutrition.

From the early days of the Soviet invasion of Afghanistan, Pakistan's policy towards Afghan refugees has been notably liberal. Pakistan does in fact allow the refugees basic rights.

The 1973 constitution protects freedom of movement only for Pakistani citizens. However, Pakistan is a party to the International Covenant on Civil and Political Rights, which provides for general rights of freedom of movement and choice of residence. In fact, the government does not impose restrictions on the movement or residence of registered Afghans, or on assistance to those living outside camps. Refugees have always been relatively free to settle wherever they wish. They also have been allowed to travel throughout the country, although Pakistan's government does not issue international travel documents to refugees.

Pakistan ratified the International Covenant on Economic, Social and Cultural Rights, which recognizes a general right to work, only in 2008. However, although Pakistan's relevant law (the Foreigners Act) prohibits the hiring of a person who has no permission to remain in the country, the authorities have always tolerated refugees working in the informal sector. In the formal sector, refugees officially need Pakistani partners and cannot hold immovable property or the requisite documents to own a business.¹¹ The law, however, is bypassed — a fact tolerated by the authorities. In the NWFP for example, refugees cannot officially own trucks but in reality dominate the entire transport sector.

The Pakistan government also allows Afghan refugees access to basic health services. However, non-Afghan refugees and asylum seekers as well as Afghans who reside in urban settlements do not have access to public schools and must send their children to private schools.

Pakistan is not a party to the 1951 Convention Relating to the Status of Refugees, and has no legislation to recognize refugees. It is, however, bound by the provision of the 1966 International Covenant on Civil and Political Rights, which allows expulsion only by law, requires the Government to allow those it wishes to expel to give reasons against doing so, and further requires that competent authorities review their cases. Pakistan is also a signatory, without reservation, to the 1984 Convention against torture and other “cruel, inhuman or degrading treatment or punishment which prohibits *refoulement* of anyone in instances where there is a substantial risk that the individual will be tortured.”¹² As a practical matter, however, being a party to the Convention against torture does not really change anything regarding the non-*refoulement* of the refugees. Finally the 1973 Pakistani Constitution grants the same protections against arbitrary arrest and detention to all persons in Pakistan.¹³

This does not mean that Afghan refugees do not encounter problems in exercising their rights. The US State Department notes, in particular, that refugees do not always have access to courts, are harassed by the intelligence agencies, or are asked by police to pay bribes. Many parts of Pakistan are insecure, and Quetta is a dangerous place for Shiite Hazara refugees as it has become a hotbed of activity for the Afghan Taliban who are overwhelmingly Sunni

¹¹ *World Refugee Survey*, Pakistan, <http://www.refugees.org/countryreports.aspx?id=2337>.

¹² *World Refugee Survey*, Pakistan, <http://www.refugees.org/countryreports.aspx?id=2337>.

¹³ *World Refugee Survey*, Pakistan, <http://www.refugees.org/countryreports.aspx?id=2337>.

Muslims, and largely Pashtun. It remains to be seen, however, to what extent the fate of most Afghan refugees is, in this regard, significantly different from the fate of ordinary Pakistani citizens. Violations of legality are largely due to the nature of a regime which, in this case, is both dysfunctional and authoritarian, though it operates behind a democratic façade.¹⁴

Pakistan's Economic and Security Concerns

Despite having several rights granted, it is nevertheless true that Afghan refugees are facing increasing constraints. With the degradation of Pakistan's economic, political, and security situation, the tolerance of the authorities tends to decrease and the new generation of refugees does not enjoy the same degree of protection. For example, the National Database and Registration Authority stopped providing Proof of Registration (PoR) cards in 2007.

Pakistan's position, which stems from both social and economic concerns, should not be taken lightly. Understandably, the Government of Pakistan believes that Afghans are a net drain on the economy. Some research indicates that Afghan labor migration could prove beneficial to Pakistan in the form of labor, and to Afghanistan in the form of remittances.¹⁵ Yet, even if one accepts the conclusions of such studies with respect to the macroeconomic level, there could nonetheless be real issues at the microeconomic level.

For example, since the early 1980s, the assertion that Afghans are taking jobs that might otherwise go to Pakistanis has surfaced repeatedly. Afghans are said to be willing to work for lower wages than Pakistanis. This might be true in rural areas, but no study has been conducted so far to assess the net job *creation* generated by Afghan entrepreneurship in the informal sector, which could be considerable. This does not mean that the presence of Afghan refugees in Pakistan does not have negative economic or social consequences. The refugee presence undoubtedly resulted in some clearly defined changes in income distribution, leading to occasional friction with local Pakistanis, even if it did not necessarily affect the overall economy. Moreover, incoming refugees created a larger demand for goods and consequently generated inflation in some parts of the country. This, however, should be assessed against the benefits generated by the presence of the refugees. Some local economies did grow, at times because of their number, which stimulated the local markets while international aid stimulated consumption and contributed to the regional infrastructure.

