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AFGHANISTAN: CONTINUING CHALLENGES

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CONTENTS

Page

WITNESSES

Gouttierre, Dr. Thomas, dean of international studies and programs and director of The Center for Afghanistan Studies, University of Nebraska at Omaha, Omaha, Nebraska 3
Isby, David, foreign and defense policy analyst, Washington, D.C. 23
Prepared statement 24
Perito, Robert, senior fellow and special advisor, Rule of Law Program, United States Institute of Peace, Washington, D.C. 19
Schneider, Mark, senior vice president, International Crisis Group, Washington, D.C. 11
Prepared statement 15
Map of Afghanistan 48

APPENDIX

Additional Material Submitted by the International Crisis Group
Elections and Security in Afghanistan 49
Additional Material Submitted by the United States Institute of Peace
Establishing the Rule of Law in Afghanistan 58

AFGHANISTAN: CONTINUING CHALLENGES

Wednesday, May 12, 2004

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met at 9:35 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Richard G. Lugar, chairman of the committee, presiding.

Present: Senators Lugar, Biden, and Feingold.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

The CHAIRMAN. This hearing of the Senate Foreign Relations Committee is called to order.

Today the committee again meets to examine the challenges in Afghanistan. Despite many successes on the ground, the prospect that we could fail in Afghanistan is still very real. Congress and the administration must soberly assess the state of political and economic reconstruction efforts in Afghanistan and devise adjustments to the current plan where necessary.

The same sources of conflict and instability that allowed the Taliban to seize power and fueled the growth of Al Qaeda's terrorist network continue to threaten the future of Afghanistan. Conflicts among heavily-armed militias controlled by warlords, pervasive poverty, systemic corruption, and an increasingly entrenched narco-economy threaten to undermine reconstruction activities. Despite coalition efforts to establish security, disarm the warlords and strengthen the central government of President Karzai, the situation sometimes appears to be getting worse, not better.

Too little assistance to Afghanistan has been provided, and often it has come too late to address the daunting needs of that country. The lack of security and continuing attacks on aid workers, particularly in southern Afghanistan, have delayed or prevented aid deliveries. In 2003, Congress appropriated funding to speed up the training of Afghan security forces, including the Afghan National Army, police, and border guards. The security force has increased to about 20,000 Afghanis, but this is a fraction of what is needed across the country.

Many of the same warlords who helped the coalition oust the Taliban are fighting each other, instilling fear in the population, and frustrating rebuilding efforts. These warlords control vast regions of Afghanistan. Reports by the UN Special Representative for Afghanistan, Jean Arnault, indicate that efforts to disarm the clashing Afghan militia factions have barely begun.

NATO decided last December to expand the International Security Assistance Force, ISAF, outside of Kabul, but the number of NATO forces has increased only from about 5,000 to 6,500. NATO allies promised to provide increased equipment and personnel support, but thus far the NATO effort has been tentative and incremental. Given the extreme challenges in Afghanistan, NATO must step forward with a much bolder commitment.

The Provincial Reconstruction Teams, the PRTs, units that concentrate military and civilian capabilities in critical locations, have been successful in establishing islands of security. The intended purpose of the 13 PRTs is to jump-start reconstruction outside Kabul. But this relative success has been hampered by a lack of resources, equipment, common doctrine, coordination, and training. Without a substantial expansion of resources and commitment, the PRTs will not succeed as a platform for reconstruction.

The failure of efforts to stem poppy production and provide alternative sources of income undermines every aspect of reconstruction in Afghanistan. The warlords are financing themselves through the illegal opium trade, valued at close to $2.3 billion last year. If this estimate is accurate, it would account for more than 50 percent of Afghanistan's gross domestic product. This drug trade also is funding resurgent Taliban units, Al Qaeda, and other criminal and terrorist elements.

As we tackle these security problems, the administration and the Congress must ensure that prisoners of war in Afghanistan are not being abused and that vigorous investigations occur into any wrongdoing. The revelations about prisoner abuse in Iraq have repulsed Americans and hurt our reputation in the international community. We need to establish absolute accountability and stay true to our principles and values without reducing our efforts to overcome terrorism.

The President and Congress have made clear our long-term commitment to a free and stable Afghanistan. Last fall, Congress strongly supported more resources in the Emergency Supplemental, bringing U.S. aid to Afghanistan to $3.7 billion since 2001. Our hope was that security enhancements and other improvements would lead to successful elections, now scheduled for next September. The UN has reported that nearly 2 million of the 10 million eligible Afghanis have been registered to vote thus far. Of those already registered, an estimated 29 percent are women. As September approaches, we must either register voters far more efficiently or develop alternatives to traditional registration that will allow elections to proceed.

This year's budget request includes $1.2 billion for Afghanistan. The administration recently announced it will seek an additional $25 billion contingency fund for Iraq and Afghanistan. Congress must carefully review these requests, assess how these funds are to be used, and ensure that they are managed properly.

We have asked a distinguished panel of experts to testify today about the priorities and the prospects for redevelopment in Afghanistan. Which elements of the reconstruction effort are succeeding and which are failing? What adjustments can be made now to improve the prospects for long-term success?

We are pleased to welcome Dr. Thomas Gouttierre, Mr. Mark Schneider, Mr. Robert Perito, and Mr. David Isby. I would point out that Dr. Gouttierre is Dean of International Studies and Director of the Center for Afghanistan Studies at the University of Nebraska, Omaha. Mr. Schneider is Senior Vice President of the International Crisis Group. Mr. Perito is Senior Fellow and Special Advisor for the Rule of Law Program at the United States Institute of Peace, and Mr. David Isby is author of several books on Afghanistan and a foreign aid and defense policy analyst.

We look forward to your insights, and we look forward to the opportunity to question you. We thank you for coming to the hearing this morning. I would like for you to testify in the order that I mentioned. That would be Dr. Gouttierre to begin with.

Let me indicate that all of your prepared statements will be made a part of the record in full. We would ask, just for the sake of moving on in the hearing, that you either give your statement or summarize in about 10 minutes or so. In the event that it moves it beyond that, the chair will be liberal, because the purpose is to hear you today, and to make certain that we encompass the ideas that you bring to us. Thank you for coming and would you please proceed, Doctor.

STATEMENT OF DR. THOMAS GOUTTIERRE, DEAN OF INTERNATIONAL STUDIES AND PROGRAMS AND DIRECTOR OF THE CENTER FOR AFGHANISTAN STUDIES, UNIVERSITY OF NEBRASKA AT OMAHA, OMAHA, NEBRASKA

Dr. GOUTTIERRE. Thank you, Senator Lugar. I am pleased to mention that I'm an IU graduate, and I remember seeing you on campus when you were mayor of Indianapolis. So that puts both of us back quite a number of years, as you well know.

The CHAIRMAN. An excellent qualification for testifying today.

Dr. GOUTTIERRE. Well, I think it is as well.

I am pleased to be able to come here, and I know the other panelists are as well because the issue of Afghanistan is still a very important one. I think in many ways, though it is often obfuscated by the news that we see daily coming from Iraq, it offers to the United States a greater opportunity for success and a greater opportunity for us to take the type of advantage we have been seeking in the Middle East with fewer challenges if we do it correctly. So thank you and the committee for having this hearing. I appreciate the fact that it is being done. It is good for U.S. interests. It is very important for Afghanistan.

In the nearly 30 years of war and instability which preceded the swearing-in of the Karzai government, nearly every element of Afghanistan's infrastructure, human and material, was significantly destroyed or displaced. Most of those services and resources upon which Afghans had come to rely in the years leading up to that tragic period are still not available to Afghans.

And yet, there can be no denying that many positive developments, some of which I observed in my most recent trip to Afghanistan a month ago, are also occurring. There are also many challenges, and I will try to address the primary ones of both the positive developments and the challenges.

The thing that stood out most to me was the fact that the population and commercial centers of Afghanistan are truly being resuscitated. The bazaars of Kabul, Kandahar, Herat, and Mazar-i-Sharif are well stocked with food, essential goods, and an amazing array of commodities. The people are in the streets in colorful clothing like they were in years past. They bargain for their purchases, shouting above the cacophony and gridlock created by the four-wheel vehicles of donor nations and organizations, the other means of transport drawn by humans and animals, and the ubiquitous music blaring from loudspeakers in the bazaars.

Most noticeable is the look of hope and anticipation in the eyes of a nation where none existed 3 years ago. There is a building and rebuilding boom in these centers, a demonstration of confidence that perhaps the long national nightmare of Afghanistan is coming to an end.

This expression of confidence is further fueled by a number of other demonstrable developments in several key sectors of Afghan society. I'm just going to mention these briefly.

Education is one with which our Center for Afghanistan Studies is intimately involved, and we've been pleased to be involved with USAID and the Bureau of Education and Cultural Affairs and the Afghan Ministry in a number of programs over the last couple of years. Right now, education is being pursued by Afghans with a vengeance. This follows, of course, nearly 30 years of little or no access. More Afghan school children today, over 4 million, are in school than at any other time in Afghan history. Education is the only national effort currently reaching into all the provinces and districts of Afghanistan.

I first went to Afghanistan 40 years ago as a Peace Corps volunteer. I lived there for 10 years, and I have been working since then at the Center for Afghanistan Studies, so I'm able to offer a perspective on education. I've never seen an interest in education in Afghanistan at the level that there is today.

The reconstruction of Afghanistan's ground transport infrastructure is improving access of Afghans to their government and regional commercial centers. Afghanistan's so-called "Ring Road" is being rebuilt. The Kabul-Kandahar corridor is reopened, reducing travel time from nearly 2 days to 5 hours. The Salang Tunnel through the Hindu Kush mountains is repaired and reopened, again reducing travel time from Kabul to the north from several days to 5 or 6 hours. Donors have been identified for each of the remaining sectors of this "Ring Road."

This road reconstruction also plays an important role in the improvement of Afghanistan's economy and its ability to play an integral role in the trade between South and Central Asian nations. When asked why Afghanistan is important to regional and U.S. interests, I always like to answer what real estate agents always recite in their mantra: "location, location, location!"

Astride the arteries of the Silk and Spice roads, Afghanistan is already profiting as a transit sector for commercial traffic between its neighbors in South and Central Asia and from Iran to South Asia as well. Should a natural gas pipeline be built from Turkmenistan to Pakistan, it will likely travel a route above the

Herat-Kandahar sector of the "Ring Road." In essence, Afghanistan has begun the process of rejoining the world economy.

The economy of Afghanistan, according to a recent statement by U.S. Ambassador Zalmay Khalilzad, grew by 29 percent in 2003. The traditional exports of Afghanistan, fruits, nuts, textiles and carpets, jewelry and precious stones, are once again being shipped abroad. In 2003, America bought over 14,000 square meters of handwoven carpets, 13 tons of dried and fresh fruit, and almost 600 tons of licorice root, an amazing kind of ad there.

Unlike Iraqis and many others in the Muslim world, Afghans have previous history with constitutional democratic process. During the decade under the Constitution of 1964, Afghans elected national officials and governments and turned them out with votes of no confidence. Afghans retain this democratic experiment, as it is often called, in their collective memory. Many believe that a democratic process is their legacy and their right.

After years of being a stateless nation, a system of governance is being rebuilt. In a series of efforts, beginning with the Bonn process in December 2001, Afghans have taken several steps towards reconstituting a national government. The constitution approved in January of this year is regarded by many observers as among the most progressive and enlightened in the Muslim world. It mandates a strong central government and presidency, with a two-house national assembly and independent judiciary. National presidential and parliamentary elections are scheduled for this September.

These positive developments have been obtained despite what most analysts characterized as a slow, distracted, and sometimes inept start on the part of U.S. and Coalition forces. The donor conference approach has proven to be disjointed, inconsistent, and largely unmanageable. Pledges are late in coming; some do not come at all. U.S. leadership in the process has often been solicitous rather than forthright. In the face of U.S. involvement in Iraq, Afghans have questioned whether the U.S. is committed, over the long haul, to reconstruction of their country.

A number of recent developments, however, have helped to assuage these concerns of Afghans. The first is the arrival of Zalmay Khalilzad as U.S. Ambassador. In my opinion, he is the best person for this job at this critical juncture. He knows most of the Afghans in national and regional leadership roles. He is considered credible and tough by those who share U.S. and Afghan aspirations for a stable Afghanistan. Needless to say, these favorable opinions are not shared by terrorists, warlords, and drug lords.

Khalilzad can speak to leaders and common citizens effectively. He is fluent in Dari and Pashto. He has good connections to the White House and with Congress. His relations with Hamid Karzai and other key Afghan leaders are constructive.

Another positive development centers around the growing number and effectiveness of the Provincial Reconstruction Teams (PRTs) as you indicated earlier. Lieutenant General David Barno's vision for the PRT process is solid, anchored in community-based reconstruction. Members of the Center for Afghanistan Studies have observed particularly successful PRT efforts led by New Zealand forces in Bamiyan and British forces in Mazar-i-Sharif.

The new, imposing American embassy and adjoining residential and office buildings are nearing completion. They have gone up in a remarkably short time. Afghans note that the investment required to construct these buildings suggest the Americans are, indeed, in it for the long haul. This builds confidence.

The continuing security, political, and economic challenges to the reconstruction of Afghanistan remain formidable. The most critical is security. It negatively affects all other factors. The lack of security is perhaps the only factor that might ensure a return of a stateless society to Afghanistan.

The three primary security threats are terrorists, drug lords, and warlords. These are holdovers, sometimes protagonists, other times allies, from the period of protracted civil war in Afghanistan. Though routed out of their strongholds and camps after 9/11, replenished and reorganized elements of Al Qaeda and the Taliban remain at large and constitute a threat, both real and symbolic, to the overall reconstruction effort. They gain financial support from drug interests.

These elements threaten Afghan teachers, students, election workers, and other government workers, even shop owners and farmers. They threaten them with death or other bodily harm if they teach, go to school, register to vote or assist in the election process, or appear to side with the government. International assistance workers and military forces are also threatened; some have been killed. The continuing capacity of these terrorists to intimidate slows and even terminates certain reconstruction efforts.

I have some recommendations on how these might be addressed.

First, increase the military capacity to provide security in the rural areas of Afghanistan through expanding the PRT program.

Second, go after Osama bin Laden, Aiman Zawahiri, Mullah Muhammad Umar, and Gulbudeen Hikmatyar with a "deck-of-cards" intensity. They remain the real and symbolic leaders of the terrorist networks and organizations whose activities are the cause of the periodic alerts in the U.S. and around the world, not those adversaries in Iraq. The fact that they remain at large undermines the confidence in U.S. policy among Afghans, reduces the credibility of the Afghan government and international reconstruction efforts, and sends the wrong message to Afghan and Pakistani tribes in their respective border areas.

Third, the pace and financial support for the creation of adequate Afghan security forces should be increased.

The U.S. Government should intensify pressure on Afghanistan's neighbors and Persian Gulf nations not to aid and support forces connected to the security threats to Afghanistan.

Afghan Vice President Hidayatullah Aminarsalah has suggested that instead of going after terrorists, warlords, and drug lords in sequential fashion, a concerted effort be made. His argument is that a sequential approach permits those sectors not targeted to aid those that are. His idea of following a more concerted approach against these threats I believe has merit.

Relating to education and the challenges there, although there is an unprecedented number of Afghan school children in school, there still are many, many challenges.

More teachers are needed. This should be a priority of the Afghan government and donors.

More in-service teacher training is necessary to bring some standard to education throughout the country. Many current teachers do not possess any manner of formal training.

The delivery of textbooks and teachers' kits is still flawed. Though millions of textbooks have been produced, many classrooms remain without books.

Vocational education is essential for the unemployed and the under-employed. The Afghan government has set a target to demilitarize 60,000 Afghan men from militia forces in the near term. What will they do for employment? They are not likely to go back to primary school, if they ever were in school, or to secondary schools. Many of them are illiterate. Vocational education in the basic construction and office management skills would attract large numbers. This need is severe. Currently, there are thousands of foreign workers in Afghanistan, primarily in Kabul and Kandahar, due to the lack of trained Afghans, taking places that many Afghans might occupy were they trained. For many, vocational literacy will also be essential.

The pace of the physical reconstruction of schools has also been slow. Many schools are still without water and sanitation.

Security threats continue to impede the attendance of girls in schools and intimidate female teachers.

Finally in this area, higher education, an area in which the U.S. was the leading donor prior to the Soviet invasion, remains neglected. Few laboratory resources remain at Kabul University. This sector within education is kind of a stepchild without the priority accorded the primary and secondary education sectors by the Afghan government and donor nations.

Health care is in even a worse state. Most Afghans do not have access to reliable health care. This is particularly critical for mothers and children. Afghan infant and maternal mortality rates are the highest and second highest in the world, respectively. There is no plan for comprehensive training of Afghans to take over their own medical health needs currently on the boards, primarily because Afghanistan's colleges of medicine, which were located at Kabul University and Nangrahar University, have not yet been reconstructed. The only type of education going on there is through lecture. There is no laboratory, no practical clinical experience. Most of Afghanistan's trained medical personnel left during the war years. So the situation in the medical profession and the medical treatment in Afghanistan still remains very woeful. Most of all of the medical attention that any Afghans get is delivered by international support and organizations.

Rural reconstruction lags far behind that of the reconstruction moving forward in the population centers, which I mentioned briefly earlier. This greatly enhances the power of warlords and handicaps the reach and influence of the central government. The crowding of Afghans into population centers, coupled with the inflationary presence of international organizations, leaves many Afghans without any real option. They cannot stay in the neglected rural areas and cannot afford to relocate in the centers where services are available. The men, in particular, are vulnerable to those

who would employ them away from the process of reconstruction into the militias of warlords and the cultivation of poppies. Until the central government is able to provide the carrots and sticks that outnumber those of the warlords, the warlords are going to continue to be able to hold sway in their regions.

I would like to conclude with just a few comments about what I feel still remain the windows of opportunity for the United States to help the Afghans, and some of the assets that we have. I am certain the other members of the panel will focus on these particular comments that I have made in greater detail.

On balance, in spite of a slow and inconsistent start, the window of opportunity for all involved in the reconstruction of Afghanistan remains open. There are many factors which constitute significant assets in this.

One, a credible political process has been launched without the uncertainties that plague Iraq. The Afghan government is gaining capacity. It is true that its reach is often limited to Kabul and, tenuously, to other population centers. At the same time, it must be noted that almost all members of the government had little or no experience in the governance process before their current assignments. They literally had to learn on the job. There are legitimate complaints stimulated by evidence and rumors of corruption and incompetence. Yet, some in this new cadre of Afghan civil servants are learning well and have helped to restore a measure of credibility in the restoration of Afghan state.

The leadership of this government has been identified and confirmed by a national assembly. President Hamid Karzai, though not without detractors, and even implacable enemies among Afghans, is largely well-known and well-regarded and is popular. He understands and is a believer in human rights. He pursues consensus, perhaps to a fault. He learned this skill from his late father, a highly regarded tribal khan. His likely reelection in September should enhance stability and provide continuity to a delicate process.

Afghans are very clear about the way they feel about Americans. They want them in Afghanistan. They want American leadership and assistance in the reconstruction process. There are no armed insurrections in the towns and villages, no demonstrations. Afghans have never regarded Americans as their enemies. To the contrary, they appreciated our development assistance in the 50s, 60s, and 70s. They appreciated American support in their war against the Soviet Union and in the war, though belated, against terrorists. They now see us as their primary allies in the reconstruction of their country.

I have attached to my statement a copy of my favorite Dari poem, "Rose and Clay," which Afghans often use in describing to me how they feel about Americans. I am going to subject you to a reading of that because I always believe it is important to point out the cultural aspects of Afghan society, something that gets left behind when we talk about these issues and urgencies and emergencies in the country.

One day at bath a piece of perfumed clay was passed to me
from the hand of a friend.

I asked the clay, are you musk or ambergris?
because your delightful scent intoxicates me.
It answered—I am but a worthless piece of clay that has
sat for a period with a rose.
The perfection of that companion left its traces on me
who remains that same piece of earth that I was.

The whole world, especially the Muslim world, is watching what is going on in Afghanistan today. If we do not try to do Afghanistan on the cheap and in piecemeal fashion, we can work with the Afghans in this cooperative venture. We will acquit ourselves admirably in our own eyes, in the eyes of Afghans, and in the eyes of others around the world.

If we muddle through, we will probably still prevent Afghanistan from returning to its status as a haven for terrorist camps. It will cost us more, take a longer period, and not really gain the credit we would deserve by doing it right. We might also lose an already unstable Pakistan in the process.

Much effort has been expended. We have learned much in the process. Assets are available. The Afghans are allies. They are in place. We can do this right. The window is open. I think the choice is ours. I think we are on the right track. I hope we really go at this with all the resources that we are able to bring to bear in this effort.

Thank you.

The CHAIRMAN. Well, thank you very much, Doctor, for a very, very compelling piece of testimony. We appreciate your coming and all that you have brought to the hearing.

I would now like to recognize the distinguished ranking member of the committee, Senator Biden, for his opening statement.

OPENING STATEMENT OF HON. JOSEPH R. BIDEN, JR., U.S. SENATOR FROM DELAWARE

Senator BIDEN. Well, thank you very much, Mr. Chairman. I am anxious to hear the witnesses. I will forgo my opening statement.

Just by way of explanation, I have been very involved as the author of the Violence Against Women Act years ago. There is a conference that was taking place downtown this morning that I had to—not had to—I was invited to attend, and it ran a little bit longer, and I apologize for my tardiness. But I am anxious to hear the rest of you.

I ask unanimous consent that my statement be placed in the record.

The CHAIRMAN. It will be placed in the record and published in full.

[The prepared statement of Senator Biden follows:]

PREPARED STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Mr. Chairman, I commend you for calling this hearing. Although our attention is focused on Iraq these days, we must never let ourselves be distracted from the urgent challenges in Afghanistan.

For the past two years, many of us on this Committee have been making the same basic points about Afghanistan:

First, the reconstruction and stabilization of Afghanistan is a vital national security imperative of the United States. We cannot permit this country to again become a haven for terrorists.

Second, the reconstruction of Afghanistan will require a very significant investment of American capital, both financial and diplomatic. We can't do this on the cheap.

Third, without bringing security to Afghanistan, nothing else is possible. Unless we are able establish stability and basic order throughout the country, any reconstruction will be built on a foundation of sand.

Three simple points. And it would be tough to dispute any of them. But, looking at the administration's performance since the fall of the Taliban, one has to wonder whether the White House has received the message.

On the issue of security, vast areas of Afghanistan are still disputed territory, with the resurgent Taliban launching attacks throughout the south and southeast. The movement is stronger now than it was two years ago.

Most of the rest of Afghanistan is only nominally under the control of the central government. Instead, it is brutal warlords who wield real power.

The Afghan Ministry of Defense has promised to disarm 40,000 of the nation?s 100,000 warlord militiamen by June 30. According to the UN, as of last week, the number who had been disarmed was exactly zero. [*AP report, May 6*]

The administration has put forward the idea of training the Afghan National Army to combat the warlord militias—and someday this force will indeed be able to shoulder the burden. But today the ANA has an operational strength of just over 8,000—and few of these troops, if any, have the training or experience necessary for serious combat.

The warlord armies support themselves through the illicit profits of the drug trade. As several of our witnesses will describe in greater detail, this trade risks turning Afghanistan into a full-blown narco-state.

Under the administration's watch, Afghanistan has firmly entrenched itself as the world's number-one supplier of opium and heroin. The opium crop of 2003 was up 7 percent from the previous year, to a near-record 3600 tons. The crop for this year is expected to increase another six percent. The drug profits amount to $2.3 billion annually—five times the entire budget of the Afghan government.

On the issue of reconstruction, the administration has failed to make good on the President's pledge of a Marshall Plan for Afghanistan.

According to the assessment of the World Bank and other authorities, Afghan reconstruction will require at least $28 billion over the next 7 years. How do the commitments thus far add up?

To date, the world community has disbursed only $3.7 billion in nonmilitary aid, with $1.4 billion of this sum coming from the United States.

What's more, the vast majority of this aid has gone for humanitarian relief, not for long-term reconstruction. Relief aid is necessary to stave off immediate disaster, but it is not the basis on which to build a stable nation.

Looking to the future, there seems to be little encouragement in sight. Total pledges from all sources, ever since 2001, add up to less than $10 billion, of which about one-third are American. And here the administration's lack of long-term vision is apparent.

In the current fiscal year, the administration proposes a marked increase in reconstruction funding—to $2.2 billion, compared with a mere $900 million for the past two years combined. This would be encouraging if it were the beginning of a program—but it seems, instead, to represent the end of the administration's stepped-up commitment.

The administration's request for fiscal year 2005 is barely half the rate for this year. [$1.2 billion, 54% of FY 04]. That is not the kind of sustained commitment that Afghanistan needs.

Mr. Chairman, I look forward to asking questions about Afghan policy to witnesses from the administration. I am concerned, too, that the prisoner abuse scandal we've been contending with in Iraq could also touch Afghanistan—I very much hope the Administration will get all the facts out as quickly as possible and make clear what steps have been taken to prevent this from happening again. Mr. Chairman, I understand that you are planning to schedule a hearing, before the summer recess, at which we will be able to get answers on Afghanistan policy from top-ranking administration officials. I look forward to that hearing, because this issue is too important to be put off any longer.

Today's hearing, however, will be informative and valuable. Our privatewitnesses bring a varied range of experiences and perspective to the discussion, from security to narcotics to nation-building. Let me also welcome the first Afghan graduates from a journalist-training program established by Radio Free Europe/Radio Liberty at my

urging, with the strong support of Congress. Your work will be vital to building a free and open society in Afghanistan.

I welcome all of our witnesses.

Senator BIDEN. Thank you.

The CHAIRMAN. I thank the Senator.

Mr. Schneider.

STATEMENT OF MARK SCHNEIDER, SENIOR VICE PRESIDENT, INTERNATIONAL CRISIS GROUP, WASHINGTON, D.C.

Mr. SCHNEIDER. Thank you very much, Mr. Chairman, Senator Biden. Let me thank the committee, the Chairman and the leadership for holding this hearing on the continuing challenges facing the Afghan people, the United States, and the international community.

The International Crisis Group is deeply concerned that the effort to assist Afghanistan in building democracy and rebuilding its shattered economy may fail. As you said in your opening statement, Mr. Chairman, it may fail because there has been a failure to recognize the magnitude of the threats that face Afghanistan, and we believe as well to direct sufficient political, military, and financial resources to overcome those threats. We also believe there have been several policy mistakes, a few of which have yet to be corrected.

This does not mean that we do not recognize positive progress that has been made from the Kandahar Road, to the constitution, to immunizing children, and to ridding the country of the Taliban repression.

However, after more than nearly 2 and a half decades of war, Afghanistan is second to last in the indicators of human development of the United Nations Development Programme (UNDP).

There are still 2 million refugees in Pakistan and Iran, 300,000 displaced persons inside Afghanistan.

The country's first and, therefore, most important transition election has yet to be held. The date already has been postponed from June to September. We believe that those elections must be fair, free, credible, and legitimate. Yet, registration is barely at 20 percent of eligible voters. The electoral law has not yet been decreed. A smattering of political parties has been registered. No one yet knows where the voting sites will be or who will protect them, and the decision of how the votes will be counted is still to be determined.

Opium, as you've noted, has been allowed to expand now to 28 of 34 provinces. Its cultivation, transformation into heroin, and trafficking across borders now accounts for $2.3 billion of a $4.5 billion to $5 billion economy. Afghanistan is in clear and present danger of descending from a narco-economy into a narco-state.

