

The Quest for Peace in Chechnya: The Relevance of Pakistan's Tribal Areas Experience

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Though the war in Chechnya has clearly reached a deadlock, there seems to be little hope of a solution. Political analysts almost unanimously believe the war is set to continue for another several years, and few expect any development toward a peaceful resolution before 2004, at the earliest. This war is extremely costly for both sides, and damaging to the regional security of the entire Caucasus region. The blunt of the burden has been borne by Chechen civilians, who have for several years faced Russian aerial bombardment, *zachistkas*, death and mutilation, poverty and destruction. For Russia, Chechnya is a costly war that it cannot afford, depleting the resources of its military, while the Russian army is sinking ever deeper into chaos, the war thwarting all possible military reform. The military is taking casualties on a continuous basis, casualties that are far higher than it is publicly admitting.

Unwilling or unable to find a way out of the war, the Putin administration has instead tried to regionalize the conflict, blaming Georgia for hosting Chechen rebels and threatening to launch a unilateral military intervention on Georgian territory. For domestic consumption, Georgia is being painted as a cause of the Chechen conflict, while in reality the isolated problem of the Pankisi gorge, marginal to the actual fighting in Chechnya, is clearly a consequence rather than a cause of the conflict.

Meanwhile, it is increasingly obvious to the Putin administration, as it became clear to Yeltsin's, that this is not a war that can be won. The Chechen fighters are presently too divided to launch major operations against Russian forces, but are still capable of exerting at least nighttime influence over most of Chechnya, denying Russian control to anywhere except where Russian bases and major fortifications are present.

What makes the Chechen conflict so intractable? Politically, the Russian President invested much energy into prosecuting the war, and his bid for the presidency

included a vow to restore “constitutional order” in Chechnya and to “crush terrorism”. Moscow withdrew its recognition of the Maskhadov government, branded it as terrorist, and instead has reverted to working with its own puppets in the Moscow-appointed administration in Grozny, led by Ahmed Kadyrov. Hence the Russian government painted itself into a corner and is now unwilling to make a u-turn and negotiate with Maskhadov.

The issue of Chechnya’s status is a major obstacle to a solution. Russia is clearly not ready to accept the granting of independence to Chechnya, preferring the current state of war to continue over that option for both narrow domestic political reasons as well as fears that granting Chechnya independence would fragment the entire Russian Federation. Having granted Chechnya *de facto* independence while remaining *de jure* within the Russian Federation in 1996-1999, this option is also a non-starter for both sides. Moscow will claim it only helped Chechnya turn into anarchy both in 1991-94 and 1996-99, while Chechens will cite Putin’s unilateral repudiation of the Khasavyurt agreement of August 1996, to prove the lack of guarantees in such a solution.

Meanwhile, although many lowland and urban dwellers among Chechens may be ready to return to Russian rule in exchange for peace and some kind of autonomy such as the one Tatarstan is enjoying, this is not true of the mountain areas of Chechnya. The source of the large majority of the fighters in the war, they will refuse and likely sabotage any agreement that does not permit them to live their lives in complete independence from any alien political authority. They are prepared to keep fighting at a high human and material cost, rather than surrender to military might. This deadlock ensures that the war would most likely go on in the mountains even should an autonomy agreement be signed between Moscow and the Maskhadov government. Various second-track diplomacy talks are taking place, even involving the Chechen leadership directly and highly placed individuals in Moscow. Yet these talks are still unofficial, and have so far been unable to lead to any agreement on the status issue. More importantly, these discussions have failed to take into account the difference in attitude in lowland and highland Chechnya; as such, even if these talks would lead to a solution, this solution is unlikely to gain the support of the entirety of Chechen society – most specifically, the mountain areas where tribal society retains stronger hold on the population than in lowland areas.

Researchers and diplomats, while seeking a solution to the Chechen conflict, have also proved unwilling or unable to distance themselves from the standard concepts and terminology of the western international system. They discuss issues centering on statehood, such as autonomy, independence, association, self-determination, territorial integrity, and the like. These concepts have been exhausted in the Chechen case as well as in other conflicts in the Caucasus, and agreement on these terms are elusive. Remaining at this abstract level, the talks and expert opinions often fail to take into account the actual needs and requirements of the conflicting parties, beyond the abstract terms of sovereignty and independence. Terms of independence and sovereignty are not goals in themselves but means to an end – and ends in both the cases of the Chechens and the Russian government are primarily related to security. Chechens desire security for their life, property, and way of life, and many came to conclude in the early 1990s, with the backdrop of several hundred years of intermittent war and the trauma of the 1944 deportation, that independence as a full member of the international community was the only way to secure their individual and collective security. Russia, on the other hand, has consistently seen Chechnya's remaining in the Russian Federation as crucial to the security of its Northern Caucasus region, crucial to its relation with the South Caucasus, and even to the very survival of the Russian Federation, in the fear that should Chechnya secede, it would form a precedent to other ethnic republics. Having reached a deadlock, it is necessary to seek ways of solving the conflict that avoid the politically and emotionally laden language of status, and focus on the needs of the inhabitants of Chechnya and of the Russian state. No party except criminal elements on both sides benefit from the present state of low-intensity conflict; moreover, the current situation is breeding a generation of Chechen youth that are in a great danger of being radicalized similarly to what occurred earlier this century in Palestinian refugee camps or in Indian-Occupied Kashmir. Basically it is urgent to 'think outside the box'.

Focus from the point of view of Russian interests are that Chechnya ceases to be a threat to the security and loyalty to the Federation of neighboring ethnic republics of the North Caucasus; that Chechnya ceases to be an area where criminal elements can seek refuge, and that Chechnya ceases to obstruct Russian interests in the South Caucasus and beyond.

Focus on the Chechen side is by necessity on ending the state of war and restoring human dignity and security. This will require some form of autonomous administration for the entirety of Chechnya. But beyond this, for the fiercely independent mountain areas of Chechnya, concerns also center upon preserving the way of life and the values that have governed tribal society for centuries and survived, to a significant degree, the Soviet onslaught against traditional society, the deportation, and the present war. Mountain Chechens, to sue for peace, must be convinced that they will continue to live by their customary laws, *Adat*, and regulate their internal matters in accordance with this.

