

Volume 92 Number 880 December 2010

# INTERNATIONAL REVIEW of the Red Cross

Humanitarian debate: Law, policy, action

# Conflict in Afghanistan I



ICRC

### Aim and scope

The International Review of the Red Cross is a periodical published by the ICRC. Its aim is to promote reflection on humanitarian law, policy and action in armed conflict and other situations of collective armed violence. A specialized journal in humanitarian law, it endeavours to promote knowledge, critical analysis and development of the law and contribute to the prevention of violations of rules protecting fundamental rights and values. The Review offers a forum for discussion about contemporary humanitarian action as well as analysis of the causes and characteristics of conflicts so as to give a clearer insight into the humanitarian problems they generate. Finally, the Review informs its readership on questions pertaining to the International Red Cross and Red Crescent Movement and in particular on the activities and policies of the ICRC.

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**INTERNATIONAL**  
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**Conflict in**  
**Afghanistan I**

**Part 1: Socio-political and humanitarian  
environment**

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## EDITORIAL

The year 2011 marks the tenth anniversary of the launching of 'Operation Enduring Freedom' (OEF), when the United States and its allies went to war with the Taliban. For Americans, this is one of the longest wars in the history of their country, but when the American forces started to bomb Afghanistan the population of that country had already been suffering the ravages of civil wars, foreign intervention, and oppressive regimes for over twenty years. The vast majority of Afghans are under 30<sup>1</sup> – a generation that has known only war, exodus, and an uncertain future.

In a country where there was very little public infrastructure at the end of the 1970s, the statistics reflect the consequences of thirty years of war. Afghanistan is the only country in the world where the life expectancy of women – less than 44 years – is lower than that of men. The infant mortality rate is more than 150 per 1000 live births.<sup>2</sup> The literacy rate of 15- to 24-year-old Afghans is 34%, with 50% for men and only 18% for women.<sup>3</sup> The country is infested with landmines and unexploded ordnance. There is not a single town or village, not a single street, without an amputee – a man, a woman, or a child.

The International Committee of the Red Cross (ICRC) conducted a study in 2009 on the impact of conflict on civilians,<sup>4</sup> and the results show the scale of the population's suffering: over half of the persons interviewed (53%) said that a member of their close family had been killed during the war, and 70% reported that their property had been lost or destroyed. One-third of the interviewees said that they had been injured, one-quarter said that they had been involved in the fighting, and one-fifth had been detained. The conflict has also led to mass population displacements, and a total of 83% of the persons interviewed had been forced to leave their homes at one time or another, often fleeing the country to seek refuge in Pakistan or Iran.

In 2010, civilian losses rose to the highest level since 2001.<sup>5</sup> Civilians are liable to be killed or injured in attacks as the victims of depredations and reprisals of the various armed groups or as casualties hit in coalition air strikes or land offensives against the armed opposition forces. The conflict is still causing major population displacements. Uprooting is followed by a precarious existence, poverty in city outskirts or camps in Pakistan, and even greater vulnerability to climate extremes. Access to health care is seriously jeopardized, particularly in rural zones, where women die in childbirth and the wounded and ill succumb either because there are no local medical facilities or because they simply cannot get to an emergency centre given the insecurity that prevails.

The Afghan conflict poses several challenges: that of building up stability in a territory ravaged by three decades of conflicts, with a strong tribal identity, and where several external actors are involved; that of the adequacy of the law to deal with the current crisis; and that of humanitarian action conducted by actors with varying goals and methods who are all operating in the same context. The purpose of the two issues of the *Review* that have been devoted to Afghanistan is to promote a better understanding of this major conflict and to examine how to improve the fate of the Afghan population in practical terms. The first issue aims to promote a better understanding of the complexity of the historical, political, social, and human issues involved. The second explains several of the legal issues involved in the conflict and the challenges that are posed for humanitarian action in this extraordinarily complex situation.

Before becoming the first arena of confrontation in the ‘global war on terrorism’, Afghanistan was the scene of the last major battle of the cold war. The Soviet intervention from 1979 to 1989 in support of the communist government led to a war that was particularly cruel for the population and to an initial mass exodus. The ultimate Soviet withdrawal and the US-backed Mujahideen victory over the government were succeeded by an equally destructive civil war between factions, parties, and warlords. This war was brought to an end in the greater part of the country by the institution of an Islamic regime by the Taliban, from 1996 to 2001. Although the Taliban government brought security and issued a ban on opium production, its inexperience in dealing with the economy and the modern world in general, its vision of Islam that alienated a large section of Afghan society, its treatment of women, its persecution of the Hazara minority, and its destruction of the giant Buddhas in Bamiyan earned the virtually unanimous disapproval of the international community. More than anything else, however, it was the Taliban’s refusal to hand over Osama bin Laden to the United States after the terrorist attacks of 11 September 2001 and the fact that they allowed Al Qaeda to run training camps in the country that triggered the US attack on Afghanistan.

However, in order to understand the situation one has to stand back and look at the whole picture, which is why we asked Professor William Maley to present the geographical and historical context of the conflict. The Afghan fighters have already proved that technological superiority is not enough to defeat them. Successive ‘conquerors’ have been haunted by the spectre of the routs of the past,

- 1 World Food Programme, ‘WFP food security atlas for Afghanistan’, available at: <http://foodsecurityatlas.org/afg/country/socioeconomic-profile/introduction> (last visited 14 April 2011).
- 2 UNData, ‘Afghanistan’, available at: <http://data.un.org/CountryProfile.aspx> (last visited 14 April 2011).
- 3 UNICEF, ‘Afghanistan’, available at: [http://www.unicef.org/infobycountry/afghanistan\\_statistics.html](http://www.unicef.org/infobycountry/afghanistan_statistics.html) (last visited 14 April 2011).
- 4 International Committee of the Red Cross, *ICRC Survey on the Impact of Armed Conflict on Civilians: Views from Afghanistan*, 09-02-2010 Report, available at <http://www.icrc.org/eng/resources/documents/report/views-from-field-report-afghanistan-230609.htm> (last visited 6 May 2011).
- 5 See statistics published by the United Nations Assistance Mission in Afghanistan, in *Afghanistan: Annual Report 2010: Protection of Civilians in Armed Conflict*, available at: <http://unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf> (last visited 6 May 2011).



ever since the United Kingdom's bloody defeats in the nineteenth century. Ken Guest refers to this eventful history but also to his own experience as war correspondent during the war with the Soviet Union in order to explain the connection between religion and armed conflict by analysing the Afghan mentality. And Imtiaz Gul, who is Executive Director of the Islamabad-based Centre for Research and Security Studies, describes the transnational Islamic networks whose very existence is at the core of international intervention.

After the fall of the Taliban, a new Afghanistan was outlined at the international meeting in Bonn in December 2001. Norah Niland, who was Chief Human Rights Officer of the United Nations Assistance Mission in Afghanistan (UNAMA) from 2008 to 2010, argues that by allowing impunity for political and military leaders, in order to sustain the Bonn Agreement, ran counter to the need for justice expressed by Afghans and thus prejudiced stability.

The international community then set to rebuilding the Afghan state, and undeniable progress was made. The International Legal Foundation's work to develop the right to defence in Afghan courts, which is presented by Jennifer Smith, Natalie Rea, and Shabeer Ahmad Kamawal, is an example of improvement in practical terms. But can the international community really create a 'nation-state' in a context where authority structures are so traditional and so decentralized? Lucy Morgan Edwards, who was Political Adviser to the EU Special Representative in Kabul from 2004 to 2005, analyses the limitations of this undertaking.

The war rhetoric was thus followed – perhaps a little too soon – by discourse on reconstruction and development, which ignored the gradual resurgence of the armed opposition. Few international actors recognized this nameless conflict, while the focus of attention moved to Iraq. The first painful reminder for humanitarian actors that the armed opposition was not only still in existence but had also become radicalized was the murder of Ricardo Munguia, a delegate of the ICRC, in 2003. Years of presence in the country and work in co-operation with the Afghans seemed to have been written off. Was there still a place for neutral and impartial humanitarian action?

The reconstruction and development discourse prevailed until 2008. It was not until then that the Afghan government opened negotiations with the Taliban, who until that time had been classed as terrorists who were not to be associated with. This showed that, after several years of denial, the government was now admitting that the strength of the armed opposition in the field was very real. This reluctance to call a spade a spade was shared by other governments, such as Germany, which until 2010 insisted on referring to a 'warlike situation'.

In 2009, a new phase in the conflict began with the dispatch of 30,000 additional troops (bringing the number of OEF and International Security Assistance Force (ISAF) troops up to 140,000), the intensification of the fighting, and a new stabilization strategy. The progressive withdrawal of troops should start this year. For the states involved in Afghanistan, it is a race against time to ensure a certain degree of stability in the country and, in particular, to prevent it from becoming once again a source of international instability. No one wants to see history repeat itself.

The history of so-called asymmetrical conflicts, where conventional forces are pitted against guerrillas, only too often reveals a spiral of violence, the brunt of which is borne by the civilian populations. In addition to the direct attacks on wounded or captive civilians, a major risk is that the distinction between civilians and combatants becomes blurred owing to the insurgents' tactic of mingling with the population. The status of the detainees held in Bagram or Guantanamo in the context of this conflict has given rise to intense legal controversies. What is more, new weapons – such as drones that are piloted at a distance of thousands of miles – have appeared on the battle field, while improvised explosives devices (IEDs) triggered by mobile phones are used to ambush convoys.

Between the recurrence of asymmetrical conflicts and technological advancement, is international humanitarian law still appropriate to present-day conflicts?

Let us reiterate first of all that armed opposition groups are bound by law. This is provided both in the Geneva Conventions and in Additional Protocols I and II. Annyssa Bellal, Gilles Giacca, and Stuart Casey-Maslen review the applicable law, arguing that human rights also apply to the Taliban; in their view, the problem lies in the implementation of the law, since it is difficult to establish dialogue with these groups. If they are to be engaged in a dialogue to encourage better respect for the law it is in fact essential to understand their conception of war and of the rules that restrict it, even though these may differ from or even run counter to international law. The Taliban have themselves defined their own line of conduct, the *Layha for the Mujahideen*, and they use their own military manual. The *Layha* explains the mentality of this group, and the Pakistani Islam expert Muhammad Munir analyses it with regard to Islamic law. Sadia Tabassum, who lectures in law in Islamabad, also takes this law as a basis for explaining the special status of the rebels in the Muslim world. Far from being outmoded, international humanitarian law is of crucial relevance to international and Afghan public opinion when it comes to assessing the action of the international forces and the Afghan government. Respect for the law is one of the major criteria of their legitimacy and, ultimately, of their success or failure.

The civilian losses resulting from the coalition attacks are a highly sensitive issue in relations between the Afghan government and the international forces. As soon as President Obama was elected, President Karzaï called upon him to limit the coalition's attacks strictly to clearly identified military targets. Recently he requested the NATO forces simply to put an end to operations causing civilian casualties. In 2009, the commander-in-chief of the international forces obtained additional reinforcements in order to conduct large-scale offensives while limiting air attacks and night raids so as to avoid as far as possible the human losses that inflame Afghan opinion and swell the ranks of the opposition.

The American strategy advocates minimizing these attacks, sometimes at the risk of exposing ground troops to a greater extent, by refraining from aerial bombing, which frequently causes civilian losses, undermining the efforts to win the co-operation of the population. But it is not solely a question of tactics: the political and operational choice of limiting civilian casualties in order to guard

against the enmity of the population is also in keeping with the law. The obligation to make a distinction between combatants and civilians, the proportionality between the military advantages expected and civilian losses, and the taking of precautions during the attack are cardinal principles of international humanitarian law and *as such* must be respected. In their article on the impact of the conflict on the rules of the conduct of hostilities, Robin Geiss and Michael Siegrist show that, far from having been overtaken by developments in the Afghan context, international humanitarian law is more relevant than ever.

Afghanistan poses major problems for humanitarian actors in terms of policy and, in particular, in terms of neutrality. The members of the coalition have presented the Taliban and their allies as the new enemies of mankind, with whom any dialogue, even on humanitarian issues, can only be regarded as collusion. The radicalization of Islamist groups has resulted in outright rejection on the part of foreign aid organizations, whatever their good intentions.