My colleague noted that Afghanistan has begun to reenter the world economy. With respect to drugs, it has reentered, fully. Warlords siphon off customs revenues that the central government needs badly to address its needs. They also increasingly use their drug-financed militias to intimidate and to challenge President Hamid Karzai.

As you noted, the central government barely has some 8,000 newly minted ANA soldiers who show up for roll call, barely an-

other 10,000 new police, and it faces several times that number, solely in terms of the militia forces, that are responding to regional and local commanders. And the Taliban and Al Qaeda continue to pose a significant military threat to security, and it is very important, a significant political threat to the transition itself. Their attacks on the United Nations NGOs and Afghan government officials have nearly doubled over the past 4 months compared to last year. More NGO staff were killed in these first 4 months of the year than all of 2003.

When I stayed overnight in Gardez in November behind the barbed wire encampment of the UN, I was really stunned at the level of security that was viewed as necessary. It hit me a few days later as to why when a young UNHCR field worker was murdered in Ghazni.

Closing the security gap—and I think you will hear that from all of us—is absolutely crucial to the success of the transition in Afghanistan. In many ways, we believe that the extension and expansion of NATO/ISAF beyond Kabul is the linchpin to greater progress on many of these issues, with respect to peace, political transformation, relief, and reconstruction. ICG has been working in Afghanistan now since 2001, just prior to the Bonn conference. We have offices in Kabul and Islamabad, and our field-based people really allow us to try and understand the real-time dynamics of what is occurring.

Let me just mention, as you did at the outset, that we also are concerned about the issue of human rights and the issue about how prisoners are being dealt within the prisons; there is a *New York Times* story today. A month ago, though, Human Rights Watch put out a report that contained information detailing mistreatment of detainees. They raised questions about the different areas in the country, where prisoners are being held and who controlled them. Some of the same issues about control, the lack of the application of the Geneva Convention were raised in that report. I think it is an issue of concern because, obviously, it can undermine our role, our presence, and the values that we all believe are important to convey.

With respect to Al Qaeda and the Taliban, the recent Pakistani offensive, together with the U.S., in south Waziristan should not have been something so new. It should have been going on from the start. Taliban political leaders still appear to move with relative ease in many of the Pakistani cities. Pakistan has just announced an amnesty proposal for foreign fighters in that region, and that proposal also needs to be scrutinized very closely. With respect to Al Qaeda, it should be cut off and terminated.

The Taliban and other Islamic extremists are still recruiting in Pakistan's madrasas, and they are seeking through intimidation and violence to rebuild their power base in Afghanistan. So in terms of policy, there needs to be greater pressure on Pakistan to go after both Taliban political and military leadership on a continuing and unyielding basis, not just going after Al Qaeda.

Second—and here I would agree with my colleague, Dr. Goutierre—there has been a recent increase of U.S. forces as part of the coalition to some 15,500. That should not be reversed. If anything, it should be increased. Really, no significant reduction

should be considered until the full task of security has been taken over by the new indigenous Afghan forces when they are prepared.

A year ago, Secretary Rumsfeld spoke of having U.S. troops leaving Afghanistan by June of this year. That was simply not realistic, and it sent the wrong signals. Achieving real security on the ground is the only way to pave the way for a successful exit strategy.

With respect to disarmament and demobilization, President Karzai emphasized at the time of the Berlin conference some 6 weeks ago, that the DDR program, which began last November, would produce a 40 percent reduction in militias and cantonment of 100 percent of their heavy weapons by the end of June. We are not even close to meeting that goal. As you heard—you mentioned yourself—the UN raised that issue last week and is very concerned.

The key policy change needed for the demobilization program to be effective is a shift in focus from disarming and demobilizing individual soldiers to the complete removal of militia units, including those still under the control of the minister of defense. Until that happens, the credibility of the entire program is in question.

There is something else that I would call to the committee's attention, which is the worrisome proposal to create a new paramilitary force called the Afghan Guard Force. They would operate in combat alongside U.S. Special Forces units. Partisan and poorly trained, coming from the militias—to have the U.S. identified with those paramilitary forces is really a bad idea. They say it is a stopgap until ANA troops are produced in greater numbers. The answer is to increase the pay, increase the incentive structure, offer long-term career guarantees, and put more resources into developing trained Afghan National Army to do the job.

Another part of the answer is to rapidly obtain a major expansion of NATO/ISAF. I know that this committee has supported that, and I know that you, Mr. Chairman, and Senator Biden have spoken out for it. Unfortunately, even after the agreement by NATO last October to expand those forces, as you said, barely 1,500 additional troops have been added, nothing like the three battalions that have been requested to be deployed across northern Afghanistan. NATO/ISAF has chapter VII authority and could provide the mailed fist behind the demobilization program, help prevent local conflicts, and ensure greater confidence in the election process. We need to double or triple the size of NATO/ISAF.

Just a few weeks ago, the Deputy Commander of the Canadian Army who used to be the Deputy Commander of NATO/ISAF spoke specifically to that. They need at least to double, another 5,000 and probably an additional 10,000, and spread around the country, including the PRT in every province, but the additional forces should focus on security. We would urge you to urge your North Atlantic Assembly colleagues at the North Atlantic Assembly at the end of this month to pressure their governments to make commitments at the Istanbul Summit that would permit this to take place in time to have the ability to put a security mantel out there for the elections.

Let me talk briefly about drugs. Last year 1.7 million people, about 260,000 farm families, were engaged in producing 3,600 met-

ric tons of opium, three-quarters of the world's illicit production. There was a recent survey of farmers' intentions and there's an expectation now, as a result of that survey, that the farmers are going to increase their production of opium this year. We are now in the beginning of the harvest. It is likely that we are going to find that it is going to go well over the 4,000 mark in terms of tons produced, and it probably will reach the largest ever amount of hectares under cultivation. In 1999, 91,000 hectares were under cultivation; it will probably go well over 100,000 this year.

It is important to understand that this is directly linked to the warlords. The local commanders are among the ones, as in Colombia, in terms of illegally armed groups—they provide protection for the drug traffickers. They tax their produce. Sometimes they help with transportation, and if Colombia is any example, in a very short time, they will begin acquiring the land, forcing farmers off the land. They will combat each other for the routes, and they will become the drug traffickers.

The response we all know has to be law enforcement, alternative development, and political leadership. Within the enforcement category, there is an argument now about eradication between the British and the United States. I can go into that later, but essentially right now we think the focus on law enforcement has to be interdiction on the roads and on the border and the destruction of laboratories and warehouses to go after not the small farmer but the traffickers and the warlords who are running the trade. We happen to be in the best position because we have more international forces in Afghanistan that anyone could ever imagine in a similar situation.

But three policy decisions are crucial.

First, the rules of engagement and mission of the expanded NATO/ISAF have to clearly state that one of their missions is counter-narcotics and helping the Afghan government destroy that network.

The second is that the United States, DOD, and our other coalition forces also have to amend their rules of engagement to include counter-narcotics within their mandate. They have shifted now from a "don't look/don't tell" stance with respect to drugs that they find, to one where, if they run across them, they will destroy them when they find them. But that is really not good enough. Actively disrupting and destroying the opium network should be within their mandate.

Finally, of course, expanded resources in training police and building a justice system are crucial.

With respect to elections that are upcoming—supposedly in September—I know the bells, and so I will close quickly by just simply saying that with respect to elections, there are many things that need to be done. It is not clear it is going to happen. They need to be credible first rather than held without the level of security and the level of participation that are needed. There are things that can be done we believe.

Finally, with respect to reconstruction, I will simply say that we have not put sufficient resources into Afghanistan. The international community now is putting about one-fourth the level per capita that it did in Bosnia and East Timor and El Salvador. We

need to do better. And I would urge the committee in that regard to authorize a full 7-year commitment that matches the needs assessment defined in the recent Berlin conference in terms of external support from the United States that would provide somewhere between 25 and 40 percent of the external aid required, which would replicate, generally, what we have done in other situations. I would urge the committee to consider doing that. It would be the best way to attract others as well to make the same kind of commitment.

Finally, Mr. Chairman, I will simply say that making that kind of commitment and helping Afghanistan complete its transition is the most cost effective way of avoiding a recurrence of the conflicts that have virtually destroyed the country and whose consequences have reached out to cause enormous suffering in our own country and elsewhere.

Thank you.

[The prepared statement of Mr. Schneider follows:]

PREPARED STATEMENT OF MARK L. SCHNEIDER, SR.

I want to thank Chairman Lugar and the ranking member, Senator Biden, for holding this hearing on the continuing challenges facing the Afghan people, the United States and the international community in Afghanistan. The Taliban regime was repressive and a willing ally of al-Qaeda in its terrorist endeavors. The allied effort to removing the Taliban reflected an international consensus, backed by UN authorization, to defeat and destroy al-Qaeda and to assist Afghanistan in building democracy and rebuilding its shattered economy.

This effort may fail. It will not fail because of a lack of desire, a lack of commitment by millions of Afghans, or a lack of bravery and determination among U.S., British and other coalition soldiers, diplomats, development professionals and relief workers. Instead, it may fail because the administration has been unwilling to recognize the magnitude of the threats which we face and to direct sufficient political, military and financial resources to overcome them. In Kabul, Kandahar and Gardez, bombs and mines have not disappeared, and killings take place on a regular basis. Afghanistan remains second to last in the world in the human development rankings of UNDP. Warlords continue to siphon off customs revenues that should go to the national government, and nearly half of Afghanistan's $4.5 billion economy comes from drug trafficking. There still are more than 2 million Afghan refugees in neighboring countries and some 300,000 internally displaced persons within Afghanistan.

The International Crisis Group has been working in Afghanistan since 2001, just prior to the Bonn Conference. Our offices in Kabul and Islamabad allow us to conduct intensive field research in developing our analysis and recommendations. When I drove with our team from Kabul to Gardez last November and visited local Afghan offices, the United Nations Assistance Mission in Afghanistan (UNAMA), the United Nations High Commissioner for Refugees (UNHCR) and a U.S. Provincial Reconstruction Team (PRT), I saw the sacrifice and courage that they all were making. It was even more poignantly conveyed to me again a few days later when a young French field officer for UNHCR in Ghazni was killed. While I will touch on the major issues of security, elections, drugs and economic reconstruction, I want to be clear that expanding NATO/ISAF remains the lynchpin to greater progress on peace, political transformation, relief and reconstruction.

Security

Security affects everything from elections to reconstruction, and it is vital to understand that this is not a post conflict situation—an unrelenting battle continues in Afghanistan. The Taliban government and al-Qaeda bases were quickly dispatched by coalition forces barely two months after 9/11. That is the good news because it opened the window for fundamental change. But many of the Taliban and al-Qaeda simply took refuge across the border in Pakistan, and for many, many months, little pressure was placed on Pakistan to deny them sanctuary. Taliban political and military leadership moved with relative ease. The just announced Pakistani proposal to provide amnesty to foreign forces in South Waziristan, bordering

on Afghanistan, presumably including al-Qaeda, in return for pledges of "good behavior," is particularly disturbing. The Taliban and other Islamic extremists are still recruiting and have built up their strength. If anything, the capacity of Taliban and al-Qaeda today to maintain a deadly insurgency across the south and southwest of the country appears to be increasing. Within Afghanistan, there has also been an unwillingness to take on the hard work of disarming and demobilizing regional warlords and militias, despite its crucial linkage to political stability and to controlling the drug trade.

Al-Qaeda and Taliban attacks on UN, NGOs and Afghan government officials have nearly doubled over the past four months compared to last year. More NGO staff were killed in these first four months than all of 2003. Two schools recently rebuilt with international aid were burned down in a village south of Kandahar and a senior Muslim cleric critical of the Taliban was assassinated in Kandahar city. And it is not limited to the south and southeast. Only last week, two British private security contractors and an Afghan elections worker were killed in the north eastern province of Nuristan.

A year ago, Secretary Rumsfeld spoke of having U.S. troops leaving Afghanistan by June of this year. There needs to be a clearer understanding that achieving real security on the ground is the only way to pave the way for a successful exit strategy. We were pleased to note that last month there was an increase of some 2,000 U.S. Marines, bringing U.S. forces up to 15,500. These troops need to be there—and maybe even more troops need to be there until Afghan security forces are capable of defending the country against whatever remains of an armed al-Qaeda and Taliban military forces.

Getting the security services up and running has moved in fits and starts. The U.S. has bolstered the German-led coordinated training of Afghanistan police, with some 20,000 police slated to be trained, equipped and on the ground by the end of June, in time for the coming elections. UNAMA has estimated that between 29,000 to 38,000 police will be required for polling places. But the pressures to get more people through the training pipeline have resulted in shorter and shorter training sessions and more questions about vetting. More than one quarter of the 10,000 Afghan National Army (ANA) troops trained have disappeared, presumably deciding that either the risks or the money did not match the competing offers. There needs to be a re-thinking of strategy to ensure that this kind of attrition does not continue.

Disarmament and demobilization: The failure to disarm and demobilize individual warlords and factional militias has sharply undercut progress on a number of fronts. UN Special Representative Lakhtar Brahimi and his successor, Jean Arnault, have criticized sharply the weakness of the demobilization program. While some militias appear willing to identify their futures with a new national Afghan government; most have simply claimed land, resources and power and used their armed militias to maintain those claims. The militias continue to engage in bitter factional infighting, retain ties to organized crime and drug trafficking and have not been particularly helpful in combating terrorism.

President Karzai emphasized at the time of the Berlin conference six weeks ago that the demobilization program, which began last November with three pilot efforts, would produce a 40% reduction in the militias and cantonment of 100 per cent of their heavy weapons by the end of June. Not only has this effort not produced any results, since Berlin this accelerated phase of the Afghan New Beginning Programme has not even begun. The initial weapons turned in included a collector's treasure of 19th century Lee Enfield rifles and World War I artillery.

The demobilization program will not be effective until it shifts from a focus on disarming and demobilizing individual soldiers to the complete removal of militia units. Some 6,225 militia members have been demobilized thus far nationwide. The militia universe initially was claimed to be 100,000, but it is probably even lower than the 45,000 to 60,000 that international observers cite. The units that are presently based in Kabul, including at least three that are directly accountable to the Minister of Defense remain in place two and a half years after the Bonn Agreement called for their withdrawal. Unless they are decommissioned, the credibility of the demobilization process itself will be undermined. Worse, until the bulk of the militias are decommissioned, there is a grave risk that the coming elections will be determined by those who control the guns.

The Afghan Defense Ministry also recently adopted a Coalition plan to fold 2,000 members of existing militias into a new Afghan Guard Force (AGF). Without real training, but under Special Forces supervision, they would be operating in combat alongside U.S. Special Forces units in the east and southeast. This would essentially be a national paramilitary force, with enormously dangerous political implications. Its formation serves as a disincentive to the national disarmament and demobilization effort. The potential, as we have seen in country after country, of such a par-

tisan and poorly trained force, for abuse of civilians, is enormous. To identify the U.S. with such forces seems particularly unwise.

NATO/ISAF One of the most effective forces in providing security in Kabul and in Konduz has been NATO/ISAF. Fortunately, the U.S. government removed its objection to the expansion of NATO/ISAF outside Kabul last August, a step widely called for. In October 2003, NATO and then the Security Council authorized that expansion, but to date, barely a few hundred more troops beyond the 5,000 previously authorized for Kabul are in place, far fewer than the three battalions requested to be deployed across northern Afghanistan. Nor has there been a great deal of movement toward the concept of a PRT in every province. At this point there are 13 on the ground, with only two operating under NATO authorship—Konduz and Faizabad. The window is closing on the opportunity to create the security environment needed for elections and reconstruction. NATO/ISAF has chapter VII authority and could provide the potential mailed fist behind the demobilization program, help prevent local conflicts and back up legitimate local and national government decisions. It also could ensure greater confidence in the election process by deploying rapid reaction forces from forward bases.

NATO member countries have not responded adequately to the call. ICG has joined with other organizations including IRC, CARE and Mercy Corps, in appearing before the North Atlantic Council in an unusual effort to emphasize the strong link between NATO expansion and the entire reconstruction effort. Time is running out in Afghanistan. The frustration is building. A robust NATO/ISAF expansion beyond Kabul should take place immediately. The deputy commander of the Canadian Army and the former deputy ISAF commander, Gen. Andrew Leslie, said doubling NATO/ISAF forces nationwide to 10,000 or more is essential. The Istanbul NATO Summit really is the final opportunity for pledges to meet NATO/ISAF needs before for expansion before the proposed elections and then there has to be the earliest possible deployment. ICG also would hope that NATO parliamentary members of the North Atlantic Assembly would press their governments toward objective.

The new Secretary General of NATO Jaap de Hoop Scheffer has said, "We cannot afford to fail . . . if we do not meet our commitments to the people of that country to help them build a better future—then who will have confidence in us again?"

Drugs

Last year in Afghanistan, according to the UN Office of Drugs and Crime, (UNODC), 1.7 million people were directly engaged in producing more than 3,600 metric tons of opium three quarters of the world's illicit opium production. In a UNODC survey, 69% of last year's poppy farmers stated that they intend to increase their production, and 43% of those who have not been growing will start cultivating in 2004. Afghanistan is in clear and present danger of descending from a narco-economy into a narco-state.

Local commanders, many in the areas controlled by President Karzai's allies, others by political opponents, are providing protection for the drug traffickers, taxing their produce, and sometimes helping with transportation. Opium poppy cultivation has expanded to 28 of the country's 32 provinces from a handful, and the illegal armed groups are financing themselves and seeking to use the political process to insure they keep those streams of financing flowing. If Colombia is any example, it will not be long before local commanders begin to acquire the land; combat each other for the routes and become the drug traffickers themselves. The good news is that President Karzai has been ahead of the curve in terms of knowing that his international colleagues were letting the drug market get out of hand.

While everyone now asserts that they recognize the seriousness of the drug trafficking threat to political stability, more needs to be done. The common elements of the international approach appear to be: Eradication, Law Enforcement—including interdiction and destruction of laboratories, Alternative Development and political leadership. However, the UK and the U.S. disagree on eradication. The British, particularly in the prelude to elections, argue against forced eradication of a small impoverished farmer's crop when there is nothing to offer in return. Not surprisingly, they believe it will antagonize those farmers and make them far more likely to sympathize with opposition forces. The U.S. position is to move forward on eradication under any circumstances—whether there is replacement income or not.

The compromise reached at a recent conference papers over the differences but does not resolve them. The British moving in Phase I, will fund governors who pay the ANA to go out and eradicate in Helmand, Kandahar and Nangarhar provinces where there are DFID and other externally financed alternative development projects. The U.S. has a centrally directed $40 million Phase II program in which a U.S. contractor finances an Afghan eradication force comprised of individuals chosen by the Ministry of Interior to actually pull out the poppy plants. It started Mon-

day, according to the State Department, in one province. That eradication force will be protected by a U.S. contractor-financed private foreign security force. This again raises additional questions about who is responsible for security in Afghanistan and the standards which apply to a U.S. financed private military force.

The primary focus should be on a broad rural development strategy that provides rural credit to small farmers, alternative crops and alternative income generating opportunities, and investment in a community's schools, clinics and infrastructure. In addition, community elders and figures of authority, and after the September polls, elected representatives, should be enlisted to argue against planting opium poppies. At the same time, interdiction, by both Afghan and international security forces, on the roads and at the border is essential.

Three policy decisions are crucial to taking advantage of the unique presence of international troops:

- The rules of engagement and mission of NATO/ISAF need to state clearly that one of its missions is counternarcotics and helping Afghan government agencies to destroy the Afghan drug trafficking network.
- Coalition forces also must amend their rules of engagement to incorporate an offensive command to go after drug traffickers. While they have shifted from don't look, don't tell when encountering drug traffickers to being able to destroy what they find when pursing other objectives, it is not good enough. Actively disrupting and destroying the opium network should be within their mandate.
- Building an effective police and judicial system also has to be part of the counterdrug efforts as well. While the British are training an Afghan interdiction force, right now it will only be 200 strong. It needs to be expanded. Similarly the U.S. is working on producing more police fast and INL has $160 million to help train and equip those police over time. The judicial side of the house is moving even more slowly.

Elections

The forthcoming presidential and parliamentary elections are vital. Originally scheduled for June, they were postponed until September by President Karzai, and with good reason. Security conditions have impeded the registration process, and would not permit open campaigning by candidates. And there is a question whether citizens would be able to vote in confidence and safety. The fundamental question now is whether adequate conditions will exist to permit both elections to be held in September—and it is ICG's view that every effort should be made to hold those elections together—and not merely because of the cost savings involved. Having the assembly in session will permit the critical institutions of government to be in place. Without a legislative body, Afghanistan would begin its democratic life with a serious lack of accountability and challenges to the central government's legitimacy.

But even more questionable is the level of registration. Barely 20 percent of Afghan voters have been registered, 2,033,568, 30% of them women, out of an estimated 10.5 million Afghans eligible to vote. There are some 275 registration sites and plans to increase those to a number equal to the 2,600 sites where ultimately voting would take place. At this point, results of the registration drive are tilted toward the center of the country because it has been too dangerous to reach potential voters in the south and southeast. However, all of this should have taken place weeks ago. The delay will make it increasingly difficult for the 70% registration figure to be reached that was among the benchmarks cited as essential in holding a credible election. Finally, the contours of the electoral law are still in question, and there are serious concerns about the absence of a centrality for political parties in the law. The electoral law supposedly to be promulgated before the Berlin conference was still in debate this Monday within the Karzai cabinet. Political party registration, despite USAID and NDI efforts, has been slow. To date only five parties have been registered. There have been threats directed at the Justice Minister by some parties anxious to by-pass serious inquiry into whether they have armed forces. The process for nominating candidates has not yet defined nor the forms prepared, nor has agreement been reached on what procedures will be followed for counting the ballots, nor have security arrangements been finalized.

New provinces also seem to be springing up as negotiations over electoral constituencies remains unresolved. Two new provinces, Dai Kundi in the central highlands and Panjshir in the northeast, have been announced.

It is difficult to see how the September date can be met for the combination of presidential and parliamentary elections since the electoral law has not even been approved and some significant issues remain to be resolved. However, if elections are to be postponed, the reasons for yet another delay in transferring power to a truly representative government should be conveyed; a definite date announced for

presidential and parliamentary polls; and all possible steps taken to ensure that there is no need for yet another postponement.

Reconstruction

Afghanistan's reconstruction is a case of starting from zero. Few other countries are trying to build roads, schools, agriculture, and public infrastructure nearly from scratch after 23 years of war, a four year drought and a continuing insurgency. There has been a reasonable level of planning for the mid and long-term rather than the short-term alone. The World Bank, ADB, UNDP and others have engaged the government in a coherent strategy for development that has an initial, post humanitarian relief phase of seven years. During that period there is a $27.5 billion shortfall in financing. The international community took the first step toward meeting that request with commitments of some $7.2 billion at the Berlin conference. While most were not for the full seven years, there were a good number, including the U.S. that at least set out a multi-year pledge.

There are some significant steps to show progress already, from the first stage of the Kandahar-Kabul road being completed, to a nationwide polio immunization campaign, to irrigation projects. However these actions pale alongside the need and the willingness of the U.S., as well as other donors, to meet that need. Security also impedes the recovery process in a host of ways, most clearly by restricting access. A USAID official lamented the inability to visit the NGOs the U.S. is funding. To drive outside the city there would be a need for two extra escort teams "of protective shooters in the front and the same in the rear."

There also is a particular need for the focus to be on rural poverty and rapid evidence of the impact of those programs. For Afghanistan to succeed in reaching even the minimum levels of development that President Karzai has described—achieving $500 per capital annual income in 10 years, the legitimate economy must grow at an annual rate of 9 percent. Alongside the growth of the private Afghan economy there will need to be a state whose institutions can alleviate the social deficit facing some four million vulnerable members of Afghan society, and provide an opportunity for broad active participation in national life by all of its diverse ethnic groups and by women.

For the international community, there must be at least a 10 year commitment at an even higher level of support than currently is the case. One of the strongest arguments for doing so is that it is the most cost effective way of avoiding a recurrence of the conflicts that have virtually destroyed the country and whose consequences reached out to cause enormous suffering in our own country and elsewhere.

[A report by the International Crisis Group, "Elections and Security in Afghanistan," appears in the appendix to this hearing.]

The CHAIRMAN. Well, thank you very much, Mr. Schneider, for that very helpful and comprehensive statement. We will look forward to asking questions of you and the other witnesses.

Mr. Perito.

STATEMENT OF ROBERT PERITO, SENIOR FELLOW AND SPECIAL ADVISOR, RULE OF LAW PROGRAM, UNITED STATES INSTITUTE OF PEACE, WASHINGTON, D.C.

Mr. PERITO. Good morning, Mr. Chairman, and thank you for the opportunity to appear here this morning. I would like to thank you and Senator Biden for your interest in this very important topic.

Mr. Chairman, my oral statement this morning is a summary of a report entitled "Establishing the Rule of Law in Afghanistan," which I co-authored; I ask your permission to have the report entered in the record.

The CHAIRMAN. It will be placed in the record.

Mr. PERITO. Thank you, sir.

Mr. Chairman, two-and-a-half years after the defeat of the Taliban, security remains the primary concern in Afghanistan. During 24 years of war, the rule of the gun long ago replaced the

rule of law. Today Afghanistan faces a combined threat of resurgent terrorism, fractional conflict and dependence on narcotics.

In the south, U.S.-led coalition forces are engaged in a running fight with resurgent Taliban and Al Qaeda. In the north, warlords and militia commanders maintain private armies and engage in armed clashes over territory, border crossings, and transportation routes. They use intimidation and violence to control the local population, and they rely on narcotics trafficking and extortion to finance their operations.

The U.S. provided money to the northern warlords in 2001 and continues to work with them in the fight against Al Qaeda and the Taliban. Some of the most powerful warlords hold positions as provincial governors but ignore the central government and refuse to turn over tax revenue. Other warlords hold key positions in the central government. Mohammed Fahim, an ethnic Tajik leader with a strong northern power base, serves as the Vice President and the Defense Minister.

More than terrorists and warlords, however, the growing dependence on narcotics poses the greatest threat to Afghanistan's future. Since the fall of the Taliban, there has been an explosion in poppy cultivation, opium production, and narcotics trafficking. According to the annual report of the United Nations Office of Drugs and Crime, opium production has spread from the traditional growing areas in the south of the country to 28 of the country's 32 provinces. Today Afghanistan is the world's largest producer of opium.

In 2003, Afghans earned $2.3 billion from opium production. This amount was equal to half the country's legitimate gross domestic product and five times the government's annual budget. According to the UN, the international trade in Afghan opiates generates a worldwide turnover of some $30 billion.

In Afghanistan, the narcotics problem is exacerbated by the fact that growers, brokers, and traffickers enjoy the protection of police chiefs, militia commanders, provincial governors, and even cabinet ministers. These officials use the proceeds from drugs to fund personal armies and to maintain their independence from the central government. Profits from narcotics trafficking also find their way through supporters to the Taliban and Al Qaeda that are used to finance local and international terrorism.

In a situation where there are few disincentives and no equally lucrative alternatives, the country's rural population has turned to opium production. Afghanistan's renowned orchards and vineyards were sown with land mines and withered during the conflict. In contrast, opium grows very well in barren and arid terrain.