It is in fact difficult to make a truly balanced cost/benefit analysis since a large part of the Pakistani real economy belongs to the informal sector. The larger demand for goods and services generated additional smuggling from Afghanistan, depriving the Pakistani government of a substantial source of tax revenue. As long as the World Food Programme was operating, relief food, when in excess, found its way to the market, where it created deflationary pressure on food prices and consequently subverted local food production.

Pakistan also paid an environmental price for being a generous host country. Refugees needed pastures for their flocks, leading sometimes to the degradation of local ecosystems. Overall, their presence did put additional pressure on Pakistan's infrastructure (notably schools and hospitals).

¹⁴ See Farzana Shaikh, *Making Sense of Pakistan* (New York: Columbia University Press, 2009).

¹⁵ See Rhoda Margesson, *Op. Cit.*

Nor should the security impact of the smuggling be underestimated. With Afghanistan producing about 92% of the world's opium crop, part of it has to be smuggled out through Pakistan where informal tax collection systems by militant groups of various affiliations have transformed narcotics trafficking into an additional source of insecurity.¹⁶

Whatever the overall impact on Pakistan's economy, the social consequences of the refugee presence should not be ignored, even if the "level of tolerance" of the local population has probably been so far much higher than in most other parts of the world. However, given the massive displacement of Pakistanis resulting from "counterinsurgency" operations in the FATA, as well as in the Swat and Bajaur districts, along with a very weak economy, this tolerance may wear thin.

The Pashtunistan Issue: Afghan Refugees as a Strategic Liability for Pakistan

During the 1980s, refugee camps in Pakistan provided significant support for the struggle against the forces of the Soviet Union and the Soviet-backed regime in Afghanistan.¹⁷ The refugees proved an important asset in defeating the Soviet forces and later in the Mujahidin's and Taliban's successive efforts to conquer Kabul. But besides the larger strategic perspective which shapes Pakistan's Afghanistan policy (part of the country's India's policy, which falls outside the scope of the present study), the strategic management of the refugees by Pakistan's intelligence agencies had a rationale of its own, namely the Pashtunistan issue, that is, the Pashtun claim to the Pakistani territories between the Afghan-Pakistan border and the Indus river.¹⁸

From the early days of the Soviet invasion, the ethnic composition of the refugee population, overwhelmingly Pashtun,¹⁹ and its concentration in sensitive regions carried the risk of a possible renewal of ethnic demands within Pakistan itself; the upsurge of an ever-latent Pashtun nationalism was feared, particularly in the NWFP which, throughout the war, sheltered most of the refugees. By focusing the refugees' attention on the "liberation" of Afghanistan, Pakistan kept them away from Pakistani national politics — unlike what had occurred with Palestinian refugees in Jordan and Lebanon. By supporting radical religious groups such as the *Hezb-e Islami* of Gulbuddin Hekmatyar, and the Taliban, Pakistan sought to weaken the position of Pashtun "nationalist" groups within the Afghan resistance.

The rationale is similar, although not identical, today. Pakistani authorities do not fear the upsurge of the Pashtuns in Pakistan's settled areas but the revival of the Pashtunistan issue in a different form should the Taliban be denied the victory they expect in Afghanistan. They could then look for an alternative by capitalizing on eventual links with Taliban organizations

¹⁶ See Alain Labrousse, *Afghanistan: Opium de guerre, opium de paix* (Paris: Mille et Une Nuits, 2005); Gretchen Peters, *Seeds of Terror: How Heroin is Bankrolling the Taliban and al Qaeda* (New York: Thomas Dunne Books, 2009).

¹⁷ See Fiona Terry, *Condemned to Repeat?: The Paradox of Humanitarian Action* (Ithaca: Cornell University Press, 2002), pp. 55–82; Sarah Kenyon Lischer, *Dangerous Sanctuaries? Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid* (Ithaca: Cornell University Press, 2005), pp. 44–72.

¹⁸ On the significance of this dispute, see Stanley Wolpert, *Roots of Confrontation in South Asia: Afghanistan, Pakistan, India, and the Superpowers* (New York: Oxford University Press, 1982), p. 120.

¹⁹ The Pashtuns constitute about 81% of the total Afghan refugee population in Pakistan.

already at war with the government in Pakistan, even if the Pakistani authorities conveniently avoid mentioning that they had created and supported the very Pakistani Pashtun organizations which the Afghan Pashtuns might be tempted to join.

Pakistan's message conveyed by the use and manipulation of refugees in its current form is identical to Pakistan's previous one: refugees should look for their future, political and otherwise, in Afghanistan, not in Pakistan.