Over and above these political or ideological stances, however, there are several objective factors that have blurred the image of the humanitarian actors in the field. The international forces have themselves distributed aid or launched development projects in order to win the favour of the people. Humanitarian action has thus become simply a means to an end in the arsenal at the disposal of military commanders. Yet, in their tribal and ethnic diversity, the only common cause that the Afghans seem to be able to find is to reject the 'invaders'. Can one then hope to win 'their hearts and minds', to quote the expression used in counter-insurgency operations, if the aid is delivered by foreigners bearing weapons?

What is more, during the years following the fall of the Taliban and the establishment of the new institutions, the aid and development organizations aligned themselves with the stabilization and reconstruction discourse in keeping with the strategic objectives of the government and the international forces. Antonio Donini, who was Director of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in Afghanistan from 1999 to 2001, analyses the risks posed by the integration of humanitarian actors into politico-military objectives.

Armed groups are now proliferating, some with criminal motives. These multifarious groups, which are unpredictable and often rival factions, restrict the possibilities of access to the population and pose a constant threat to the staff of the few organizations operating in the field. A village or valley may be accessible one day, but there is nothing to guarantee that it will be open the next. An agreement negotiated with one group by no means guarantees that a rival, or simply a different, group will abide by it.

In response to this insecurity, the use of armed escorts and private security companies and the bunkering of the organizations and NGOs has made the latter look like the instruments of political and military objectives. Worse still, they can also be seen as instrumental in a plan to Westernize Afghan society. The risk is great that these various actors, who claim to be humanitarian but who in actual fact are not always neutral, or impartial, and are rarely independent, will all be lumped together under a common denominator.

In 2011, the ICRC operations in Afghanistan are the organization's most extensive action in the field. After assisting Afghan refugees and wounded Afghans in Pakistan for six years, the ICRC opened a delegation in Kabul in 1987, which still has employees who have been there since then and who have managed to maintain action to assist victims by adapting to the changing realities of thirty years of crisis. Alberto Cairo, for example, who has been in charge of the ICRC's orthopaedic programme in Afghanistan since 1992, reviews his years in Afghanistan with a personal selection of photos from the ICRC archives.

Afghanistan is an extreme test for the ICRC, but the organization is resisting current trends among aid organizations to shelter behind fortified walls and use armed escort to travel. By applying strict neutrality in its humanitarian work, the ICRC is able to maintain dialogue on respect for international humanitarian law with all parties to the conflict. Although the situation is volatile and obtaining access to victims remains a daily challenge, the ICRC's action in Afghanistan demonstrates how relevant this principle is in times of conflict. Fiona Terry, a specialist in humanitarian action and research, had exceptional access to the ICRC's work in the field and its archives, and shares the results of her research into the practice of neutrality in Afghanistan.

The *Review* also wanted to give Afghans the opportunity to voice their opinions. Three women who are committed to the future of their country – Fatima Gailani, President of the Afghan Red Crescent, Dr Sima Samar, Chairperson of the Afghanistan Independent Human Rights Commission, and Taiba Rahim, President of the Nai Qala Association – recount their courageous action, working with Red Crescent volunteers in Afghanistan, working with refugees in Pakistan, or working from abroad to try to influence political actors and mobilize aid for local projects. Avenues for Afghan solutions emerge from their accounts – education, justice and the rule of law, voluntary service, and recognition of the role of women in reconstruction.

In opting to focus these two issues on Afghanistan, the *Review* hopes to participate in policymakers' reflection on the future, learning from the Afghans, who say, 'You cannot wash blood with blood' – a saying that has been little heeded in the last thirty years.

*Vincent Bernard  
Editor-in-Chief*

N.B. This topical edition of the *Review*, focusing on Afghanistan, was the initiative of Dr. Toni Pfanner, who was Editor-in-Chief from 2001 to 2010. On the occasion of Dr. Pfanner's departure, the *Review* wishes to underline the decisive contribution that he made towards modernizing our journal and to thank him for the tremendous work that he undertook during his tenure.



## Interview with Dr Sima Samar\*

Chairperson of the Afghan Independent Human Rights Commission.

*Dr Sima Samar was born in Jaghoori, Ghazni, Afghanistan, on 3 February 1957. She obtained her degree in medicine in February 1982 from Kabul University, one of the few Hazara women to do so. She practised medicine at a government hospital in Kabul, but after a few months was forced to flee for her safety to her native Jaghoori, where she provided medical treatment to patients throughout the remote areas of central Afghanistan.*

*One year after the communist revolution in 1978, her husband was arrested and was never heard from again. Some years later, Dr Samar and her young son fled to the safety of nearby Pakistan. She then worked as a doctor at the refugee branch of the Mission Hospital in Quetta. In 1989, distressed by the total lack of healthcare facilities for Afghan refugee women, she established the Shuhada Organization and Shuhada Clinic in Quetta. The Shuhada Organization was dedicated to the provision of health care to Afghan women and girls, the training of medical staff, and education. In the following years, further branches of the clinic/hospital were opened in central Afghanistan.*

*After living in Quetta as a refugee for over a decade, Dr Samar returned to Afghanistan in December 2001 to assume a cabinet post in the Afghan Interim Administration led by Hamid Karzai. In the interim government she served as Deputy Chairperson and first ever Minister for Women's Affairs. She was forced to resign from her post after receiving death threats and being harassed for questioning conservative Islamic laws, especially sharia law, during an interview in Canada with a Persian-language newspaper. During the 2002 Loya Jirga, several religious conservatives*

\* The interview was conducted in Kabul, Afghanistan, on 7 February 2011 by Markus Cott, Deputy Head of the International Committee of the Red Cross delegation in Kabul, and by Robert Whelan, communication delegate.

*published an advertisement in a local newspaper calling Dr Samar the Salman Rushdie of Afghanistan.*

*She currently heads the Afghanistan Independent Human Rights Commission (AIHRC).<sup>1</sup> She was a nominee for the Nobel Peace Prize in 2009.*

⋮⋮⋮⋮⋮

***What do you think are the root causes of decades of conflicts in Afghanistan?***

In my view, the root cause of the conflicts in the country – and then later the behaviour of the people in power – has from the start been the lack of education.

***What are your earliest memories of the conflict in Afghanistan?***

I think from the day of the coup d'état in Afghanistan in 1978. I was a student at university. For the first time in my life I heard the sound of a MiG fighter flying over the palace, and we had never seen a tank before. I remember that with the noise of the tank, the shooting, and the MiG, I couldn't sleep at all that night. I was already married and kept my husband awake too, because there was so much noise that it was impossible to sleep. I was 22 years old.

I remember that, the week after the coup, our classmates who belonged to the People's Democratic Party of Afghanistan (PDPA) immediately changed their clothing and their behaviour. They all had pistols and brought them into the classroom. Then we saw who was who. We knew some of them; they belonged to Khalq and Parcham.<sup>2</sup>

When the coup took place in 1978, the Khalqis started to arrest anyone, especially anyone who had land. They did so without any record, without any accusation, without any kind of fair trial. Lack of education was the main reason for the conduct of the PDPA. They began to be very tough, acting like a dictatorship, without any accountability. That is what caused most of the people to stand against them. For instance, it led to a popular uprising in my district of Jaghoori in Ghazni province. Because the Khalqis started to arrest family members, the people began to fight back and killed them all with stones and some very old British guns.

***How did this first conflict affect women and what role did they play in it?***

It affected them very badly, because when it comes to conflict, women's movements are even more restricted.

In a country like Afghanistan, the whole conflict is conducted by men. Women are left behind, washing and cooking. But at the beginning some city-educated women were involved. For example, we took part in propaganda,

1 Material drawn from 'Sima Samar', Wikipedia, available at: [http://en.wikipedia.org/wiki/Sima\\_Samar](http://en.wikipedia.org/wiki/Sima_Samar) (last visited 28 March 2011).

2 Khalq and Parcham were factions of the PDPA, Khalq meaning 'masses' and Parcham meaning 'banner' or 'flag'. The leaders of Khalq were Presidents Nur Muhammad Taraki and Hafizullah Amin. The party was formed in 1965, supported by the USSR. The leader of Parcham was Babrak Kamal, who became the third president of Afghanistan in 1979. He was replaced by Najibullah in 1986.

distributing our 'night letters' and writing 'Death to Russia,<sup>3</sup> Death to Khalqis' on the walls of Kabul.

There was a curfew at night. Whenever we were distributing 'night letters' we did so under the curfew. Soviet jeeps were patrolling and it wasn't clear who was who. They were on the lookout and we were trying to hide. The curfew was lifted at 6 a.m. and we would pretend we were going to the *hamam* (public bathhouse). But in fact we had the sprays or the 'night letters' on us and we distributed them in the *hamam*.

We lived in a two-storey house and used to throw such letters down into the compound. Our neighbour was a teacher and she would come up and say, 'Hi, I saw this one!' Everybody was so happy, encouraging people to stand up, and saying why the PDPA and the Soviets were bad and how they were violating everything.

We did not wear scarves at that time, and they were only very rarely worn in the university. We started to wear them not to be identified. We took different coloured scarves with us when we went to the demonstration because the Intelligence Service was trying to find us. We used to have four scarves in our bags; when we set out [into the city] we wore one colour, and then changed to another colour, thinking they could not identify us. But the Soviets were really brutal. They beat up many of us. Even under the Khalqis they came with rubber batons, beating us with them and spraying us with water.

One day during *Se Hoot*<sup>4</sup> we all went out, and the Soviets came with their soldiers. We were led by the elite, the educated ones. All the other universities and schools, the girls' schools, the boys' schools, all of them joined the demonstration. The narrow streets were full of students and academic staff. We were shouting; we had slogans; we had all those things.

At the time it was not possible to make enough photocopies, and very few people had a typewriter. So during *Se Hoot* we were writing pamphlets and tracts, what we called 'night letters', by hand. We used up to ten layers of carbon paper and wrote with a Chinese pen. It was quite hard to make them readable through to the tenth copy. We were encouraging people to come up and say 'Allah-u-Akbar'. I think Kabul was moving when people were saying 'Allah-u-Akbar' against the communists. It was quite good.

However, when things became insecure the women were progressively put aside. Then the Islamic revolution in Iran in 1979 obviously had a really negative impact on our situation. Of course, the Hezb-i Islami<sup>5</sup> had no women members; I don't remember any women being with them when we were out on the streets at that time.

3 In December 1979, Soviet military forces entered Afghanistan, remaining for ten years.

4 The last month of the Afghan year.

5 Hezb-i-Islami Afghanistan, meaning Islamic Party, is an Islamist organization commonly known for fighting the Marxist government of Afghanistan and its close ally, the Soviet Union. Led by Gulbuddin Hekmatyar, it was established at Kabul University in 1975.



***Later you had to flee Afghanistan for Pakistan, where you opened a hospital for women in Quetta. What prompted you to do that and how did you manage to keep it running?***

I went to Peshawar in 1983 and joined the local union of medical doctors. But we did not have enough medical supplies, so I sought help from various organizations. I was in close contact with the ICRC because I often went to see some of their female patients in Quetta Hospital, and occasionally I asked them to give me some dressings, iodine or suchlike, Vaseline and gauze for burn cases, things like that. So we did have some kind of co-operation. Otherwise there was nothing. All those Jihadi groups, all seven of them, had a hospital for the male members of the party, but not for their families.

There was a non-governmental organization (NGO) called Inter-Church Aid that was running hospitals, clinics, relief programmes. It was a consortium of different churches – Church World Service from the US, Norwegian Church Aid, and churches all over the world. I started to work with it in Quetta in a Christian hospital a hundred years old, dating back to the British time. It had a refugee branch, which included a female branch. That was where I worked.

One morning, a young Afghan woman was brought in with pre-eclampsia. She was having convulsions, and I ran here and there trying to find someone who could give her a valium injection to reduce them. The pharmacy was closed, nobody was in the hospital yet, the delivery room was locked, and I couldn't find the key. I got really angry. So I went back and sent the patient to another hospital. She died. I was so depressed. I said: 'We have to do something, there is nothing here for women. This is a hospital, but it's not for emergencies.'