Opium brokers and traffickers provide a kind of highly organized agricultural extension service. Farmers are provided with seed, fertilizer, advance payments, technical training, and an assured market for their product. Opium is easy to package, store, and transport, and it does not spoil. Growing poppies enables farmers to earn 10 times the amount that they would earn from other crops, and opium production is particularly attractive to returning refugees who find ready work and good pay helping farmers grow poppies.

With the assistance of the UN and Britain, the Afghan government has put in place the institutional framework to begin a

counter-narcotics program. Afghanistan now has a Counter-Narcotics Directorate, a national drug control strategy, and a modern narcotics control law. The Karzai government, however, is incapable of implementing its own counter-narcotics program. Afghanistan does not have a national police force. There are some 50,000 men in Afghanistan who work as police, but they are generally untrained, ill-equipped, poorly paid, if paid, and loyal to warlords or local commanders.

International efforts to create a national police force, including the drug enforcement capacity, are just beginning. The U.S. is spending $110 million to provide training to 50,000 currently serving police. This training is taking place in Kabul and at seven regional training centers co-located with provincial reconstruction teams. The initial training is focused on basic skills and election security, however. It will take time before a newly trained police force can be counted on for effective law enforcement.

Germany, which is the lead donor nation for police training, has spent some $70 million on new equipment and rebuilt the police academy in Kabul. But under the German program, 1,500 new police officers and 1,000 non-commissioned officers are enrolled in a 5-year work/study program. The Germans are also working to create a 12,000-member border guard force. This effort is well intentioned, but the benefits are years in the future.

The UK, which is the lead donor nation for counter-narcotics programs, will spend $12 million over the next 3 years to create an anti-narcotics task force to conduct eradication. The UK has also promoted crop substitution and alternative livelihood programs for Afghan farmers, but again, the benefits are not going to be felt for some time.

Once trained, Afghan police will be ineffective, however, if there is no functioning criminal justice system to support them. Unfortunately, little has been done to aid courts and prisons. There is no master strategy or even consensus on priorities for judicial reform. Italy, the lead donor nation, has failed to promote cooperation among the relevant Afghan institutions. There is a critical shortage of trained personnel, buildings, equipment, and financial resources. International funding for judicial projects has been very limited.

There is also an ongoing debate within the country about which law to enforce and about what the role of religion should be in the legal process. The new constitution concentrates the power to appoint judges in the hands of the Chief Justice of the Supreme Court, but the current Chief Justice, a conservative cleric, has packed the court system with mullahs with no legal education.

In the critical area of corrections, jails and prisons, there has been almost no effort made. Prison conditions in Afghanistan are routinely described as inhumane, lacking adequate food, sanitation, trained personnel, and space. Outside of Kabul, warlords control detention facilities and conditions are even more deplorable.

International assistance for corrections has been severely limited. Other than a few NGO projects, the UN is working alone on jail and prison improvement. Currently the UN is spending only $2 million over 2 years on very basic renovation of a detention center in Kabul and three cellblocks of the infamous Pul-e-Charki prison.

The UN is also providing some limited training to administrative staff.

The interrelated problems of terrorism, warlords, and narcotics are extremely serious, but many Afghans, particularly Afghans that we spoke with when we visited there, think the situation may still be reversible. Afghan farmers are reluctant to engage in illegal activities, especially those that are viewed as immoral by Islam. Any hopeful scenario, however, involves a race against time. The UN has warned that Afghanistan is in critical danger of becoming a narco-state and a haven for narco-terrorists.

To prevent this from happening, the United States should make counter-narcotics its top priority. Curtailing the narcotics trade will deny terrorists and warlords the funds they use to recruit followers and conduct operations. The U.S. is currently training four teams of Afghan police in crop eradication, but this and other law enforcement programs must be coupled with effective projects for creating alternative livelihoods and imaginative programs for crop substitution. Thanks to your leadership, Mr. Chairman, the United States now has the financial resources it needs. The emphasis must now be placed on vigorous implementation.

The U.S.-led coalition and the International Security Assistance Force (ISAF) must now join in the fight against narcotics. Military forces must begin to proactively perform at least a limited number of counter-narcotics mission. These would include intelligence sharing, destruction of drug warehouses and heroin laboratories, and drug seizures. At present U.S. military forces only seize drugs if they encounter them in the course of their routine operations.

The U.S. must make good on Secretary Powell's recent statement that warlords have no place in Afghanistan and private armies must be disbanded. Warlords and militia commanders are a source of insecurity and a threat to the central government. U.S. military payments to what are called regional influentials conflict with our overall policy of promoting national unity. Stopping payments would correct the impression that many Afghans have, that the U.S. military condones the warlords' participation in the drug trade.

There must also be a vigorous effort to curtail corruption. We should assist the Afghan government to pay adequate salaries to police, judges, and prison personnel. It is impossible to have judicial reform when judges earn only $36 a month and policemen earn only $15 a month and then are not paid.

The U.S. should ensure that equal attention and resources are paid to police, the judicial system, and prisons. Emphasis on police training at the expense of the other parts of the justice triad will produce the kind of results that we saw in Haiti and in Iraq. Without effective courts and humane prisons, there can be no rule of law. As events in Iraq demonstrate, we cannot allow ourselves to ignore conditions and practices in Afghan detention facilities.

At this point, the U.S. should not be constrained by the lead donor nation approach and should do what is needed to provide training and technical assistance. The effort to promote burden sharing has not worked well and the U.S. can no longer wait for other donors to take effective action. The United States has both the most experience and the most at stake.

The missing ingredient in international assistance to Afghanistan has been leadership. The so-called "light footprint" approach has left the Afghans adrift. Afghans realize they need help. Afghans look to Americans for guidance. We need to move quickly, however, Mr. Chairman, before it is too late.

Thank you.

[The report to which Mr. Perito referred, "Establishing the Rule of Law in Afghanistan," appears in the appendix to this hearing.]

The CHAIRMAN. Thank you very much, Mr. Perito.

Mr. Isby.

STATEMENT OF DAVID ISBY, FOREIGN AND DEFENSE POLICY ANALYST, WASHINGTON, D.C.

Mr. ISBY. I would like to thank the chair and the distinguished members of this panel for the opportunity to talk here about Afghanistan.

There have been a number of successes affecting Afghanistan in recent months, including the donor conference in Berlin. But new challenges to Afghanistan's security are emerging. These include the effects of the elections called for under the new constitution. The revival of often divisive politics inside Afghanistan has led to largely cross-border violence aimed at preventing electoral participation. Reconstruction has been limited in the south and east by the same violence. Narcotics cultivation and trafficking have been revived. Disarmament has stalled. The Afghan security situation is more difficult and complex than it was a few months ago.

To prevent a challenging situation becoming a deteriorating one, the United States and its international partners must shift their Afghanistan priorities. Long-term security commitments should match the aid commitments made at Berlin. These should include a sustained, enhanced U.S. presence, ideally matching ISAF expansion. But regardless of NATO actions, there is no substitute for the perceptions of commitment to both security and reconstruction created by deployed U.S. forces, especially in areas where the UN and NGOs have been deterred from operating.

An enhanced U.S. security commitment to south and east Afghanistan could take the form of a near-term surge deployment to secure the elections, attack Taliban and Al Qaeda remnants, build intelligence networks, and revive reconstruction. Military units committed to reconstruction can provide their own security while training Afghans to take over their tasks. A longer-term U.S. security commitment can take the form of expanding the successful provincial reconstruction teams.

Such an enhanced commitment needs to be reconciled with admittedly over-stretched U.S. capabilities in force structure and integrated with those forces already operating in Afghanistan. The commitment needs to be implemented in a way that at the grassroots level will enhance security rather than focus Afghan resentment.

The most important U.S. contribution to security in Afghanistan, however, is through engaging with regional countries. One of the functions of a long-term U.S. security commitment to Afghanistan is to show these countries that they are more likely to realize their

own security goals by cooperating with the international community and Kabul. Since 2001, Pakistan has cooperated in anti-Taliban activities and anti-terrorist activities. Yet, the Taliban culture that exists in Pakistan provides support for terror and violence inside Afghanistan. U.S. engagement with Pakistan needs to encourage them both to crack down on the roots of violence in the Taliban culture and to improve their cooperation with Kabul.

Outside funding and support coming into Afghanistan, often through religious channels, is another security challenge. This can affect the upcoming elections, especially those for parliament. However, effective reconstruction must include an Islamic dimension amongst its objectives.

Assessing U.S. policy success in Afghanistan is more complex than simply counting troops deployed or dollars spent. We need to avoid the entanglement of Afghan politics. We must not treat the Afghan government as just another faction, but we must also avoid an embrace of them that will make them appear as a United States creation. We must not act as Kabul's enforcer, carrying out politically costly tasks.

Today our most important security contribution to Afghanistan is to prevent outside spoilers. We need more U.S. boots on the ground in the near term because of the election. We need to jump start reconstruction in the south and east and we need to address disarmament and narcotics issues. Together, these actions will demonstrate U.S. commitment to Afghans and regional countries alike.

The best hope for Afghanistan is the Afghans. If the United States and the international community can enable them to decide their own future and prevent outside spoilers, there is cause for guarded optimism about the future of Afghanistan.

Thank you.

[The prepared statement of Mr. Isby follows:]

PREPARED STATEMENT OF DAVID C. ISBY

I would like to thank the Chair and the distinguished members of this panel for the opportunity to talk here about Afghanistan.

There have been a number of successes in Afghanistan recent months. The new constitution has been generally accepted. Increased United States government efforts have resulted in $1.2 million Emergency Supplemental assistance programs under the "Accelerating Success in Afghanistan" strategy. The initial stages of the Kabul-Kandahar highway reconstruction have been completed. A new "South and Southeast Strategy" has provided resources to combat hostile activities and enhance lagging reconstruction. At the recent donor's conference in Berlin, the Afghan government presented a request for aid commitments based on what it had determined would be required to re-create a functioning national economy and saw those commitments, reflecting the priorities of Kabul rather than the donors, largely met.

The war against Taliban and Al Qaida needs to continue. The national security of the United States is served by defeating these forces in detail. Key leadership figures remain to be captured. While they present only a limited military challenge, their campaign of violence and terror is preventing reconstruction and political participation in areas in the south and east.

The national security of the United States is also served by effectively implementing our commitment to assist in the international community's efforts to rebuild Afghanistan, to prevent it ever again being a base of terrorism and extremism that threatens other countries. Afghanistan still has a need for humanitarian assistance and, increasingly, reconstruction throughout all the country. Such activities also contribute to security. They demonstrate to the Afghan grass roots that their lives are being made better. Functioning government outside Kabul and a viable national economy are both evolving slowly despite many setbacks.

Through its continuing commitment to Afghanistan, the United States can demonstrate that they can help a people that suffered from Taliban and Al Qaida oppression, terrorism, and warfare. In Afghanistan in 2001, the U.S. demonstrated the power of even a relative small part of its armed forces in helping their Afghan allies militarily defeat the Taliban and Al Qaida on the battlefield. In 2001, the world saw the jubilation of Afghans as the Taliban and Al Qaida were driven from Kabul, including the joyful re-openings of the long-shuttered movie theaters. Now the U.S. is faced with the opportunity to help bring about a third success, making possible the rebuilding of Afghanistan. I believe that the United States needs to do more to meet emerging challenges to this last—and most critical—of our national security goals in Afghanistan.

Conflict in Afghanistan tends to be about legitimacy. To win the current conflict, the government in Kabul needs to continue to increase its legitimacy, building on continued commitment to the Bonn process and the desire for peace of the vast majority of the Afghan people. I believe that the U.S. and the world community need to do more. Success in Afghanistan requires effective diplomatic activity to prevent outside forces from acting as spoilers, both a near-term surge and a long-term security commitment of troops on the ground, and more resources available for addressing emerging new challenges.

The military elements of U.S. policy in Afghanistan since 2001 have been, in many ways, the most successful. Yet the U.S. must use military force with care, avoid the pitfalls of resurgent Afghan politics and avoid involvement in implementing policies of the Kabul government that would make it appear an outside creation. In some cases, international security cooperation cannot serve as a substitute for U.S. action. Perception of a long-term U.S. security commitment is crucial.

Afghanistan's new challenges come from diverse sources. The requirement, under the new constitution, for presidential and parliamentary (both houses) elections has led to critical security concerns. It has presented a target for the forces that are using terror and violence against the Kabul government and its international supporters and so must be considered the most significant security threat in Afghanistan. The Taliban and Al Qaida are making a strong attempt to limit voter registration in a number of areas in the south and east of Afghanistan.

The upcoming presidential election itself marks the formal return of Afghan politics. The wars of 1978–2001 polarized Afghans, not only along the ethno-linguistic divisions but also those of economic interest, religious practice and philosophy, class and locality, and other complex factors. Recently, these tensions have undercut ambitious internationally-supported programs aimed at disarmament. A revival in narcotics cultivation and traffic presents an international threat and provide a source of funding for those opposed to the Kabul government.

With the benefit of hindsight, it is possible to identify many missed opportunities in Afghanistan since 2001. The prompt and skillful military action that enabled and empowered our Afghan allies to liberate their own country from the Taliban and Al Qaida was not matched by comparable decisive action, unity of command, and application of resources in other areas. Too often, opportunities to build on momentum were not taken. The U.S. now has enough experience and knowledge to learn from mistakes.

Yet I believe the bottom line is guardedly optimistic. Afghanistan is neither the former Yugoslavia nor Iraq. The Afghan people, resilient though destitute and war-weary, have demonstrated they are willing and able to deal with the deep and fundamental issues that divide them. The U.S. needs to give them the tools to make this possible and help stop those that aim, for their own ends, to blight Afghan hopes.

What Should We Be Doing?

The current U.S. commitment to security, reconstruction and developmental aid to Afghan government is vital. The Afghan government has had an increasing role in decisions to allocate this aid, demonstrating competence and legitimacy both internationally—as seen at the Berlin conference—and domestically, where it allows the government to find sources of revenue outside of aid, build patronage and demonstrate its relevance.

The U.S. needs to support implementation in Afghanistan that will avoid what Ambassador Peter Thomsen has termed "the briar patch of Afghan politics." The United States must not treat the Afghan government as just another faction. Yet it must also avoid too close an embrace that will make that government appear as a creation of the U.S. Nor must the U.S. act as the Afghan government's "enforcer," implementing policies that Kabul lacks the political or military strength to carry out. The elections, the conflict with the Taliban and Al Qaida, disarmament, corruption, narcotics, human rights abuses, the lack of economic development and many

other critical problems can block progress. These issues are now firmly enmeshed in Afghan politics. Afghans are increasingly accusing their political opponents of these (and other) problems and insisting that justice requires that foreign influence (or force) be used to put them (and their friends) into power.

What the U.S. should aim for as a priority of a strengthened commitment to Afghanistan is not implementing specific solutions devised by the Kabul government of the U.N., but rather to continue to enable and empower Afghans to work together, to build confidence is each other, and to identify steps that will lead to an emergence of a more mature political culture in a society that has been mobilized by war throughout the 1978–2001 period by using every possible claim and rationale to get Afghans to fight others, usually other Afghans.

It is vital that the U.S. not be seen as being politically manipulated in policy implementation in Afghanistan, especially with the elections likely to hold center stage for the immediate future. While the U.S. is rightly engaged primarily with the Kabul government, it also needs to engage with regional leaders (including some of those lumped together pejoratively as "warlords" by their political opponents) and, through mechanisms such as the PRTs and cooperation with NGOs, the grass roots.

The Afghan government will have in effect, to repeat the state-building process that took place in the generation before 1978 while avoiding the mistakes in that process that led directly to the tragic events that followed. It is a difficult task. There are many places in Afghanistan where nothing good came from Kabul in 1978–2001. Legitimacy and a presumption of competence and even-handedness must be rebuilt from less than zero in 2001.

Indeed, there are still many Afghans—in and out of government and of many different political alignments—that, like the post-revolutionary Bourbons, appear to have both learned nothing and forgotten nothing. Urban Kabulis with Pushtun roots want Dari-speaking rural Panjsheris disarmed and out of their city. Those that collaborated with the Soviets during the occupation or are returning from exile demand criminalization of the "jihadis" that fought the Soviet invaders and took part in the civil wars of 1992–2001; they, in turn, disparage the "washers of dogs and cats" returning from exile that, without their record of being able to get things done on the ground (made possible by their appropriation of income, patronage networks and their Kalashnikovs), have to rely on foreign support. All will try their best to secure U.S. support in the emerging world of Afghan politics.

Regional Security Issues

The most important U.S. contribution to Afghanistan's security is through interaction with the regional actors. In 1992–2001, it was the willingness of those actors—especially but not exclusively neighbors—to back opposing sides in Afghanistan's civil wars that kept the conflicts going.

If the neighbors believe the U.S. security commitment to Afghanistan be a long-lasting one, they will be more likely to permanently turn away from their 1990s policies and seek to accommodate their security interests through cooperation with the internationally-recognized government in Kabul and not by backing Afghan regional military commanders to oppose it. If the neighbors believe the U.S. presence and interest in Afghanistan are transitory and that the U.S. is, despite its rhetoric, looking for an exit strategy, then they will hedge their bets in their relations with Afghanistan. U.S. long-term security commitments are going to be stronger than any coming from elsewhere in the international community, including NATO.

Effective U.S. interaction with Pakistan is most important thing we do for security in Afghanistan. Pakistan's involvement with Afghanistan has been, in recent decades, an order or magnitude greater than any other neighbor. The conflict currently going on in Afghanistan by Taliban and Al Qaida is a cross-border insurgency mounted from Pakistan. It is not a grass-roots insurgency by Afghans aggrieved at the slow rate of reconstruction or that members of other ethnic groups hold ministerial positions in Kabul. Even though the Taliban may have sympathy in some areas in Afghanistan on ethno-linguistic, local, or religious grounds, it they are no longer a viable political movement inside Afghanistan. However, in Pakistan, the "Taliban culture" remains, including a network of internationally linked fundamentalist groups, madrassas and Pakistani religious parties that support the conflict in Afghanistan.

Challenging this culture is politically costly for any Pakistani government. In the longer term, however, it is likely to prove critical not only for Afghanistan but for the future nature of state and civil society in Pakistan. Yet as long as the Taliban culture remains strong across the Durand line, achieving peace in Afghanistan will be problematic, regardless of how many resources are committed by the international community, including the U.S., to Afghanistan.

The current U.S. engagement has been met with increased Pakistani willingness to address the threat to achieving peace and security in Afghanistan that is coming from Pakistan. This was demonstrated in recent Pakistani military operations in South Waziristan. It has also been seen in President Musharref's address to parliament earlier this year and in a range of other actions dating back to his 14 January 2002 speech and before. Pakistani cooperation in arresting foreign terrorists has included a number of significant successes. These actions have been recognized by the recent U.S. designation of Pakistan as a major non-NATO ally.

Yet problems remain. Taliban leaders—not limited to "moderates"—live openly in Quetta. The Pakistani intelligence services and elements of the military have not turned away from the policies that brought Afghanistan to the disastrous situation of 2001. In recent weeks, statements of concern about Pakistani policies from U.S. Ambassador to Afghanistan, Dr. Zalmay Khalilzad and the commander of Combined Forces Command, U.S. Lieutenant General David Barno, have been matched by statements from the Afghan government.

The upcoming Afghan election is vulnerable to a broad range of action by its opponents. While the Taliban and Al Qaida must be considered the most important threat, they are not the only one. Throughout Afghanistan, regional and local leaders—who tend to perceive no viable alternative to themselves—are likely to use all the power at their disposal, from the use of patronage to armed intimidation, to see that the elections do not overturn their power. However, in these cases, U.S. and international community interaction with these leaders are important to try and minimize their effect. The security situation is most important in those areas in the south and east where the threats to the election include terrorist violence. Nor is reducing participation to reduce legitimacy the only threat goal. Reports at the time of loya jirga delegate selection from the south have told of convoys of "voters" being trucked from Pakistan.

Regional Security is Linked to Reconstruction

The importance of reconstruction aid is that it allows the U.S. to have an impact that will increase stability while not becoming hostage to Afghan politics. For example, gender issues are likely to remain politically polarizing for the immediate future. They may be used as a shorthand to rally opposition to the current government on a range of issues. Yet by backing programs that make Afghans lives better at the grass roots by rebuilding schools or microcredit schemes that put sewing machines in villages, the U.S. can hope to avoid its policies being perceived as contributing to the continued divisions and polarization that marks Afghan politics.

No one is likely to be against schools and sewing machines. If the Taliban and Al Qaida come with guns to burn them, they need to be detected and defeated. If mullahs—supported with rupees from Pakistan's "Taliban culture" or from foreign radical Islam—preach against them and demand the schools and sewing machines be burned, then there needs to be a countervailing support for traditional Afghan Islam, which has long demonstrated that piety can lead to resistance to fundamentalism and oppression.

It has been a long time since anyone has funded traditional Afghan religious practices and leaders, while those attacking them have enjoyed extensive foreign support. While this may be an uncomfortable issue for the U.S., it remains that a purely secular conception of reconstruction will be inadequate to deal with Afghanistan and the role of Islam in its politics and life. Reconstruction has to include not only government, infrastructure and economy, but Afghan Islam as well. If this is not an area where the U.S. is competent or comfortable in acting, then by all means let us engage with international partners to deal with this issue, as so long as they do not have their own agendas. If there is a vacuum in funding and support here, it will be filled by men from outside Afghanistan with evil ideas and suitcases full of dollars.

This is a necessary part of security making possible reconstruction—blocking the outside spoilers. The religious element is more difficult than interacting with the regional players, for most of the action here involves sub-national actors and many of these have committed Afghan political allies. Addressing this problem in a way that will not be perceived as an attempt to criminalize opposition politics by the Kabul government is a challenge.

Security Forces in Afghanistan

The national security interests of the United States in making Afghanistan secure are likely to mandate the presence of military forces there for at least the next five to ten years. Currently, there are three distinct foreign security forces in Afghanistan. In Kabul is the International Security Assistance Force (ISAF), currently under NATO. There are the coalition forces taking part in the war on terror, often

with the support of aircraft and assets based outside Afghanistan. U.S. and coalition provincial reconstruction teams (PRTs) (plus an ISAF German effort in Konduz) carry out high-value relief programs while being able to provide for their own security. They bring an outside presence and token of commitment to grass-roots Afghanistan.

ISAF expansion remains problematic despite the 2003 commitment to its expansion. While there are places in the north and west where such forces could be useful—Herat, Konduz, areas of tension in the northwest—they would best be employed in the south and east, to counter Taliban and Al Qaida terror and help make possible humanitarian aid and reconstruction. While NATO is making good current commitments and has offered to deploy an additional five PRTs in north Afghanistan (where there is largely not a security threat) lack of long-term security commitments to match the aid commitments made at Berlin earlier this year is disconcerting.

In reality, it has been difficult to sustain the force at its current level. While expansion of ISAF would be a good thing, it is hard to see how it could be carried out on a sustainable basis. NATO countries are finding that the Afghanistan commitment stretches their forces and funding even at current levels. They have cut back force structures and have other commitments. While expanding ISAF may be possible, before implementing it is necessary to recall that poorly trained, ill-equipped or ineffective troops are worse than no troops. One must be hesitant about any expansion that would bring in untrained or inexperienced units—in terms of the current situation rather than conventional operations—into Afghanistan.

Deployment of additional U.S. forces to southern and eastern Afghanistan could provide security, assist with reconstruction, and help the campaign against Taliban and Al Qaida. There is a need a short-term this-year surge deployment to deal with emerging problems such as making possible election security, the completion of high-value infrastructure reconstruction, narcotics eradication, and disarmament. Even if the troops do not carry out these missions themselves, their presence and military action against the threat will help make it possible for Afghans to carry out these actions.

The current force structure and resources overstretch by the U.S. (and any participating NATO or coalition members) means that deployment of such forces needs to be targeted to help provide security especially in areas where reconstruction efforts by the UN and NGOs being deterred by terrorism or, as in case of UN with election registration, have turned the program over to Afghans. In these areas, the U.S. and coalition presence is currently limited to those forces waging military operations against the Al Qaida and Taliban remnants and the PRTs.

While the PRTs have done good work (despite the hostility of some NGOs and skepticism of some of the local population), their actions have not been sufficient for average Afghans in this area to see how their life is better. The deployment of additional PRTs should be made alongside the surge deployment. The PRTs can remain as a part of a long-term commitment to Afghan security.

While ISAF expansion into areas in the south and east would be a good and important advance, NATO troops are not a substitute for U.S. troops in those areas of Afghanistan. Only U.S. troops are the "boots on the ground" that indicate superpower commitment and an effective willingness to support Afghanistan and the Kabul government against both Taliban and Al Qaida and the policies of regional players.

Deployments will also have to be done to skillfully minimize friction (and friendly fire incidents). More garrisons in the south and east—unless integrated into an effective operational concept—may only provide targets for Taliban and Al Qaida mortars and rockets. Many Afghans are anxious for an outside presence to assure security, but it needs to be implemented to avoid the streak of xenophobia that runs alongside the hospitality of Afghanistan.

An expanded U.S. security commitment should not be judged by troop end-strength but rather by effectiveness. It should include increased intelligence assets and be able to work with both grass roots Afghans and Kabul government forces to develop intelligence. It could include expanded PRTs; or units such as engineer battalions that could both initiate reconstruction programs and train Afghans—ideally demobilized fighting men paid by aid money—to take over their jobs.

While the U.S. military should look to make clear its security commitment to Afghanistan is a long-term one, in carrying out reconstruction tasks the goal should be to train and turn over the tasks to Afghans as soon as possible. Infrastructure building and provision of security are two exceptions but those digging wells and carrying out other needed tasks should be Afghans.

To meet regional goals and make Afghanistan a place that will not be a haven for terrorism and extremism, I believe that U.S. forces, concentrating on security,

will need to remain in place for foreseeable future, five to ten years. I believe that a similar commitment of ISAF forces will be required if it is to remain viable. I believe that a near-term surge commitment of U.S. and ISAF forces to the south and east is required to help provide security, defeat terrorist forces, and help jump-start reconstruction.

DDR—Example of an Emerging Challenge

There is no disagreement that the DDR (Disarmament, Demobilization and Reintegration) process is vital to the future of Afghanistan. and that, at some point in the future, there will be a single national army and police force in Afghanistan. It has also been determined by the Bonn process and the Afghan constitution that the armed forces that liberated Afghanistan in 2001 are not to enjoy the central place in national life that has been the case in many developing countries, most notably that of Pakistan. It has also been determined that the emerging national army and police forces are to reflect the entire country's ethno-linguistic makeup (especially in their commanders), which is frequently not the case in many developing countries, most notably region that of Pakistan.

Demobilization of fighting men outside the Kabul government's army and police forces without jobs creates only bandits and narcotics cultivators. Demobilization has to be a primary aim of reconstruction aid. In long term, rebirth of a national economy is the only answer. But in the short term, the U.S. may have to look to these forces to assist with security.

However, in the short term, the DDR process has led to a stand-off between U.N. authorities trying to implement it and defense minister Marshal Fahim. In the longer term, effective DDR is going to be the consequence of the successful assumption of legitimate and competent national power by the government in Kabul rather than the cause.

Since 1978, armed power wielded by Kabul has been discredited, and it will require years of increasing legitimacy and competency to restore it. The Hazaras and the Bamiyan shura are going to have a different view of the DDR process than that held in Kabul by our friends in the government. They are going to want re-assurance that the emerging national army and police force and not going to be used as the "big stick" of a repressive center-periphery relationship. The same considerations also apply to other armed forces in Afghanistan, which need to have their security situation considered on a case-by-case basis.