Afghan Refugees as a Strategic Asset for Pakistan

Islamabad is pursuing several parallel objectives in Afghanistan. First, it is seeking to persuade the Pashtun refugees that Afghanistan, not an hypothetical Pashtunistan that would deprive Pakistan of a great deal of its own territory, is the country of the Pashtuns. Second and related, Islamabad is trying to limit India's influence in Afghanistan in order to avoid the formation of an alliance between Afghanistan and India and the consequent risk of a two-front war with India should a conflict erupt. This has long been a feature of Pakistan's Afghanistan policy.²⁰

In this perspective it makes sense to continue harassing India and India's assets and allies in Afghanistan. At another level, Pakistan desires to keep the United States tied down in Afghanistan for as long as possible, since, failing a return to power by the Taliban, a US presence provides the only guarantee against a predominant Indian influence in Afghanistan. The killing of Osama Bin Laden on May 2, 2011 has already led President Obama to initiate a significant withdrawal of US forces from Afghanistan. Having failed historically to obtain from the US the long-term strategic alliance against India it sought, Pakistan can get the desired guarantee only on an *ad hoc* basis. The Soviet invasion of Afghanistan was one such opportunity; the war on terror is another. Seen from Islamabad, it makes sense for Pakistan to maintain a low-intensity conflict in Afghanistan, for which objective the Afghan refugees in Pakistan constitute the ideal cannon fodder.

These various objectives do not necessarily contradict each other, but they change the perspective on the refugees, who are no longer exclusively a potential strategic liability. They are also a strategic asset. From their own perspective, they are being relegated to collateral damage of Pakistan's strategic constraints or ambitions.²¹

This policy of course entails costs for Pakistan. Officials invariably estimate the cost at \$1.5 billion (a figure which also includes the cost of the internally displaced persons). By participating in the "War on Terror," however, Islamabad has managed to have the international community pay for it, on account of its participation to the war on terror. It also

²⁰ See Frédéric Grare, *Pakistan and the Afghan Conflict 1979–1985* (Karachi: Oxford University Press, 2003), pp. 9-17.

²¹ The "Indian factor" also has another, although indirect, impact on the refugee problem. Because it sees India as its main, if not only strategic threat, Pakistan has refused to turn its army into a body specialized in counterinsurgency. Only a very limited number of units do train for such a contingency. As a result, operations in Swat and Bajaur, as well as in the FATA, have been conducted by conventional means: heavy artillery and air bombardments. The net results were a number of internally displaced persons far greater that would have been the case with specialized units. One of the authors (Dr. Grare) was told by one IDP in a refugee camp: "the army does nothing to the militants but it does destroy our homes."

has a potential political cost: the Afghan Taliban are a potential Frankenstein's monster.²² A perceived Taliban victory in Afghanistan would offer an enormous fillip to the Pakistan Taliban, and to radical groups elsewhere in the world. These are dangers which Pakistan's leadership so far does not appear to recognize.

The Future of Afghan Refugees in Pakistan

Given current developments in Pakistan, it is obvious that the Afghan refugee problem is likely to become increasingly unmanageable. Should the fighting continue in the FATA and elsewhere or expand to other parts of the country, the size of the internally displaced population will make it increasingly difficult for the Pakistani population to accept a flow of refugees from a neighboring country with which they feel increasingly at odds (including continuing to host Afghan refugees who may have lived their entire lives in Pakistan).

A positive solution, based on the potential benefits of migration for both the country of migration and the host country, would be to focus on a new political arrangement between Afghanistan and Pakistan, as suggested in a Congressional Research Service (CRS) report,²³ although this may prove difficult.

Although studies on cross-border population movements between Afghanistan and Pakistan demonstrate that movements for social and economic purposes far exceed refugee movements *per se*,²⁴ it is clear that the continuation of the war thanks to Pakistan's continued support of the Taliban is also an important factor in convincing the refugees directly (because of the consequences of the conflict) and indirectly (because of the inhibition of Afghanistan's reconstruction) to stay in Pakistan.

As noted earlier, Pakistan's management of the refugee issue is fraught with contradictions, and not necessarily linked to logic cost-benefit assessments. Unlike the 1980s, when Pakistan was mainly suffering from the consequences of the Soviet occupation and strategies, it suffers today because of its own policies in Afghanistan, as a result of which it still has to cope with a refugee problem of significant magnitude.