That is why I wanted to set up the hospital for women and children. But it was difficult to find money. Nobody was willing to provide funding and nobody was willing to listen to a woman. In 1987, after that incident, I got some money from Inter-Church Aid. It was headed by an old British man. I went to him, still crying; I was so young! He asked me: 'What's happened, my daughter?' – he was really old, 85 at that time. I said: 'Well, today an Afghan patient came and she died because there were no injections, no valium injections. So I want to start a hospital. Can you fund me?' 'Sorry, no,' he said, 'because the Hezb-i-Islami will bomb our office; we will be in trouble.' I mean, the Pakistani police was in the service of Hezb-i-Islami, and it was controlling all those people. I told him that I would not tell anyone he was giving me funding, and managed to convince him. I worked with him for two years, so he saw that I was really working hard. I was the first to arrive at the hospital each day and I was the last to leave it – a young revolutionary. I went twice a week to the Afghan refugee camps. We had a lot of Pakistani staff, of course. The male doctor and the Pakistani staff kept saying it was time to leave. And I was saying 'No, not until I've finished tending the last patient.' So all of them were against me. It was already a fight between us.

Anyway, the British man eventually provided me with funds and I started the hospital in 1987. At that time, there was nothing for a woman, no education, not even in the camps. Each camp had a clinic, but there were hardly any female staff.



***This was when you realized that you needed to work to improve women's education too?***

Yes. You must realize that in Peshawar at the time literate people, and women in particular, were oppressed.

I remember one Mawlawi<sup>6</sup> who came late on in 1987 to the hospital I started in Pakistan. He brought a lot of patients and said: 'One day, if Kabul is free, then we know what to do with you literate ones.' I said: 'Why?' He replied: 'Because you people understand what happens if a bomb drops here, you know how big an area it can cover; but the illiterate don't understand and disregard the bomb; that is why they're able to fight.'

So again, it's a question of education and literacy. Of course we understood. I said: 'We did our job; we did our part.' He said: 'I don't mean you, because yes, you are saving our morals, our honour, you have a hospital for women and children; but the others, they all ran away, they all went to America.' In that sense he was right: first of all only a few women in Peshawar were active, some of them were killed by Hezb-i-Islami, and the rest ran away. Then I was the only woman in a position to do something.

There was already a girls' school run by Iranians, but of course everything, including the curriculum, was Iranian, and they even provided uniforms and buses for the students. But to see that our own children, Afghan children, were being educated by Iranians in an Iranian manner, praying for Khomeini, was not easy for a secular person like me.

In 1989, Oxfam agreed to support us and gave us 24,000 Pakistani rupees [then approximately US\$1,000]. With that money I started a girls' school. The money didn't pay for furniture or chairs for the students; there was only a plastic carpet for the classroom. I thought, 'It's difficult to compete with Iranians; they provide everything for free, they give extra money and food rations. If I only have a cement floor, who will come to my school?' So I also asked the Norwegian Afghanistan Committee and they gave me some money for the furniture. That's how we got that school going.

By then the Soviets had left Afghanistan, and all the donors came out from Geneva, started the UN Operation Salam in aid of Afghanistan, and opened their offices there. For the first time the United Nations Development Programme (UNDP) came to Pakistan. They opened an office in Quetta, and UNESCO opened an office in Quetta City too.

When I started the girls' school, I developed a literacy course for women. I wrote it myself and included health education in it. I said that, while they're learning to read and write, they should also learn how to stop epistaxis, how to deal with insect bites, things like that, explained in very simple sentences. I had also included family planning in the book. But when I approached UNESCO to print the book, they said that this subject was too sensitive. They said: 'We really can't fund this – Hezb-i-Islami will bomb our office!'

6 'Mawlawi' is an honorific Islamic religious title given to Sunni Muslim religious scholars.

So that was another instance of completely ignoring women. Nobody talked with us; nobody was there to listen to a woman. Of course, when I started the hospital, Hezb-i-Islami was after me. But they couldn't really catch me out, otherwise they would have torn me to pieces.

***Did the situation change after the departure of the Soviets?***

It became extremely harsh when the Mujahideen took power. The first thing they did was to ban women's participation in various ways. They divided the ministries among themselves in Pakistan. We had a very big administration in Quetta, but women were not included in it. The posts were shared out between Tajik and Pashtun alone, and there was no representation for minorities. There were no women, and that was in 1992!

One of the ministers from Sayyaf's party came to his office in the ministry. I think he was the Minister of Mines – I don't remember his name. On the first day he said: 'Oh, the women should not be seen when the minister comes, and they cannot come and greet me.' The next day he came with a pile of scarves, big ones, and first of all asked the staff to distribute them to the women and tell them to wear them, and then they could come and greet their minister. Whatever they did, the first thing was headscarves for women, and then they slowly increased the pressure.

At one point the government announced that the women who presented the news on television, national television – we had only one channel – were not to be seen. There was a rose on the screen when a woman was reading the news. Then they decided that the woman's voice should not be heard by men who were unrelated to her.

Nowadays we are still feeling the impact of that; above all, the lost possibility for women to have an education. And I believe that without education we cannot have the necessary confidence in ourselves to stand up for such things. I compare myself with my own cousins who did not have the opportunity to go to school. What I'm doing and what my cousin, who is my own age, does are completely different. She has a normal rural Afghan life – though not what I consider normal – and I believe that I'm a different person because of education.

***What role did the international community play in improving the conditions of women?***

Overall the international community was really, in my view, part of the problem that isolated women. Nobody talked about women's issues.

I remember, when UNESCO started to give some tents, furniture, and cupboards with some books to the Afghan refugees, I went to them and kept saying 'If you give two tents and materials for the boys' school, give one for the girls'. You should make it compulsory.'

When UNDP opened an office, I called and got an appointment. I began by telling the man I went to see: 'I'm glad that UNDP has started its programme for Afghanistan; do you have any programmes for women?' He said: 'Women?' 'Yes,' I said, 'the UNDP is all about development, and how can you have development without women's participation?' He replied: 'Sorry, we don't have anything for

women.' I asked him: 'Why not?' He said: 'I was in Afghanistan. I was in Logar province for a week and I didn't see any women.' And I commented: 'Look, all these heroes who fought with the Soviets and pushed the Soviets out, do you think they dropped from the sky? They were all born of a woman.' And that man said: 'I haven't seen any Afghan women.' I was so naïve, I said: 'I'm one of them!' He asked: 'Are you not French?' I said: 'No. I have green eyes, but I'm not French. An Afghan can have green eyes. You should understand from my broken English that I'm not.' 'I thought you were French', he said.

So that was the overall attitude.

***Did you try to change this perception within the international community?***

I argued the subject with Francesco Vendrell in 1998, at one of the conferences on Afghanistan in Lausanne. He was the UN Special Representative for Afghanistan at that time.<sup>7</sup> There was an Afghanistan Support Group conference in Switzerland. It was the time when the United States wanted to impose sanctions on the Taliban government.

Mr Vendrell spoke as the UN Special Representative, and I spoke too as the only woman in that group. He said he didn't want the Americans to impose sanctions on the Taliban because he had already spoken with them and also with the Northern Alliance, and that they were going to sit around the table and discuss the issues. I raised my hand and said: 'Mr Special Representative, at that table where you got a guarantee from the Northern Alliance and from the Taliban in Pakistan and Iran, where was the space for women? What is our role?'

After the US intervention I told him: 'I'm here to tell you that women should be included from the beginning, but not me. Not Sima Samar. I am not here to fight for myself.' Then I stressed: 'But please include women from the beginning; otherwise they will not give us a chance.' Thus he remembered that I was fighting for women's participation.

Also, when I was appointed Minister of Women's Affairs and Deputy Chairperson of the Afghanistan Interim Administration, I went to Washington. They received and treated me really well. So I raised a few issues during a meeting with Colin Powell, who was then the Secretary of State. I said: 'I'm not a diplomat; I already have a lot of troubles to my name. One, I'm a woman. Two, I'm Hazara. Three, I'm vocal, nobody likes me. So I would like to ask you a few things. One, please do not repeat the mistakes that you made before.' He said: 'What?' I replied: 'You created these monsters. Please don't support them again. Two, the amount of money you spend on bombing in Afghanistan, do spend it on development there instead.' I gave him the example of the eighty-five missiles fired during Clinton's administration against Bin Laden's camps in Afghanistan: 'How many people you have killed. I think that with \$85 million you could have done a lot in Afghanistan.'

7 Francesco Vendrell was head of the United Nations Special Mission to Afghanistan (UNSM) and Personal Representative of the Secretary-General of the United Nations from January 2000 to December 2001. From 1993 to 2000 he was Director of the Asia and Pacific Division in the UN Department of Political Affairs.

I went on: 'Three, don't forget that you have not done enough for women in that country. We cannot really build democracy and bring peace in Afghanistan without women's participation.'

'Four,' I pointed out, 'who is going to see to our security? The failure of this government, our government, is clearly the failure of your government and the CIA. And please do send enough women with your soldiers to Afghanistan.' 'Why should we send female soldiers?' he asked. And I said: 'To let the Afghan people see a female face and see that they are also able to carry guns and able to patrol the streets and the cities. Finally,' I urged him, 'you really should not undermine accountability and justice'.

When I asked that the same amount of money be spent on construction and development in Afghanistan (as had been spent on the bombing), he said: 'Do you know how much money we spend?' I said: 'No, I just guess it's a lot.'

Colin Powell reacted to my remark saying 'I come from a minority, I'm a woman.' 'I'm also from a minority, Sima,' he said. 'I come from the black community and I'm the first black Secretary of State here, so I do understand part of your worries and concerns.'

When he came to Afghanistan and President Karzai introduced me to him, saying 'Sima is my Deputy Chairperson and Minister of Women's Affairs', he replied, 'I know, she already gave me a hard time in Washington.' Karzai looked at me: 'Where did you meet him?' 'Well, I had a fight with him.' [Laughter]

Colin Powell said: 'Your Foreign Minister [it was Abdullah] has already said that you don't need foreign troops in Afghanistan.' I told him that it's the same mistake, the same group. Who is Abdullah and who am I? Because we were not selected by the people; we were selected by someone and put in that position. I was appointed because I was fighting and walking around and saying that women should be part of the process.

### ***How do you see things going in the future, let's say in the medium term?***

I think the future of Afghanistan depends on the strategy of the Afghan government, let's say Afghan leadership, and also on our partners in the international community, to attain what we want for this country. In my view, one of the mistakes we all made was the lack of a strategy and clear benchmarks for ourselves – where we are going and what we want to do in Afghanistan. Unless we really give a chance to the people who are genuinely committed to and honest about democracy and about the principles of human rights, we will not be able to build democracy with soldiers. We can double or triple the number of soldiers. That will not help. It should be the people of Afghanistan who assert their will. The international community as our partner can facilitate matters, can help us and perhaps smooth the road for us.

I don't believe in a democratic country or a democratic society without women's participation. In Afghanistan, women's names have been used to demonstrate the democratic process, rather than for their real participation. Take the elections as an example. A male member of the family voted on their behalf, using the female name, but in reality their participation was low. It was high in only a few

areas, such as Bamyan and Hazara, and in Jaghoori it was really high because we have a lot of educated women. But it was low in Helmand or Logar. In Logar, for instance, when they provided voting cards for the population in the presidential election, there were twice as many voting cards for women as for men. I raised this issue; I had a fight with the President. I said: 'It's not fair. If the men in the family don't allow their wives to be photographed, they should at least be allowed to have their fingerprint taken. And women should be allowed to come and get the card, to let them know they have ownership of it. This was not the case.' His reply was: 'You're so extreme! They don't allow it.' 'Okay,' I said, 'if they don't allow it, then don't provide voting cards.'

***If you consider Western history over the twentieth century, it was mainly after wars and because of their contribution as civilians to the war effort that women finally gained political access and a political vote. Why didn't that happen here?***

Again, it is because of the oppression of women, and how little freedom we have. Again, it comes down to education. In Paktia, they say a woman has the right to leave the house twice: once when she's married and the second time when she's dead and they are burying her. That is not the European culture, because in Europe – and in Iraq, for example – there are a lot of educated women. It is very difficult to convince an educated woman to let her husband go and get her card and vote on her behalf. But it's easy for the husband of the poor woman who has not heard anything to vote in her place, to use her name, and vote for Sayyaf or anybody else.