The U.S. can contribute to an effective DDR process. The most important elements are already being carried out—the creation of a national army and reconstruction that can both employ and train former fighting men. An important challenge will be to extend the benefits of DDR not only to the regional commanders—they already have jobs with the government—but to their senior and mid-level commanders. If they end up as bandit chiefs or narcotics growers, then the effectiveness of the entire process will be undercut.

Hindering the implementation of DDR is a widespread belief by the Afghans affected by it in political bias by both UN and the Kabul government. If the U.S. retains the confidence of the regional commanders, it can act as a trusted interlocutor, looking for ways to implement DDR. This is likely to be more effective than having U.S. combat units physically disarming Afghans. Effective actions in support of DDR can include the continued provision of U.S. Special Forces teams with Afghan forces. On multiple occasions, these have "deconflicted" potential problems and demonstrated earnest that the regional commanders should continue to support Kabul, the constitution, and the Bonn process rather than call up their foreign supporters and look for funding to start implementing their own agenda.

The U.S. needs to work with these commanders and forces where appropriate. While they are "yesterday's men" and they know it, their residual power—in the terms of patronage networks and armed men—is significant. Demanding that they be swept away as an a priori condition for the elections while the central government's institutions that would replace them—and the legitimacy for their non-repressive use—are both still weak is unachievable and will undercut the potential for limited—but still real—gains.

Conclusion

These are just a few elements of a vast interconnected problem. While judging the U.S. effort by money spent or number of troops in-country rather than their effect is dangerous, more U.S. resources would be good. There is a continued need for reconstruction funds. Money can smooth over many of the center-periphery political problems. There would be many fewer Afghans carrying Kalashnikovs for regional commanders or maintaining poppy fields if there were programs where, funded by aid money, they could work on rebuilding in the morning and be taught to read in

the afternoons. When such programs have been offered, there have been literally hundreds of applicants for each place.

But until that time, even with more U.S. troops on the ground and more U.S. aid over what is currently available, we will have to prioritize. I believe that the elections make regional security the highest priority. But additional resources would make it possible for the U.S. to have more policy options in dealing with worsening problems such as disarmament and narcotics. Dealing with both while avoiding becoming a participant in Afghan politics or making the Afghan government appear to be a U.S. creation will be difficult, but this cannot be an excuse for inaction.

A goal of all U.S. and international action—diplomatic, security, reconstruction—is to ensure an Afghan government is able to make meeting the needs of its citizens a priority. This was not a priority in 1978–2001. The government needs, within the context of the constitution and the Bonn process, to grow revenues and patronage networks that can help stabilize Afghanistan. But do not expect—or try and fund—short-term success. While supporting the government in Kabul, we must help ensure tomorrow's Afghans do right what the former King and his governments—flush with superpower aid at the height of the Cold War—did terribly wrong in the decades before 1978.

There is a desperate need for training Afghans in many fields, especially civil administration. The concept of effective, accountable, impartial administration was put aside in 1978–2001 when power and its possession were often the sole concerns. Between the pre-1978 heritage and the skills of individual Afghans, there is hope for improvement, but this is an area where the aid is needed.

U.S./NATO troops are needed to make reconstruction possible in the south and east. But keep in mind that goal should be the minimal level of troop commitment consistent with effectiveness. While U.S. troops are a unique and important symbol of commitment, good foreign troops are needed to share the burden and demonstrate international security commitments. The wrong foreign troops need to stay home.

The most important reconstruction aid—that only the U.S. can provide —is preventing regional players acting as spoilers in Afghanistan. This means, in the near term, undercutting support for the cross-border actions by the Taliban and Al Qaida. In the longer term, it means support for efforts that will undercut the "Taliban culture" on Pakistan's side of the Durand Line and encourage the growth of civil society and effective governance. Religious funding originating in the Kingdom of Saudi Arabia and the Gulf region will be critical if it is used in the election process.

In the final analysis, Afghans are likely to work things better out themselves. We need to build back their infrastructure, act as interlocutors and mediators, prevent outsiders from acting as spoilers, and be guided by a goal of not doing for the Afghans what they can do for themselves. The U.S. and the international community—by making long term security commitments to match the aid commitments given recently at Berlin—can help the Afghans work things out themselves. If the U.S. and the international community can enable and empower them to decide their own future and can prevent outside spoilers from doing damage, then there is cause for guarded optimism about the future of Afghanistan. But as new challenges have emerged in Afghanistan—the need to conduct elections, the need for disarmament and narcotics eradication, the creation of a national economy—they require new responses and commitment of resources from the United States.

The CHAIRMAN. Thank you very much, Mr. Isby.

Let me say that we will try to have 10 minutes of questioning by each Senator and then maybe another round. Let me recognize for a moment Senator Biden. You have to leave.

Senator BIDEN. Yes. I am supposed to address a national police organization, but this is, quite frankly, much more important. I wonder if you would indulge me to ask one question.

The CHAIRMAN. Please.

Senator BIDEN. I know it is not appropriate. The Chairman speaks first.

Gentlemen, some of us on this committee have had a running and legitimate debate with people inside and outside the administration, from the moment the Taliban collapsed, as to how we should proceed. I want to make it clear that I think when we are talking about Afghanistan or Iraq and how we should have pro-

ceeded, a strong dose of humility is in order for anyone who has a recommendation, particularly speaking for myself. I am not suggesting by the question I am about to ask that had the prescriptions offered by the majority of this committee been followed, that things would be materially different. I think they would, but I do not know. This is not one of these "we told them so and here we are and what do we do."

I want to get to the heart of what I see as a difference in policy prescriptions here without speaking about the details, the tactics, whether we are speaking about education and whether or not—when I was in Afghanistan, meeting with a man who had been in Italy for the last 24 years and came back to become the head of the Department of Education, in effect, he talked about opening up the university. I went in to see him and I said, basically what do you need? I thought he was going to tell me he needed supplies, laboratories, books, *et cetera.* He said, I need one thing. I need security on the roads. No student is going to show up without security on the roads. I said, what do you mean? He said, literally on the roads. I have got to be able to have a student who lives in Kandahar or lives in Herat or lives in Bagram to be able to think they can travel the road to get to the university.

When I visited the first schools that were open, the grade schools, it was impressive the determination of the young girls in particular who had been out of school for 5 years, some of them 14, 15 years old going back to primary school and their determination to learn to read. One young woman, as I said I was leaving, stood up with those magnificent hazel eyes so many of them have and with fire in them, looked at me and said, "You cannot go." I thought she meant I could not leave the classroom. She said, "America cannot go. I will never learn to read. I want to be a doctor like my mother." This was through a translator. Her determination was incredible.

But again, security. Even immediately after the Taliban was on the run, I met with two women ministers and sublevel women in the government who told me that, as they took the bus to work, they wore their burka. They told me of examples where cars would drive up with four men and the men would jump out, throw the women against the wall, threaten them, tell them if they are not covered next time, they will be punished.

So, when we tried to expand the security force—and Secretary Powell weighed in on this force as well—there was a reluctance, a judgment made at the highest levels in our government that that was not the way to go.

Then in what were at the time weekly meetings with Dr. Rice—and I think she expresses a legitimate view, but a different view—I remember one day saying to her, Condy, the warlords are gaining power not reducing power. For a brief, shining moment there, they were all sort of cowed and they all were worried about whether benefactors would continue to support them, whether it be any one of the five surrounding countries. There was a moment there where they were ready to let international security forces in sort of as apartheid cops. They kind of viewed it as if the international security force was there, at least their territory would not be encroached upon by a competing faction.

And Dr. Rice looked at me and she said this—I am not telling tales out of school—she said, "What do you mean? What is the problem?" I said well, Ismail Khan in Iraq. She said, "What is the problem? The Taliban is not there. Al Qaeda is not there. It has always been this way."

So I think we should level with one another here about what is the base, fundamental difference in approach and what we have to deal with here. There has been a judgment made, if not by direction, by indirection in a sense, that the way to maintain stability in Afghanistan was to try to do whatever is necessary within our power and divert our attention to deal with Al Qaeda and deal with the Taliban. Part of that seems to have been that the warlords are an element in that. If you have Khan in charge, you do not have the Taliban in charge.

And also, this debate, Mark, about the British view and the American view on dealing with poppy. We met with some high ranking German officials who said this is not the time to crack down on the poppy trade because you will just cause more unemployment and you will have another problem. Now, maybe I have spent too much of my life, 23 years of the 32 I have been here, being chairman or ranking member of the subcommittee on drugs of the Judiciary Committee. This seems to me a prescription for disaster.

It is a long prelude to a short question. I am not looking for what you think should be our policy. I want you to respond to what you think our policy is. Does the support or the failure to attempt to crack down—and we have limited capacity right now—on warlords have, for all the bad aspects of it, the positive impact at least of, other than in the south, curtailing the activity, growth, and influence of the Taliban and Al Qaeda? That is my first question. Can you just give me a yes or no, since we only have 10 minutes here? Does it have that effect? Not all the bad effects that flow from it. Does it have that effect of dampening the influence of the Taliban and Al Qaeda to the degree to which the warlords have increased power and do not answer to Kabul?

Dr. GOUTTIERRE. Initially right after the 9/11 events, and as we went into Afghanistan with our own forces, I think that it did. I think it no longer does. I think now it has a negative impact on the long-term objectives that we and the Afghans have, and it only in a sense sustains the instability that permits the conditions that encourage the resuscitation of the Taliban and Al Qaeda and the border areas.

Senator BIDEN. Because part of what I think some view—and these are serious people. They suggest that our ability to actually devote the resources, in light of our circumstances in Iraq and the unwillingness of the Europeans to do even more in Afghanistan is that we are given one of two options. We either put in significantly more resources, that is, more troops, more money, not just ours, but the international community, and more direct effort to bolster Kabul.

For example, one of the things we argued about was whether every single project should go through Karzai. What value is there if you give your money directly to Ismail Khan to build a road or a school? He is the one delivering it. Why call Karzai? Why call

Kabul? If you don't have any military control over that part of the region because of the warlords' capacity, at least there has to be some reason why anyone in the provinces would want to deal with Kabul, and if the money is not controlled and the projects are not controlled from there, then who needs it? You become the Mayor of Kabul.

But it seems the realists on the left and the right in our political spectrum are coming up with what I think will be a compelling argument to some, not one I agree with, which is, look, the resources required are significantly larger than are now committed. That is not going to happen. So we should at least decide to limit the damage and reduce the objective, the objective being keep the Taliban from resurging, keep Al Qaeda out. The only way to do that is invest, in effect, indirectly in the warlords.

Mr. SCHNEIDER. I do not think that is going to get you where you want to be, Senator. In fact, I think that one of the conclusions of the United Nations and of others is that if that position holds and there is a continued support for or at least acceptance of the warlords maintaining their power base, what that does in the Pashtun area is essentially allow them to argue that they need, in a sense, their own warlords. If this is the way it is going to be, then they say we have got lots of linkages back with the Taliban. And so you are going to see a greater degree of political insertion of roots in that area by the Taliban. What the warlords bring is essentially illegal activity being accepted as legitimate, and this is not going to be the basis for building any institutions for the future.

But you are right. There is going to be a need for greater resources, both military and economic, to be devoted. I do think, though, that there is an opportunity to get more European contributions from the Spanish, from Turkey, particularly in terms of meeting what is now set out by NATO as their requirements.

Senator BIDEN. I happen to agree with you. I totally disagree with what I have just put forward, but I think we should be realistic and understand where we are.

Mr. SCHNEIDER. Understood. That is not acceptable any longer inside Afghanistan I do not think.

Mr. PERITO. No. Senator, the realists among the Afghans that we talked to pointed out that the U.S. military continuing to provide financial resources to the warlords creates a duplicity in our position. It makes it look as if we are on all sides of the issue.

Mr. ISBY. Can I say a good word for duplicity, sir?

Mr. PERITO. Are you in charge of duplicity?

Mr. ISBY. I will stand up for duplicity, sir. I think we need to support the people that you call warlords. I do not call them that. It is a pejorative term. Judge them individually. They are not our enemies. They are yesterday's men, but it is going to take many years to phase them out and their armies. We cannot become an arm of Kabuli power, Kabul has to rebuild its legitimacy and competence which was reduced to less than zero in 1978–2001. Marshal Fahim is not our enemy. The other people that are called warlords are not our enemies. We do need to engage them to show if you join in with this process, even though at the end of it, there is only an honorable retirement for you, it is better than getting

out your Rolodex and calling your foreign supporters for more free Kalashnikovs.

Senator BIDEN. Well, let me just conclude by saying that as I said to you, I think this different school of thought is a totally legitimate argument. I am not making a moral judgment about it. As I said at the outset, I think I am right, but I acknowledge that there is another position.

What you have said is different than what is happening, I think. What you said is you want to, in fact, treat them as friends, do it over a process, incorporate them into the process, and in fact, over time as Kabul grows in strength and they become more integrated, and end up with, down the road, a more coherent state.

Mr. ISBY. That is the Bonn solution, the process envisioned at that conference.

Senator BIDEN. Right. No, I understand that. All I am suggesting to you is I am not sure that is the alternative that is being pursued now. It seems to me the alternative being pursued now is there is not much we can do about this. Period. And we ought to just focus on a more narrow objective.

But again, this is a legitimate area of debate. I just think sometimes in this area we do not meet head on what the significant differences are in terms of policy proscriptions, and they lead to other decisions along the road.

But I truly appreciate you all being here. I am anxious to follow up with you, and I really appreciate the courtesy, Mr. Chairman, of you allowing me to go first and apologize. It is a longstanding commitment I made to the International Police Organization to speak, and I am required to do that. So I am sorry.

The CHAIRMAN. Well, thank you very much, Senator Biden.

While you are here, I wanted to recognize the fact that there are nine journalists from Afghanistan in our hearing today. Would you please stand wherever you are?

Senator BIDEN. Welcome, gentlemen, ladies.

The CHAIRMAN. We are delighted that you are here, and there are three ladies in the back. All right. There they are. Very good.

I just simply wanted to mention that the program that sponsors you, Radio Free Europe and Radio Liberty, is one that we have strongly supported. Senator Biden has been a champion specifically of the program that has brought us all together today. So before you left, I wanted to recognize that.

Senator BIDEN. You were kind to mention that. Welcome to all of you.

The CHAIRMAN. Let me continue the questioning by indicating that I was pleased with your evaluation, Dr. Gouttierre, and your conclusion that Afghans are very clear about the way they feel about Americans. They want them in Afghanistan. They want American leadership and assistance in the reconstruction process.

Now, what is the basis for that evaluation? In other words, how do you know that there is that regard for the United States? I ask this, because very clearly the polling in Iraq is very different. Iraqis do not like us. We think they should. They have been liberated and what have you, but they do not like us at all. As a matter of fact, in a good number of countries in the area, as the Pew Foundation or others have gone about asking about popular opinion, we

are not doing so well. Is this different in Afghanistan and if so, why?

Dr. GOUTTIERRE. You really should not give me such an entree because the opportunity to take a look at this requires a history lesson in many ways, but I am pleased that you asked that question because I think it is, in many ways, the key to our ability to have success in Afghanistan.

I have been involved with Afghanistan—I hate to admit it—40 years. I hate to admit it because it confesses my age. But I am pleased to admit it because it has been a very pleasing experience in terms of dealing with the people.

Right from the very beginning, when I went as a Peace Corps volunteer, 40 years ago this year, to Afghanistan, the thing that was very evident was that Afghans really enjoyed playing hosts to people from other countries if they had well-intentioned reasons for being there.

We have had a long and wonderful history in Afghanistan, as I suggested. We have been very much involved with the Afghans in development projects through the 1950s and 1960s and 1970s. Afghans remember us as helping them against the Soviets. I think their biggest disappointment with us was when in the 1990s we were not there during the time when the terrorists hijacked the country.

We helped to create Kabul University. We helped to build the Ministry of Education and set up the whole education process with Afghans, of course. We brought many Afghans to the United States.

They have never been obsessed with this issue that the United States has been waging a crusade against Islam. They have never been focused on this particular issue that the United States has malevolent intentions in the Middle East. Probably almost every Afghan would feel that we tilt unfairly to Israel in the Israeli-Palestinian issue, but that has not overwhelmed them in their evaluation of the United States.

I think Afghans have always felt positively about us. They have never been among those included in the question, "Why do they hate us?" Never. And I think our history with them has helped them to retain that. It has been a positive history, and we should be proud of that, and we should build upon it.

I am sure each of these journalists here would agree. I did not read that poem in Persian because I did not think I had the time, but I would love to do that for them afterwards because this poem is very indicative of the way Afghans feel. They believe that they gain from the relationship. They are always a little apprehensive; like Senator Biden suggested, the young school girl was saying, do not leave or I will not get the future I dream of.

I say that often the U.S. is solicitous. There has been a statement here that the donor process thing in Berlin was a success. Only if we take the right leadership, because it is the U.S. leadership that the Afghans are counting on, not just our money. They identify success that they see in Afghanistan with the United States. They are also going to identify failures with the United States.

We are not going to have another country in any part of that region. Pakistanis do not feel the same way as Afghans do. Maybe some in Central Asia could feel that way. We know how Iranians and Iraqis feel, but Afghans are our best possible allies to do something correct in that region.

I go to bed at night having trouble sleeping, not just because I am concerned about Afghans, but primarily because I do not want to see us blow this opportunity to deal with people who really do want us there, who have given every indication throughout a long time.

So I said you should not have given me that entree. You are lucky I have not gone on and on and on with all of the history, which I could. I am certain others here on the panel could as well. But it is from 40 years of experience, and they have always been positive experiences in dealing personally with Afghans. Even with some of those who are of a questionable, they always were exceedingly hospitable and always solicitous of our interests.

The CHAIRMAN. Well, I appreciate that testimony because obviously this is why we are having another hearing on Afghanistan, and we continually are having hearings——

Dr. GOUTTIERRE. A quick interjection, Senator. Senator Biden said, well, you know, it has always been this way amongst Afghans. I just get so angry when I hear that because it has not always been that way. Afghans have not always been fighting each other, and there is this misconception because the West has become focused on Afghanistan only with crises and those crises were the Soviet invasion and this current set of circumstances.

When I lived in Afghanistan, it was not a perfect place. It sounds like I am describing Valhalla perhaps. It was not. But it was a place where I did not worry about my car being attacked. I could go individually into the depths of the bazaars in any town without any concern, and Afghans were not killing each other. There was a reliance on a central government. It was growing. It was not perfect, but it was growing. If you took a look at Afghanistan in 1970, let us say, and you take a look at any other country around that part of the world today, Afghanistan then was light years ahead of not only itself but of most of the other countries surrounding it today. It took a very methodical, sometimes too deliberate, but methodical and deliberate approach to trying to bring in a national sensitivity, and it was working, though it was not perfect. But there is never a perfect democracy and they were trying through this democratic experiment. It was something anybody living there would have been tremendously pleased to be a part of.

The CHAIRMAN. Let me follow on from this as the basis for this question. We established that Afghans like us, and we have some possibilities here. Now then, the question is, will they still like us if we do all the things that we are discussing today, or even some of them? How many of them should we try to do to at least establish a basis on which Afghans will solve the problem?

For example, Senator Biden quoted the young lady who was very worried about her education in the event that we leave, probably with good reason. But this gets to the heart of a great cultural change. We have discussed the warlords already in various ways. As we Americans, along with our NATO allies, endeavor to estab-

lish a system of education that clearly is open to women—and there is no dispute about that element—and we somehow dispense with the warlords—some would think that is important, to enable the central government to work.

Furthermore, should we do something about the poppies—either we interdict them, start chopping them down or what have you—in each of these three areas. I sense that there will be some in Afghanistan who would say that we are overreaching. On the other hand, some would say perhaps that these are things that we can do as Afghans if you give us time and money and some structure and you keep the outsiders from intruding and so forth.

What I want to hear from the panel is, what are the appropriate areas in our idealism as to what the best outcome for Afghans would be, if we devote the time and money? The committee starts with the prejudice that we ought to do more, and we have been on the side of always amending relevant pending bills to do more. You might testify that it is going to have to be a lot more if we really are serious about Afghanistan. You are also saying that we should be serious about Afghanistan. It would be tragic if we were not.

Let us say that we get much more serious. We beef up the resources, even personnel, tough as that may be given our commitments elsewhere. We exhort our NATO allies successfully. Given the good will that we now have, what are the things that are reasonable to suspect that we will be able to do, or that we should be advocating? How can we set the stage for Afghans to implement reforms, which perhaps they must do if they are to have a cohesive, ongoing democracy?

Mr. SCHNEIDER. Mr. Chairman, I would begin by saying that the fundamental issue is our long-term engagement, that there has to be an awareness that whatever we do we have to be engaged with Afghanistan, not for the next 2 years or the next 4 years but for the long term. That kind of engagement and that kind of commitment is why I suggested an authorization that would match the 7-year period that the Afghan government itself has set forth as its next planning phase. That was the basis for the Berlin conference and the donor discussion. It seems to me that that answers part of your question because the proposals and goals in education help reconstruction. All of those in a sense begin with an Afghan input, and while there has been support from lots of people, that does depict to some degree Afghan ownership.

Whether we stay with them throughout that process is going to be the question, and that will determine whether or not there is a maintenance of the kind of sympathy for the United States that was described. If we pull out or if we begin to ramp down our involvement during this period, I suspect that it is going to go the other way.

The key issue is, are we going to stay with them and create the kind of security environment that permits these other things to take place. I spoke with an aid worker, and I asked her about going out to some of the rural programs that the U.S. is funding. I said, "How do you drive there? I drove to Gardez." She said, "We do not go really by road. It would take a car full of shooters in front and a car full of shooters behind as an escort."

When you think about that kind of security obstacle to reconstruction, you know that the situation remains extremely hard, and it requires continued military engagement and, as you say, an expanded involvement.

I would also note with respect to legitimacy of the government, the most important thing we can do, it seems to me, is to help ensure that parliamentary elections take place and represent all parts of the country in the context of security where there is a belief that they can be credible and they can be fair because they really are going to set the stage for the next period of development of Afghan institutions. And if they are not fair, we also will be blamed for it.

The CHAIRMAN. Let me interrupt at this point because I wanted to recognize Senator Feingold. I will ask other members of the panel who might have responses to my questions to withhold for the moment, and we will get back to that in another round.

I just wanted to comment, Mr. Schneider, as I listened to you, perhaps what we need—and this is never exactly the right metaphor, but something like the 10 Plus 10 Over 10 program that we have with Russian nuclear disarmament, for example. In other words, with the Nunn-Lugar program, we say we are going to go for 10 years, and therefore you in the G-8, the other seven, can count on that. The Russians can count on that. That is 10 years and $20 billion. Maybe it is that kind of commitment in which in fact no government, including our own, can appropriate in this place for years down the trail, and yet there is at least sufficient bipartisan support that that is in our national interest. It occurs to me maybe as a picture of what people in Afghanistan and our NATO allies need to see, maybe not the G-8, but in this case, whoever sort of adds in at least. There are additions to this program given that kind of context.

Mr. SCHNEIDER. I would agree absolutely.

The CHAIRMAN. Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman. I also want to thank Senator Biden for calling this important hearing, and I want to thank all the witnesses for being here.

The last time the Senate Foreign Relations Committee held a hearing explicitly focused on Afghanistan was in late January of this year, and I remember asking Ambassador Taylor at that hearing about how we will define success in Afghanistan. He told me that our mission will be complete when a stable, responsible government that will never harbor terrorists is firmly in control of the country.

In the months since that hearing, Americans have continued to fight and die in Afghanistan, and clearly insecurity persists in much of the country. It is unfortunate that there are no witnesses here today from the administration who could speak authoritatively to current U.S. policy and, most importantly, to what has changed in the last 4 months. What progress have we made toward overcoming the obstacles to policy goals? Do our goals actually remain the same? Do we believe that our current strategy is working, or do we need to make changes to achieve success?

When we reflect on the terrible attacks of September 11th, 2001, when we remember when and why we embarked on our current

initiative in Afghanistan, we then recapture the sense of urgency and priority that I fear is sometimes missing from discussions of this initiative today.

So I look forward to hearing from our witnesses even more in the future and also to hearing especially from the administration sometime soon about where this whole effort actually stands.

I would like to ask the panel a follow-up on a question Senator Lugar asked related to the success of U.S. public diplomacy efforts thus far in Afghanistan. How about U.S. efforts to explain our policy and practices in Afghanistan to the rest of the world? How does the Muslim world view the continuing U.S. intervention in Afghanistan today? Mr. Schneider?

Mr. SCHNEIDER. It is varied. Obviously, there are those who are linked to the more extreme side of the Islamic world that criticize everything that we have done and criticize the international community generally, what the United Nations is doing.

I think that it is important to note that we generally have support from many of the Islamic governments in the region, and after 9/11 and the adoption of the resolutions authorizing the United Nations Assistance Mission in Afghanistan (UNAMA) and authorizing the intervention in Afghanistan, I think that you have seen a degree of sympathy that is, unfortunately, obviously not there in Iraq.

Senator FEINGOLD. Apart from the governments, what about the Muslim peoples? Do they, in your view, distinguish pretty clearly between what we are doing in Afghanistan and what is happening in Iraq, or do they see it as part of the same thing?

Mr. SCHNEIDER. I think it is a closer question there. The level of communication within the Islamic world gets to be biased to some degree by the kinds of messages that come, and I would say that it is not quite as clear. In Afghanistan, I do not think there is any question about the feeling of the people about getting rid of Al Qaeda and the Taliban and the support for the international effort, although with a growing degree of concern about where it is going.

Senator FEINGOLD. How about the recent news? Has the Iraq prison scandal and the reports of other instances of abusive treatment that occurred in U.S. military prisons in Afghanistan and elsewhere affected international perceptions of U.S. policy in Afghanistan?

Mr. SCHNEIDER. That is going to. There was a Human Rights Watch report 2 months ago. I do not have any question that given what is going on in Iraq, that there will be—and there should be—a focus on allegations of mistreatment of detainees, on whether or not the Geneva Convention is being respected, the kinds of management of those facilities, and I do not have any question that there will be a greater negative view on the U.S. role. And as a result of the publicity around it, I am sure that there is going to be, unfortunately, a very negative message coming out.

Dr. GOUTTIERRE. Senator Feingold, I think in Afghanistan right now, the people of Afghanistan, after nearly 30 years of instability, violence, war, they are focused on Afghanistan. I think the issues relating to Iraq come to their attention primarily in their own fear that the U.S. focus on Iraq will lead the U.S. from doing what they hope the U.S. will do for Afghanistan in its reconstruction.

I think also the impact of what we are doing in Afghanistan right now is not going to register high on any country's citizens just because we are so shortly into the process. So little has been made evident that we are nearing any type of goal. I think that that is going to take time. I always like to tell people, it is going to take Afghanistan nearly a decade to put it back where it was in 1973 so that it can begin developing from there. I think it is going to take us a long, long time, as has been suggested by a number of comments here. I cannot remember who said that. I think maybe it was David, but if it was one of the other of you, I apologize. But we need to make it very clear that this is not just a 2-year, a 3-year, a 7-year program you mentioned, Senator. This has to be a long-term commitment.

I think as we have successes, if we do not muddle through in our approach, we will continue to sustain the respect and appreciation of the Afghans, and others will begin to notice. But we are not going to be able to use this for any spin at the moment. It is just going to take too much time and too much of an effort because there is so much left to be done.