Is there a possible compromise between the actual needs and interests of the Chechen and Russian parties to this conflict? Can a system of administration be devised that both satisfy mountainous Chechnya's demand for freedom and internal self-rule, and Russia's need to prevent Chechnya from being a hotbed of instability? In fact, it would seem that a very similar dilemma was handled in a way that, to a larger extent than what has been achieved elsewhere in similar conditions, has succeeded in satisfying most of the requirements of both sides: the system of Tribal Areas originally introduced by Great Britain in the Northwest Frontier of its Indian Empire, for the tribal Pashtun societies of what became known as the North-West Frontier Province. This system was taken over and hardly altered by the Republic of Pakistan in 1947, and has preserved peace between the central government in Delhi and then Islamabad and the tribes with minor interruptions for almost a century.

Chechens and Pashtuns

There are striking similarities between the societal structure and modern history of the Chechens and the Pashtun society that straddles the border of present-day Pakistan and Afghanistan.

In the political realm, both Chechnya and the Pashtun areas are located in crucial geopolitical areas, along mountain chains that either bloc or allow large powers access to lands beyond the mountains. The Pashtuns blocked the expansion of many empires, including annihilating entire Mughal and British armies. The Chechen resistance against Russian occupation in the nineteenth century slowed and complicated Russia's push southward. Some say North Caucasian resistance

prevented Russia from reaching south into Iran, though that may be a slight exaggeration. Yet both the British in the 'Northwest Frontier', and the Russians in the North Caucasus, had to commit large numbers of troops to seek to control, often at loss, mountainous areas inhabited by Chechens and Pashtuns. In the 1990s, there is no doubt that the conflict in Chechnya has been perhaps the major factor, probably more important than western influence, in denying Russia a dominating role in the South Caucasus. Likewise, Pashtun resistance ensured that Britain, after its first debacles, never attempted to actually control Afghanistan.

Parallel is also the singular reluctance of these peoples to accept foreign domination in any form. The Chechens fought during over thirty years, from the 1820s until 1859, to escape Russian domination, and revolted at countless occasions since then well into the Soviet era, basically taking a chance to revolt whenever Moscow's power was weakened. The Pashtuns in the tribal belt, likewise, resisted incorporation into any empire that came through their areas, be it Mughal, Sikh, or British, to name only the most recent examples. Though the tribal belt on the eastern side of the Durand line – the British-drawn line forming the border between British India and Afghanistan – signed treaties of various kind with the British raj, they often revolted, especially at times of perceived British weakness or when incited by Afghanistan.

Perhaps more importantly, Pashtun and Chechen social structures share numerous similarities. Both are tribal and egalitarian in nature, and have strong codes of honor. By tribal, we refer to a society that clearly divides and categorizes individuals into a system of concentric circles of social belonging. The largest concentric circle is the nation, under which comes the tribe, section, clan, sub-clan, right down to the individual household. An inhabitant of South Waziristan would be a Pashtun, then a member of the Mahsud tribe, a member of the Shaman Khel section, etc. In Chechen society, there are nine Tukums, or tribes, subdivided into Teips, or clans, further subdivided into village-level units and then into the individual household. The Tukum is a loose congregation of Teips, which number ca. 150 all in all, and that are further subdivided into sub-units down to the individual household.

Beyond sharing a tribal structure, Pashtun and Chechen societies are acephalous [without a head]. That means they are not hierarchically organized societies that

have a feudal-type leadership; quite to the contrary, they are both fiercely egalitarian, bordering on anarchic given the emphasis on equality. They lack structures of leadership by lineage. The head of an individual household does not have any direct authority over him, with the exception of the veneration for and deference to elders. In turn, these societies come very close to the archetype of democracy, given that it is councils of elders that are the only decision-making authority with any legitimacy in society.

Another common feature is the presence of strict customary laws, known in Chechnya simply by the word *Adat*, which exists in much of the Muslim world with a weaker meaning; among Pashtuns, the code is known as *Pukhtoonwali*, or the way of the Pukhtoons. Though the customs of Chechens and Pashtuns are not identical, they do share similarities. First among these is the emphasis on honor, called *Nang* in Pashto. This being the dominant principle of customary law, other principles follow from it, most importantly the blood feud, which, as in many other acephalous societies, is a brutal but relatively effective way of preserving self-restraint and order in society.

These societies are also deeply religious. Though the Soviet experience went far to undermine religion, Chechnya remained one of the most conservative Muslim parts of the former Soviet Union. The relationship between tribal customary law and Islamic principles, especially Islamic law or *Sharia*, is not uncomplicated; in most instances, the two are understood as linked or even synonymous. This posed little problem as long as the traditional, Hanafi-based forms of Islam dominated in both areas, which are moderate, allow for interpretation, and therefore permit the integration or adaptation of customary laws to the religious principles. By contrast, the increasing influence of radical, purist Salafi thought in both Chechnya and the Pashtun areas has led to conflict, as uncompromising religious principles do not offer any leeway for coexistence with tribal traditions that may diverge from the Salafi interpretation of Islam.

Further, Pashtun and Chechen societies, despite their anarchic character, have mechanisms that help them unite under conditions of external threat. The tribal council, *Jirga* in the Pashtun context and *Mekhek Kbel* in Chechen, is the main decision-making mechanism, entrusted with the power to adjudicate disputes, to decide on matters of war and peace, etc. It is empowered to choose a leader in the

face of an external threat, who enjoys command during wartime but loses it immediately as soon as peace returns. The tribal councils are often referred to as councils of elders; in fact, these councils do not consist only of elders but of people of good repute in the community in general, sometimes simply consisting of the men who happen to be present at the time – in this sense, these mechanisms are examples of the most original form of democracy.