I repeat: education really is the key.

***You stress the importance of education. How do children face the future after thirty years of war and ongoing conflict? How do young people see what awaits them in the future?***

Well, I honestly do think our hope lies in the young generation, both boys and girls. I'm very focused on education. One of the problems of this government – Karzai's administration – is that he does not pay committed attention to education. The Ministry of Education should be given to a person who is really committed to change and to providing a better quality of education. Two weeks ago, he officially sent letters to say that the time assigned to science studies should be reduced and lessons on religious subjects increased. I don't mean we should not have religious studies, but let's have them as a family responsibility.

Let the family take responsibility for the children and what they want them to understand about their religion. I suffered because I was a Shia. At home I had to learn the Shia religion for my father's and my family's sake, and at school I had to learn the Sunni religion to get the grade, in order to pass. So when answering an exam question in third or fourth grade I was trying, as a child of seven or eight years old, to focus on the fact that I was not at home, and not to give a Shia reply. If I was at home, I had to concentrate on not saying the Sunni things, because my father and my family would get angry.

This does not help us. We have to know our principles of Islam and we have to practise them. But not by force. We have to teach our children the value of Islam rather than focusing on Islamic subjects. [We have to] introduce the quality of education. We are living in the twenty-first century.

***But why would you say that these people focus so much on religion?***

It's just for political interest, political interest only.

***How do you explain that humanitarian organizations are today not able to access certain parts of the country where there are needs?***

I think it's simply a question of control and power. The power holders see the humanitarian NGOs and human rights NGOs or the people who defend human rights as a threat to themselves, because they are afraid they will lose their power or that we will weaken their power, which is true. That is why they are exerting such pressure.

***Do you believe a court will ever be established to try people who have violated human rights and committed atrocities in these decades of war, and to bring justice to the victims?***

I don't, because I don't see any political will on the part of the Afghan government and authorities or the international partners of Afghanistan. We keep saying that there should at least be an acknowledgement of the suffering of the people.

My 14-year-old brother-in-law was in seventh grade when he was taken from the street, and he never returned. And who is responsible for that?

Being a victim of war myself, I cannot really forget. Imagine what percentage of women in this country face the same problem as I did. I became a widow when I was only 23, and I had a son. I was able to raise him and provide him with a good education and an easier life, but he still ... he simply doesn't try to discuss these issues with me because he doesn't want me to be depressed. For instance, when my father died, my brother held the funeral and my brothers cried, and it was quite natural. But my son did not cry. Then he told me that my brothers were angry with him because he had not cried, and he said, 'Mother, I don't understand what a father means.'

He's got a daughter now and I can see, by the way he loves her, that he himself did not know the feeling of that love. So he has tried to centre all his love and attention on his daughter. The way he holds and takes care of her, you feel it. And who is responsible for that?

What percentage of women who faced the same problem as I did were able to stand on their feet and feed themselves? Very few. They all became victims again and again. I don't know how many brothers-in-law they had to marry in order to survive with their orphaned children. Somebody must be responsible for that.

I do think, though, that many people did not suffer. They gained a lot of money, status, and power because of the suffering of the general population. There should be acknowledgement of the victims' suffering. And then the perpetrators should at least be isolated, and sidelined from positions of power. If you look at

most of the leaders we already have, which of them have lost their sons? Which ones have lost their fathers? Very few. So they have no feeling for and understanding of the suffering of the people.

To sum up, it is as though the Khalqis took the bride away from the wedding ceremony and she never returned. They took away the doctors, the intellectuals, the educated people, and nobody was there to respond. Nobody.

In the Afghanistan Independent Human Rights Commission we are mapping the conflict, especially the mass graves. And nobody is found to be directly responsible. It is so depressing.

***Are you optimistic or pessimistic when you look to the future?***

I'm an optimistic person. If I lose my optimism, then I really must leave the country or lie down somewhere to die. We have no choice. I think this country and the people in it cannot continue forever in conflict. We have to find a better way for sustainable peace. And hopefully we will do so. It will take time because of Afghanistan's low literacy rate and the ethnic, linguistic, and regional tensions and suchlike. We have to realize one day that we are the same, we are all human beings.





# Afghanistan: an historical and geographical appraisal

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## **Abstract**

*Afghanistan's current difficulties are in large measure the product of a troubled history and a troubled geographical location. These have combined to produce a debilitated state, open to meddling from a range of external powers, that has now experienced decades of trauma. The current insurgency that afflicts the country is sustained by the sanctuaries in Pakistan from which the Taliban operate. Unless and until there is progress on this front, the situation in Afghanistan will remain stalemated.*

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Afghanistan, more than many other states, has been the victim of its history and geography. In the three decades since the communist coup of April 1978 and the Soviet invasion of December 1979, it has been exposed to the impact of political and ideological forces that are far beyond the capacity of the bulk of its own people to control. The Soviet invasion made it a battleground within the Cold War, and the end of the Cold War and the collapse of the Soviet Union turned Afghanistan into a new theatre of competition, this time between regional actors determined that their competitors should not obtain a foothold in the shadows of the Hindu Kush. In 1937, the French diplomat René Dollot described Afghanistan as 'the Switzerland of Asia'.<sup>1</sup> It is not a label that any wise analyst would now attach to that country, although it serves as a useful reminder that, for the five decades or so before the communist coup, Afghanistan was perhaps the most peaceful country in

the Asian continent. My aim in this article is to outline the processes by which Afghanistan lost the status of ‘the Switzerland of Asia’, and to explore some of the ramifications of these processes for the country’s future prospects. It is divided into six sections. The first examines the development of the Afghan ‘state’ as both a territorially bounded unit and a set of administrative structures. The second explores the factors that led to the political crises of 1978–1979. The third outlines the course and the impact of the Soviet military presence in Afghanistan from 1979 to 1989, and the fourth traces developments from the end of the Soviet presence in 1989 to the overthrow of the Taliban regime in November 2001. The fifth deals with the burden of Afghanistan’s politics and regional environment in the period since then. The sixth offers some brief conclusions.

## The development of the Afghan state

One complication of studying ‘state formation’ is that the English word ‘state’ is itself ambiguous. In one sense it refers to a territorially bounded unit, equivalent to the word ‘country’. In another sense, it refers to the melange of political and administrative units that control or seek to control the public space within a territorial unit, performing tasks of resource extraction and mobilization, penetration of society, and regulation of behaviour.<sup>2</sup> The two senses cannot be completely separated; for example, the 1933 Montevideo Convention on the Rights and Duties of States identifies ‘government’ as one of the qualifications that a state in the first sense of the term should possess. Nonetheless, it is analytically useful to distinguish the two senses, since the processes by which states in these different senses are formed themselves differ significantly.

Territorial states can be defined positively by an expansion of power from within, negatively by the limits of the writ of approaching external powers, or by a combination of the two. (They can also be defined by the expansion and then contraction of colonialism, but that process has less use in explaining Afghanistan’s appearance.) Afghanistan emerged as a classic buffer state, not only caught between but in part defined by the rivalry in the nineteenth century between the British and Russian empires. With the British entrenched in India, the Russian expansion into Central Asia through the establishment of a number of protectorates made the Russians and the British potential competitors in what came to be called the ‘Great Game’.<sup>3</sup> That said, it was in the interest of neither power to see their rivalry become a shooting war, and, for that reason, the existence of a buffer state between the two

1 René Dollot, *L’Afghanistan: histoire, description, moeurs et coutumes, folklore, fouilles*, Payot, Paris, 1937, p. 15.

2 Joel S. Migdal, *Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World*, Princeton University Press, Princeton, 1988, p. 4.

3 On this process, see Seymour Becker, *Russia’s Protectorates in Central Asia: Bukhara and Khiva, 1865–1924*, Harvard University Press, Cambridge, MA, 1968. For further discussion on Anglo-Russian rivalry, see Karl E. Meyer and Sharen Blair Brysac, *Tournament of Shadows: The Great Game and the Race for Empire in Central Asia*, Basic Books, New York, 1999.

great powers was convenient. As a result, by the end of the nineteenth century, the boundaries of what we now call Afghanistan had been largely fixed, although not always in ways that satisfied everybody.

### Political and administrative control

In the political and administrative senses, the Afghan state developed a number of distinctive features. First, it was a dynastic state. It initially took shape as a tribal confederation during the era of Ahmad Shah Durrani (1747–1772), and the monarchical system remained in place for two centuries. However, for much of the nineteenth century the Afghan state had a pre-modern form,<sup>4</sup> with taxes (or tribute) collected in kind rather than cash, and rulers dependent upon external patrons, the most notorious being Shah Shuja (1803–1809, 1839–1842), whose name became synonymous with craven subordination to a patron's pressures. The late nineteenth century witnessed a considerable consolidation of state power under Amir Abdul Rahman Khan (1880–1901), especially in the modernization of tax gathering<sup>5</sup> and a willingness to use muscle in order to assert control over other power centres, but later rulers lacked either the determination or the capacity that the 'Iron Amir' had brought to his position. His successor, Habibullah, was a cautious and low-key ruler, although this did not save him from assassination in 1919. Habibullah's son Amanullah, a much more committed reformer, sought the rapid modernization of the country but faced mounting opposition and was finally overthrown in 1929.<sup>6</sup> After a brief interval of non-Pushtun rule, the throne was regained by a Pushtun aristocrat, Nadir Shah, and, while his brief reign was terminated by assassination in November 1933, his 19-year-old son, Zahir Shah, went on to occupy the throne for nearly forty years before he was overthrown in a palace coup by his cousin Mohammad Daoud in 1973. It was only with the killing of Daoud in the communist coup of April 1978 that dynastic rule came to an end (and, even then, Zahir Shah was to return to Afghanistan after 2001 as 'Father of the Nation', remaining a remote but popular presence in Kabul until his death in 2007).

### Dependency on unstable revenue

Over time, the Afghan state became a 'rentier' state, overly dependent in its budget on unstable revenue sources such as foreign aid and income from the sale of exhaustible natural resources. When Zahir Shah became king, a large amount of state revenue came from land taxes, and most state expenditure was funded from

4 See Christine Noelle, *State and Tribe in Nineteenth-century Afghanistan: The Reign of Amir Dost Muhammad Khan (1826–1863)*, Curzon Press, Richmond, 1998.

5 See Hasan Kawun Kakar, *Government and Society in Afghanistan: The Reign of Amir 'Abd al-Rahman Khan*, University of Texas Press, Austin, 1979, pp. 73–91.

6 Leon B. Poullada, *Reform and Rebellion in Afghanistan: King Amanullah's Failure to Modernize a Tribal Society*, Cornell University Press, Ithaca, 1973, pp. 160–213.

internal revenue sources. By the beginning of the so-called ‘New Democracy’ in 1964, 49% of state expenditure was covered by foreign aid.<sup>7</sup> The danger that arises from dependence on such revenue flows is a direct result of their instability. If donor priorities shift, state revenue can decline; likewise, if the world price of a key export drops, the revenue that accrues from its sale can fall as well. When this happens, it is unlikely that the state will be able to meet the expectations that it may have fostered in the minds of its people during the good times, and the result may be either a decline in the standing of the government or a fully fledged legitimacy crisis. If the latter ensues, the state may require considerable strength to be able to ride the storm, drawing on coercion and other non-legitimate forms of domination in order to survive.

### Weak presence outside the capital

The Afghan state was fundamentally a weak state. On the one hand, it was a ubiquitous presence in many parts of the country; on the other, it was for the most part a passive and distant presence. On occasion the central state could concentrate power to serve its objects: for example, the putting down of a Safi Pushtun revolt in 1947, or the squashing of objections to the winding back of *purdah* from 1959 during the premiership of Mohammad Daoud. But this was the exception rather than the rule. For the most part, a substantial gulf separated state and subjects. Officials from Kabul disliked being sent out into the provinces, and many rural dwellers found the urban bureaucrats ignorant of their own ways of life, and of the legitimate traditional structures that served to regulate social relations.<sup>8</sup> The state as it stood was no tool for the penetration and control of these complex rural realms, a fact that became painfully obvious with the crisis of 1978–1979.