Senator FEINGOLD. Recent press reports indicate that Pakistan has offered amnesty to foreign militants who have been operating along the border with Afghanistan. What does this mean for our efforts to eliminate the terrorist presence in Afghanistan and bring stability to the country?

Mr. SCHNEIDER. I personally think it is a very bad idea, particularly as was originally put out, there was no distinction between which foreigners they are talking about, whether they are Afghans or whether they are part of Al Qaeda. I think that that needs to be looked at very closely, and I would urge the committee to, in fact, look at that very closely in order to make a recommendation to the administration and to Pakistan, with whom we obviously have a very strong relationship. But to provide amnesty to Al Qaeda forces seems to me a bad, bad idea.

Senator FEINGOLD. Mr. Isby?

Mr. ISBY. Perhaps more importantly it depends who is being amnestied and where. Certainly individuals carrying Kalashnikovs are not the issue. The problem is the Taliban leadership and not only the "moderate" Taliban who live openly in places such as Quetta. I am more concerned perhaps about madrasas and other institutions that provide money and funding for cross-border violence than individuals—Uzbeks or whatever—who may be caught as foot soldiers. So that is the most important thing.

This is also vital to the focus of Pakistan. The future of Pakistan is not going to thrive if the people who support the violence in Afghanistan remain strong and to a large extent outside the rule of law.

Senator FEINGOLD. Let me ask if the pervasive climate of insecurity in Afghanistan in recent months has led to increased popular support for a return to Taliban rule simply out of a desire to see some order, even if that order is unjust and repressive. I know that Senator Biden sort of got at this from a different angle. I just wonder if we could put on the record any responses to that.

Mr. PERITO. Senator, I do not think that is the case. I think that the Taliban resurgence, thanks to the effectiveness of Operation

Enduring Freedom, is contained along the Pakistani border. The greater threat to security within the country, as we have talked before, is the warlords. That is something which we now we need to begin to focus on.

I believe the solution lies in going after the problem of narcotics because it is the narcotics trade that provides the funding to all those people who oppose our goal, which is a strong democratic and effective central government. Draining away resources through doing something about narcotics would begin to really affect the situation.

There is now total impunity for the narcotics trade. The government has no enforcement capability. That enforcement capability is coming on line, but it is coming on line very slowly. That is where we need to place our emphasis. We need to begin to create disincentives at the same time we create alternatives.

Mr. ISBY. Certainly there is no national economy either, and that is the key thing. Narcotics enforcement before a national economy is put in place may not be efficacious. And I point out this is one reason I have been talking about a long-term commitment; many of these problems do not have short-term solutions. The Afghan institutions and the Afghans have to have ownership of the program to suppress the narcotics trade. They are going to take years to train, deploy, and get there which is going to sit poorly with Americans who want solutions now.

Mr. PERITO. Can I take this argument on just for a second? There is a national economy in Afghanistan. It is an opium-based economy. If opium was a legal commodity, Afghanistan would be the poster child for international development. In fact, it is an illegal commodity, and we have an economy which is based on organized criminal activity. That is our first challenge. We have only to look at Colombia for an example of what happens to a society when organized crime becomes the motivating factor in the economy and the driving force in the society. We cannot wait. We have to start doing something about that now.

Senator FEINGOLD. Thank you for your answers.

Dr. GOUTTIERRE. Senator Feingold, I want to quickly——

Senator FEINGOLD. Very quickly because I have got to go.

Dr. GOUTTIERRE (continuing). ——Just ask any of these journalists if they feel there is a sympathy in Afghanistan for in any way a return of the Taliban. No possibility. The lifestyle of the Taliban is an anathema to Afghans. When I lived there for 10 years in the 1960s and 1970s, it was not that kind. Women were not wearing veils. Women were working. Women were even wearing miniskirts. There was an active, modern life in that country. The Taliban style of life is not, in the minds of the Afghan people, a desirable choice.

Senator FEINGOLD. Obviously, I am very pleased to hear that.

Let me just say, Mr. Chairman, I understand obviously you have worked hard to keep Afghanistan from slipping off the agenda of the Congress and the administration. I know you plan to hold another hearing with representation from the administration in the coming weeks, and I want thank you for your continued leadership on this, and I thank the panel for the answers.

The CHAIRMAN. Well, thank you very much, Senator Feingold. Be assured that we will hear from the administration again. Our hope today, of course, was to hear from each of you, some independent benchmarks as to how things are going. We have not asked any of you to take responsibility for this, as we will do with future administration witnesses. It is not that they would have to be overly defensive, but at the same time, you do not have to defend anybody. You can offer your suggestions, which are very helpful, I think, for our consideration. As Senator Feingold has phrased it, I think correctly, we are attempting to make sure Afghanistan remains very much on the agenda, even in the midst of other stories currently that are also very important to us.

Let me just continue the discussion of the narcotics and the poppies. Mention has been made, for instance, of Colombia and before then, Peru and the Upper Huallaga Valley. Those of us who have visited those areas found, just as you have pointed out today, that this is a daunting problem in terms of substitution. If you are a farmer and you are making 10 times as much off of poppies as you can over any visible alternative, this is a very tough choice in a situation in which people are very poor to begin with. What clearly is astonishing for most observers, as you have pointed out, and as I have mentioned in my opening statement, is that as much as half of the gross domestic product of the country comes from opium, from the drug trade. That is a formidable situation. As you pointed out, Mr. Isby, there has to be an economy.

What are the possibilities for the development of an economy? If opium is 50 percent now, what could substitute for it—not just simply agricultural substitution, but what other industries? You mentioned trade. That opens up possibilities, but we have also said that the road system and security are currently, to say the least, pretty dicey, even for governmental officials now. I am just trying to get some sort of a road map in mind. Granted, I know that this is a long-term problem, or at best an intermediate problem, in terms of a substantial solution. What is the prognosis for some successful strategy?

Mr. SCHNEIDER. If I could just speak specifically to that.

The CHAIRMAN. Mr. Schneider.

Mr. SCHNEIDER. If you look at the plan that was submitted by the government of Afghanistan with the support of the World Bank, they identify three major sectors. Actually agriculture is one of those where they anticipate in the short term, in 1 to 5 years, 10 to 15 percent growth per year is possible in cereals, in livestock, and in other areas. Also, as you noted, in industry they focus on transport power as again about the same level of per-year growth and in services. They do, in fact, feel that you can have a fairly successful growth over the course of the next 10 years without having poppies. They also argue that to some degree it undermines the ability for the licit economy to take hold because it brings with it the kind of violence that undercuts the possibility for private investment.

I would just add that poppy cultivation in the case of Afghanistan is somewhat different than the case of cocaine cultivation in Colombia and Peru. The recent surveys that the UN has done show that the Afghan poppy growers turn only about 27 percent of their

land to poppy cultivation, but the bulk of their land is dedicated to other crops, generally food crops. So there is a slight difference in the relative impact of eradication on farm incomes in Afghanistan contrasted to Colombia where the bulk of their land goes to coca or poppy cultivation.

The other fact to remember is that the $2.3 billion is divided, a billion for farmers and $1.3 billion for the traffickers. So I think that one of the things that we would argue, at least I would argue strongly, is to go after the traffickers, focus on interdiction; go after warehousing, laboratories as a first step. Do not forget about eradication, but that is the one where you want to be sure that you are not going after the small farmer and putting him in a situation where he cannot survive. I think that there is a distinction there. In fact, you can then link that to the building up of an alternative rural development program, which everybody recognizes is necessary.

The CHAIRMAN. Mr. Schneider, you mentioned—this I think is an important point—that the Afghan government itself has a plan. Now, a year ago roughly, in June of last year, I met with President Karzai, the Minister of Finance, and other ministers of the Afghan government at the World Economic Forum conference outside of Amman, Jordan. On that occasion, the Finance Minister, as I recall, had a 5-year plan. His plea was both for help from the United States, first of all, in financing what he hoped would be our part of it, and likewise for diplomacy with regard to other countries before a pledging conference that was due shortly thereafter, in addition to others that might come along.

I thought this was very important. I contrasted this, for example, with the fact that in Iraq there was no 5-year plan, not any plan of that sort, unfortunately. So this is prior to the constitution's success and other things that have come along subsequently. I want to highlight that because there is within this government, if we are talking about how Afghans are going to try to move to govern themselves, at least this kind of ongoing line of thought.

What is not clear to most of us is the contents of the plan. You have illuminated some of that today. This is probably going to be helpful not only for members of the American Congress and the American press and so forth, but for everybody who is thinking about this, who seek some idea of what Afghans envision, and how, if the money was provided, you would fill in the gaps, whether it be with the help of our country or internationally.

Mr. Isby, you were wanting to comment.

Mr. ISBY. Certainly. The plan, which Ashraf Ghani Ahmadzai has presented at Berlin, has received general acceptance. I would say, however, more important than the contents of the plan itself is the fact that it is a plan. We can see not just a request for more money, whatever the donors come up with, but a way to get from here to there that they hope will get them away from dependence on international aid.

Now, everyone knows that economic plans, as a whole, have a very poor track record of implementation, but I think the most important thing, rather than as a road map, is as an example of how the Afghans can build their own future.

I agree that looking at the things that create a national economy is important. Currently the Afghan economy is much broken into regional areas which are low-rent annexes to the economies of their neighbors. That is one of the reasons why the emergence of a national economy is going to increase legitimacy and competence of Kabul, when it acquires functions other than simply giving out aid money to regions or to other participants. So making Afghanistan economically viable through trading, extractive activities, and with the help of the Afghan diaspora is critical. That is a key advantage they did not have in the old days. Afghans from overseas have foreign business contacts. The micro-credit projects the Americans have stressed can also help there.

The CHAIRMAN. Mr. Perito.

Mr. PERITO. Yes. There is a difference between Afghanistan and Colombia that I think is worth noting. Other than three major provinces in the south, growing opium poppy is a new experience for most people in the country. This is a recent phenomenon, and it is one that could be rolled back. We have to remember that a couple of years ago when the Taliban decreed that all opium production must stop, it did for 1 year. There is a cultural impediment against growing opium, and that is the moral problems that exist relative to Islam. So that is something we need to utilize for our crusade against narcotics.

Then there are several things that we can do, and we are beginning to do them. The program to begin to create alternative livelihoods has now been funded by Congress, and it is starting in Afghanistan. But this has to be sustained over the long term.

Mr. SCHNEIDER. Could I just add to that?

The CHAIRMAN. Yes, of course.

Mr. SCHNEIDER. That is one of the areas where, it seems to me, that we made a major mistake. We had very little available to fund alternative development for the first several years. When I was in Afghanistan in November, I asked the embassy and was told that they had something like $17 million to $20 million available, total, for alternative development. If you contrast that with the $1 billion farm gate, you can see the impossible situation. Even today, in terms of the funding that has been made available through State and INL (Bureau for International Narcotics and Law Enforcement Affairs), they essentially have about $30 million total from the FY 2002 supplemental and this last FY 2004 supplemental for alternative livelihoods. The rest is focused on eradication and enforcement. It is just not enough.

The CHAIRMAN. Let me ask now about Pakistan. We have touched upon that in several different ways, but each of you has mentioned that they are neighbors, and they have their influence in different ways. In the case of Pakistan, the question was raised, and you responded to Senator Biden, Mr. Schneider, that it was a mistake on the part of the Pakistanis to offer amnesty to various people.

President Musharaf is under great pressure from people in his government and elsewhere. First of all, he faces pressure from us to pursue Al Qaeda and the Taliban. From time to time, there are new Pakistani efforts to do that, that have some vigor. Then after a few weeks, there is less vigor, and the situation comes to a halt

until there is another round, simply because in that particular area of the country, as President Musharaf has explained to us in a couple of coffees the committee has had, as have other Pakistanis, there is a tenuous Pakistani hold. The Afghan government is not the only one that sometimes, in terms of its central government, has difficulty. Some of the territory near the border seems to be among those provinces that are the most tenuous, and that have the strangest election results when pressed by us and others to let democracy work. Democracy does work, but with very adverse consequences toward Musharaf and the central government.

Now, on the other hand, Pakistanis strongly feel that the situation would be very much exacerbated by American troops marching in there and going after Al Qaeda or the Taliban, either one. At this point, Musharaf's difficulties with regard to his maintenance and control of the army and civil society really take a blow and continue taking blows so long as we are there rumbling about. This is bound to lead to a very unsatisfactory situation for a while, for those in Afghanistan who are nearby, because many of our troops are close by on the border, and sometimes they are engaged in military action. Sometimes tragic errors occur, and innocent Afghans are killed. Mistakes are made with regard to intelligence.

So, in the same way that we were talking earlier about how Afghans like us, in some situations that has turned abruptly. Yet we would say, listen, we came over here to try to clean up the Al Qaeda situation and the more orthodox Taliban, and we are still here for that task. In a way, Afghans understand that. They just wish we were more fastidious in our work, more successful with regard to our relationship with Pakistan.

Can any of you foresee some way to offer some blue sky in this situation?

Yes, Doctor.

Dr. GOUTTIERRE. I think if in the textbook on American foreign policy failures, the chapter on Pakistan would be the lead article or the lead chapter. We have not made friends and influenced people. We have made enemies and lost our influence there. And that is with a country which at one time was really very friendly to the United States. I do not think you can find a Pakistani who would use the term "reliable" in describing the United States in any form of the relationship. Every politically correct issue that comes before Congress is visited upon the Pakistanis and our relationship. We have been in and out, and we are back in again because it is in our interest, and that is what Pakistanis see.

We have not yet, I think, convinced the Pakistanis that our presence back in Pakistan is in their interest, and that is where the blue sky has to be sought. We have had our military in Pakistan, as well you know. They were a charter member of the Baghdad Pact, as were Iraq and Iran. It is kind of a sad story there if you take a look at that one. There is only Turkey and the U.S. left of no pact.

But in any case, I think the only way we are going to be able to do this is to find some way to convince the Pakistanis that we are there in their interest. I think Musharaf understands that Pakistan's interest was not being advanced by the influence that the fundamentalists were having upon the Pakistani citizenry. He

came to understand that the pan-Islam was more important to the Pakistani than any pan-Pakistani or Pakistani nationalism. I think that is the element we have to work with.

Pakistan needs a lot of help economically. One of the best things that could happen to Pakistan is to have access to natural gas in Turkmenistan, which will have to travel through Afghanistan because that is the cheapest and most direct route, and Pakistan has a lot of labor that can be put to work in a very sophisticated country in terms of certain industries.

Mr. ISBY. One hopes the U.S. relationship with Pakistan will improve. I mean, unfortunately, in the case of the Pakistani military, even if Musharaf has been brought over to support our Afghanistan policy, the evidence is less clear that this is shared by all military. They see the ethnic, the ethno-linguistic dimension as primary, and their goal is still an ethnic Pashtun government in Kabul that would follow an Islamist agenda comparable to what they believe in. They believe that this is important for Pakistani national security. One of the reasons that the U.S. commitment to Afghanistan is important is to say to the Pakistani military that, guys, this is not going to happen. Instead, work with us. We can deal with your national security concerns other ways.

Now, it would be great if we had another carrot to offer the Pakistanis. It would be great if we could wave a magic wand and create a Northern Ireland solution in Kashmir. That is not going to happen anytime soon. But Musharaf needs to have things more concrete than the designation as a major non-NATO ally to show to his supporters and electorate, to say the future is with the Americans, not the people killing aid workers. Let us go with them.

Mr. SCHNEIDER. If I could just add one thing, Mr. Chairman, and that is I think one of the problems in Pakistan is that we have not emphasized that the government's movement back to democracy is an important objective in our relationship. I think we have issued several reports that we strongly argue that Musharaf in fact could take more action against the radical Islamist groups within Pakistan without endangering his political situation. The evidence that we have had about madrasas continuing to be the source of recruitment for extremists, both with respect to Kashmir, but also with respect to, most importantly, to Afghanistan, is clear. And the steps that Musharaf promised with respect to regulation, of financing, *et cetera,* of those madrasas has not taken place.

The CHAIRMAN. Well, we could have and should have another hearing on Pakistan soon. I wanted to raise this because this is a difficult neighborhood. As all of you know, in terms of our foreign policy prior to 9/11, our relations with Pakistan were nil or barely alive. Suddenly Secretary Powell, in a dramatic meeting I recall somewhere, perhaps over in S. 407 of the Capitol Building, comes over and says to us, you have got to lift all of the sanctions on Pakistan, military, economic, and what have you, now and permanently. This is a new world, new business.

Well, that was a long drink of water all in one statement. Many people asked, all of them? Permanently? After all, there has been an overthrow of democracy. They had a nuclear test, albeit one in India as well, but we ought to have sanctions on them too. Powell replied, lift all of them, at the same time on both.

This is quite an evolution, in fact, almost a revolution in American foreign policy in the region, in a very short period of time. The other steps that are required to build on that relationship—so that both of those countries have confidence in us, are very important. In the meanwhile, we are discussing Afghanistan, which is in the midst of all of this. Iran is a major influence, but that is another story all by itself, as we try to develop American foreign policy in the region. I mentioned this simply because it would be helpful if we could just take Afghanistan in isolation, but of course that is not possible. We understand that, and you have illustrated that.

Dr. GOUTTIERRE. That is what makes doing it right in Afghanistan so important.

The CHAIRMAN. Yes.

Dr. GOUTTIERRE. That is the point. Pakistan with 150 million people compared to Afghanistan with between 15 million and 22 million, whatever people find—there are all kinds of estimates primarily generated by computer programs, not real counts. It is something that we can deal with, and it is in the middle. As I said, location, location, location. It is in the center of it all.

Mr. ISBY. But truly, it is harder to deal with things with the Iranians where we have much less influence, if any, and also things like the nongovernmental money coming out of the Kingdom of Saudi Arabia and the Gulf. With the elections coming up, I suspect the candidates they are going to fund are those which are committed not to traditional Afghan forms of Islam but those who have been paid by Wahabis in the past. This is a time when money is going to be very key. It is also a problem for the Americans who see reconstruction largely as a secular process and are not comfortable with its Islamic dimension. We are going to have to deal with this because, as well as rebuilding the country and institutions, Afghan Islam has to be rebuilt because, since 1978, people have been sending money to Afghanistan for outside strains of Islam from Deobandis, from Wahabis, many different sources. Very few people have been helping and nurturing the Afghan practice of Islam which has been resistant, over 1,300 years, to terrorism and extremism.

The CHAIRMAN. This is why I started with Dr. Gouttierre and his thought that we have some friends in Afghanistan. There is some basis, therefore, to hope that some day that will be the case in greater numbers in the surrounding countries as well. That would be very important for our foreign policy.

Just putting on our hats as people in political life for a while, you go to constituents and they might well ask why in the world are we contributing money to the governments of people who dislike us? Take a look at the polls, and what they think of us, and so forth! Yet this is a long-term situation. The polls may change, but maybe not for quite a while.

At least in Afghanistan, the case being made for doing more, for augmenting the appropriations the administration is asking for and trying to offer amendments that are constructive for those programs, is really a viable situation that I believe has political support in this country. American people want to see success there, and they are prepared to spend some time doing that. We, in our own way, have to keep underlining that.

Well, I very much appreciate your testimony today, both your initial papers, which are a great contribution to our record, as well as your responses to our questions. We look forward to staying in touch with you as this progresses.

Having said that, the hearing is adjourned.

[Whereupon, at 11:42 a.m., the committee was adjourned.]

AFGHANISTAN

APPENDIX

ADDITIONAL MATERIAL SUBMITTED BY THE INTERNATIONAL CRISIS GROUP

ELECTIONS AND SECURITY IN AFGHANISTAN

Kabul/Brussels, 30 March 2004

I. OVERVIEW

Representatives of the Afghan government, the UN and the major donor countries and institutions will assemble in Berlin on 31 March and 1 April for the first high-level diplomatic meeting on Afghanistan in more than two years. The principal objective is to secure substantial long-term aid commitments—the Afghan government seeks U.S.$27.6 billion over seven years. In addition to meeting this global figure, it will be important for donors to make multi-year pledges that provide a basis for predictability and to increase cash on hand for immediate projects over the coming year. All this is needed if Afghanistan's governance and security institutions are to be reconstructed, development goals met, and poverty alleviated.[1]

Unless conference participants also set in train discussion of the political framework within which aid can be effectively utilised, however, they will only be doing part of their job. In particular, there is need to:

- discuss candidly the security failings and other internal obstacles that are seriously hindering implementation of the Bonn Agreement and endangering the success of the September 2004 presidential and parliamentary elections that are meant to promote accountable, democratic government;
- establish much more quickly the promised robust international security presence beyond Kabul, which is vital to the disarmament and reintegration (DR)[2] of Afghanistan's militias and in turn to fostering an environment in which a culture of democratic politics can develop; and
- give greater attention to the legal and institutional infrastructure required for democratic politics.

The international community's failure thus far to extend a strong security umbrella beyond Kabul is perpetuating, indeed deepening, the political and economic power of regional commanders. Even Kabul, where militiamen from Panjshir and Shamali remain concentrated more than two years after their entry into the capital, is not yet demilitarised. NATO still lacks troop commitments from its member states to deploy additional Provincial Reconstruction Teams (PRTs) across northern Afghanistan by September, as its already slow plan for gradually extending its presence in the countryside envisages. Nor has it obtained a commitment of troops for forward-basing rapid reaction forces as originally planned.

[1] The conference will be guided in part by a document, "Securing Afghanistan's Future: Accomplishments and Strategic Pathway Forward," that revises cost estimates for national reconstruction. It was prepared by the Afghanistan Assistance Coordination Authority, headed by Finance Minister Ashraf Ghani, and includes several technical annexes produced by the United Nations Assistance Mission in Afghanistan (UNAMA) that assess, often frankly, the degree of progress made in such key areas as disarmament, demobilisation, and reintegration; police and national army training; and judicial and civil service reforms. Available at http://www.af. *See also,* Finance Ministry, "Press Release on Berlin Conference," 24 March 2004.

[2] For greater simplicity and in the hope that the usage will become more common, ICG employs in its reporting the abbreviation DR, to include, as appropriate to individual situations, the concepts of disarmament, demobilisation, repatriation, resettlement, and reintegration that are elsewhere often abbreviated as DDRRR or DDR.

The new Afghan National Army (ANA) has suffered setbacks that limit its ability to extend the authority of the central government, facilitate DR, and provide security during the elections. Ministry of defence control of the recruitment process initially led to a disproportionate representation of Tajiks in the ANA, a situation that has prompted the U.S. to establish recruitment centres in Jalalabad, Kabul, Gardez and Bamiyan in an effort to encourage a more diversified army. The desertion rate in the ANA reached 10 per cent during the summer of 2003. A number of measures have been taken to address the desertion problem but the present strength of approximately 7,500 is still far short of the 40,000 projected by Coalition officers.[3]

DR programs to cut down the many militias around the country are going slowly. The proposed establishment of new Special Forces-led militia units (Afghanistan Guard Forces, AGF) would cut across those programs, providing a disincentive to DR. There is, moreover, no publicly disclosed plan for the eventual disarmament and demobilisation of the AGF. The hazards in the AGF concept include increasing the authority and armament of militia commanders as well as potential command and control problems.

President Hamid Karzai has yet to issue either a draft electoral law or a presidential decree on the provincial and district boundaries that would form electoral constituencies. The registration of political parties has proceeded very slowly, in part due to a cumbersome structure for registration that involves screening by six different government departments or ministries, but also due to political pressure exerted by fundamentalist leaders. Only about 1.5 million voters out of an estimated potential electorate of 10 million have been registered, and those unevenly. Registration is markedly lower in the south and southeast in both absolute numbers and the proportion of women.

There is a real risk that elections under present conditions will merely confirm an undemocratic and unstable status quo. To avoid this, the international community needs to make serious efforts over the next few months to invigorate the disarmament and reintegration process, guarantee the independence and impartiality of electoral institutions, and ensure that Afghan authorities create opportunities for non-militarised political parties and independent candidates to participate meaningfully in the electoral process.

II. DISARMAMENT AND REARMAMENT

The salient feature of the UNDP-managed DR fund, known as Afghanistan's New Beginnings Programme (ANBP), is that it is an essentially voluntary process, with the ministry of defence having ultimate authority to identify the target personnel. The program is intended to cover 100,000 militiamen over three years; that figure is based on negotiations with the ministry not on informed estimates of the actual number of active-duty and reserve forces affiliated with the militias. The UN Assistance Mission in Afghanistan (UNAMA) estimates the maximum number of troops in the militias recognised by the ministry at 45,000.[4] ICG's own observations at militia corps and division bases, coupled with interviews with Afghan professional officers, suggest that the number of active duty personnel is lower still. The elasticity of membership in militia units and the paucity of information about district level command structures make any projection of potential strength inherently speculative.[5]

With most militia commanders maintaining only a relatively small number of combatants on active duty but retaining the capacity to mobilise many more through "team leaders" (sargroups) in each village, the scope for abuse of the process is considerable. Not surprisingly, the first ANBP pilot project in Kunduz—which collected arms from 1,008 former combatants, slightly above the target figure of 1,000— yielded a high proportion of effectively demobilised combatants: small farmers who had not seen active combat since the intervention against the Taliban in the northeast.[6] Moreover, some troops ostensibly demobilised during the subsequent pilot project in Mazar-i Sharif were later re-recruited by their commanders. There is inherent risk in downsizing, rather than decommissioning militia units.[7]

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[3] *See* Dr. Antonio Giustozzi and Mark Sedra, "National Army: Technical Annex," in "Securing Afghanistan's Future," *op. cit.*

[4] Ibid.

[5] *See* ICG Asia Report No. 65, Disarmament and Reintegration in Afghanistan, 30 September 2003.

[6] Mark Sedra (BICC/UNAMA), "Disarmament, Demobilisation, and Reintegration of Ex-Combatants," in "Securing Afghanistan's Future," *op. cit.*

[7] ICG interview with an ANBP official, 25 March 2004.

A major impasse developed in early 2004 over ANBP implementation in the central region, encompassing the provinces of Kabul,[8] Parwan, Kapisa, Wardak, and Logar, and including the key units directly accountable to Vice President and Defence Minister Mohammad Qasim Fahim. The main phase of DR there was originally slated for February but was stalled by the defence ministry. The Army Chief of Staff, General Bismillah Khan, insisted that all pilot projects should be completed before the main DR phase was launched in Kabul.[9] Subsequent developments led some international observers to speculate that the ministry was attempting to stall those other pilot programs in order to protect the militia presence in Kabul. Getting the ministry to field its operational groups (the units assigned to the ANBP for registration, collection, and storage of weapons, and other tasks) has been a persistent problem, as has been delivery of vehicles for the operational group assigned to the Kandahar pilot project.[10]

Defining the scope of the main phase of DR was contentious as well. The UN and Japan, the program's major donor, maintain that the objective should be the decommissioning of entire divisions, leading to a 40 per cent reduction prior to elections in the overall size of the Afghanistan Military Forces (AMF), as the militias are collectively known. The ministry proposed instead that the size of each militia be reduced by 40 per cent, leaving their structures intact and therefore the formal authority of each of their commanders. DR would thus become a cosmetic exercise in which militias currently enjoying the status of divisions would be downgraded to battalions, battalions would be downgraded to regiments, and so on.[11]

A compromise reached on 25 March 2004 by UNAMA, the ANBP, President Karzai, and Defence Minister Fahim, in the presence of U.S. Ambassador Zalmay Khalilzad, entailed only modest concessions by the minister. Under its terms, a 40 per cent reduction in the size of the AMF is to be achieved by decommissioning 20 per cent of the units and downsizing a further 20 percent by July 2004. The decommissioning is projected to include four Kabul-based units: Division 7, composed of Badakhshani and Panjshiri troops, linked respectively to former President Burhanuddin Rabbani and Fahim; Division 10, composed of troops from Paghman, linked to Ittihad i-Islami leader Abd al-Rabb Rasul Sayyaf; Division 31, composed of Hazara troops from the Harakat-i Islami faction led by Agriculture Minister Sayyid Hussain Anwari; and Regiment 42, a Pashtun unit. Of the units to be decommissioned, the most significant politically would be Division 10, based in West Kabul, near Sayyaf's stronghold of Paghman; neither Rabbani nor Anwari wield much authority in the capital.[12]

Two of the three units in Kabul directly linked to Fahim, Divisions 1 and 8, composed largely of troops from Panjshir and Shamali, are slated only for downsizing.[13] The failure to decommission these units ultimately reflects inadequate pressure on the defence minister from Coalition members, a result perhaps of the erroneous assumption that Fahim's present support for Karzai makes the disarmament of his forces less critical. Unless that pressure is brought to bear by July 2004, when the status of the three units will again be open to negotiation, however, Fahim will not only be able to project, but arguably even enhance his authority during the election campaign. Further progress on DR, as well as credible reforms in the defence ministry, would be compromised as a result.