Misreading the acephalous character of Pashtun and Chechen societies as weakness and internal divisions that allow a foreign invader to sweep the area has led to many large strategic mistakes; the latest occurring when the Russian military in 1994 believed the large-scale opposition against Chechen leader General Dudayev would translate into his opposition supporting Russia. But age-old Chechen tradition ensured that the opposition buried its disagreements with Dudayev, accepted him as wartime leader, though stating clearly that once peace had returned, their erstwhile disagreements would reemerge.

At a deeper societal level, Chechnya, and especially mountain Chechnya, is a case of a traditional (though modernizing), tribal society in conflict with the alien modern nation-state, which for decades has been trying to incorporate tribal areas into itself, thereby flouting the social and legal codes of tribal societies and hence wittingly or unwittingly seeking to undermine the very foundations of society among the tribal peoples.

This point deserves to be stressed, given that the fundamental incompatibility between the modern nation-state and a tribal social structure has been underestimated in scholarly attempts to understand the reasons for protracted conflict in such areas as the Kurdish-populated areas of Turkey, Iran and Iraq, or Chechnya, Baluchistan and Afghanistan, only to name several examples from the Eurasian region. A tribe inherently contains many of the functions of power of the state – it has tribal customs that function as laws; mechanisms of dispute resolution that act as judiciary organs; and in most cases, mechanisms of assigning executive authority in times of need, that is, normally, in times of an external threat. The tribal system, strongly entrenched and normally legitimated by a myth of common ancestry – as in the case of Chechens and Pashtuns, enabling a person to immediately identify himself as well as another member of the tribal society by virtue of the tribe, clan, sub-clan or section he belongs to down to the

nuclear family – is inherently impermeable to change, and, as David McDowell put it with reference to the Kurds, the tribal systems “jealously guard their monopoly of all relations with the outside world”. A modern-nation state is hence a direct threat to the tribal system because it inherently seeks to exercise direct control over all its citizens, and to integrate them in a national system of laws, administration, and education. The state can hence attempt to secure order in tribal societies in two ways. The first is to attempt to break down the tribal structure and integrate the population in the administrative system of the rest of the country, often through forcible deportations, at great cost, often with interminable wars with great losses as tribal peoples typically inhabit inaccessible, predominantly mountainous territories. This is the policy adopted by Turkey in the 1920s and 1930s, by the Soviet Union in Chechnya in 1922-1944, and by Russia in Chechnya in the 1990s. All examples have shown the futility of this approach short of truly genocidal policies.

Another manner of dealing with the tribal areas is to try to secure the loyalty of tribal leaders (including their boosting where they are weak) to the state through co-optation, monetary rewards, guarantees of autonomy in internal tribal affairs, against pledges of allegiance to the state, help in protecting borderlands, and provision of soldiers in the case of war. This policy has to a large extent been adopted by democratic Turkey since the 1950s with respect to the non-Marxist Kurdish mainstream, and the Pakistani Tribal Areas are an example of the furthest utilization of this system.

Development and modernization has also had an effect on these societies that is similar in type but different in extent and detail. In both areas, while the mountainous areas have retained their tribal social structure, abidance by customary laws and value for independence, the lowland, agricultural or town-dwelling areas have lost parts of this heritage and gradually become integrated into the social systems of the lowlands. Hence southern, mountainous Chechnya is much more likely to abide by Adat and more fiercely freedom-loving, whereas the lowlands up to the Terek river are more willing to compromise political independence, more influenced by Russian society, and less observant of Adat. Likewise in Pakistan, the tribal, mountainous areas along the border with Afghanistan are the areas where Pashtun traditions are best preserved, whereas the plains areas in and around the Vale of Peshawar are considerably more

integrated into Pakistani society, although they have by no means lost their ethnic identity, and neither have the lowland Chechens. It is the social structure and values more than ethnicity that have been affected by the interaction with neighboring societies.

This is not to say that the Chechen or Pashtun societies are static entities that have been ruled for hundreds of years by a monolithic social structure impermeable to change; quite to the contrary, these are societies in deep and rapid change, with an important generational gap in both cases, and the destructive effect of the current war has been a tremendous strain on Chechen society. Modernization and the presence of alien ideologies and alternative social structures are further encroaching upon the age-old social structures, forming a formidable challenge to the survival of these societies. But these societies have been under stress before, and to that the insecurity connected with modernity is pushing many people to seek refuge, if possible, in the security of traditional social structure. Most importantly, there is a migrational and geographic phenomenon: Both Chechen and Pashtun societies are growing in size very rapidly. The population of Mahsuds, the major tribe in South Waziristan, passed from 88,000 in 1946 to 247,000 in 1972 – a near tripling in less than thirty years. The Chechen population of the former Soviet Union doubled in the twenty-year period between 1959 and 1979. Such population growth can simply not be borne by the land in the mountain areas in the absence of major development programs. Hence a large exodus to the plains and cities of Pakistan or the North Caucasus, respectively, has taken place. This implies that the people who are dissatisfied with the tribal traditions would be likely to choose to move to settled or urban areas; hence the tribal areas will remain the domain of those who seek to perpetuate a traditional lifestyle.

The above should also not obscure the differences between the two peoples. Chechens are a much smaller nation; there are perhaps one million Chechens today and over twenty million Pashtuns, 10 million in Afghanistan and perhaps 12 million in Pakistan. The Pashtuns live on both sides of a major mountain range, and therefore the Pashtuns in the British empire, and later Pakistan, have had a kin state, Afghanistan, on the other side; the Chechens live only on the northern side of the Caucasus mountains, with Christian Georgia across the border. The Chechens endured direct incorporation into the Soviet Union, with far-reaching

consequences such as near-total literacy, while the Pashtun tribes never were conquered or really subdued, this difference being very much due to the size differential. Moreover, the Chechen nation was deported to Central Asia in 1944, an event which had deep impact on the development of Chechen society. Yet the commonalities in political geography, as well as in the history, social structure and customs of the Chechens and the Pashtuns are significant and, arguably, by far outweigh the differences between them.