### A difficult geopolitical environment

The Afghan state was to some degree shaped by Afghanistan’s conflicted geopolitical environment. The Durand Line of 1893 divided the ethnic Pushtuns of Southwest Asia between Afghanistan and British India. When the partition of the subcontinent occurred in 1947, Afghanistan’s demand for ‘self-determination’ for the Pushtuns of India went nowhere. As a result, Afghanistan was the one state to vote against the admission of Pakistan to the United Nations, and this set the scene for tense relations for the next three decades.<sup>9</sup> For Pakistani military planners, a nightmare scenario saw their country sandwiched between a hostile India and a

7 Barnett R. Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, Yale University Press, New Haven, 2002, p. 296.

8 For more detailed discussion, see Thomas J. Barfield, ‘Weak links on a rusty chain: structural weaknesses in Afghanistan’s provincial government administration’, in M. Nazif Shahrani and Robert L. Canfield (eds), *Revolutions and Rebellions in Afghanistan: Anthropological Perspectives*, Institute of International Studies, University of California, Berkeley, 1984, pp. 170–184.

9 This came to be known as the ‘Pushtunistan dispute’. See Rajat Ganguly, *Kin State Intervention in Ethnic Conflicts: Lessons from South Asia*, SAGE Publications, New Delhi, 1998, pp. 162–192.

hostile Afghanistan, and they stood poised to seize any opportunity to change this situation. As they saw it, the overthrow of Daoud's Pushtunist presidency, and even more the Soviet invasion of Afghanistan, provided the opportunity that they had been seeking.

## The crises of 1978–1979

The communist coup of April 1978 tipped Afghanistan into a social and political abyss from which it has yet to extract itself. Its roots were diverse, but at the outset it is important above all to note that it was not a product of any demand for revolutionary change on the part of the mass Afghan population. Rather, it reflected severe division within the Kabul-based political elite. The genesis of this division was the emergence of radical political groups in the 'New Democracy' period from 1964 to 1973. Two Marxist groups, the Khalq ('Masses') and Parcham ('Banner') factions had crystallized during this period and, although there were serious rivalries between the two, they joined to form the 'People's Democratic Party of Afghanistan' (PDPA).<sup>10</sup> These groups were inspired by the Soviet model, and, while there is no credible evidence that the USSR orchestrated the April coup, it appears to have received advance warning<sup>11</sup> – not surprising, given that many members of the Afghan armed forces had been trained in the Soviet Union. Daoud's regime had failed to meet the high expectations that its own rhetoric of 'revolution' had created, and it only needed one match to set off an explosion.

## The 'Saur Revolution'

This explosion came with the assassination on 17 April 1978 of a prominent Parcham activist, Mir Akbar Khayber. The identity of the assassins remains unclear, although many blamed the ruthless Khalqi Hafizullah Amin for the slaying.<sup>12</sup> Thousands turned out at Khayber's funeral, and Daoud's regime panicked, moving to arrest a number of communist activists. This triggered the coup of 27 April, essentially from the ranks of the military. The four key figures in the coup were Abdul Qadir and Muhammad Rafi (from the Parcham), and Aslam Watanjar and Sayid Muhammad Gulabzoi (from the Khalq). However, after overrunning the palace and killing Daoud and his family early on the morning of 28 April, they made way for a clutch of civilian Marxist politicians: Nur Mohammad Taraki and Hafizullah Amin (from the Khalq) and Babrak Karmal (from the Parcham). Taraki was the designated leader of the so-called 'Saur Revolution' (*inqilab-e saur*) that

10 See Anthony Arnold, *Afghanistan's Two-party Communism: Parcham and Khalq*, Hoover Institution Press, Stanford, 1983, pp. 52–56; Henry S. Bradsher, *Afghan Communism and Soviet Intervention*, Oxford University Press, Karachi, 1999, pp. 20–23.

11 Christopher Andrew and Vasili Mitrokhin, *The World Was Going Our Way: The KGB and the Battle for the Third World*, Basic Books, New York, 2005, p. 386.

12 See, for example, Gilles Dorransoro, *Revolution Unending: Afghanistan, 1979 to the Present*, Columbia University Press, New York, 2005, p. 85.

took its name from the month in the Afghan calendar in which the coup had occurred. At one level, the use of the term ‘revolution’ was inappropriate: most Afghans awoke in surprise to hear of the communist takeover, which was in no sense the product of a mass movement. At another level, however, it deserved the title, for the new Marxist rulers rapidly moved to try to produce a revolution from above, a step that triggered a substantial conflict between the state and its subjects.

The period from April 1978 to December 1979 was one of almost unrelenting turbulence, for a number of reasons. The most important was that the policies of the new rulers proved profoundly offensive to the attitudes and values of large numbers of Afghans. The rulers’ avowed atheism immediately set them apart, and policies that they pursued in spheres such as land reform were both ill-considered and provocative. Faced with resistance, they rapidly turned to brutal coercion as a way of strengthening their position. In Pul-e-Charkhi prison near Kabul, prisoners were executed in large numbers. Sayid Abdullah, the prison commandant, stated that ‘a million Afghans are all that should remain alive. We need a million Khalqis. The others we don’t need, we will get rid of them.’<sup>13</sup> Coercion, however, had the opposite effect to that which the regime intended, driving more and more people into the camp of the opposition, which in turn increasingly took up arms against the regime. The turmoil caused by policy failings was aggravated by the severe division between the Parcham and the Khalq. First to fall victim were Karmal and a number of his associates, who were sent abroad as ambassadors within three months of the coup. Later in the year, there was a further purge of Parchamis,<sup>14</sup> although some survived because of Soviet protection. But this was not the only split. In September 1979, Amin succeeded in ousting his fellow Khalqi, Taraki, who was subsequently murdered, and this initiated a period of ferocious repression. It had wider effects as well. Taraki had been received by the Soviet leader Leonid Brezhnev shortly before his ouster, and Brezhnev and his colleagues were infuriated by the course that events had taken. Amin was living on borrowed time.

## The Soviet invasion

The Soviet leadership had long been perturbed by the course of events in Afghanistan, but its initial reaction had been to try to keep its distance. On 15 March 1979, the 17th Division of the Afghan Army had mutinied in Herat, creating a grave challenge to the regime. Taraki had requested Soviet assistance, but the Chairman of the Council of Ministers, Aleksei Kosygin, had responded in measured terms that bear repeating:

The deployment of our forces in the territory of Afghanistan would immediately arouse the international community and would invite sharply

13 Michael Barry, ‘Répressions et guerre soviétiques’, in *Les Temps Modernes*, Nos. 408–409, 1980, p. 183.

14 See Odd Arne Westad, ‘Prelude to invasion: the Soviet Union and the Afghan communists, 1978–1979’, in *International History Review*, Vol. 16, 1994, pp. 61–62.

unfavourable multipronged consequence ... I would again like to underline that the question of deploying our forces has been examined by us from every direction; we carefully studied all aspects of this action and came to the conclusion that if our troops were introduced, the situation in your country would not only not improve, but would worsen. One cannot deny that our troops would have to fight not only with foreign aggressors, but also with a certain number of your people. And people do not forgive such things.<sup>15</sup>

Unfortunately, by late 1979, ill-health had largely removed the ageing Kosygin from the policy-making process, and the killing of Taraki sent the Soviet leadership in a different direction. On 12 December 1979, a meeting of the Soviet Politburo, chaired by the Foreign Minister, Andrei Gromyko, accepted the recommendation of four key Soviet leaders and Politburo members – the Communist Party General Secretary, Brezhnev, the Chairman of the Committee on State Security, Iurii Andropov, the Defence Minister, Dmitrii Ustinov, and Gromyko himself – that Afghanistan should be invaded. On 27 December, Amin was killed by Soviet commandos at the Tajbeg Palace in southern Kabul, and at 8.45 pm a Soviet radio station overpowered the signal of Kabul radio and broadcast a recording in which Babrak Karmal announced the overthrow of Amin. Afghanistan was about to enter not just a new decade but a new era.

The Soviet invasion decisively transformed Afghanistan from a remote outpost to a key theatre of Cold War rivalry. The US Central Intelligence Agency had not foreseen the invasion, and the Carter Administration was deeply affronted by what had occurred.<sup>16</sup> Soviet motives were inscrutable, and President Carter saw the invasion as leaving the USSR poised to interdict the flow of oil from the Persian Gulf, constituting ‘the most serious threat to world peace since the Second World War’.<sup>17</sup> The response of the Carter Administration, and the Reagan Administration that succeeded it, was to arm groups opposed to the Soviet Union, with a view to signalling that such an invasion was internationally unacceptable. This approach proved successful when the Soviets finally withdrew their forces in 1989; but it had some unintended and unanticipated consequences.

## The Soviet–Afghan War

The Soviet invasion of Afghanistan created a deeply paradoxical political environment. The presence of Soviet forces was apparently sufficient to sustain the Afghan state, but the very dependence of the state on Soviet support for its survival limited its ability to win generalized normative support. Thus, Soviet support

15 James G. Hershberg (ed.), ‘New evidence on the Soviet intervention in Afghanistan’, in *Cold War International History Bulletin*, Nos. 8–9, 1996–1997, p. 147.

16 Tim Weiner, *Legacy of Ashes: The History of the CIA*, Penguin, New York, 2007, pp. 365–367.

17 Gabriella Grasselli, *British and American Responses to the Soviet Invasion of Afghanistan*, Dartmouth Publishing Co., Aldershot, 1996, p. 121.



offered not a strategy for long-term sustainable rule but rather a life-support system, and when this was cut off at the end of 1991, the communist regime in Kabul swiftly collapsed. In effect, the Afghan state as an autonomous structure for resource extraction and mobilization disintegrated following the Soviet invasion; the scale of the problem was long disguised by Soviet subventions, but, when these disappeared, so did the regime. However, what made this possible was the widespread resistance in Afghanistan to communist rule. The Soviet leadership may have hoped to win kudos from the removal of the hated Amin, but their new surrogate, Babrak Karmal, was widely scorned, and those with a strong sense of Afghan history labelled him a second Shah Shuja. This was not a promising environment for Karmal, and he proved an unimpressive client.

## The mujahideen

Resistance to the Soviet presence came from many different circles, but the armed resistants came to be known as ‘mujahideen’, which means practitioners of *jihād*. The Afghan mujahideen had many different components, including political parties based predominantly in Pakistan, commanders with different degrees of sway within Afghanistan itself, and communities on whose support they drew.<sup>18</sup> Their disparate character was a strength during the 1980s (when it made them very difficult to co-opt or decapitate) but a weakness after 1991 (when they lacked the coherence to exercise state power effectively). The mujahideen reflected the complexities of Afghan society – which is differentiated significantly on ethnic, sectarian, spatial, economic, and gender lines – and manifested a number of sharp ideological distinctions as well. They included parties as diverse as the near-Leninist Hezb-e-Islami (‘Party of Islam’) headed by Gulbuddin Hekmatyar, and the moderate Islamist Jamiat-e-Islami (‘Islamic Society’) of Burhanuddin Rabbani, as well as smaller parties led by figures such as Pir Sayid Ahmad Gailani and Sibghatullah Mojadiddi, who reflected Sufi influences and supported the return of Zahir Shah, and Abdul Rab al-Rasoul Sayyaf, who was much more influenced by Wahhabi tendencies originating from the Arabian peninsula. Such parties became conduits for international aid, but on the ground were less directly important than commanders such as Haji Abdul Latif in Kandahar, Ismail Khan in Herat, and Ahmad Shah Massoud in the Panjsher Valley to the north of Kabul.<sup>19</sup> The mujahideen were not able to hold and occupy major cities, but they harried Soviet and regime forces very effectively throughout most of the countryside, denying them any semblance of ‘victory’.

18 For more background on the mujahideen, see Olivier Roy, *Islam and Resistance in Afghanistan*, Cambridge University Press, Cambridge, 1990, pp. 98–148; Abdulkader Sinno, *Organizations at War in Afghanistan and Beyond*, Cornell University Press, Ithaca, 2008, pp. 119–172.

19 For more information on these parties and commanders, see William Maley, *The Afghanistan Wars*, Palgrave Macmillan, New York, 2009, pp. 52–55.