Another potential set of hurdles for DR and political stability lies in a Coalition plan to re-equip and retrain militia units to support Special Forces units in counter-insurgency operations. First disclosed in January 2004, the plan originally entailed creating a Pashtun force for operations in the Pashtun-populated east and southeast. The prospect of a revamped force drawn from Pashtun militias was immediately seized upon by General Khan as a pretext to shelve DR in Kabul. His statements were echoed by other Tajik commanders as well as non-military personalities associated with the former United Front (Northern Alliance).

"The [DR] process is moving slowly because most people don't see it as a just and fair process," Mohiuddin Mahdi, a leader of the Nazhat-i Milli party, told ICG. "In parts of Afghanistan, arms are being distributed, new militias are being created. In

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[8] Conversely, provincial division commanders interviewed by ICG in Takhar and Khost, in July and August 2003, argued that DR should be implemented in Kabul prior to its roll out in the provinces. *See* ICG Asia Report, Disarmament and Reintegration in Afghanistan, *op. cit.*

[9] ICG interview with a diplomat in Kabul, 13 March 2004.

[10] ICG interview with a diplomat in Kabul, 25 March 2004. Weapons that are collected in the program are brought to Kabul and stored at the Afghan National Army base, under a dual key system that prevents the ministry of defence from having unilateral access to the storage containers.

[11] *Ibid.*

[12] ICG interviews with diplomats in Kabul, 26–28 March 2004.

[13] *Ibid.*

other parts, militias are being disarmed."[14] The new Afghanistan Guard Force (AGF) is accordingly now being reconceived by the Coalition as a multiethnic force.

The top-ranking U.S. military and political representatives in Afghanistan, Lieutenant General David Barno, who commands the Coalition forces, and Ambassador Zalmay Khalilzad, have publicly discussed the AGF in terms of a proposal.[15] Members of the diplomatic community in Kabul, however, accord it much greater weight. One reason for the concept is that the U.S. military is simply overstretched in Afghanistan and will be hard pressed to meet its force requirements for a spring offensive without significant Afghan auxiliaries. Each of the Special Forces units deployed in Afghanistan, known as Operational Detachment Alphas (ODAs), is intended to have twelve members but the average is now down to eight.[16] The delay in extending NATO/ISAF forces beyond Kabul in sufficient size adds to the current security vacuum.

The size, composition and relationship to the ministry of defence of the proposed AGF are still undetermined. In January 2004, when the Coalition linked its proposed mandate to election security, the goal was to have 3,000 troops trained by March and 5,000 by June—the date by which the Bonn Agreement of 2001 envisaged elections being held.[17] According to an informed source, the current projected goal involves having 100 militiamen attached to each ODA. Vetting procedures remain undefined but the recruits are likely to be drawn from units that have been handpicked by the Special Forces, in other words, those with whom they already have field experience.[18]

The AGF strategy is risky, not least for its impact on DR. Though the Coalition initially maintained that AGF troops would be paid less than their counterparts in the Afghan National Army, their wages plus food, clothing, and accommodation would far outstrip the flat rate of 800 Afghanis per month that militiamen (AMF) receive from the defence ministry (and often those salaries arrive months late or are siphoned off by commanders). As a result, resistance to DR is reportedly growing among AMF troops in the south, who hope that they might instead find employment in the AGF.[19]

Most problematic, however, is the absence of a DR strategy for the AGF itself. Rearmed, and in many cases remobilised, the AGF would likely entrench the power of their commanders at a time when donors expect the Karzai administration to demonstrate its authority in the provinces. If not included in a DR program, the AGF could pose a challenge to the new army once the Coalition presence is scaled back. There is also the problem of countering the predatory behaviour that Afghan militia forces have engaged in over the last twenty years. If this is not guarded against in the proposed AGF through careful vetting of personnel and adequate training, U.S. Special Forces in command responsibility could be held ultimately responsible for abuses.

III. ELECTION INSTITUTIONS AND SECURITY ARRANGEMENTS

President Karzai announced on 28 March 2004 that simultaneous presidential and parliamentary elections would be held in September, three months later than envisioned in the Bonn agreement. The delay reflects concerns within UNAMA and among donor agencies assisting the election process about the low levels of voter and political party registration, as well as the absence of a firm security strategy for the elections. Much remains to be done in the interim to convince the Afghan public that the election process will be not only reasonably free and fair, but also meaningful.

The legal framework for the elections remains unclear. A draft election law has been under revision by the Joint Election Management Board (JEMB), the mixed Afghan-UN commission the Afghan component of which was appointed by Karzai and which has the mandate of managing the electoral process. It has been antici-

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[14] ICG interview with Mohiuddin Mahdi, Nazhat-i Milli, Kabul, 13 March 2004.

[15] Referring to a question about "a proposed national guard," General Barno was reported to have said it would number between 5,000 and 6,000 troops selected from existing militias under the ministry of defence's control. "Security Not Main Issue for Polls: U.S.," Dawn, 2 March 2004. Ambassador Khalilzad said, "We are considering building a 5,000-man Afghan Guard Force to give increased security in the short term especially in the south and east." "Remarks by U.S. Ambassador and Special Presidential Envoy Zalmay Khalilzad during Ghazni PRT Opening," 4 March 2004. Also, ICG interview, Tim Wilder, deputy director for Afghanistan, U.S. State Department, Washington, DC, 11 February 2004.

[16] ICG interview, Kabul, 9 March 2004.

[17] As noted in fn. 16 above, General Barno has recently spoken of a possible 5,000 to 6,000-man force, and Ambassador Khalilzad of a 5,000-man force.

[18] ICG interview, Kabul, 9 March 2004.

[19] *Ibid.*

pated that the law will be promulgated by the president prior to the Berlin conference. The draft does not address what is likely to be one of the most controversial issues: the provincial and district boundaries that will serve as electoral constituencies. This will instead be dealt with in a presidential decree, which must be issued at least 90 days before the election.[20]

Registration to date has been markedly uneven, with respect to both region and gender, according to data collected and analysed by JEMB. As of late February 2004, the multiethnic central region, including Kabul, had by far the highest share of registered voters, 42 per cent, followed by the mainly Pashtun east and the mainly Persian-speaking west, each at approximately 15 per cent. There were far lower rates in the Pashtun-majority south and south east, 5 per cent and 3 per cent respectively. The mainly Hazara central highlands had the highest proportion of registered women, 42 per cent of the total, followed closely by the West, at 37 per cent. The lowest proportions were recorded in the south and south east, where women made up less than 20 per cent of the total.[21] These disparities, if reflected in the election, are likely to yield results with a pronounced northern and central bias.

The first phase of registration has been limited to the eight major urban centres and has included a civic education campaign supported by the International Foundation for Election Systems (IFES) and aimed at government employees. Plans to carry out an accelerated three-week registration drive during May, with a goal of registering 6.5 million voters, were shelved in late March due to delays in appointing qualified local staff and obtaining registration kits and to allow for prior civic education efforts in rural areas. Postponement of the elections to September will, according to election officers, compensate by allowing additional time for registration. To address regional disparities in both absolute numbers and women registered, an elections officer told ICG, there have been efforts to mobilise traditional elements, such as elders in Khost, and clerics. The latter issued a resolution in Kandahar that addressed in part the need to register women voters.[22]

Afghanistan's new constitution recognises the right to form political parties, but with certain qualifications. A welcome restriction, reflected as well in the law on political parties, prohibits the participation of parties that have "military or paramilitary aims and structures." Other provisions, however, act as barriers to free association by barring the formation of parties whose charters are "contrary to the principles of [the] sacred religion of Islam" or that are based on ethnicity, language, religious sect or region.[23] Some authorities have defined fundamental principles of Islam to include any principle agreed upon by the major schools of jurisprudence (fiqh); a party whose charter calls for full equality before the law of women and men could by this reasoning be defined as contrary to Islamic principles. Prohibiting the registration of ethnic parties could limit the ability of ethnic groups to seek redress for perceived injustice or discrimination through the electoral process or to articulate and advance the demands and interests of their communities.

To date, 27 political parties, including both mujahidin factions and non-militarised parties established after the collapse of the Taliban, have applied for registration at the justice ministry's Office for Coordination and Registration of Political Parties and Social Organisations. Five have been registered,[24] while eight have completed the registration process and are awaiting screening for compliance with the constitution and the political parties law by the ministries of interior, defence, and finance, the National Security Directorate (NSD), and the Japanese Embassy, acting on behalf of the DR program. Many observers believe the registration process has been slow and may minimise the potential for non-militarised political parties to participate actively in the upcoming elections.

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[20] ICG interviews, Kabul, 13 March and 26 March 2004.

[21] Joint Electoral Management Board (JEMB), "Voter Registration Analysis: Week Ending 26th February 2004."

[22] ICG interview, Kabul, 13 March 2004.

[23] Constitution of Afghanistan, Article 35.

[24] The following political parties have been registered as of 25 March 2004:

- Republican Party of Afghanistan, led by Sebghatullah Sanjar, a 36-year-old former member of the Emergency Loya Jirga Commission with a degree in political science from Kabul University.
- National Unity Movement, led by Sultan Mahmud Ghazi, a cousin of the former Afghan King Muhammad Zahir. The formerly royalist party has been supporting President Karzai since the Constitutional Loya Jirga.
- Party of National Solidarity of Youth of Afghanistan, led by Muhammad Jamil Karzai.
- Party of Islamic Independence of Afghanistan, led by Faruq Najrabi.
- Party of National Unity of Afghanistan, led by Abdurrashid Jalili, a former member of the Khalq faction of the communist People's Democratic Party of Afghanistan. ICG interviews, Kabul, 25–26 March 2004.

A ministry of justice official told ICG that most of the new political parties have been unable to meet the criteria specified in the law and that some have failed to furnish a list of 700 members, the minimum required to form a political party. Independent observers identified other bottlenecks, including administrative difficulties in getting the ministerial and NSD members of a review committee to convene. According to the official, a permanent committee is now being constituted with secondments from each of the concerned ministries and the NSD, in the hope of expediting the review process. USAID is helping to identify space for the registration office, which is currently very limited.

The Kabul-based Republican Party of Afghanistan, led by a liberal former Emergency Loya Jirga commissioner, Sebghatullah Sanjar, was the first to be registered. Though the process took two months, Sanjar holds a benign view: "They [the justice ministry] carefully assessed our applications and copies of the national ID cards of our members to make sure one person was not a member of more than one party at the same time. These types of inquiries are good and right indeed. We believe in both lawfulness and political pluralism."[25]

The obstacles encountered by the United National Party (UNP), formed by former members of the Parcham faction of the communist People's Democratic Party of Afghanistan (PDPA), point to serious weaknesses in the registration process, however. According to a party member, the UNP was the first to submit a complete application but has yet to be registered. "Apparently, the minister [Abdul Rahim Karimi] is under pressure by fundamentalist mujahidin such as Shinwari, Sayyaf, Rabbani and Asif Muhsini, not to register our party," the party member said. "During a meeting with us the minister acknowledged that he is under pressure."[26] These allegations, which have also been related to ICG by international observers, are significant not only because the former Parchamis have a large national constituency, particularly among the professional classes in urban areas, but also because the stigma of being former communists can and has been used against other socially liberal political actors.

Though very few mujahidin parties have yet applied for registration,[27] some are in the process of establishing front parties and nominating new leaders in an attempt to circumvent a prohibition in the law of parties that maintain armed forces. Sayyaf's Ittihad-I Islami faction, for example, has been recently reconstituted as Dawat-i Islami with his deputy, Ahmad Shah Ahmadzai, formally assuming leadership of the party. Enforcing the intent of the political parties law will, in the current security environment, pose a challenge for the registration office.[28] The likely influence of powerful fundamentalists on the registration process, the relative vulnerability of Minister Karimi, an Islamic law professor from Takhar who lacks an independent power base, and the administrative obstacles would argue for including on the permanent review committee a member of the Afghan Independent Human Rights Commission and, for this election, UNAMA.

Likewise, maintaining the independence and effectiveness of the JEMB and the election secretariat is vital to the process. Both non-militarised parties and international observers have questioned the effectiveness of the Afghans whom President Karzai appointed to the JEMB. "The formation of the election commission [JEMB] has been entirely based on the relationship of the officials with different individuals," said the UNP member. "They have not considered the qualifications and competencies of the people they have appointed there."[29] That sentiment was echoed as well by Sanjar, who maintained, "The election commission lacks adequate experienced and competent staff to carry out an effective registration process."[30]

The objectivity of a panel whose composition is determined or unduly influenced by the president, who is himself a candidate, will inevitably be disputed. The constitution mandates establishment of an independent electoral commission by the Transitional Administration; this should be treated as a priority, with criteria for membership defined beforehand and approval required by the cabinet and the Afghan Independent Human Rights Commission.

The main obstacle faced by non-militarised parties and genuinely independent candidates, however, is the lack of adequate security assurances. "Young parties like ours won't be able to take part in the election if ISAF is not expanded to ensure

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[25] ICG interview with Sebghatullah Sanjar, Republican Party of Afghanistan, 14 March 2004.
[26] ICG interview with a United National Party member, 13 March 2004.
[27] Those that have applied include Jamiat-i Islami, led by former President Burhanuddin Rabbani.
[28] ICG interviews, Kabul, 25–26 March 2004.
[29] *Ibid.*
[30] ICG interview with Sebghatullah Sanjar, Republican Party of Afghanistan, 14 March 2004.

our security outside Kabul," Sanjar said. "Obviously, we can't compete with provincial governors who have guns and all [other] resources under their control."

Current plans call for the creation of a security ring around voter registration sites, with successive zones of authority patrolled in turn by trained police, the Afghan National Army, and either a Coalition or ISAF quick-reaction force, with medevac, intelligence, and logistics capabilities.[31] All three elements of this security arrangement are tenuous propositions, however. Training for police officers in the German-administered Police Academy in Kabul and constables in the seven U.S.-supported regional training centres established since November 2003 will not keep pace with the numbers required for election security. The interior ministry is accordingly attempting to expedite the deployment of 30,000 police for the elections through a "train the trainers" program,[32] a task that should be measured against the three-year timetable intended for training 50,000 constables and 12,000 border guards in the regional training centres.[33] The ANA, as mentioned earlier, has problems of attrition and is stretched by its current deployments as presidential guard, in counterinsurgency operations in the south east, and since mid-March, in Herat, following armed clashes between forces loyal to provincial governor Ismail Khan and the Kabul-backed 17th Division.

While the planned measures may well reduce the potential for interference during the voting itself, security during the campaign will be contingent on the extent to which DR has been carried out and international security arrangements extended beyond the capital. At present, NATO has command over both the ISAF contingent in Kabul and the German-led Provincial Reconstruction Team (PRT) in Kunduz. Its planners hope to complete the first of a four-phase NATO expansion across the country with new PRTs in Maimana and Faizabad by June 2004. This would be substantially later than conceived when NATO ministers approved ISAF expansion in October 2003.[34] At this time, the British-led PRT in Mazar-i Sharif and possibly the New Zealand-led PRT in Bamiyan would come under NATO authority.[35]

Phase two of the NATO expansion should be concluded by September. This entails new PRTs in the towns of Chagcharan, Qala-i Nau, and Farah and assuming command over the existing PRT in Herat (currently U.S.-led but expected to be taken over by a European country, an arrangement that may be reviewed in light of the internal armed conflict in Herat in late March and the subsequent deployment there of 1,500 ANA troops). Current and planned PRTs across virtually the entire Pashtun belt, extending from Kunar province up to the border of Farah province, will be under the authority of the U.S.-led Coalition and be staffed by U.S. army personnel. Though these eastern and southern regions are due to be covered during phases three and four of the NATO expansion, target dates have not been identified.[36]

The approach taken by Britain in Mazar-i Sharif, and intended to be echoed by a joint Nordic PRT,[37] involves an explicit focus on security, including patrols, support for security sector reform, and the maintaining of small detachments in neighbouring provinces. If additional PRTs along this model are established in the northern and north eastern provinces by June,[38] they may indeed have a positive impact on security during the election campaign, even if their presence would be insufficient to guard against intimidation and election-related violence in outlying areas. (Phase two of the PRT expansion is unlikely to have a comparable impact on election security unless it is completed well before September). However, the emphasis on reconstruction projects by the U.S.-led PRTs, together with the diminished staffing levels that are reportedly accompanying their expansion,[39] will do little to promote security in the southern and eastern provinces during the run up to elec-

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[31] ICG interview, Kabul, 9 March 2004.

[32] ICG interview with a diplomat in Kabul, 25 March 2004.

[33] *See* Mark Sedra, "National Police and Law Enforcement: Technical Annex," in "Securing Afghanistan's Future," *op. cit.*

[34] ICG interview, November 2003.

[35] An alternative proposal is to establish satellite missions in Faizabad and Baghlan, linked to the PRT in Kunduz.

[36] *Ibid.*

[37] ICG interviews with a diplomat in Kabul, 16 and 25 March 2004. *See also* Nahim Qadery, "Scandinavians to send troops: Swedish ambassador visits northern Afghanistan ahead of expected troop deployment," Institute for War and Peace Reporting (IWPR), Afghan Recovery Report, No. 112, 26 March 2004. The report cites Swedish ambassador Ann Wilkens as saying that Norway and Sweden plan to contribute a combined force of 60 to 80 soldiers to the British-led PRT in Mazar-i Sharif, in May or June 2004.

[38] *See* comments by Gen. James Jones, NATO Supreme Allied Commander, in "NATO ready to take wider role in Afghanistan Command Structure," *Financial Times,* 11 March 2004.

[39] As one international observer put it, "the Coalition is doubling [the number of] PRTs by halving the number of people." ICG interview, March 2004.

tions. "It's a hearts and minds campaign for Americans, not for Afghans," a Kabul-based diplomat said of the Coalition PRTs.[40]

UNAMA has defined a series of benchmarks that will have to be met prior to elections if they are to be considered free and fair. These have received the backing of the main diplomatic envoys to Afghanistan. Security figures prominently among these benchmarks, with stipulations that include:

> . . . a vigorous [DR] program aiming at the cantonment of 100 per cent of heavy weapons and the demobilisation and reintegration of no less than 40 per cent of the AMF troop strength, . . . [and] promoting the deployment by NATO and the Coalition of international military forces, both static and mobile, in numbers large enough to assist effectively domestic security forces in the protection of the electoral process against extremists' attacks and factional intimidation and interference.[41]

The international community should treat these recommendations as binding, and elections should be held only when the necessary measures have been implemented.

IV. EMERGING POLITICAL FAULT LINES

The signal event during the Constitutional Loya Jirga was the consolidation of Pashtun delegates behind President Karzai, which ensured the retention in the draft of a strong presidency. Rather than representing a spontaneous development, this consolidation appears to have been the outcome of concerted lobbying by Karzai's principal advisers and allies, including his brothers Qayyum and Ahmad Wali Karzai and certain high-level Pashtun officials in the central government. The decision by the pro-Karzai camp to cultivate an ethnic support base had a profound impact upon the delegates, whose debates over such critical issues as the extent of presidential powers and the status of minority languages split decisively along Pashtun and non-Pashtun lines. An alternative strategy, which would have required a greater willingness to limit presidential powers in the constitution and correspondingly strengthen those of parliament, could have avoided this polarisation and helped maintain the president's standing as a national figure.

An important element of the pro-Karzai camp's strategy was to secure the support of Pashtun mujahidin, formerly associated with the Hizb-i Islami factions led by Gulbuddin Hikmatyar and Yunis Khalis, as well as Sayyaf's Ittihad-i Islami. The incorporation of former Hizb-i Islami personalities into the government has accelerated since the Constitutional Loya Jirga, an indication that the support extended to Karzai by the party's erstwhile members may be more than a short-term alliance.[42] Sayyaf, while promoting a more radically Islamic agenda than that reflected in the draft constitution, was relatively muted in his protests when his party's proposals were rejected and is reported to have played a conciliatory role during disputes over the draft.

Simultaneously, most delegates from the royalist National Unity Movement, a mainly Pashtun party with considerable strength in southern and eastern Afghanistan, abandoned their support for a parliamentary system during the Constitutional Loya Jirga and threw their weight behind Karzai. This shift was due in part to pressure exerted upon them during the delegate elections. According to a royalist leader, party members in Oruzgan province were threatened with arbitrary detention by provincial officials if they did not support candidates favouring a presidential system. But the decisive factor appears to have been pragmatism. "We want to support Karzai because he is the person the U.S. and the West have confidence in," the same leader said. "Without the support of Western countries, we can't protect our [country's] independence."[43]

That the President's camp chose to focus its attention on Pashtun delegates was not in and of itself surprising. Support for a centralised, presidential form of government is considerably weaker in the north, particularly among Hazaras and Uzbeks, who have rarely held positions of leadership at the centre. In addition, Pashtun delegates had felt themselves marginalised during the Emergency Loya Jirga in June 2002, when Tajiks associated with the dominant Shura-yi Nazar faction had leveraged their control of key security institutions to confirm their positions in the cabinet. The Constitutional Loya Jirga offered them an opportunity to redress those

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[40] *Ibid.*

[41] *See* UNAMA, "Holding a Free and Fair Election in Afghanistan" [undated].

[42] In the weeks since the Constitutional Loya Jirga, the president has appointed a number of former Hizb-i Islami (Hikmatyar) commanders and political figures to high-level posts, including Bashir Baghlani as governor of Farah, Khyal Mohammad as governor of Zabul, and Sabawoon as minister-adviser in the Ministry of Border and Tribal Affairs.

[43] ICG interview with a royalist party leader, Kabul, 11 January 2004.

grievances, particularly with a dominant Pashtun presence in the Constitutional Commission's secretariat and the exclusion of the Panjshiri-dominated National Security Directorate from the Loya Jirga compound.

Since the Emergency Loya Jirga, Shura-yi Nazar has succumbed to sharp internal rifts, with Vice President and Defence Minister Fahim now seen to be supporting Karzai, a decision likely informed by his expectation that the president will name him as his running mate during the presidential election. The mantle of challenging Karzai has been taken up Ahmad Wali Massoud, Afghan ambassador to the United Kingdom and brother of the late Panjshiri commander Ahmad Shah Massoud; Hafiz Mansour, the editor of the weekly newspaper, Payam-i Mujahid; Mohiuddin Mahdi of Nazhat-i Milli, and other non-military figures associated with the former United Front.

They have approached Abdul Rashid Dostum's Junbish-i Milli-yi Islami, Herat governor Ismail Khan, the Shia parties Hizb-i Wahdat and Harakat-i Islami and a few minor parties in the hope of forming a "Front for Justice and Democracy" that would field a common candidate during the presidential election. This front would campaign around a limited set of objectives: proportional representation in parliament based upon a new census, direct election of provincial governors, and repeal of all changes made to the text of the constitution following the conclusion of the Constitutional Loya Jirga.[44]

The chief limitation facing its organisers at present is the lack of firm support from a major regional commander—a circumstance one ascribed to the militia leaders' opportunism. "The commanders are supporting those who are supporting them, who have confirmed them in their posts, who are paying them," he said.[45] Although the proposed front's leaders claim to be building a national alliance, their concerns and appeals are clearly regional and ethnic in nature. In early January, one privately speculated that the pro-Karzai camp's cultivation of Pashtun support during the Constitutional Loya Jirga reflected a "strategic imperative for Karzai and those around him to restore Pashtun hegemony."[46]

The removal on 7 March 2004 of Haji Mohammad Mohaqqeq, a presidential candidate and former leader of the Hizb-i Wahdat forces in northern Afghanistan, as planning minister illustrated the continued sensitivity of ethnic representation at the centre. In a press conference the following day, Mohaqqeq accused Karzai of firing him during a cabinet meeting for criticising a decision to transfer some of his ministry's powers to Finance Minister Ashraf Ghani, an ethnic Pashtun, and in retaliation for announcing his intention to run for president.[47]

Although Mohaqqeq had been widely considered an ineffective minister, he frequently spoke in the name of the Hazara community. In announcing his presidential candidacy, he said he was doing so to demonstrate that a Hazara could run for the highest office.[48] His dismissal less than two months after the declaration of that candidacy prompted Hizb-i Wahdat leaders in Mazar-i Sharif to organise a 2,000-strong demonstration against Karzai on 12 March 2004.[49] In informal conversations, ICG found that there was also great resentment among ordinary Hazaras in Kabul toward Karzai and his perceived ally, the Hazara Vice President Karim Khalili. The circumstances surrounding Mohaqqeq's dismissal are thus likely, in the short term at least, to enhance his standing among Hazaras and diminish Karzai's credibility.

V. CONCLUSION

Political reconstruction in Afghanistan has frequently been equated with the extension of the central government's authority. Less attention has been paid to the development of democratic norms. The country's long-term stability, however, rests on the ability of its institutions to accommodate the latter process and to provide

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[44] ICG interview with Mohiuddin Mahdi, Nazhat-i Milli, Kabul, 13 March 2004. The organisers of the front would object particularly to the current text of Article 64 (2). The Dari and Pashto texts approved by the Constitutional Loya Jirga stated that the president's power included "determining basic policies of the state with the approval (taswib)" of the parliament. The published Dari and Pashto texts of the constitution replaced taswib with taid, a word meaning "confirmation." According to Front organiser Hafiz Mansour, taid does not include the right to reject, and was introduced in the text to weaken the parliament further.

[45] ICG interview, Kabul, March 2004.

[46] ICG interview, Kabul, 8 January.

[47] Karzai's spokesperson, Jawed Ludin, claimed that Mohaqqeq had resigned following a dispute with the president during a cabinet meeting. Amin Tarzi, "Dispute Erupts Over Afghan Minister's Purported Resignation," Radio Free Europe/Radio Liberty, 11 March 2004.

[48] Hizb-e-Wahdat Islami Afghanistan Political Committee, "Press Release: Ustad Mohaqiq will run for president of Afghanistan," 20 January 2004.