The Chechen and Pashtun social structures being so similar, it is striking to observe the differences in their political development in the last century and a half. Both were faced with the threat of large empires, the British and the Russian empires, that sought to “pacify” their territories and that needed calm on their frontiers both for internal stability and for their influence on the area immediately beyond these frontiers. Both empires were culturally and religiously alien, and technologically more advanced.

Yet the outcomes were very different. Russia waged a continuous, head-on battle against the Chechen and Circassian tribesmen, a battle in which it only progressed very slowly, with numerous backlashes, at immense cost and without respite. It is fair to say that the Russian army did not conquer Chechnya by the sword, but by the axe; by physically cutting down the forests of the foothills of the Caucasus mountains, thereby depriving the Chechens of the protection of the forests. Russian, and Soviet, control of the mountains nevertheless remained elusive. In order to control these areas, the Soviets forcibly resettled mountain dwellers to the lowlands, where they could be supervised and controlled. Even this did not seem to succeed, giving way to the ‘final solution’ to the Chechen issue in 1944, as Stalin ordered the deportation of the entire Chechen people to Central Asia. This deportation, which killed a quarter or more of the Chechens, only served to galvanize the sense of unity and common belonging among a Chechen nation that had previously been relatively fragmented into its tribal units. This paved the way for the national movement of self-determination that erupted with the liberalization of the USSR under Gorbachev and the eventual dissolution of the Soviet Union, which in turn led to the demands for Chechnya’s secession from both the Soviet Union and Russia, under General Dudayev. Again, war and large-scale destruction was to follow, with the result that at least 10% of the Chechen nation has been killed and countless others, close to half of the population, have

been forced into either internal or external exile. In short, Chechnya's history in the last 150 years is one of blood and death.

By contrast, the tribal areas of the Northwestern Frontier Province, as the British named the region in 1902, have experienced a considerably calmer history. The period after the British arrival on the scene and their first encounters with Pashtuns was bloody and warlike; however, as will be discussed below, the British soon chose to strike a compromise with the tribes that would satisfy the interests of the Pashtuns by allowing them to remain outside British direct administration and thereby safeguard their tribal society. Meanwhile, the British interests were met as the tribesmen allowed British access to roads to Afghanistan; the British recruited police and soldiers from among the tribesmen, and co-opted their leading families through subsidies. The system was not foolproof, of course, and neither was it a happy agreement by two willing parties. The deal was dictated by necessity, with British military power constantly ready to penalize the reluctant tribes through the dreaded punitive expeditions, and the tribes notwithstanding often willing to challenge the system and rid themselves of the British whenever they felt an opportunity to do so. But the system evolved, and remarkably managed to avoid slipping into the type of recurrent warfare and all-out violence that characterized Chechnya's history. For most of the time, the tribesmen managed to keep their societies at relative peace, at least comparable to the period before the British which had not been devoid of conflicts either – given their location, both the Caucasus and the NWFP are traditional hotbeds of conflict and great power rivalry and movements.

In 1947, the British left India and the Tribal Areas joined the nascent state of Pakistan – and amazingly, in the half-century that has passed since then, Pakistan has managed to avoid large-scale unrest in its tribal areas of the NWFP. This is all the more remarkable in the regional context of state-tribe interaction, including Pakistan's own 1970s insurrection in the Baluchistan province. Even in Pakistan's political scene, the settled areas of Sindh have formed a considerably larger threat to the country's stability integrity than have the Pashtuns; though the Pashtunistan issue, sponsored by successive governments in Kabul, has at times been a serious issue, the Pashtun areas have remained remarkably calm and manageable by the state – again, especially considering the proven reputation for fierce independence that these tribal peoples have exhibited.

This is in great part the case due to the continued application and further perfecting of the British policy toward the Tribal Areas. The key to the success of this system, which will be further analyzed below, lies in that it has managed to *avoid* the issue of political status or statehood. It has not framed the relationship between the state and the minority or population group, in this case a tribal people, in terms of statehood, independence, autonomy, federalism, self-determination, international law, or other modern principles that are not relevant to the lives and aspirations of the people in question. It has not created modern and hierarchical institutions of statehood or pseudo-statehood in an egalitarian society; but it has simply fulfilled the major demand of the tribal people and its representatives, namely to be able to continue living according to their existing social organization, resolving disputes internal to the tribe within the tribe according to the customary laws of the tribe, avoiding forcible integration into the legal and political system of the state, perceived by the tribal people as alien and conflicting with their own system of values.

It may be argued that the tribal areas system, by failing to integrate the tribes, has helped to sustain and promote an archaic form of society that fails to protect the human rights of the members of the tribe, especially as women's rights are concerned; in this view, the system has wronged by deliberately failing to modernize the tribal areas and bring the advances of modern civilization to them. While this is correct, even from a western liberal human rights perspective, the situation in the tribal areas of Pakistan in the last fifty years must surely be considered preferable to the incalculable sufferings of the Chechens, of the Afghans under Soviet occupation, of the Kurdish populations in conflict with one another and with their various central governments, of the Berbers of Morocco, or other tribal societies that have violently clashed with the forces of modernization that they have not invited to their areas, areas that they usually have inhabited much longer than the representatives of the states that claim their territories as their own. In this sense, the Tribal Areas system has proven successful and may hold promise as an example from which attempts to promote a peaceful and durable solution to the conflict in Chechnya can draw significant lessons.

The Tribal Areas System

The tribal areas of the North-West Frontier (NWFP) and Baluchistan provinces of Pakistan are home to some of the most fiercely independent-minded peoples in Asia, who have consistently – and for the most part successfully – resisted subjugation into larger states or empires. They posed large difficulties for most invaders of the Indian subcontinent from either the North – such as Alexander the Great or the Mughals – or the South, such as the Sikhs or the British.