## Global and regional support

The mujahideen were actively supported in their resistance through most of the 1980s by the United States, led by President Reagan, and by Pakistan, under General Zia ul-Haq. Each of these states, however, had its own distinct interests. The United States was intent on striking at the foundations of Soviet power, and saw the mujahideen as an instrument that could be turned to this purpose. Pakistan, by contrast, had a complicated set of regional interests. Having confronted a smouldering border dispute with Afghanistan over the decades since 1947, Pakistan had no interest in boosting the position of secularized, nationalistic Afghans, and it thus preferred to support radical Islamists such as Hekmatyar's Hezb-e-Islami,<sup>20</sup> which had long been a loyal client of Pakistan's Inter-Services Intelligence Directorate (ISI). This was something that the United States, the main source of funding for the arms used by the mujahideen, was prepared to tolerate, although it was no secret that the Hezb-e-Islami was also radically anti-Western. This was often a matter of intense annoyance to commanders such as Massoud, who questioned how much fighting the Hezb was actually doing, and felt that a Frankenstein's monster was being created with which they would one day have to cope. In this they were to prove much more astute than either policy-makers in Washington or CIA personnel in Islamabad.

## Soviet withdrawal

Ultimately, the Soviets withdrew their forces from Afghanistan. A new leadership under Mikhail Gorbachev, who became General Secretary of the Communist Party of the Soviet Union in March 1985, found little in the Afghan commitment that was to their taste. At the 27th Party Congress in February 1986, Gorbachev referred to Afghanistan as a 'bleeding wound' (*krovotochashchaia rana*),<sup>21</sup> and, on 5 May, Babrak Karmal was replaced as General Secretary of the PDPA Central Committee by Dr Najibullah, who had headed the regime's secret police from 1980 to 1985. On 13 November 1986, the Soviet Politburo took the decision to withdraw Soviet forces over a two-year period. Najibullah was encouraged to engage in an attempt to broaden his regime's base through 'national reconciliation', but the wounds of war were too deep and, as one analysis put it, his secret police background 'inherently disqualified him as the architect of national reconciliation'.<sup>22</sup> With supplies of Soviet materiel, Najibullah succeeded in surviving the withdrawal of Soviet forces in 1989, but, as subsequently became clear, his survival was dependent

20 See Mariam Abou Zahab and Olivier Roy, *Islamist Networks: The Afghan–Pakistan Connection*, Hurst & Co., London, 2004, pp. 53–57; Rizwan Hussain, *Pakistan and the Emergence of Islamic Militancy in Afghanistan*, Ashgate, Aldershot, 2005, pp. 93–133.

21 *Materialy XXVII s'ezda Kommunisticheskoi partii Sovetskogo Soiuza [Materials of the 27th Congress of the Communist Party of the Soviet Union]*, Izdatel'stvo politicheskoi literatury, Moscow, 1986, p. 69.

22 Kim M. Tsagolov and Selig S. Harrison, 'Afganskaia voina: vzgliad iz segodniashnego dnia [The Afghan war: a view from the present day]', in *Vostok*, No. 3, 1991, p. 53.

on his having Soviet-supplied resources with which to buy the loyalty of key actors in varying parties of the country. Almost as soon as the supply of such resources dried up, his regime began to fall apart as key actors repositioned themselves; in April 1992, the regime collapsed completely.<sup>23</sup>

The effects of the war on Afghanistan were absolutely devastating. Between 1978 and 1987, on average over 240 Afghans were killed every day for ten years straight, a level of civilian casualties fifty times greater than that experienced in 2010.<sup>24</sup> This high level of mortality was accompanied by shocking and extensive war crimes and human rights violations.<sup>25</sup> It was also accompanied by vast and enduring population displacement and forced migration, giving rise to long-term problems of social disruption.<sup>26</sup> Out of a pre-war settled population estimated at 13.05 million, by the beginning of 1990 around 6.2 million were living abroad as refugees, mostly in Pakistan and Iran. The refugee camps in Pakistan proved to be ambiguous spaces, not just protecting vulnerable refugees but also nurturing combatants,<sup>27</sup> and ultimately they were to provide a breeding ground for the Taliban movement, a toxic yet tragic force that reflected not some ‘traditional’ Afghan society but the results of decades of disruption of everyday life for ordinary Afghans. Afghanistan was profoundly traumatized by the events of the 1980s and has a long way to go before it will have any hope of complete recovery.

## Post-Soviet turmoil: mujahideen and Taliban

The disintegration of Najibullah’s regime resulted in the takeover of Kabul by elements of the Afghan mujahideen. They faced two problems, however. The first was that they inherited the symbols of a state (notably a capital city) but not functioning state mechanisms: bureaucrats had scattered or fled, the army had split along ethnic and regional lines, and there were simply no longer agencies available to extract and redistribute resources. Few resistance movements have ever acquired such a debilitated inheritance.

23 See Phillip Corwin, *Doomed in Afghanistan: A UN Officer’s Memoir of the Fall of Kabul and Najibullah’s Failed Escape, 1992*, Rutgers University Press, New Brunswick, NJ, 2003.

24 Noor Ahmad Khalidi, ‘Afghanistan: demographic consequences of war, 1978–1987’, in *Central Asian Survey*, Vol. 10, 1991, pp. 101–126.

25 See Jeri Laber and Barnett R. Rubin, *A Nation is Dying: Afghanistan under the Soviets 1979–87*, Northwestern University Press, Evanston, 1988; The Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity 1978–2001*, Afghanistan Justice Project, Kabul, 2005; William Maley, ‘Human rights in Afghanistan’, in Shahram Akbarzadeh and Benjamin MacQueen (eds), *Islam and Human Rights in Practice: Perspectives Across the Ummah*, Routledge, New York, 2008, pp. 89–107.

26 See Susanne Schmeidl and William Maley, ‘The case of the Afghan refugee population: finding durable solutions in contested transitions’, in Howard Adelman (ed.), *Protracted Displacement in Asia: No Place to Call Home*, Ashgate, Aldershot, 2008, pp. 131–179.

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

## Intra-mujahideen rivalry

Just as seriously, the divisions between the mujahideen had themselves intensified. While most Sunni Muslim mujahideen leaders signed an agreement on 24 April 1992 to form a 'Leadership Council' (*Shura-i Qiyadi*) under Professor Mojadiddi, Gulbuddin Hekmatyar declined to participate; his spokesman had earlier stated that 'Hekmatyar can't agree to anything that includes Ahmad Shah Massoud'.<sup>28</sup> Despite several subsequent attempts to resolve these divisions, they remained an acute source of tension,<sup>29</sup> and when finally Hekmatyar returned to Kabul as 'Prime Minister' in June 1996, all his presence did was to contaminate the reputation of the government, which by this time was headed by Burhanuddin Rabbani.

One of the key reasons for this was that intra-mujahideen rivalry had resulted in brutal armed conflict that caused massive damage to the capital itself. While mortality in most parts of Afghanistan fell dramatically at this time, in Kabul the opposite was the case. Different parts of the city had come under the control of different forces, with the Shiite Hezb-e-Wahdat in the west of the city, forces loyal to Massoud in the north, a militia associated with the former communist commander Abdul Rashid Dostam in the Bala Hissar area, and loyalists of Abdul Rab al-Rasoul Sayyaf in Paghman. Fighting between the Hezb-e-Wahdat and Sayyaf's forces broke out first, in June 1992.<sup>30</sup> On top of this, rocket attacks were made on the city by Hezb-e-Islami forces located to the south, using arms accumulated during the 1980s, to try to prevent anyone from ruling if Hekmatyar himself could not do so. Rabbani referred to Hekmatyar as a 'dangerous terrorist who should be expelled from Afghanistan'.<sup>31</sup> The human consequences of this period were atrocious, with large-scale war crimes being committed by a number of forces that were involved in the conflict.<sup>32</sup> It was only in March 1995 that Massoud succeeded in securing both the city and its surrounds. The lull that this produced proved to be short-lived.

## Emergence of the Taliban

It was in this context that the Taliban movement emerged on the scene in 1994, taking first the city of Kandahar, then Herat in 1995, and finally Kabul in September 1996.<sup>33</sup> 'Taliban' is simply the Persianized plural of an Arabic word for

28 In *International Herald Tribune*, 22 April 1992, p. 2.

29 See William Maley, 'The future of Islamic Afghanistan', in *Security Dialogue*, Vol. 24, December 1993, pp. 388–390.

30 Kristian Berg Harpviken, *Political Mobilization among the Hazara of Afghanistan: 1978–1992*, Report No. 9, Department of Sociology, University of Oslo, Oslo, p. 113.

31 BBC, *Summary of World Broadcasts*, FE/1461/B/1, 17 August 1992.

32 See Human Rights Watch, *Blood-stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, Human Rights Watch, New York, 2005.

33 For more detail on the Taliban's rise, see Anthony Davis, 'How the Taliban became a military force', in William Maley (ed.), *Fundamentalism Reborn? Afghanistan and the Taliban*, Hurst & Co., London, 1998, pp. 43–71; Neamatollah Nojumi, *The Rise of the Taliban: Mass Mobilization, Civil War, and the Future of the Region*, Palgrave, New York, 2002, pp. 117–124; Michael Griffin, *Reaping the Whirlwind: Afghanistan*,

‘student’, and various ‘Taliban fronts’ had existed in Afghanistan the early 1980s. This movement, however, was different. It was much more a conventional military force. Its emergence fundamentally reflected Pakistan’s desire for a surrogate that could hold and occupy significant chunks of territory, which Hekmatyar’s Hezbe-Islami had failed to do. Pakistan’s Interior Minister, retired Major-General Nasseerullah Babar, used to refer to the Taliban as ‘our boys’, something which infuriated the Pakistan foreign ministry.<sup>34</sup> Pakistan’s role in supporting the Taliban movement was central to its rise: as Human Rights Watch put it,

Of all the foreign powers involved in efforts to sustain and manipulate the ongoing fighting, Pakistan is distinguished both by the sweep of its objectives and the scale of its efforts, which include soliciting funding for the Taliban, bankrolling Taliban operations, providing diplomatic support as the Taliban’s virtual emissaries abroad, arranging training for Taliban fighters, recruiting skilled and unskilled manpower to serve in Taliban armies, planning and directing offensives, providing and facilitating shipments of ammunition and fuel, and on several occasions apparently directly providing combat support.<sup>35</sup>

## The effects of the Taliban’s ruthlessness

Unfortunately for Pakistan, the behaviour of the Taliban rapidly won them pariah status. As Pakistan’s Foreign Minister Abdul Sattar remarked, ‘Islamabad failed to foresee that the Taliban were internationally perceived to be the creation of Pakistan ... As the only friend of the Taliban, Pakistan was blamed for their policies’.<sup>36</sup> The Taliban’s policies towards women won them international condemnation,<sup>37</sup> and their treatment of minorities was often horrific, something most dramatically on display in Mazar-e Sharif in August 1998 when over 2,000 ethnic Hazaras were massacred in just three days, in gruesome circumstances described by a staffer of the office of the United Nations High Commissioner for Refugees:

Some were shot on the streets. Many were executed in their own homes, after areas of the town known to be inhabited by their ethnic group had been systematically sealed off and searched. Some were boiled or asphyxiated to

*Al Qa’ida and the Holy War*, Pluto Press, London, 2004, pp. 30–47; Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan and Bin Laden, from the Soviet Invasion to September 10, 2001*, Penguin, London, 2005, pp. 280–300; Roy Gutman, *How We Missed the Story: Osama Bin Laden, the Taliban, and the Hijacking of Afghanistan*, United States Institute of Peace Press, Washington, DC, 2008, pp. 61–79; Robert D. Crews and Amin Tarzi (eds), *The Taliban and the Crisis of Afghanistan*, Harvard University Press, Cambridge, MA, 2008; Ahmed Rashid, *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia*, Yale University Press, New Haven, 2010, pp. 17–30.

34 See S. Iftikhar Murshed, *Afghanistan: The Taliban Years*, Bennett & Bloom, London, 2006, p. 45.

35 Human Rights Watch, *Afghanistan – Crisis of Impunity: The Role of Pakistan, Russia and Iran in Fuelling the Civil War*, Human Rights Watch, New York, 2001, p. 23.