[49] Nahim Qadery and Sayed Yaqub Ibrahimi, "Street Protests After Minister's Removal: Demonstrators in northern city demand reinstatement of leading Hazara minister," Institute for War and Peace Reporting (IWPR), Afghan Recovery Report No. 110, 17 March 2004.

channels through which the various components of Afghan society can find political expression. The debates during the Constitutional Loya Jirga on the relative powers of the president and parliament, as well as symbols of the state such as its national and official languages, underscore the imperative of accommodating these competing interests. But democratic institutions can only develop in an environment that allows open discussion about governance, something that continues to elude Afghanistan more than two years after the signing of the Bonn Agreement.

Without a reinvigorated DR process, political and economic life in both the centre and the provinces will continue to be dominated by the gun or the shadow of the gun. Elections under the prevailing conditions will only confirm this reality—something that is understood by the commanders who control the ministry of defence and have steadfastly resisted efforts to dismantle their militias. The limits of the present DR process should now be evident: unless the authority responsible for DR, namely the ANBP, is backed by a credible deterrent, there will be no incentive for commanders to surrender the bases of their political and economic influence. That deterrent could be provided through NATO, the Coalition, or a combination of the two, but neither force is present in sufficient strength to project its authority over the larger part of the country or considers that it is presently mandated to take part in DR.

NATO's planned four-phase expansion across Afghanistan provides a framework within which to create an interim security regime that would enable DR and facilitate the rebuilding of Afghanistan's own security institutions. But NATO's appeal to member states to contribute a modest three battalions in the north to cover the first two phases of that expansion has yet to result in a single firm commitment. This limited first step must be taken very quickly if the near-term objective of defensibly free and fair elections and the longer-term administrative and security sector reforms proposed by the central government are to be realised.[50] The alternative would be continued accommodation of, and reliance upon, militia commanders by the central government and the surrendering of reforms.

The poor integration of Coalition counter-terrorism strategy with the Bonn political process needs to be replaced by far closer coordination between the two. The establishment of an Afghanistan Guard Force without a DR plan or apparently even consideration of its potential impact on the ANBP and on political stability is a glaring illustration of the extent to which military planning is proceeding in isolation from the Bonn process. Donor states, even as they commit with their checkbooks during the Berlin Conference to helping Afghanistan over the long haul, should make it an urgent priority to harmonise these disparate elements by promoting transparency and consultation between military and political planners. Kabul/Brussels, 30 March 2004

ADDITIONAL MATERIAL SUBMITTED BY THE UNITED STATES INSTITUTE OF PEACE

ESTABLISHING THE RULE OF LAW IN AFGHANISTAN

BRIEFLY

- In most of Afghanistan, the rule of law has never been strong, but after 23 years of warfare it has been displaced almost completely by the "rule of the gun." In most of the country, regional power-holders, whether they hold official positions or not, effectively exercise political, police and judicial authority through their control of militia forces.
- The justice system and law enforcement suffer from a very low level of human resource and physical infrastructure capacity. In addition, the discontinuity of regimes over the last quarter century has left a patchwork of differing and overlapping laws, and an incoherent collection of security structures. Rebuilding and reform will require the commitment of Afghan authorities and foreign donors over a long haul.
- No national civilian police force yet exists in Afghanistan. The approximately 50,000 men working as police are generally untrained, ill-equipped, poorly paid,

[50] Early realisation of the NATO plan for two forward bases in Mazar and Herat with distinct 1,000-strong rapid reaction forces would also be highly desirable. "NATO gets aggressive on forces for Afghanistan," Reuters, 10 March 2004. *Also* ICG interview, Washington DC, March 2004.

and illiterate, and they owe their allegiance to local warlords and militia commanders rather than to the central government. U.S. and German police training programs have begun efforts to shape a national force. From July 2003 through 2005, the United States plans to conduct in-service training for 50,000 police in Kabul and at regional centers. Germany will train a much smaller number of officers in a more comprehensive program at a reconstructed Police Academy in Kabul. No efforts appear underway to reform the parallel and secretive intelligence police under the control of the National Security Directorate.

- Though Afghan and international officials often refer to rule of law development as a high priority, the necessary measures are not being treated with urgency, except for police training. In the justice sector, no strategy has been agreed upon for the reform and rebuilding process. Donors have left this task largely to "lead nation" Italy, whose performance and approach is seen by other donors and Afghan officials and observers as more narrowly focused. Fractious relations among the Afghan stakeholder institutions and the inability of the Judicial Reform Commission to play the coordinating and facilitating role envisioned for it have hobbled the process.
- Some progress has been made in law reform, some legal training programs are underway, and a minimal amount of infrastructure repair has been performed. Virtually nothing has been done to update the court structure, establish and apply qualifications for judicial personnel (Afghan legal experts consider many judges to be unqualified), ensure widespread access to legal texts for practitioners and students, develop court administration, improve the poor quality of legal education, or address deep-rooted corruption. Defense attorneys are essentially unheard of. The vast needs for improvement in the corrections system have been almost entirely ignored.
- The burgeoning narcotics trade presents a fundamental challenge to the future of Afghanistan, and specifically to efforts to develop a culture of rule of law. The trade earns Afghan traffickers an amount equal to half the country's legitimate GDP and nearly five times the government's budget. Nearly all elements of local and regional power structures use the proceeds from trafficking to fund their activities and maintain their independence from the central government. Though important steps have been taken to create a legal and institutional framework for counter-narcotics work, it will be years before the Afghan government has an operational capacity robust enough to put a dent in the narcotics trade. Unless U.S.-led Coalition military forces become willing to undertake at least some counter-narcotics actions, traffickers will continue to operate with utter impunity, and the perceived message of tolerance of this activity will continue to undermine efforts to build the rule of law.
- Warlordism—control of local populations through force and intimidation by provincial governors, militia commanders, police chiefs, and other power-holders—continues to destabilize Afghanistan and impede reform of justice and law enforcement institutions. The most powerful warlords continue to exercise influence over key ministries and institutions including the judiciary.
- The slow pace of efforts to establish the rule of law has resulted in part from the inherent difficulties of conducting a post-conflict reconstruction operation in a country that has suffered over two decades of modern warfare. But it is also a consequence of the decision of the United States and United Nations to limit the international presence and to place primary responsibility upon the Afghans for providing their own security and directing their own reconstruction—responsibilities they have had little capacity to execute.
- A corollary to the UN's "light footprint" approach has been to assign certain donors "lead nation" responsibility for particular sectors. In the rule of law area, this has not worked well. The United States already has significantly augmented "lead nation" Germany's efforts in police training, putting in place a much larger program. A similar recognition is needed that greater international leadership and political attention from a broader array of donors is required in the justice sector. At the same time, Afghan authorities should undertake to reform the judicial reform process, either dissolving or significantly enhancing the stature and capabilities of the Judicial Reform Commission.
- An integrated, holistic approach to establishing the rule of law is needed. Though significant funds are being put into police training, even a well-trained force will not be able to provide genuine law enforcement if there is no functioning criminal justice system or corrections system in which to place offenders. At best, such a force will be able to provide some public order; at worst, the international community will have enhanced the ability of power-holders to

control and abuse the population without creating mechanisms to protect the rights of Afghans. A substantial investment in one area of rule of law will not have a meaningful pay-off in terms of real democratic governance and stability unless other pieces of the puzzle are put in place as well.

INTRODUCTION

Two years after the fall of the Taliban, Afghanistan is at a defining moment concerning its future. The adoption of a new Constitution on January 4, 2003, delineated the permanent shape of national institutions and set the stage for holding national elections. At the same time, security remains an overwhelming concern of Afghans, and a desire to get out from under the control of warlords remains their primary aspiration. The country faces the combined challenges of resurgent terrorism, factional conflict, and rampant narcotics production. In the south, U.S.-led Coalition forces are engaged in a running fight against al Qaeda remnants along the border with Pakistan and against a reconstituted Taliban that retains support among the Pashtun majority. In the north, the Afghan government is challenged by recurrent armed conflict among regional warlords, and by the refusal of provincial governors to turn over revenues to the center. Throughout the country, there is a near-explosion in the cultivation of poppy. Traditional growing areas have been augmented by vast new areas brought under cultivation in the past year. In the absence of disincentives, production of opium has returned to record levels and the production of refined heroin has expanded, as has local drug consumption. With earnings from narcotics amounting to an about half of the country's gross domestic product, Afghanistan is in critical danger of becoming a "narco-state."

In most of Afghanistan, the rule of law has never been strong, but after 23 years of warfare, it has been displaced almost completely by the "rule of the gun." Moreover, the discontinuity of regimes over the last quarter century has resulted in a patchwork of differing and overlapping laws, elements of different types of legal systems, and an incoherent collection of law enforcement and military structures. Provincial governors, militia commanders, police chiefs, and other power brokers now exercise control through fear and intimidation, and through manipulation of the traditional shuras (village councils). In most of the country, regional power holders—whether they hold official positions or not—exercise political, police, and judicial authority through their control of militia forces. Their activities are financed by profits from production and trafficking in opium, and through their control of roadblocks on transportation routes at which they exact "taxes" on travelers and commodities.

In the final days of his tenure, UN Special Representative of the Secretary General Lakhdar Brahimi stated at the closing ceremony of the Constitutional Loya Jirga (grand assembly) that, "[t]he people of Afghanistan are afraid of the guns that are held by the wrong people and used not to defend them and not to wage a jihad, because the time for jihad is finished, but to terrorize people, to take advantage for their own and the people who are close to them." The current year will be critical in determining whether Afghanistan will continue its slow progress toward representative government, the rule of law, and a responsible role in the international community, or whether it will lose ground and slide back toward political and religious extremism and economic chaos.

BACKGROUND

The Transitional Islamic State of Afghanistan

Following the U.S.-led military operation that ousted the Taliban regime in the fall of 2001, the starting point for rebuilding Afghanistan was the "Agreement on Provisional Arrangements in Afghanistan Pending Re-establishment of Permanent Institutions"—the Bonn Agreement—signed by representatives of the Afghan people on December 5, 2001. The Agreement established an Interim Afghan Authority, and provided the basis for an interim system of law and governance, employing the 1964 Constitution as its foundation. The Agreement also laid out a timetable for further steps toward establishing a new government, constitution, and ultimately elections. The Emergency Loya Jirga of June 2002 installed a Transitional Administration, with Hamid Karzai as its president; Karzai later appointed a cabinet of four vice-presidents, four special advisors, and 28 ministers. Karzai's government, through a constitutional commission, drafted a new constitution, which was released in early November 2003 and adopted with amendments by a constitutional Loya Jirga on January 4, 2004.

Foreign Military Forces

Annex I of the Bonn Agreement called for the deployment of an international military force to maintain security in Kabul, with possible expansion to other areas of

the country. In response, the UN Security Council authorized the creation of an International Security Assistance Force (ISAF). ISAF deployed in January 2002, and by summer had 5,000 troops from 19 countries. ISAF's responsibility was limited to providing security in the capital, where it conducted routine patrols with local police. ISAF's purpose was to provide "breathing space" during which the Afghans could create their own security forces. In October 2003, the UN Security Council, responding to requests from President Karzai, expanded ISAF's authorized area of operations to include all of Afghanistan, but did not further define ISAF's mandate. NATO, now in command of ISAF, so far has been unable to generate the forces needed for a significant expansion.

ISAF operates separately from "Operation Enduring Freedom" (OEF), the U.S.-led military mission focused on destroying the remnants of the Taliban and al Qaeda. With 11,500 troops participating, OEF is the most potent military force in Afghanistan. While OEF does not conduct peacekeeping activities, it has occasionally engaged in settling disputes between warlords, usually by dispensing cash or issuing veiled threats of force. OEF forces have not taken action against narcotics traffickers or supported law enforcement.

In Spring 2003, the Pentagon responded to the continuing deterioration of the security situation in Afghanistan by authorizing a somewhat greater involvement in civil affairs and reconstruction by U.S. military forces. American troops began providing humanitarian assistance and took on some road and school construction projects. The Defense Department initiated a program to deploy "Provincial Reconstruction Teams" (PRTs) near major cities throughout Afghanistan. The PRTs are designed to provide assistance in rebuilding local infrastructure and ensuring local security, but not to perform police functions. Of eight PRTs currently operational, one is under NATO command (the first NATO presence outside Kabul) and will have up to 240 personnel, two are 100-person teams commanded by the United Kingdom and New Zealand, and the remainder are 30-person U.S. teams commanded by a senior U.S. officer and including personnel from Special Forces, Civil Affairs, Army engineers, the State Department, USAID, and the U.S. Department of Agriculture. The PRTs are the centerpiece of the international community's strategy for stabilizing areas outside of Kabul and enabling the central government to extend its reach, but given their limited number and sizes, some observers have questioned their real impact. In some areas, the central government has relied on the presence of the PRTs in beginning to remove problematic local officials, while not challenging the most powerful warlords.

United Nations Assistance Mission in Afghanistan (UNAMA)

The UN model for its mission in Afghanistan is vastly different from that used in Kosovo and East Timor. In those missions, the UN established an interim authority that was responsible for civil administration and for guiding the local population toward democratic self-government. In Afghanistan, the UN has sought to limit its involvement and to encourage Afghans to assume responsibility for their own political reconciliation and economic reconstruction. As a consequence, the UN mission has limited material resources and no operational role with respect to the Afghan police, judicial, or corrections systems.

Under the leadership of Special Representative of the Secretary General Brahimi, the UN advocated a "light footprint," a euphemism for a minimalist UN mission. The light footprint was publicly advocated as a way to ensure space for Afghans to take the leading role in rebuilding their country, in contrast to the outsider-dominated approaches of the Kosovo and East Timor missions. The main underlying rationale, however, was that a light UN footprint would force donor nations to accept their responsibility for assisting Afghanistan, rather than putting responsibility on the UN and then underfunding the mission and blaming it for the resulting failure—as has occurred in other circumstances. As part of this approach, certain donors have taken on "lead nation" responsibility for assistance to particular sectors. The "light footprint" approach, however, has to some extent been reflected in the nature of the international community's involvement in Afghanistan more generally. Despite initial promises of billions of dollars in foreign largess and a rhetorical commitment not to neglect Afghanistan once again, international assistance has been characterized by a relatively light wallet. The "peacekeeping-light" mode is also seen in the international community's approach to ensuring internal security and assisting Afghan law enforcement—for example, the lack of peacekeeping forces outside of Kabul and the absence of a foreign police mission.

The Justice System

Afghanistan cannot be said to have a genuine system of justice at present. To be sure, there are many appointed judges and prosecutors in the country, there are laws on the books, and there are occasional trials, but there is no functioning system. Court management is archaic or non-existent, central judicial and prosecutorial authorities often have no technical means of communicating with colleagues in the provinces, and judicial appointments are routinely made on the basis of personal or political connections without regard to legal training or other qualifications. Moreover, the organization of the judicial apparatus fails to comply with existing law in important respects (*e.g.*, both the 1964 Constitution—in force until recently—and the new Constitution call for a Supreme Court of nine members, but the current Chief Justice has added several more justices); judges routinely make decisions without reference to written law; there are effectively no means of enforcing decisions; and despite a theoretical right to counsel, there are virtually no defense lawyers in the country. To a great extent, the written law in Afghanistan is not applied—or even widely known, including by judges and lawyers. As one senior Afghan judicial official put it, Afghanistan "has many laws, but no implementation." With apparent good reason, Afghans do not trust the judiciary, and avoid recourse to it as much as possible.

Though Afghan and international officials often refer to rule of law development as one of the highest priorities in the reconstruction process, the necessary measures are not being treated with urgency (other than recently in the police sector). U.S. funding, for example, for rule of law activities other than police or counter-narcotics for FY 2004 is $10 million in State Department funds, plus some limited (but not yet decided) portion of USAID's $54 million in "democracy and governance" funds for Afghanistan, the majority of which will be used for elections support, compared to over $110 million for police training. In 2003, the U.S. spent about $13 million on rule of law activities other than police, including support for the Judicial Reform, Constitutional, and Independent Human Rights Commissions. (As insufficient as these amounts are relative to the needs of the Afghan justice sector, they make the U.S. the second largest donor to the sector.) Money aside, relatively little political attention is being paid to the justice sector; the field has been left largely to "lead nation" Italy, which is widely seen as focused mainly on implementation of its own projects, rather than coordination of broader efforts. As a consequence, and despite the presence of some Afghan officials who are committed to reform, since the fall of the Taliban little progress has been made toward building a functioning justice system.

Key issues that need to be addressed in order to turn around this situation include a flawed reform process, inadequate international capacity and attention, and a desperately low level of Afghan capacity in terms of both physical and human resources. The latter—a result of 23 years of war and a low level of development before that, and a limiting factor in every area of Afghanistan's reconstruction—can only be addressed over the long haul and through sustained international commitment. But the first two obstacles can be addressed in the near term.

Institutional Architecture and the Reform Process

The justice sector in Afghanistan is administratively complex and highly factionalized. The three main permanent institutions—the Ministry of Justice, the Supreme Court, and the Attorney General's office (Saranwali)—are coequal in stature, and for a variety of political, personality, and turf-consciousness reasons have fractious relations with each other. While police perform a central role in criminal justice, the Ministry of Interior has not played an active role in the justice rebuilding process. The lack of clear legal guidelines regarding proper institutional roles, and the absence of steps to provide clarity, has allowed this fractiousness to persist. The Judicial Reform Commission (JRC) created under the Bonn Agreement to guide the reform and be a facilitator among the permanent institutions and between them and the donor community, has instead become a fourth faction in the sector. The Italian government operation in Kabul, which, as leader of the donor effort, will need to work to bridge the differences among the other players, has to an extent become a fifth faction, having very difficult relations with its natural partner, the JRC, in particular.

In principle, the JRC should have become the driving force behind the reform and reconstruction process in the justice sector. In practice, partly as a result of lack of buy-in from the permanent institutions, this has not occurred. No consensus has been developed regarding the proper role of the JRC—whether it should be a policy

body or a project implementer, whether it should take a leading role in setting the agenda or facilitate support for the priorities of others. Moreover, the JRC's efforts have been hampered by lack of resources and a sluggish pace of support from UNDP, the main conduit for the JRC's funding (of $6 million available for support to the justice sector, UNDP had expended only $500,000 as of November 2003). Regardless whether the JRC itself is at fault or whether it has been ill-served by its partners, it is apparent that the JRC is not performing as intended. Meanwhile, building the JRC from scratch has been a major task in a resource-poor situation, and has consumed resources and donor attention that otherwise could be devoted to building the capacity of the permanent institutions. Other than some limited provision of equipment and infrastructure repair in Kabul, the permanent institutions have received little direct support from foreign donors. A reform of the reform process is needed.

Coupled with these difficulties, the international effort to support the justice sector suffers from a lack of strategy and a lack of capacity. Other donors have deferred to Italy to develop a strategy, but no clear strategy has been coordinated among donors and stakeholders. UNAMA in early February 2004 released a "Proposal for a Long-Term Strategic Framework" that offers its view on priorities for improving the justice system, highlighting the need to strengthen capacity in the permanent institutions; it remains to be seen whether the proposals will be adopted or funded. The Consultative Group (CG) for the justice sector—in which Afghan stakeholders and donors are supposed to meet to air and address priorities and obstacles—does not function, unlike the CGs for some other sectors. Furthermore, the justice sector—including infrastructure repair, institutional capacity building, training, law reform, and corrections—is relatively lightly funded. As of November 2003, according to official Afghan government figures, just over $19 million in assistance was "disbursed" during that year for the justice sector, but with $4.7 million of that amount unallocated to any projects (and some of the "disbursements" not clearly identified and therefore questionable). In addition, key posts such as the UNAMA senior rule of law advisor and the UNDP justice sector project director have been vacant for many months.

Courts, Judges and Prosecutors

The nearly uniform view of observers inside and outside the justice system in Afghanistan is that the greatest need in building the system is to improve the quality of judicial personnel. To some extent, the lack of qualified personnel is part of the broad human resource capacity deficit plaguing Afghan reconstruction in general. But particular to the justice system, many judges appointed in the post-Taliban period, including some on the Supreme Court, do not have a legal education (secular or Shari'a), and have been educated only in madrassas. Having little—and in some cases in the provinces no—access to legal texts, many judges are unfamiliar with the law and make decisions without reference to it. Moreover, corruption in the judiciary is considered to be rampant—not surprising in light of salaries of about $36 a month. Bribery aside, one senior judicial official commented that it is not possible at present to hold judges accountable for their conduct because they are under pressure from and control of "commanders." Some judges and others report that judges assigned to the provinces are able to perform their duties only if they are personally in favor with the local power-holder. Corruption and pressure from local power-holders is similarly widespread among prosecutors.

Assessing the actual level of activity among judges and prosecutors is difficult. Reliable data on caseloads appears to be unavailable. Some who have visited courts in the provinces have reported no apparent sign of legal proceedings at particular courthouses. According to the Attorney General's office, there are 3,274 prosecutors in the country, and they are actively prosecuting a variety of criminal cases—murder, adultery, rape, and, mostly, theft—with an 85% conviction rate. But, though there are 341 prosecutors in Kabul center and the districts of Kabul province, there are only 600 persons ("men, women, and infants," according to the Attorney General's office) in detention in Kabul—a small number for a city of over two million persons, and an apparently small caseload for the prosecutors.

In addition to improving the human resource capacity of the judiciary, a tremendous need exists to begin the arduous process of determining a sound structure for the court system and developing basic court management techniques. No work has yet been done to analyze the number of judges and courts, and their locations, that makes sense for Afghanistan. The current organigram of the judiciary was developed haphazardly during the Najibullah and Mujahedeen periods (approximately 1986–1996) in order to create jobs for people in particular places based on political exigencies. Similarly, no work has been done to develop a court management system suitable for conditions in the country. This should include establishing technical

means of communication between the central justice authorities and the provinces; currently, days, months, or more are required to send or receive information.

In some other post-conflict/transition situations (most notably East Germany, and more recently Bosnia and Herzegovina), the problem of corrupt and/or inefficient judicial personnel has been handled by serving notice to all, allowing them to reapply, and re-hiring selectively. This approach probably is not feasible politically in Afghanistan.

Under the country's current judicial appointment structure, improving the quality of judicial personnel will prove difficult. The Supreme Court is responsible for administering the entire judiciary, and the Chief Justice has authority (nominally as chair of a committee) to nominate all judges. The Supreme Court is headed by a Chief Justice who is a noted religious conservative originally appointed by the "mujahadeen" government of President Burhanuddin Rabbani and reconfirmed by President Karzai. Notably, the Supreme Court has created within its administrative structure a "Fatwa Council" composed of clerics. The Council reviews questions of Islamic law, and has, on its own initiative, issued rulings even in matters not actually brought to the Supreme Court by any parties. Although the President has the final appointment power under the law, President Karzai reportedly has not rejected any of Chief Justice Shinwari's judicial nominees, many of whom do not meet the education and experience requirements of Afghan law. At a February 2003 U.S. Institute of Peace symposium on rule of law in Afghanistan, the Afghan participants (including the Minister of Justice, JRC chairman, two Supreme Court justices, and other senior legal officials) concluded that judicial appointments should be based on merit and education, and proposed new minimum qualifications that should be established; these recommendations have not been implemented. While there are some differences of opinion within the Supreme Court, the leadership of the institution is regarded as opposed to any consideration of enhancing judicial qualification requirements, purging the judiciary of unqualified personnel, or reforming the structure of the court system.

As the centerpiece of their efforts to strengthen the justice sector, Italian officials have decided that the most urgent need is to extend the justice system to areas of the country where courts presently are not functioning. They plan to address this need through a focus on selected district (primary) courts. They have developed a new, streamlined interim code of criminal procedure, which was promulgated into law by Presidential decree in February 2004. This interim code has been the subject of some controversy, as it was prepared by Italian officials with help from U.S. military lawyers but relatively little input or support from the Afghan justice institutions, and was reportedly adopted under strong foreign political pressure. The interim code officially now replaces the pre-existing code of criminal procedure throughout the country.

The Italian project will focus first on introducing the interim code in selected district courts, i.e., those located in provincial capital cities, which in theory could also hear cases from other districts in the province where courts are not functioning. They plan to train an initial corps of 20 judges and 20 prosecutors in this new code, after which these persons would be assigned to the selected districts. The Italian program will first be implemented in a pilot project in Gardez. The remaining districts in which they will pursue this effort remain to be identified, as does the number of districts they intend to target and over what time period. Italian and Afghan officials also need to determine clearly how they will amend or work around the existing procedure for appointment and assignment of district judges. Some Afghan and foreign observers have expressed skepticism regarding this plan, suggesting that an approach that focuses on use of a new code in a small number of district level courts could produce inconsistency and isolated pockets of administration of justice. An alternative strategy would focus on Kabul plus the five major provincial capitals (Mazar-i-Sharif, Herat, Jalalabad, Kandahar, and Kunduz), and outside of Kabul would focus on the provincial courts rather than district (primary) courts. (The provincial courts are appellate level, but have some first-instance jurisdiction.) An approach that is focused on provincial courts would have a wider potential impact than one focused on district courts. Outside of these urban centers the population generally relies on and has much greater trust in informal systems of dispute resolution (such as decisionmaking or mediation by shuras and tribal elders). Inside these centers, the traditional, informal systems tend not to function, and the need is therefore greater for access to a formal justice process that works. A soundly functioning provincial court could provide a check on unreformed district courts throughout its jurisdiction.

Defense Attorneys

Though Afghans have a legal right to defense counsel, defense attorneys are virtually unknown in Afghanistan. Even in criminal proceedings, defendants are almost never represented by counsel. Traditionally, clients have used lawyers for commercial matters, but even these could be characterized better as brokers or agents, who, for example, handle payments of bribes to judicial officials. A legal aid department within the Supreme Court is supposed to provide assistance to indigent defendants, but according to multiple sources, the office exists in name only. Understanding of the role of defense counsel is lacking as well. For example, a senior prosecutorial official said that a lawyer is only necessary for a defendant who is not literate. Apparently the only work to build defense lawyering capacity is being undertaken by a U.S. NGO, the International Legal Foundation, which launched a small training program in Kabul in August 2003, and which also provides some training through other organizations.

Legal Reform

Legal reform in Afghanistan has been complicated by lack of clarity regarding what laws exist in the country. The Bonn Agreement called for existing law, with some exceptions, to continue to apply, but this provision ignored the fact that there are significant overlaps and contradictions among different laws promulgated during different periods. In addition, all existing significant collections of legal texts were destroyed during the wars. The International Development Law Organization in October 2003 completed a digital chronological compilation of Afghan laws going back to the 1920s, but this has not yet been indexed or distributed. In 2002, the Institute together with the American Bar Association and International Resources Group, collected authenticated versions of several key legal codes, and with the cooperation of the Ministry of Justice and the U.S. Army, printed and distributed 1,000 copies. The U.S. Army delivered most of the copies to regional governors.

While the lack of clarity regarding existing law is likely to persist for some time, some progress has meanwhile been made in revising laws and writing new ones. According to the Ministry of Justice, 12 amended or new laws have been approved by the government as of November 2003, and several others are in progress. Many of these are focused on commercial law, and other areas related to regulation of the economy. In current circumstances, law reform may be the easiest area of justice sector development; relatively few resources are required, there is no parliament to contend with (laws are adopted by Presidential decree after cabinet review), and results can be achieved just on paper. The real test of law reform, however, will be whether new and improved laws are actually implemented, and in that regard, there is so far little change. In order to create a possibility of implementation, a system will have to be devised for distributing, and providing training regarding, the new and revised laws to judges, prosecutors, and legal educators.