British Dilemmas on the Frontier

The collapse of the Sikh empire that covered the Punjab and most of what became the NWFP with the death of emperor Ranjit Singh in 1839 led to the gradual advance of the British forces. Even before the outright annexation of the Punjab in 1849, the British established control over Peshawar in early 1847, taking over its administration from the Sikhs, who themselves had only annexed the vale of Peshawar in 1834, after over a decade of fighting against Pashtun tribesmen. The territories between the Indus river and Afghanistan were considered too strategically important to the British, given their proximity to Afghanistan, to be left uncontrolled. In 1837, the first Anglo-Russian confrontation had taken place in Afghanistan when Russia, while advancing in Central Asia, supported a Persian move against Herat. The British launched an invasion of Afghanistan in 1839, in cooperation with the Sikhs under Ranjit Singh, who nevertheless died the same year. The British crossed the Khyber pass by paying a large sum to the Afridi tribes inhabiting the pass – just as many other conquerors through history had done. This first Anglo-Afghan war ended in disaster as a resurgent Afghan army annihilated the entire British army except one man in November 1841. The British set up an ‘army of retribution’ in 1842 and fought their way over the Khyber pass back into Afghanistan, sacking Kabul before retreating again in October 1842.

After this experience, the British scarcely attempted to control Afghanistan, instead working to establish it as a buffer state that would not be under Russian control or influence. In order to keep Afghanistan as a buffer state, the British nevertheless felt it crucial to establish control over the Pashtun-populated territory between the Indus river and the mountains separating the Peshawar vale

from Afghanistan proper. This became a frontier region, hence the later name of the Province once it was separated from the Punjab.

British control was established relatively easily over the settled areas of the vale of Peshawar, beginning in 1847. However, they never effectively attempted to establish direct rule over the inaccessible, mountainous areas forming the frontier with Afghanistan. Quite to the contrary, British forces in Peshawar, as well as the economy and society of the region, was constantly threatened by tribal raids on the vale, carried out by Pashtun tribesmen in the mountainous areas between the vale and Afghanistan.

This posed a dilemma for the British, who did not have the resources to attempt to assert direct control over these tribal areas – the fierce independence of the Pashtun tribes and the inaccessibility of the area combined entailed that such an operation would require an enormous permanent military presence, to that in a territory that the British were interested in chiefly because of its location on the border with Afghanistan, rather than for any resources or characteristics of its own. Hence came the urge to find a way to secure stability in the settled areas of the Peshawar vale, through a special arrangement with the tribes that would prevent tribal incursion, while securing as far as possible the calm and stability in the tribal areas themselves.

Towards Accommodation

The British soon acquainted themselves with the very specific and rigid social structure and customs of the Pashtun tribes, and devised, through trial and error, a mode of relations with the tribes that built on the needs of the British as well as on respect of the customs of the tribal areas. This system, which began with agreements with the tribes in the 1850s and was perfected in the early 1900s, secured a comparative stability on the North-West Frontier until the end of British rule in 1947. The system was inherited by the nascent state of Pakistan, and left basically untouched in its core, with the result that Pakistan, for all its shortcomings in other areas, has been one of the most successful modern nation-states in managing to secure a relative peace and stability with tribal populations within its borders.

At the end of the 19th century in Baluchistan, as a result of the various skirmishes as well as continuous resistance of the people in the area against the British, a

study was carried out regarding its people, society, culture and traditions. As such, an administrative machinery was devised which was unique in nature and suited to the tribal people of the area, in terms of granting them maximum autonomy while meeting the needs of the centre to have a certain degree of presence in the area, in order to ensure the allegiance of the tribes to the central government. As a result, authority was delegated to the tribal population and criminal law was enacted through tribal customs and traditions being codified into a law and justice was dispensed according to the prevalent customs and traditions of the tribe. Flowing from this, the concept of community policing was evolved. The similarity of the law to the tribal customs and traditions and the fact that the council of elders or *Sardars* (Tribal Chiefs) were given a certain degree of economic and social patronage by the central government lead to a gradual but comparatively easy acceptance of the presence of central authority in the region than what had been experienced earlier by the British government. Institutionalizing tribal law and concentrating power in local power denominators like the chiefs or council of elders in the area, allowed the central government to deal with the area and its internal and external security dimensions with considerably more ease and with lesser human cost to the centre. As the tribal society was already familiar with the working dynamics of the new law, it never revolted against it. The administrative system was so modeled that it fitted in the already existing system of governance, as well as of policing and dispensation of criminal justice.

Coming to the NWFP, the British faced the dilemma that their military superiority was not relevant to the forms of asymmetric warfare used by the Pashtun tribes. While the British could at any given moment mass a punitive expedition to any Pashtun tribal area and sack villages or entire regions, this did not give the British forces control over the tribal areas. Establishing direct control over people that valued their independence higher than anything else would have meant a constant military presence of tens of thousands of troops, likely in a state of continuous guerrilla warfare that would slowly bleed the army to death – incidentally, a situation very similar to the one Russia presently faces in Chechnya. The British instead began to seek ways of securing cooperation by the tribal groups, a strategy that based itself on several main pillars. A main facet of this strategy was a realization on the part of the British that they were dealing with the tribal people on an equal basis.

Firstly, the British declared they would not seek to administer the tribal areas directly nor to impose their laws and regulations on the tribes. Tribal areas would retain a maximum autonomy, indeed bordering upon independence, since they were never formally part of the British Empire.

Secondly, the British would use a mix of carrots and sticks to induce and deter the tribes from attacking settled areas; this included the payment of allowances, as well as the threat of punitive action, including actual punitive expeditions when criminals were not handed over to the British, or when a tribe had revolted etc.

The strategy based on using the existing, age-old and respected traditions of Pashtun society in order to legitimize the agreements and give them a lasting base. Hence agreements were made between the British and a *Jirga* or tribal council of elders or *Maliks* of the tribe or clan in question.