36 Abdul Sattar, *Pakistan’s Foreign Policy 1947–2005*, Oxford University Press, Karachi, 2007, p. 227.

37 See, famously, Physicians for Human Rights, *The Taliban’s War on Women: A Health and Human Rights Crisis in Afghanistan*, Physicians for Human Rights, Boston, 1998.

death after being left crammed inside sealed metal containers under a hot August sun. In at least one hospital, as many as 30 patients were shot as they lay helplessly in their beds. The bodies of many of the victims were left on the streets or in their houses as a stark warning to the city's remaining inhabitants. Horrified witnesses saw dogs tearing at the corpses, but were instructed over loudspeakers and by radio announcements not to remove or bury them.<sup>38</sup>

Added to such atrocities were acts of gross vandalism, such as the destruction of the famous Buddhas of Bamiyan in March 2001. Furthermore, since resistance to the Taliban continued under the leadership of Ahmad Shah Massoud, the movement proved incapable of securing Afghanistan's UN seat, and only Pakistan, Saudi Arabia, and the United Arab Emirates ever granted it diplomatic recognition.

The end of the Taliban regime came quite quickly. While Osama bin Laden's terrorist Al Qaeda network succeeded in assassinating Massoud on 9 September 2001, its attacks on US targets two days later led to a direct US assault in October 2001 ('Operation Enduring Freedom') that the Taliban were quite unable to resist. By mid-November Kabul had fallen to anti-Taliban forces, and by mid-December most of the Taliban leadership had fled to Pakistan. It is easily forgotten how quickly the Taliban regime fell once a stronger force had appeared; the lesson is that, in conflicts such as that in Afghanistan, it is vital to obtain and maintain momentum.

## Afghanistan since 2001

The period since the overthrow of the Taliban regime in November–December 2001 has witnessed both achievements and disappointments. Survey evidence suggests that 54% of Afghan respondents feel 'that their families are more prosperous today than they were during the days of the Taliban regime', and 78% agree that 'Democracy may have its problems, but it is better than any other form of government'.<sup>39</sup> However, the country is extremely diverse, with a kaleidoscopic range of local political environments. Furthermore, any casual discussion in Afghanistan rapidly brings to the fore a host of complaints, and many reflect specific ways in which the post-2001 transition has gone astray. Five particular problems stand out.

### Weak government

First, Afghanistan has carried the burden of weaknesses in the design of its new political institutions. The Bonn Agreement of December 2001 provided for up to

38 Rupert C. Colville, 'One massacre that didn't grab the world's attention', in *International Herald Tribune*, 7 August 1999.

39 Ruth Rennie, Sudhindra Sharma, and Pawan Sen, *Afghanistan in 2009: A Survey of the Afghan People*, The Asia Foundation, Kabul, 2009, pp. 43, 100.

twenty-nine departments of government, when perhaps six to eight would have sufficed, and this set the scene for rivalry between agencies controlled by different political factions. Furthermore, Afghanistan's 2004 constitution, by establishing a strong presidential system, created an overburdened office at the heart of executive government, and ensured that key issues would go unaddressed unless and until they received the president's attention. Beyond this, the blocking by the US of the expansion beyond Kabul of the International Security Assistance Force (ISAF) in 2002 more or less forced the new Afghan leader, Hamed Karzai, to offer positions of power in provinces and districts to armed actors who might otherwise have become 'spoilers'. This had the effect of marginalizing legitimate local leaderships, especially those based in Pushtun tribal structures, and in the long run it contaminated the reputation of the new state and encouraged major problems of nepotism and maladministration.<sup>40</sup>

## Corruption

Second, poor governance and corruption have been endemic problems, fuelled by the resurgence of the opium industry, and the failure to rebuild a judicial system capable of ensuring that the rule of law is respected. The rule of law remains pathetically weak; as a result, for most Afghans the impressive guarantees of rights set out in the constitution and in various statutes exist only on paper.<sup>41</sup> Bribery is one of the main contributors to this problem: judges can easily be bought.<sup>42</sup> According to Integrity Watch Afghanistan,

One adult in seven, i.e. an approximate equivalent of 1,677,000 adults, experienced direct bribery in Afghanistan in 2009. 28% of Afghan households paid a bribe to obtain at least one public service ... In 2009, the average value of the bribes among those who paid them was 7,769 Afs (156 USD). This represents an enormous amount of money in a country where the per capita income is 502 USD per year.<sup>43</sup>

40 William Maley, *Rescuing Afghanistan*, Hurst & Co., London, 2006, p. 128; Sarah Chayes, *The Punishment of Virtue: Inside Afghanistan after the Taliban*, Penguin Press, New York, 2006; Antonio Giustozzi, *Koran, Kalashnikov and Laptop: The Neo-Taliban Insurgency in Afghanistan*, Hurst & Co., London, 2007, p. 16.

41 For detailed discussion, see Whit Mason (ed.), *The Rule of Law in Afghanistan: Missing in Inaction*, Cambridge University Press, Cambridge, 2010.

42 Paul Watson, 'In Afghanistan, money tips the scales of justice', in *Los Angeles Times*, 18 December 2006; Keith B. Richburg, 'In Afghanistan, U.S. seeks to fix a tattered system of justice', in *Washington Post*, 28 February 2011.

43 Integrity Watch Afghanistan, *Afghan Perceptions and Experiences of Corruption: A National Survey 2010*, Integrity Watch Afghanistan, Kabul, July 2010, p. 10. See also United Nations Office on Drugs and Crime (UNODC), *Corruption in Afghanistan: Bribery as Reported by the Victims*, UNODC, Vienna, January 2010; Manija Gardizi, Karen Hussmann, and Yama Torabi, *Corrupting the State or State-crafted Corruption? Exploring the Nexus between Corruption and Subnational Governance*, Afghanistan Research and Evaluation Unit, Kabul, June 2010.

As well as funding the government's opponents,<sup>44</sup> opium profits have supplied some of the monies with which corrupt payments can be made, but so have lavish Western contracts given to Afghans perceived to have helpful connections. There is little inclination at the top of the Afghan system to address these problems. This became painfully clear when President Karzai moved to protect a presidential associate arrested in July 2010 for soliciting a bribe. The president rounded on the Afghan and international agencies that had sought to bring the accused to justice: according to Mr Karzai's chief of staff, this was because the president wanted these units to operate 'within an Afghan framework'.<sup>45</sup>

### Patronage and alliances

This points to a third problem, namely that Afghanistan's political leadership has been unequal to the task of taking the helm. President Karzai grew up in a state-free political environment in Peshawar in the 1980s and his conception of politics is not fundamentally concerned with policy development and implementation, but with patronage, networking, and alliances. In late 2009, the US Ambassador to Afghanistan, Karl W. Eikenberry, set this out in a cable to Washington:

President Karzai is not an adequate strategic partner ... Karzai continues to shun responsibility for any sovereign burden, whether defense, governance, or development ... It strains credulity to expect Karzai to change fundamentally this late in his life and in our relationship.<sup>46</sup>

Tragically for Karzai, as time went by his strengths became less and less relevant, and his weaknesses more and more an encumbrance. This problem was aggravated by his being surrounded by a network of self-interested and conspiratorial associates,<sup>47</sup> and finally culminated in the disastrous presidential election of August 2009, in which the monumental fraud that was used to secure Karzai a second term at the same time undercut his legitimacy both domestically and in the eyes of Western publics.<sup>48</sup>

### Iraq as a fatal distraction

Fourth, the shift of US focus to Iraq from late 2002 deprived the Afghan theatre of oxygen at a vital moment, and encouraged a resumption of active Pakistani

44 Gretchen Peters, *Seeds of Terror: How Heroin is Bankrolling the Taliban and Al Qaeda*, Thomas Dunne Books, New York, 2009.

45 Rajiv Chandrasekaran, 'Karzai seeks to limit role of U.S. corruption investigators', in *Washington Post*, 9 September 2010.

46 Ambassador Karl W. Eikenberry, 'COIN strategy: civilian concerns', US Department of State Cable No. Kabul 03572, Kabul, November 2009.

47 Elizabeth Rubin, 'Karzai in his labyrinth', in *New York Times*, 9 August 2009.

48 On the electoral fraud of 2009, see Martine van Biljert, *Polling Day Fraud in the Afghan Elections*, AAN Briefing Paper 03/2009, The Afghanistan Analysts Network, Kabul, 2009, available at: <http://aan-afghanistan.com/uploads/20090903/pollingfraud.pdf> (last visited 15 March 2011); and Thomas Ruttig, *Afghanistans Wahlkrise: Die gefälschte Präsidentschaftswahl und Strategien für 'danach'*, Stiftung Wissenschaft und Politik, Berlin, 2009.



support for the Taliban. For this, former US President Bush, Vice-President Cheney, and Defense Secretary Rumsfeld bear the prime responsibility, since they recklessly assumed that in a country such as Afghanistan, which had experienced decades of turmoil, stability could be attained in a matter of months. The effects of the Iraq distraction were serious and long-lasting. In 2007, Admiral Michael G. Mullen, Chairman of the US Joint Chiefs of Staff stated that: 'In Afghanistan we do what we can. In Iraq we do what we must'.<sup>49</sup> No more devastating picture of Washington's misplaced priorities could be imagined.

## Growing insurgency

Finally, and most importantly, Afghanistan faces a vicious ongoing Taliban insurgency. Large numbers of Afghans live in fear, knowing that they are exposed to the insurgents' predations and that the agencies of the state cannot or will not do much to help them. While corruption and poor governance have discouraged many Afghans from standing firmly by the Karzai government, and civilian casualties have become a major public relations issue for NATO,<sup>50</sup> the insurgency recommenced before these problems became palpable. Indeed, one of the first markers of Taliban recrudescence was on 27 March 2003, just a week after the commencement of the US invasion of Iraq, when a Red Cross worker, Ricardo Munguia, was murdered by the Taliban near Kandahar.<sup>51</sup> The insurgency fundamentally reflects Pakistan's disposition to interfere in Afghanistan's transition in profoundly destructive ways.<sup>52</sup> In August 2007, the Pakistani President, Pervez Musharraf, publicly admitted during a visit to Kabul that 'There is no doubt Afghan militants are supported from Pakistani soil. The problem that you have in your region is because support is provided from our side'.<sup>53</sup> At one level no more need be said: as a sovereign state, Pakistan clearly has the responsibility to prevent its territory from being used in this way. Unfortunately, it has not done so, and mounting evidence points to duplicity on its part, with the Afghan Taliban continuing to receive active support from military circles.<sup>54</sup> For the United States and Afghanistan, this is understandably infuriating: as of May 2010, the 'latest

49 Robert Burns, 'Mullen: Afghanistan isn't top priority', in *Washington Post*, 11 December 2007.

50 See Human Rights Watch, 'Troops in Contact': *Airstrikes and Civilian Deaths in Afghanistan*, Human Rights Watch, New York, 2008.

51 See William Maley, 'The "war against terrorism" in South Asia', in *Contemporary South Asia*, Vol. 12, June 2003, p. 214.

52 See William Maley, 'Pakistan–Afghanistan relations', in Michael Clarke and Ashutosh Misra (eds), *Pakistan's Stability Paradox*, Routledge, New York, 2011.

53 Taimoor Shah and Carlotta Gall, 'Afghan Rebels Find Aid in Pakistan, Musharraf Admits', in *The New York Times*, 13 August 2007.

54 See, for example, Daniel Byman, *Deadly Connections: States that Sponsor Terrorism*, Cambridge University Press, Cambridge, 2005, p. 195; Ahmed Rashid, *Descent into Chaos: The United States and the Failure of Nation Building in Pakistan, Afghanistan, and Central Asia*, Viking Press, New York, 2008, pp. 249–250; Seth G. Jones, *In the Graveyard of Empires: America's War in Afghanistan*, W.W. Norton, New York, 2009, pp. 256–273; Matt Waldman, *The Sun in the Sky: The Relationship between Pakistan's ISI and Afghan Insurgents*, Discussion Paper No. 18, Crisis States Research Unit, London School of Economics and Political Science, London, June 2010.



intelligence showed trucks crossing the border that were full of Taliban combatants with all kinds of weapons packed in the back. They were being waved through into Afghanistan to kill Americans at checkpoints controlled by the Pakistanis'.<sup>55</sup> The significance of this duplicitous behaviour is quite profound, for, as Barfield has put it, 'If Pakistan ever reversed its policy of support, as it did to Mullah Omar in 2001, the insurgency in Afghanistan would be dealt a fatal blow'.<sup>56</sup> Afghanistan has been poorly governed since 2001, but it has had to cope with a creeping invasion by its eastern neighbour.