There is a great risk that the international community and its various specialized organizations will continue to be held hostage to Pakistan's policies conducted on its neighbour's territory. This situation is further exacerbated by the new presence of internally displaced persons. Thus, international actors have increasingly to balance making conflicting demands, such as asking for a more humane management of the refugee issue while at the same time insisting on the combating of terrorism that the Pakistani security establishment contributes to perpetuating. The contradiction is partly resolved by the willingness of the international community to finance the management of a humanitarian problem that Pakistan has itself

²² It is thus not surprising that Pakistan would wish to maintain a tight grip on the Afghan Taliban. See Matt Waldman, *The Sun in the Sky: The Relationship between Pakistan's ISI and Afghan Insurgents* (London: Discussion Paper No. 18, Crisis States Research Unit, London School of Economics and Political Science, June 2010).

²³ See Rhoda Margesson, *op. cit.* p. 17. See also Alessandro Monsutti, "Afghan Migratory Strategies and the Three Solutions to the Refugee Problem," *Refugee Survey Quarterly*, Vol. 27, No.1 (2008), pp. 58–73.

²⁴ See Eric Davin and Nassim Majidi, *Study on cross border population movements between Afghanistan and Pakistan* (Geneva; Altai Consulting/UNHCR, June 2009).

created. In other words, the international community not only *de facto* legitimizes Pakistan's behavior but funds it.

Therefore, although the potential consequences of the following remark may prove controversial, one major consideration should guide all treatment of the refugee issue in Pakistan: *It is simply impossible to solve a problem which is political in essence by non-political means.* All solutions on a sustainable basis to the refugee issue, or even simply the mitigation of the suffering of the refugees, will have to include some degree of politicization of the answer to the Pakistani demands, in the form of conditionality.

The case has been made before for the development of minimum standards that would allow UNHCR and other refugee agencies to refuse to engage in situations where the principal recipient of aid blatantly supports warring groups.²⁵ Pakistan has taken advantage for too long of the existing gap in the refugee and security regimes, aiding and abetting manipulation when it is in its own security interests, yet treating the problem as a humanitarian concern when it has to face the consequences of this manipulation. True, the international community bears part of the responsibility in this situation by accepting the fiction according to which Pakistan faces such problems exclusively because it is the "frontline state" against whatever is the problem of the moment, be it the Soviet presence in Afghanistan or terrorism. Unfortunately, at least in the latter case, it is a substantial part of the problem, a fact which is increasingly recognized internationally, not least because of the US's success in tracking down Bin Laden in Abbottabad.

Conditioning international funding to Afghan refugees in Pakistan to its signing and ratification of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol could be one way out of this situation.

So far, Pakistan does accept most of the norms and principles contained in the Convention but the absence of legal obligations makes the refugees a potential source of leverage whenever it considers the problems intractable and by the same token, a bargaining tool with the international community. The fact that Pakistan is a signatory to the 1984 Convention against torture and other "cruel, inhuman or degrading treatment or punishment which prohibits *refoulement* of anyone where there will be a substantial risk that they will be tortured,"²⁶ creates no obligation for Islamabad if there is no such risk of torture, and being tortured in Afghanistan is usually not the main problem potential returnees confront.

As a party to the 1951 Convention and the 1967 Protocol, Pakistan could not threaten to send the refugees back and would be forced by a legal obligation to face the consequences of its policy in Afghanistan. This would be a far stronger obligation than any which it arguably bears under customary international law. There would be nothing truly scandalous in pushing Pakistan to sign a text drafted and ratified by the international community when the same international community has to pay for the consequences of Pakistan not doing so.

²⁵ Stephen John Stedman, "Conclusions and Policy Recommendations," in Stephen John Stedman and Fred Tanners, eds., *Refugee Manipulation: War, Politics and the Abuse of Human Suffering* (Washington, DC: Brookings Institution Press, 2003), p. 187.

²⁶ *World Refugee Survey*, Pakistan, <http://www.refugees.org/countryreports.aspx?id=2337>.

The international community should also condition its funding on a serious independent assessment of the situation and not on Pakistani propaganda. Therefore, it should refuse to fund the refugees whenever their presence in Pakistan is the direct or indirect result of Pakistan's own action in Afghanistan. Should Pakistan threaten to stop the flow into Pakistan, it would be faced, if successful, with the demonstration that its supposed incapacity to seal the border is by and large a fiction, and if, unsuccessful, with the obligation to support the burden of the refugees, and the potential consequences on its economy and security.

One could go as far as advocating some form of disengagement, now a real possibility with the chill in US-Pakistan following the discovery of Bin Laden. This could, and should be projected to Pakistan as a real possibility. This would open a large political space where each step could, and would most likely be taken seriously by the Pakistani security establishment. There is no need for an all-or-nothing approach, but the credibility of a real disengagement is the condition for a nuanced approach to be possible. It is because walking away from the humanitarian need of the refugees will inevitably have a cost for the trouble maker that a conditional approach will become acceptable to it.

Without any such constraints, humanitarian agencies will continue, in Pakistan and elsewhere, to face the ethical dilemmas between providing humanitarian assistance for a self-inflicted problem.