The Main Facets of Agreements

In December 1851, the Deputy Commissioner of Kohat made an agreement with a Jirga of 10 elders of the Jawaki section of the Afridi tribe in the Kohat region, forming the first agreement of its kind, where the Elders committed to several points, which are contained in the large number of agreements reached with different tribes. First of all, the Elders agreed that any property stolen by members of the tribe from British territory be returned or restored in kind or in the same value. Secondly, the tribesmen committed to hand over any culprit committing crimes in British territory to the British representatives; thirdly, they committed to ensure security on the road passing to their territory; and fourth, they gave twenty hostages to the British to ensure the proper observance of the agreement. This agreement was to form a blueprint for the agreements that followed between the British and the tribes, which typically centered around the following facets:

- The tribe, or section of a tribe, remained outside the legal and political administration of British India. British Indian law was not applicable in tribal areas, with the exception of the roads built by the British. In this case, British law applied on the roads and one hundred yards on each side of the road; beyond this area, tribal customary laws ruled the land. This meant that all

- internal matters of the tribe would be settled according to Pakhtoonwali, normally by a *Jirga*.
- The tribe or section in question accepted collective responsibility for the actions on British (settled) territory of any member of their tribe. If a member of the Shaman Khel section of the Mahsud tribe in South Waziristan would commit murder or robbery in Peshawar, for example, the Shaman Khel section, as per an agreement of July 1922, declared itself ‘responsible jointly and individually for all offences; that is to say, in the first instance, the subsection concerned with the responsible; after that the responsibility will lie on the next larger tribal unit and finally the Shaman Khel section will be responsible.’” In practice, these agreements meant that when an offence took place, the British would appeal to the “Maliks” or leading men of a tribe, who would seek to produce the culprit to the British authorities. Should they fail to do so, having accepted responsibility for his actions, the tribe would pay a determined fine for the offense committed. Whenever possible, the British would seek to punish the individual offender; where that proved impossible, it reverted to Pashtun customary rules of collective responsibility. This system ensured that tribes exerted a collective restraining effect on members, who knew that the consequences of their actions would be born by the wider community.
 - The tribe was in turn given allowances by the British, which were distributed through the *Maliks*, who hence gradually increased their standing in Pashtun society, due to the financial instruments at their hands. These allowances were cancelled in case of misconduct by the tribe, further creating incentives to abide by the agreements.
 - As a form of representation in the tribal areas, the British appointed a Political Agent, (PA), who was the only representative of the British rule in the Tribal Areas. The PA did and does not have a direct authority over the internal functions of the Tribal Areas. In fact, the PA has been described as ‘half ambassador and half governor’, in the sense that the PA’s power devolves as much from the financial and military resources he can draw upon as the way in which he is able to keep relations with the tribal leaders, preventing deterioration of relations, or instability. The PA made use of the Frontier

- Crimes Regulation (FCR), introduced in 1872, which allowed him to refer criminal and civil cases to a tribal *Jirga*; to issue blockades of certain tribes and exact penalties from them; fine entire communities. The British legal system had close to no legitimacy at all in Pashtun society, whereas the *Jirga* system did. By using the *Jirga* system to adjudicate crimes, the British ensured that the legal decisions taken resounded in society, rather than being understood simply as coercion by an alien and illegitimate authority.
- The tribes supplied the British with Khassadars, or tribal levies, who functioned as a form of paramilitary force under British command but staffed by locals.

Patrolling the Frontier: The Levies

In order to meet the needs of maintaining a central paramilitary forces in the region as well as to balance out any kind of resentment from the tribal people, the basis of a new kind of locally raised force (Levies) was laid. Henceforth an institution was devised to operate in a simple society which required an informal policing system. The levies were further subdivided into two broad categories, i.e. Federal levies and Provincial levies, depending upon the tribal areas and whether they were termed as category A or B areas (i.e. unsettled areas or semi-cultivated areas adjacent to settled areas). The recruitment to the two was and still is made in a different way.

The Federal levies

Federal levies are divided into three subdivisions: Hereditary or Khassadars, sectional, and open.

Hereditary/Khassadars: There are no hard rules for the recruitment of Khassadars. Recruitment is done on the basis of a distribution yardstick (*Nikkaat*) among various sections of the tribes, good behavior and loyalty to the government. Khassadars are hereditary in nature and devolve usually from father to son. The holder of this service has the right to transfer his service to one of his nominees in his lifetime or, after his death, to one of the male members of his family or tribe on whom the heirs of the deceased have no objection to. This is not subject to any medical fitness; anyone who can carry and use a gun can be a Khassadar. Under certain conditions, the Khassadar can send his nominee/substitute for

duty. No uniform or weaponry is issued by the government and they bear their personnel arms and expend their own ammunition. Their primary function is to take care of the central government's holdings such as buildings, roads etc. However, with time, there has been an expansion in their role, and particularly after independence, they arrest/detain outlaws, serve summons and warrants etc. within their respective jurisdiction, defined by the territorial boundaries of the tribe. No direct disciplinary action can be taken by the government against these individuals for these constitute irregular components of government paramilitary forces in the FATA and are primarily responsible to the tribal chiefs or Maliks in the region. The government has very little say or authority while making an appointment on the recommendation of such a service holder. The creation of hereditary levies was created primarily to appease the Sardars and Maliks, and this service had been bestowed by the British government as reward for their services and to keep the tribal leaders on their side and not to allow pockets of resistance to emerge. Hence an effort was made to keep the customary local power centers effective and less volatile to the centre. After Pakistan's independence, the same structures were allowed to function, and not much changes were brought about with the exception that the military force that was sent as a backup option by the British to the region was withdrawn as a step towards greater integration, and for creating a much more amicable atmosphere between the tribal population and the central government of Pakistan.

The history of the Khassadars/Levies varies throughout the formation of the various agencies. Nevertheless, broadly the inception of the force dates back to 1919 in the Khyber agency. With the establishment of new agencies, the employment of this force was adopted upon opening up new inaccessible areas in the tribal belt. The initial intent was the protection of roads, government buildings, and vital installations. Later, with the passage of time, their role was expanded to maintenance of law and order – both as a lead law enforcing agency as well as a supplementary one.

Sectional: The holder of this category of service inherits the service from the same tribe and it is not transferable to anyone outside the tribe. The fixed nature of these posts had been made primarily to keep the balance between the tribes and their respective position in the area.