Legal Training and Education

As already noted, improvement of the quality and professionalism of judges and prosecutors is the greatest need in the justice sector. Legal training and education is fundamental to meeting this need, particularly in the current situation where purging unqualified personnel is not politically feasible. Both short-term fixes and long-term investments are needed. Some attention is being paid to the former, as several training programs are underway, but no attention is yet being paid to the latter, which requires taking steps to improve the currently dismal state of university law faculties. Short training programs can provide benefits, but major gains in the quality of administration of justice can only be achieved if investments are made in the preparation of the next generation of legal professionals.

The largest training program underway for current judges and prosecutors is being conducted by the International Development Law Organization (IDLO). This program will provide 50 days (300 hours) of training to 450 persons over a 16-month period ending in September 2004. There does not appear to have been any outside evaluation of the quality or impact of this training as yet. The professional skill level of the participants—even those with 25 or more years of experience—is very low. They have no experience in producing written opinions, no experience with defense advocates in the courtroom, and are accustomed to disposing of issues without any reference to legal texts. Working to impart the basic idea of making judicial decisions based on actual law has been an important element of the training. Separately, the Judicial Reform Commission has initiated a nine-month training program for new judges and prosecutors. The first class of 150 students began training in 2003 and is still in progress. A common understanding exists that responsibility for this program needs to be moved to a permanent institution, preferably with cre-

ation of a national judicial training center, but no concrete steps have yet been taken in this direction.

The needs of the university law faculties, both secular and Shari'a, are huge. These include books (libraries were destroyed and students cannot afford their own texts, even when available), infrastructure repair, faculty training (most have no more than an undergraduate degree), curriculum development, and visiting professors from abroad. Virtually no assistance has yet been provided to law faculties in Kabul or in provincial capitals.

One factor limiting opportunities to provide training and assistance for law faculties (as well as law reform and other efforts) is the lack of trained interpreters and translators who have knowledge of legal vocabulary. The dearth of qualified linguists in general is a challenge in Afghanistan's reconstruction process, but it is a particular problem in justice sector projects where precise use of legal terminology is essential. A program to train a cadre of individuals in the necessary skills could facilitate the execution of many projects.

Customary Law

Outside of the major cities, village councils or tribal elders have for generations played the predominant role in resolving disputes and meting out justice. There are indications that this customary system of law—which varies in form and substance throughout Afghanistan—has been subverted and manipulated by local wartime and current power-holders, but to what extent and effect has not yet been closely examined. Though the issue has not been greatly considered, there appears to be broad agreement that legal reform should include limiting the authority of customary law mechanisms, particularly in areas of criminal justice. Some also believe it will be important to design connections between the formal and informal systems, perhaps by crafting procedures for courts to confirm results of customary dispute settlements. In rural areas for the foreseeable future, fostering the informal system will be both more realistic and more sensible in the cultural context than trying to push the formal justice system into remote areas. In the near term, it will be constructive to study the nature and current state of customary law practices in order to provide an information base for future action. USIP is currently conducting one such study.

Police

Historically, the police were organized as a quasi-military force on the Soviet model with a two-track system of career officers and conscripts who chose to serve for two years as police patrolmen rather than join the army. During the past decades of conflict there has been no national civilian police force in Afghanistan. Though figures are uncertain, there are estimated to be about 50,000 men working as police, but they are generally untrained, ill-equipped, illiterate (70–90%), and owe their allegiance to local warlords and militia commanders and not to the central government. Many of those serving as police are former Mujahedeen who have experienced a lifetime of armed conflict and are accustomed to acting with impunity. A few professional police officers remain from the Afghan National Police of the Soviet period, but these officers have little understanding of the role of police in a democratic society. In Kandahar, for example, 120 officers out of 3,000 police had received some police training, but it was more than a decade ago.

The Bonn Agreement provided for the creation of an Interior Ministry responsible for police and corrections. The border police were transferred to the Ministry of Defense in January 2002, and responsibility for corrections was moved to the Ministry of Justice during 2003. The Kabul police have cooperated with ISAF and helped reduce the number of armed militia fighters in the city.

In addition to a lack of training and questionable loyalty, the Afghan police suffer from a lack of uniforms, inadequate equipment and transportation, dilapidated facilities, and little or no pay. The UN-administered Law and Order Trust Fund, established in 2002, has received only $11.2 million of the $65 million requested for two years. Failure of the international community to provide the required funding means that the central government lacks the resources to fund the police outside of the capital, and thus the ability to reduce the influence of regional leaders. Even within Kabul, as of November 2003, police had not been paid since May 2003. Low or no pay has resulted in widespread corruption, further undermining public confidence in police, who are generally regarded with a mixture of fear and disdain.

For purposes of creating a capacity to handle internal security, Afghan authorities and the international community determined that it would be more cost-effective to focus on training and equipping a national police force than a national army. Given Afghanistan's size and population, creating a national police force represented a far greater challenge than any police-related program the international community has ever attempted. At the request of the UN and the Interim Authority, Germany as-

sumed responsibility as "lead nation" for training and equipping the Afghan police. This request was based upon the Afghans' positive experiences with German police assistance programs prior to the Soviet intervention. Germany's goal was to create an ethnically balanced force that was familiar with human rights standards and modern police methods and capable of assisting with the country's transition to democracy.

Germany developed an initial plan for police training and announced the commitment of $70 million toward renovating the police academy in Kabul, providing 11 police instructors, refurbishing Kabul police stations, and donating 50 police vehicles. The first team of 14 German police advisors arrived in Kabul on March 16 and the German Coordination Office was opened on March 18, 2002. The Coordination Office advised the Interim Authority on police training and reform and supervised the reconstruction of the Police Academy that formally reopened on August 22, 2002, with 1,500 cadets in residence. The Academy provides a five-year recruit training course for officers and a three-month recruit course for non-commissioned officers.

In November 2003, the Academy had 1,000 officer cadets and 500 non-commissioned officers in residence. Education requirements for admission were 12 years for officers and six years for non-commissioned officers. The student body was composed of 60 percent Pashtuns, 30 percent Uzbeks and 10 percent others. Students came from 26 provinces, but most were from the Kabul area. Only 11 members of the officer class and 22 members of the non-commissioned officer class were women. Germany accepted responsibility for training an Afghan border patrol as well, but as of November 2003 had trained only 125 officers, who serve as guards and immigration inspectors at the Kabul international airport. The future of the new border police is dependent upon the central government's ability to remove the local commanders and heavily armed military forces that now control the border and the smuggling of drugs and other contraband across it.

In 2003, the U.S. State Department established a police assistance program to provide in-service training for currently serving Afghan police in Kabul. There are three American and six international instructors, plus Afghan staff. When fully operational, the facility will graduate 700 police officers every eight weeks. The U.S. program aims to train 7,000 police, including 3,000 officers and 4,000 patrolmen, for Kabul. Students in the U.S. program are selected by the Interior Ministry, and are not vetted by U.S. program administrators. The program offers the following basic courses that the U.S. has provided in other post-conflict situations, such as Kosovo and Bosnia:

- Transitional Policing (policing in a democracy for officers) 2 weeks
- Basic Police Skills (for NCOs and patrolmen) 8 weeks
- Instructor Development 2-4 weeks

The Kabul site will be a prototype for seven regional training centers that will be located around the country and staffed by international and Afghan instructors. The U.S. expects to train 50,000 police by 2005. The regional sites will be co-located with the Provincial Reconstruction Teams, but will be larger in size, housing up to 500 students and trainers. The U.S. Congress has provided $110 million in funding for this program.

Corrections

Typical for a post-conflict reconstruction situation, the corrections system in Afghanistan is the neglected step-child of justice sector reform. Though corrections nominally falls within Italy's lead, it has paid limited attention to this area and other donors have paid none. Afghan authorities also have applied few resources to address the huge needs of the prison system.

Except for a few limited NGO projects, the UN Office of Drugs and Crime (UNODC) is the only organization working on prison and jail improvement projects in Afghanistan. UNODC is currently spending $2 million provided by the Italian government over two years on very basic renovation (*e.g.*, water, sanitation, kitchens) of the male and female detention centers in Kabul and three cellblocks of the Pul-e-Charki prison outside Kabul, and limited training of administrative staff in the Ministry of Justice, to which responsibility for prisons was transferred during 2003 from the Ministry of Interior. The International Committee of the Red Cross has regularly visited prisons, and to some extent has provided food and water to detainees. Though information on the situation outside of Kabul is inconsistent, it appears that all or most actually functioning prisons and detention facilities (with an unknown number of detainees) are effectively controlled by commanders or other regional power-holders, rather than the central government. Prison conditions generally in Afghanistan have been harshly criticized by those who have examined

them, but other than the work described above, no concrete measures are underway to address the situation.

Transitional Justice and the Human Rights Commission

Transitional justice—the process of dealing with the legacy of atrocities and human rights abuses—has taken a backseat in post-Taliban Afghanistan. Political support, both within and outside the country, for documenting such crimes and developing mechanisms to deal with them has been minimal. According to one senior Afghan official, a serious effort to pursue a war crimes agenda could implicate half the current cabinet. While the legacy of past atrocities and continuing human rights violations fail to be addressed, the culture of impunity will continue to undermine development of a culture of rule of law.

Transitional justice is included within the broad human rights mandate of the Afghan Independent Human Rights Commission established under the Bonn Agreement. Recognizing the reality of the present environment—that it is difficult to envision a full-fledged transitional justice process while probable violators hold the reins of power—the Commission is undertaking two categories of activities to lay the groundwork for future efforts in this area. First, the Commission is beginning work on documentation of past crimes, and, second, the Commission is preparing to launch a "national consultation" on transitional justice that will consider what types of mechanisms should be adopted. The Commission does not see the Afghan judicial system as being capable of handling war crimes or other serious human rights matters any time soon, given that the judiciary is politicized, many judges are poorly qualified, and corruption is widespread.

The documentation work has been slowed by security risks for witnesses and Commission staff, as well as, in the Commission's view, by the lack of political support, particularly from the United States, for investigations of past crimes at the current time. Nevertheless, the process has begun in select areas, where the security situation is satisfactory and where probable perpetrators are not in official local positions of power.

The Commission is preparing for the national consultation process by consulting first with civil society groups. Commission staff hope to start the national consultation early in 2004. The consultation is expected to include a media campaign, public presentation of options, and use of civil society groups and shuras to organize discussions around the country. The Commission hopes to conclude the process by the time of elections—now slated for June 2004, but likely to slip until the late summer or fall. Commission staff predict the consultation will show popular interest in a combination of a limited number of trials for major perpetrators, and some form of truth and reconciliation process, probably using traditional shuras, for most perpetrators. Such conclusions would reflect the deep-rooted Afghan traditions of both revenge and forgiveness. This approach would also recognize the need to balance legal accountability for past abuses with the limitations of the criminal justice system and the imperative of dealing with the past through complementary processes that can move Afghan society forward in a constructive fashion.

KEY CHALLENGES

Narcotics and Organized Crime

A fundamental challenge to the future of Afghanistan, and specifically to the effort to develop a culture of rule of law, is the growing domination of the economy by, and the dependence of most power-holders on, the production of opium and the international traffic in narcotics. In a situation where there are no disincentives and no equally lucrative alternatives (opium provides farmers ten times the income of wheat or other crops), Afghanistan's rural population is turning increasingly to farming poppies and the production of opium and its derivatives. Opium production fuels the rural economy and provides livelihoods for seven percent of the population. At the same time, nearly all elements of local and regional power structures, who take most of the profits, use the proceeds from narcotics trafficking to fund their activities and maintain their independence from the central government.

Afghanistan is the world's largest producer of illicit opium. The UN Office of Drugs and Crime reported in its "Afghanistan Opium Survey 2003" that Afghanistan produced 3,600 metric tons of opium, or three-fourths of the world's supply. This amount of opium earned Afghan traffickers, and to a lesser extent farmers, $2.3 billion, an amount equal to half the country's legitimate GDP and nearly five times the government's annual budget. Production was six percent greater than the previous year, despite poor weather, disease, and limited government efforts at eradication. In the past, cultivation was concentrated in only three provinces; by 2003, it had spread to 28 of Afghanistan's 32 provinces. At present, 80 percent of

Afghanistan's opium production is consumed in the region. Pakistan and Iran have an estimated two million addicts each, and there are growing addict populations in the former Soviet republics on the Afghan border. At the same time, Afghanistan supplies 70 percent of the heroin consumed in Western Europe. According to the UNODC, the international trade in Afghan opiates generates a total turnover of $30 billion worldwide.

Expansion is fueled by a lack of restraints and the encouragement of provincial governors, warlords, corrupt officials, and even some Islamic clerics. In addition, the return to the countryside of large numbers of refugees with no employment opportunities other than laboring in poppy fields has contributed to increased production. As central government authority does not extend beyond Kabul, poppy growing is not subject to interference by law enforcement authorities. Experts uniformly agree that counter-narcotics efforts must combine "carrots" and "sticks," but essentially no sticks are now being wielded. While large-scale interdiction and eradication programs may not be feasible in present circumstances, close observers have said that even targeted, sporadic seizures and other enforcement measures would provide some deterrent.

The opium economy also benefits from a well-organized "agricultural extension" system sponsored by drug brokers and traffickers that provides farmers with seeds, fertilizer, advance credit, technical assistance, and an assured market. Credit may be used for production of legitimate crops as well as opium, but repayment must be in the form of opium. Drug brokers buy directly from farmers or from opium merchants in small towns and village markets. They resell to drug traffickers, who either supply refiners or exporters. Local refining of opium into morphine base and production of heroin is increasing.

The U.S. Drug Enforcement Administration (DEA) has identified some ten major ethnic-Pashtun traffickers engaged in moving drugs over the traditional smuggling route between Kandahar and Quetta in Pakistan. Major traffickers from other ethnic groups are also involved and control the trade in areas where their kin live on both sides of the Afghan border. Transportation of narcotics frequently is carried out in police or military vehicles controlled by provincial governors, commanders, or other power-holders.

Over the past two years, the Afghan government has put in place the legal and institutional framework to begin an effective counter-narcotics program. In January 2002, President Karzai issued a Presidential decree outlawing the cultivation, production, trafficking, and abuse of narcotics. In October 2002, the Counter-Narcotics Directorate (CND) was created as part of the National Security Council. In May 2003, a National Drug Control Strategy was adopted. In October 2003, a modern, national narcotics control law was enacted. Also in 2003, an initial Afghan government enforcement program resulted in the claimed eradication of 21,000 hectares of opium in the major growing areas of Helmand, Kandahar, and Ningarhar provinces. As the central government had no capacity, the eradication effort was undertaken by provincial governors, but without independent verification. This raised suspicions that any poppies actually destroyed probably belonged to political rivals or farmers who refused to pay for protection.

The government's program has been supported by the United Kingdom, which is the "lead nation" among international donors on counter-narcotics efforts. The British have provided effective coordination of international and Afghan initiatives, and have contributed funding and political support for the government's eradication program. The UK has pledged $12 million over the next three years to create an anti-narcotics task force. British customs agents are training a new police enforcement unit of the CND. They have also promised drug-related equipment for the Afghan border police.

The UNODC has also played a valuable role in supporting the CND, particularly in the area of research and advising on strategies for creating alternative livelihoods. For the first time this year, the UN's annual report on opium production was produced in cooperation with the Afghan government. For its part, the U.S. government has promised to provide assistance for eradication, alternative crops, and effective law enforcement. Some U.S.-trained Afghan police will be assigned to controlling opium production, providing the missing "shock troops" for a local war on drugs. That said, a robust operational capacity on the part of the Afghan government is years away.

Taliban and al Qaeda Resurgence

Nearly two years after their defeat by U.S. and allied Northern Alliance forces, the Taliban has re-emerged as a growing security threat along Afghanistan's southeastern border with Pakistan. Taliban forces have staged attacks and have tried to regain political influence in Pashtun areas. Similarly, al Qaeda's training camps in

Afghanistan have been destroyed and a substantial proportion of its cadre eliminated, but it retains the capacity to conduct military operations. From sanctuaries in Pakistan's lawless tribal areas, bands of al Qaeda extremists have staged cross-border raids on U.S. bases. At the same time, forces loyal to renegade militia commander Gulbuddin Hekmatyar operate in the northern border provinces of Kunar and Nuristan, where they have declared their own jihad against the United States and Coalition forces. Taliban insurgents have also attacked and killed foreign aid workers, Afghan police, and road crews. These events have caused a dramatic scaling back by international agencies, and a consequent lack of capacity to provide assistance to a significant portion of the country.

Warlordism

Other than in the southern and eastern areas, the blame for the lack of security in Afghanistan falls on a number of heavily armed regional warlords and their subordinate militia commanders. These local leaders also remain a major impediment to national unity. They have refused to disband their private armies, and routinely engage in armed clashes over control of territory, border crossings, and transportation routes. They also use intimidation and violence to control the local population, and rely upon criminal activities including narcotics trafficking and extortion to finance their activities. In many cases, the most senior warlords serve as provincial governors or hold other official positions, but refuse to accept direction from or provide revenue to the central government. The problem of regional warlords is particularly serious in the north, where ethnic divisions and personal rivalries among commanders persist. Conflicts among these leaders pose a problem for the United States, as the American military provided money and military support to these leaders in the battle against the Taliban. The United States continues to provide these regional commanders with financial support and to rely upon their forces to engage Taliban remnants. Observers note that many ordinary Afghans question the U.S. approach and have been disappointed that the Coalition has not taken a harder stand against the warlords, whom people consider to be their abusers.

To help deal with the warlord problem, the UN, with Japan in the "lead nation" role, has begun implementing a program to disarm, demobilize, and reintegrate as many as 100,000 soldiers and militia members. The program began by demobilizing a group of 1,200 fighters in Kunduz and Paktia provinces in October 2003. On December 9, two thousand former Northern Alliance soldiers surrendered their weapons in Kabul and agreed to participate in a job-training program to prepare for civilian life. Many regard disarmament to be of critical importance to the stabilization of Afghanistan; whether the efforts that have only recently been set underway will prove to be substantial and effective remains to be seen.

As with many areas of the reconstruction process, the warlordism problem is a direct impediment to efforts to build the rule of law. Warlords, whether they hold official positions or not, currently subvert both formal and informal justice processes through intimidation and interference in areas from the capital to rural districts, and they largely control whatever law enforcement apparatus exists outside of Kabul. Even in Kabul, militia men are able to assert control on the streets, despite a semblance of central government police presence.

RECOMMENDATIONS

- *Move beyond the "lead nation" approach for the rule of law.* After two years, it is clear that the "lead nation" approach has not worked effectively in the rule of law area. The significant and multiple challenges in restructuring and rebuilding Afghanistan's justice sector requires the intensive involvement of more than one foreign donor. "Non-lead" donors need to engage more dynamically with Afghan institutions on these issues, rather than leaving Italy to shoulder most of the task. The lack of strong international leadership in energizing reform, bridging differences among the Afghan institutions, and coordinating donors has resulted in drift. Three steps should be taken to introduce stronger leadership:

  —Donors other than the "lead nation" should work more proactively with Afghan authorities and Italy to help define and drive a reform strategy for the justice sector and undertake initiatives where they are needed, as the United States has done recently in police training. Though the United States already has significant commitments in other sectors and is already the second largest donor in the justice sector, it also has the most at stake and invested in Afghanistan's reconstruction and the greatest political influence of any international player in the country, and should not wait for

other donors to act in this area. Other donors should also step up for particular aspects of the rule of law portfolio, such as corrections.

—UNAMA should immediately fill its vacant position of a senior rule of law advisor. The institutional weaknesses of UNAMA (*e.g.*, its lack of operational capacity) might limit the ability of such a person to play a significant role, but a dynamic, highly qualified individual could still make a difference in working with the Afghan institutions to push reform, and in stimulating donors' interest in key priorities.

—The Ministry of Justice and donors should activate the moribund Consultative Group (CG) for the justice sector. Consideration might be given to putting a revitalized Judicial Reform Commission in the chair of the justice sector CG, instead of the Ministry of Justice, in view of the persistent institutional rivalries in the sector. Some criticize the CG process as being a bureaucratic talk shop, and the usefulness of Groups for different sectors appears to vary. But the CG does provide a forum for a variety of donors' voices to be heard, and for questions to be raised about the lead nation's approach. It also provides a mechanism for regular communication between Afghan stakeholders and donors.

- *Devote greater resources to developing human resource capacity through professional education and long-term training.* Realistically, it will be difficult to make significant headway in improving the quality of law enforcement, judicial, and legal personnel without extensive efforts to improve literacy and provide basic education, including for adults. At present, much of the training provided is wasted or lost on students who lack the basic understanding and skills necessary to make the best use of the training provided. There is a specific need to improve the legal education system, which is being almost entirely ignored. While quick-impact training has a useful role, a long-term and deep impact will be achieved only by preparing the next generation of legal professionals. In addition, given the relatively short period of training most police will receive through the U.S. program, regular follow-on training will be necessary to ensure a lasting impact. Finally, donors should initiate a program to train a cadre of high-quality translators/interpreters with knowledge of legal terminology; the current lack of such capacity is a bottleneck for all other capacity-building projects.
- *Work, where possible, to improve the quality of judicial and law enforcement personnel through professionalized selection procedures.* While a comprehensive weeding-out process for current personnel is not realistic at present, Afghan authorities should take steps wherever possible to professionalize judicial and prosecutorial selection procedures in accordance with established standards. Any progress on this front would begin the essential process of reducing the impact of madrassa-educated personnel in the system, and would complement short- and long-term training. Similarly, steps should be taken to adopt a transparent and merit-based recruiting and selection system for police, who are now mostly converted militia members. This would include a mechanism for vetting to ensure that human rights abusers and criminals are rejected.
- *Focus the rule of law reform strategy on Kabul and the five major provincial cities.* Efforts toward improving law enforcement and the judiciary should focus on the major cities in Afghanistan because that is where the formal justice system is most used and most needed. Bearing in mind the reality of limited resources, judicial reform should be focused on the provincial (rather than district) level courts in order to have a broad impact in ensuring a reasonable quality of justice. An improved provincial court could provide a check on as-yet unreformed district courts throughout the province. The strategy should include intensive training of police, judges, prosecutors, and court administrators; enhanced salaries; improvement of facilities; provision of equipment; improvement of court management; and replacement of poorly qualified personnel.
- *Require Coalition military forces to perform limited law enforcement functions until Afghan police and law enforcement capacities come on line.* Unless the U.S.-led OEF is willing to expand its mandate to include at least a minimum of counter-narcotics activities, it will be years before the Afghan police are prepared to undertake on their own the kind of high-risk operations that are required. At present, OEF forces rarely interfere with narcotics trafficking or heroin production even if they discover such activity in the performance of other duties. A limited, but extremely useful, change in the military mandate would involve intelligence sharing with civilian law enforcement and a willingness to take action against drug warehouses and heroin laboratories. This would help

correct the impression of most Afghans that the U.S. military purposefully ignores the participation of the warlords in the drug trade. In the absence of any enforcement actions against the narcotics trade, the perceived message of tolerance of this activity will continue to undermine the effort to develop a culture of rule of law.

- *Reform the judicial reform process.* In theory, the Judicial Reform Commission (JRC) was a sensible idea, given that no single Afghan institution has authority over all elements of the justice sector; in practice, it has not been able effectively to drive reform in the sector.

  —One option is to wind down the JRC and shift donor resources to building capacity in the permanent institutions. The persistent lack of consensus regarding the proper role of the JRC, the JRC's having become another faction in an already factionalized sector, and the limited time remaining in its currently defined lifespan militate in favor of beginning now to wind down the JRC and spin off its activities. Donor resources now being devoted to or earmarked for building up the JRC could be redirected to building the capacity of the permanent institutions directly, including the Ministry of Justice, Saranwali, Judiciary, and Ministry of Interior. In order to provide a new umbrella body for driving reform and coordinating with donors, creation of a joint body composed of representatives of the permanent institutions would seem to have the benefit—in contrast to the JRC—of buy-in from the stakeholders. However, such a body probably would mirror the disputatious relations among the institutions rather than bridging their differences. Consequently, if the JRC is disbanded, a new expert advisory body attached to the President's office is recommended instead, in particular because the current posture of the Supreme Court is a primary obstacle to reform, and only the chief executive has the potential for influence over that institution. This body should be composed in a way that would give it greater political clout than the current JRC, in order to enable it to bridge differences among the permanent institutions and carry weight with foreign donors.

  —A second option is to substantially enhance the JRC's political stature and capacity in order to improve its effectiveness. The continuing need for an umbrella over and facilitator among the coequal permanent institutions in the justice sector argues in favor of maintaining, but enhancing, the JRC. This would entail reorganizing the JRC to give it a more politically powerful membership; forging a close relationship between the Presidency and the JRC, so that the latter becomes the President's agent in dealing with the justice sector; and extending the life of the JRC beyond the coming elections, while clarifying and enhancing its somewhat ambiguous terms of reference in a new decree. At the same time, donors would need to speed the flow of resources to the JRC, supplement its currently limited technical capacity, and provide professional management capability. A revitalized JRC could play a leading role in facilitating regular dialogue and cooperation among the permanent institutions, thus helping to ensure an integrated approach to developing the rule of law.

  In either scenario, it is imperative that organizational arrangements ensure that Afghans, with international assistance, decide how their judicial system should look and function, by addressing such issues as the role of Shari'a and tribal tradition and the respective roles and authority of the various institutional actors in the justice sector. Until such issues are addressed, any new commission or advisory body—in all likelihood involving personnel from the various institutions—will continue to be fractious.

- *Establish a judicial monitoring program.* As part of a renewed engagement with justice sector rebuilding, UNAMA would be best-placed to establish an independently managed judicial monitoring arm. Without any systematic observation of how the system functions in reality, measuring progress, applying resources, and identifying specific issues to be addressed will continue to be exceedingly challenging. Monitoring personnel also could work to foster appropriate disciplinary systems in Afghan institutions.

- *Significantly increase funding for corrections programs.* Except for one $2 million program and limited NGO activities, the dire need to improve prisons and detention centers in Afghanistan and ensure central government control over facilities is being ignored. Lack of overhaul of the corrections system has a direct negative impact on the functioning of the entire criminal justice system. One or more donors are needed to step forward and play a major role in this area.

Even if resources for implementation of prison infrastructure projects are limited in the near term, it would be possible with more modest resources to build capacity in the Ministry of Justice for professional corrections planning and management, and to train corrections personnel. At the same time, the political and diplomatic work of disengaging warlords from control over prison and detention facilities in the provinces should proceed.

ABOUT THE REPORT

Two years into the process of re-building Afghanistan, and in the wake of the adoption of a new Constitution in January 2004, this report evaluates the progress that has—and has not—been made in establishing the rule of law in Afghanistan. The report assesses efforts by Afghan institutions and international donors to develop the apparatus of law enforcement and administration of justice necessary to ensure that the rights and protections guaranteed to Afghans in their new Constitution can be meaningfully implemented. Both the reform process and priorities are analyzed with respect to police, courts, judges and lawyers, law reform, legal education, and corrections. Key cross-cutting challenges to rule of law development, such as narcotics and organized crime, are also addressed. The report is based principally on approximately 70 interviews conducted by the authors in Kabul and Washington during October and November 2003. Interviewees included officials of the Afghan government, judiciary, and commissions created under the Bonn Agreement, the United Nations, the United States and other donor governments, and nongovernmental organizations, as well as independent observers. This report was written by Laurel Miller and Robert Perito of the Institute's Rule of Law Program.

The views expressed in this report do not necessarily reflect views of the United States Institute of Peace, which does not advocate specific policy positions.

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