Open: The holder of this category are the inhabitants of various tribes residing in the Area or District. On termination, these posts are advertised and a standing committee selects suitable candidates. The majority of the levies force belong to this section. The levies are created in such a manner that certain pay is given to them; however, unlike other government positions, these are not pension-generating jobs.

Provincial Levies

These are open posts as recruitment is open for everyone on the basis of equal opportunity. The creation and continuance of this cadre of forces has been important in many ways.

Tribal areas have manifested a unique of pattern of development in the last fifty years as they can be termed as semi-urban centers with more facilities of health, education and employment. Interestingly these are areas where semi-urban and tribal cultures have coexisted. Given the nature of the people, their sense of independence and lack of direct colonial experience as experienced by the more settled areas to their south and west called for operating two policing systems, one formal police and another tribal force, jointly in the towns. The levies system tried to adapt to this system through a more open system of provincial levy system in attempt to extend the formal policing system. However, since ca. 90% of the tribal population has maintained their tribal culture, it has been paramount to keep the system closer to the tradition and custom of the land than what had been done in other areas of Pakistan.

The system as result has functioned extremely well over the last fifty years of independence, and has resulted in lesser law and order problems than in most other areas of the state of Pakistan. One of the reasons for the system to function has been the fact that it draws its strength from the local settings and the participatory nature of the force.

Local Intelligence Support

Since the force is primarily composed of local, tribal population and revolves around the concept of respect and honor more than purely monetary rewards, the amount of knowledge base of the force is enormously rich. Policing can be done through an effective system of intelligence, as grassroots connections of the

forces with their respective zones of influence enable them to have better knowledge of the area, individuals, possible perpetrators and the subject matter at hand than what might have been possible otherwise. This inherent knowledge base helps detecting crime and maintaining order without the large-scale use of force or upsetting the tribal values of the tribes. In addition, a levy-man who represents a tribe usually enjoys the confidence and protection of the tribe, therefore his personal safety is ensured by the honor code of the tribe which might be difficult, if not impossible, if the person was an outsider. As a result, even raids of personal holdings and residence are not taken as an offense, although in the case of an outsider, it would be considered as an insult with the consequences attached to it. Similarly, criminals also find it easier to surrender to these forces than to outsiders.

However, despite its strengths, the system has suffered from a certain degree of inertia, owing largely to the irregular nature of the force, a lack of training in procedural laws and practice, the lack of substantial financial rewards, and the absence of a service structure.

The Creation of Pakistan and the Constitutional status of FATA

Upon partition, no referendum was held in the tribal areas though one was held in the rest of the North-West Frontier Province. Instead, *Jirgas* of tribal groups were called to decide on the future of the tribal areas after British rule. As the last British Governor-General Sir George Cunningham noted, *Jirgas* of every big tribe in the frontier decided to accede to Pakistan on condition that the conditions they had enjoyed under the British would continue under the state of Pakistan. During the April 1948 visit to the NWFP of Quaid-e-Azam Mohammad Ali Jinnah, a large *Jirga* was held in Peshawar, where two hundred leading Maliks reasserted their allegiance to Pakistan, but requested that the tribal areas deal directly with the Central Government, and not with the Province administration. This request was accepted by the Pakistani leadership.

Articles 246 and 247 of the 1973 Pakistan Constitution define the constitutional status of FATA in Pakistan and the governing principles, the mode of integration and the degree of control of the Federal Government in these areas. With

reference to article 246 of the constitution, tribal areas are defined as the areas in Pakistan which immediately before the commencing day were tribal areas. These are broadly categorized into the following sub units: the tribal areas of Baluchistan and the North-West Frontier Province (NWFP), the former states of Amb, Chitral, Dir and Swat; the Provincially Administered Tribal areas further sub divided into the certain districts of Chitral, Dir and Swat, the Malakand protected area, the Zhob and Loralai district of Baluchistan, the Dalbandin tehsil of the Chagai district, and the Marri and Bugti tribal territories of the Sibi district, also in Baluchistan. Federally Administered Tribal Areas were determined to include tribal areas adjoining the Peshawar, Kohat, Bunn and Dera Ismail Khan districts; the Bajaur, Orakzai, Mohmand, Khyber, Kurram and the North and South Waziristan agencies.

Article 247 of the constitution outlines the degree of involvement in local self-government and the status of the areas in the Federation. According to the article, no act of the Majlis-e-shoora, the Pakistan Parliament, shall apply to any Federally Administered Tribal Area or any part thereof, and similarly, no act of the provincial assembly shall apply to a Provincially Administered Tribal Area without the approval of the respective governor of the Province and the prior approval of the President. Notwithstanding anything contained in the constitution, the president may, with respect to any matter within the legislative competence of the Provincial Assembly, make regulations for peace and good government of a provincially or federally administered tribal areas. However, importantly, while making these laws, the President must ascertain the views of the Tribal Areas concerned as represented in a tribal *Jirga*.

On the judicial and political front, the FATA region provides an interesting mix of tribal culture and modern state machinery. According to the constitution of Pakistan (Article 247 sub-section 7) neither the Supreme Court of Pakistan nor a High Court can exercise any kind of power or jurisdiction under the Constitution in relation to the Tribal Areas, unless the Parliament so directs through a law with the approval of the President to regulate peace and good government in the FATA. This clause is linked to the approval of the tribal population to the law, made clear through a *Jirga*.

The tribal areas are given a unique position with a status resembling that of an autonomous, associated or semi-independent area in the Federation regulated through the authority of the State by the Political Agent directly responsible to the Governor of the respective Province, who is in turn responsible to the President of Pakistan for the dispersion of certain privileges, socio- economic development, regulation of law and order, determination of relations between the state of Pakistan and the Tribal Areas. Hence relations have so developed that the tribes have given pledge to help the state of Pakistan to man the external boundaries of the state, while the internal affairs of the FATA are regulated primarily through the commensuration of *Jirgas* which can be called for mediating and carrying out justice, either at the individual level or at the community level . Similarly, in order to have a uniform decision from the tribes, the method of calling a national *Jirga* is recognized by the government. Therefore, by giving legitimacy to the local and tribal way, agreements on law and order as well as the independent character of the tribes has been maintained throughout the last fifty years of independence. Finally, the FATA region is given a certain share in the Federal Government by way of allocating certain seats for the region in the National Assembly, the legislative body of the country. Similarly, a certain quota is reserved for the tribes in the federal administrative units and mechanism. By giving them a special status in the state's administrative machinery, stakes are increased for the tribal areas to associate themselves to the state of Pakistan and to work effectively towards the growth and progress of the center as well as the federation. Therefore, by strengthening the existing tribal mechanism of statehood – that is through the appropriation of legal authority to sub-systems in the tribal societies – Pakistan has been able to create a sense of belonging in the tribal population to the State of Pakistan. This has been achieved as a result of decreasing the sense of insecurity of the tribal population vis-à-vis Pakistan and by increasing a sense of belonging.

Implications for Chechnya

It is worth noting that the Tribal Areas system is unique in that it has managed to function practically as detailed above, but also managed to function with respect to Pashtun customary law; the British Civil Law system which Pakistan inherited; as well as Islamic Law, Sharia, which is applied in Pakistan parallel to Civil Law. The implications for Chechnya of the Tribal Areas are manifold. First of all, one

lesson is that even in the harshest tensions such as those that existed between the British and the Tribal Pashtuns, and in spite of the amount of blood that had been shed, it proved possible to devise a compromise solution that safeguarded to core interests of both sides to the conflict. Secondly, the system was successful because it did not focus on the technicalities or terminologies of international politics, as current efforts to resolve the conflict tend to do. Instead, the system addressed the real concerns of security, preservation of way of life, and dignity that the two sides had, without spending much effort on abstract notions of whether the tribal areas were part or not of the British Empire; whether they were independent, sovereign, associated, autonomous or the like. The implication is that in order to find a solution to the Chechen question, it is necessary to go further than terminologies and technicalities, and focus on the essential interests of the two sides.

Thirdly, the system accounted for the important notion of social structure and the importance of preserving traditional lifestyles in tribal, mountainous areas. As noted above, most of lowland Chechnya may accept incorporation into the Russian Federation through some form of autonomy negotiated between the Russian government and the Maskhadov government. Even then, special attention must be given to the mountainous parts of Chechnya, to allow for the preservation of traditional lifestyles and leaving the internal matters of people living there to themselves. In other words, a special administrative system, even within an autonomous or associated republic of Chechnya to the Russian Federation, needs to be implemented for the southern, mountainous areas of Chechnya. In this area, Chechen traditional mechanisms of conflict resolution and the maintenance of law and order need to be allowed to rule internal matters. This is a practical necessity as otherwise these areas are unlikely to accept a peace agreement; moreover, imposition of Moscow or Grozny law on these areas will be practically impossible. The only way to preserve law and order in these areas is to boost the authority of age-old, socially sanctioned methods.

Fourthly, this system needs to establish a system of interaction between the Moscow and Grozny governments and the highlands. In this sense, the system of the Political Agent deserves to be studied. A Political Agent needs to have certain power to enforce the requirements of his government in the highland areas. However, this power cannot come only from force and coercion; it needs to be

accompanied with monetary or other rewards that the Political Agent can distribute in order to create an incentive structure for the local population to cooperate. Pashtun and Chechen societies have time and again shown that they cannot be coerced into submission; they need to be dealt with on an equal basis. Respecting local sensitivities and offering incentives for cooperation is the only way for the Russian leadership to secure the stability and cooperation of these areas. The Political Agent should be a person skilled not only in military or political matters, but also in the society and culture of the highlands. It could make sense to employ a person from among other Muslim populations in Russia; such persons will enjoy a certain level of legitimacy in the Chechen highlands while also having a clear allegiance to the Russian state.

Fifth, the system of interaction between government and highlands also needs to have a mechanism for conflict resolution. In this sense, the collective responsibility principle applied in the Tribal Areas is a way to minimize the risks of the highland areas becoming a haven for criminality and instability, as the Russian Government fears. A system could be applied as follows: if a crime is committed by an individual based in the Highlands, the lowland or Russian authorities will bring their complaint through the Political Agent. The Political Agent will, according to a code similar to the Frontier Crimes Regulation, then seek the village or community of the accused person, and have a local council adjudicate the matter, with evidence provided by the Russian authorities. The council decision will then form a basis for legal action against the perpetrator. Should the perpetrator be absent, his property can be confiscated; should this fail, the Political Agent can hold the individual *Teip* responsible for the actions of its member, and force the payment of a certain, stipulated fine for the offense. There can then be an entire series of actions in case of refusal, involving blockade of a certain *Teip*, etc. Such a system will be likely to increase social control over crime and minimize its occurrence, while the usage of local mechanisms will increase the social legitimacy of law enforcement.

Finally, as alluded to above, the Political Agent will likely have to pay allowances to the *Teips* in his area of jurisdiction. This will further cement the incentive structure for cooperation. These allowances will be linked to the good behavior of the local community, and forfeited if the community does not cooperate in the prevention and punishment of crimes.

This type of a solution will not immediately solve all problems in Chechnya. However, it does have the advantage of providing for a system that guarantees the core interests of both sides. To Russia, the system will restore stability in the Chechen mountains areas; create an incentive structure for Chechens to cooperate with the government rather than working against it or engaging in illegal activities. Moreover, this system, even given the payment of allowances to the local communities, is immensely cheaper in both human and material terms than engaging in a policy of military occupation, which evidently is not producing its desired results anyway. To the highland Chechens, this model will enable those who so wish to preserve their traditional way of life, remaining outside the legal jurisdiction and social and cultural influence of the Russian state. To both sides, it would provide for a workable mechanism to establish relations and mechanisms to solve dispute and regulate relations between the two sides.