## Conclusion

Many different lessons might be drawn from Afghanistan's experience over the last three decades, and not many of them are encouraging from the viewpoints of ordinary Afghans. Too often, their distinct interests and perspectives have been lost in the wider politics of struggle within their country. The novelist Doris Lessing once quoted a poignant comment made to her by an Afghan acquaintance: 'We cry to you for help, but the wind blows away our words'.<sup>57</sup> Many international actors have been prepared to exploit the suffering of the Afghans without empathizing with them in any serious fashion; in the long run, this can only breed cynicism about Western motives in committing troops and resources to the Afghan theatre of operations.<sup>58</sup> The threats to Afghanistan need to be recognized in a starkly realistic fashion, but met from a position of principle grounded in the provisions of the UN Charter, international law, and the norms of international society. The danger is that, instead, a crude form of realpolitik with a focus only on short-term issues will determine Afghanistan's fate.

With waning support among Western publics for the Afghan commitment, the desire in NATO capitals to strike some kind of deal with the Afghan Taliban leadership seems to be mounting. However, the risks of any such attempt need to be appreciated properly.<sup>59</sup> Mere talk of talking with the Taliban is deeply unsettling for Afghan groups such as women and ethnic and sectarian minorities that suffered under the Taliban in the past,<sup>60</sup> and risks triggering expanded refugee flows out of the country. The Taliban themselves have shown no serious inclination

55 Bob Woodward, *Obama's War*, Simon & Schuster, New York, 2010, p. 367.

56 Thomas Barfield, *Afghanistan: A Cultural and Political History*, Princeton University Press, Princeton, 2010, p. 328.

57 Doris Lessing, *The Wind Blows Away Our Words*, Pan, London, 1987.

58 The Taliban have sought in their propaganda to emphasize the presence of foreign troops in Afghanistan as a problem: see *Taliban Propaganda: Winning the War of Words?*, International Crisis Group, Kabul and Brussels, 2008. There is, however, very little evidence that a majority of Afghans at present would like to see NATO/ISAF troops withdraw from the country.

59 Ashley J. Tellis, *Reconciling with the Taliban? Toward an Alternative Grand Strategy in Afghanistan*, Carnegie Endowment for International Peace, Washington, DC, 2009.

60 See, for example, Human Rights Watch, *The 'Ten Dollar' Talib and Women's Rights*, Human Rights Watch, New York, 2010.

to negotiate and, as a highly ideological movement,<sup>61</sup> they would be unlikely to shift from any of their fundamental positions, although for tactical reasons they might seek to make themselves look less extreme. Any power-sharing arrangement with the Taliban would probably survive only while they mustered their forces in preparation for a thrust for total power. The detriment in terms of extremist recruitment flowing from what radical forces would undoubtedly trumpet as yet another defeat for a superpower at the hands of religious faith should not be underestimated. And, far from bringing peace to Afghanistan, the return of the Taliban to centre-stage as part of a short-sighted ‘deal’ could well see Afghanistan once again become a theatre of intense armed competition between Afghan actors backed by powers such as Pakistan, Iran, the US, and Russia, and trigger turbulence in South and Southwest Asia more broadly.

The greatest threat to order in Afghanistan arises from the sanctuaries in Pakistan that the Taliban employ. The reluctance of Western governments to speak candidly about this issue is a source of frustration for Afghan politicians and citizens alike,<sup>62</sup> and risks fuelling conspiracy theories (already alive and well) about Western objectives in Afghanistan. The problem of Pakistan is not an easy one to confront: the United States depends upon access to Pakistani territory in order to provision US troops in Afghanistan; theories of negotiation tend to warn against driving parties into corners from which they cannot escape with dignity; and positive inducements often deliver more than threats.<sup>63</sup> In the case of Pakistan, however, positive inducements have been deployed at considerable cost, and with no real return.<sup>64</sup> If the wider world continues to turn a blind eye to what is happening, the adverse consequences for Afghanistan, for Pakistan, and for regional and world order more generally could be serious and possibly incalculable.<sup>65</sup>

61 The ideological dimension of the Taliban is often underrated. Yet it is very important to note, since it helps to explain why it is extremely simplistic to treat the Taliban as somehow the ‘representative’ of the Pushtuns of Afghanistan. See Thomas Ruttig, *How Tribal are the Taleban? Afghanistan’s Largest Insurgent Movement Between its Tribal Roots and Islamist Ideology*, AAN Thematic Report 04/2010, The Afghanistan Analysts Network, Kabul, June 2010, available at <http://aan-afghanistan.com/uploads/20100624TR-HowTribalAretheTaleban-FINAL.pdf> (last visited 15 March 2011).

62 See, for example, Rangin Dadfar Spanta, ‘Pakistan is the Afghan war’s real aggressor’, in *Washington Post*, 23 August 2010, p. A13.

63 See Miroslav Nincic, ‘Getting what you want: positive inducements in international relations’, in *International Security*, Vol. 35, Summer 2010, pp. 138–183.

64 See Craig Cohen and Derek Chollet, ‘When \$10 billion is not enough: rethinking U.S. strategy toward Pakistan’, in *Washington Quarterly*, Vol. 30, April 2007, pp. 7–19.

65 See Bruce Riedel, ‘Armageddon in Islamabad’, in *The National Interest*, No. 102, July–August 2009, pp. 9–18; Michael E. O’Hanlon and Hassina Sherjan, *Toughing It Out in Afghanistan*, Brookings Institution Press, Washington, DC, 2010, pp. 4–8; see also Seth G. Jones and C. Christine Fair, *Counterinsurgency in Pakistan*, RAND National Security Research Division, Santa Monica, 2010.

# Dynamic interplay between religion and armed conflict in Afghanistan

## Ken Guest

Ken Guest is a former Royal Marine Commando trained for mountain and arctic warfare, who left the forces to work as a freelance journalist specializing in reporting on guerrilla warfare. He covered the Soviet–Afghan War from 1980 to 1989, making over thirty trips with the mujahideen, and has continued to cover Afghanistan regularly to the present day, having recently spent three years living and working there. As a journalist he is a committee member of the Rory Peck Trust, a founder member of the Frontline Club and winner of a Royal Television Society Award for best investigative documentary (about Afghanistan).

## Abstract

*In approaching this subject the most important thing to understand is how Afghans perceive things to be. On to this must be grafted factors about their environment, beliefs, and character that most affect their response. The physical characteristics of their environment are easy to define and describe, but their character, relationship to Islam, and how the two combine and affect their mode of warfare is more complex – a knot of truly Gordian proportions. However, if the past is accurately factored into the present, this enables contextual understanding, which is the key to unlocking the puzzle.*

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In the dawning chapter of the twenty-first century, as a consequence of the 11 September 2001 terrorist attack on the United States and what has followed since, discussion on Afghanistan is dominated by two subjects, warfare and Islam. Allowing for a degree of internal division on the subject, it is reasonable to say that the debate falls into two camps, one following Western interpretation and the other favouring a more local perspective. Both camps share, and suffer from, issues of

interpretation and misunderstanding about each other and events on the ground. These are largely based on misconceptions of the past and present, or a degree of manipulation of both in order to support a view or a political agenda geared to present perceptions of need. The differing, and competing, interpretations on offer complicate the consideration of both religion and warfare in Afghanistan. This article is an attempt to explain the ‘dynamic interplay between religion and armed conflict in Afghanistan’ based on fundamental realities, rather than imagined interpretations.

With such vast and interesting ground to cover, it is tempting, but ill-advised, to charge into this subject in isolation from its operating environment. Inevitably, the landscape, the weather, and the prevailing social conditions leave their mark on the character of the people who must endure the many trials of the environment in which they live. This profoundly affects their approach to life, their faith, and their preferred style of warfare. In seeking to understand the interplay between faith and armed conflict in Afghanistan, it is therefore judicious to first scout the ground and the nature of the environment in which these factors operate. To clear some of the dust obscuring the battle space in question, I have separated the prime governing factors that have most influenced religion and warfare in Afghanistan and drawn heavily on nineteenth-century observers who had both a close association with the Afghans and continuity of contact in a way little in evidence today. I look in turn at the land inhabited by the Afghans, the Afghans inhabiting the land, the faith in question, and the nature of armed conflict in Afghanistan, before a conclusion based on the findings from those four areas under consideration.

## The land inhabited by the Afghans

Afghanistan has been described as ‘the Switzerland of Southern Asia’.<sup>1</sup> Like Switzerland it is a landlocked nation, containing the source of important rivers, and represents home to a mixture of cohabitating races speaking differing languages. However, it is considerably larger than Switzerland, carved out of the north-east corner of the Iranian plateau with a land mass of 647,500 km (making it slightly larger than France).

Within its borders Afghanistan has formidable mountains, described by one early European traveller to those elevated parts as ‘a wild assemblage of hills’.<sup>2</sup> Many of the ‘hills’ involved in that accurate description stretch away into the far distance, rising in ever more impressive elevation to form the foothills of the Himalayas. But Afghanistan is not all mountains, it also contains daunting deserts – straddling its southern and western borders. Having walked in both its mountains and its deserts (wherein you can sink up to your ankles in the fine,

1 Percy Sykes, *A History of Afghanistan*, Macmillan & Co. Ltd, London, 1940, Vol. 1, p. 2.

2 Mountstuart Elphinstone, *An Account of the Kingdom of Caubul*, London, 1815, p. 149.

choking surface dust), I can assure the reader that, in their own way, Afghan deserts are no less impressive and challenging to confront on foot than Afghan hills.

The crude ground inhabited by the Afghans is invariably arid and harsh, except for some narrow bands of fertile soil that hold fast to meandering rivers. For most of the year the rivers are reduced to a trickle, or vanish altogether in the summer heat, only to fill again in winter and flood with the spring thaws.

A mid-nineteenth-century writer described the reality of Afghan existence as: ‘Living under a dry, clear, bracing climate, but one subject to considerable alternations of heat and cold’.<sup>3</sup> That is something of an understatement. Having experienced more than my fair share of that ‘bracing climate’ in all seasons – travelling with the mujahideen during the Soviet–Afghan War,<sup>4</sup> I would describe the climate of that severe combination of mountain and desert land as nothing less than merciless – blisteringly hot in summer and sub-freezing in winter.

As a home, or merely as a landscape for the traveller passing through, Afghanistan is a place to be taken seriously. The consequences of underestimating what the land, weather and people are capable of can prove fatal. Dealing with those conditions, largely without the support of twentieth- or twenty-first-century comforts (in terms of accommodations and nutritious food) and under wartime conditions was a humbling experience, more so when my companions were even less well equipped – very few even possessing a good pair of boots or adequate winter clothing.

## The Afghans inhabiting the land

There is academic debate about whether Afghan society is, even among the Pashtun (or Pushtun, Pakhtun, Pakhtoon, etc.), tribal in nature but there is no room here to explore that debate. Tribe or not, the bedrock of Afghan society across the ethnic and geographic divides involved is for the most part a rural peasantry sharing not dissimilar social structures, needs, and experiences. They have more in common with each other than they have differences – although that may not be how an Afghan, with an emotional attachment to the subject, would necessarily describe it.

Richard Tapper defines Afghan society as one that is loosely composed ‘of a localised group in which kinship is the dominant idiom of organisation, and whose members consider themselves culturally distinct (in terms of customs, dialect or language, and origins)’.<sup>5</sup> According to an observer writing in the early nineteenth century, the social order of the Afghans represented ‘freedom, which forms their grand distinction among nations of the East’ and involved ‘a mixture of

3 John W. Kaye, *The War in Afghanistan*, 3rd edition, 3 vols, William H. Allen, London, 1874, Vol. 1, p. 11.

4 The Soviet invasion began in December 1979 and ended in February 1989.

5 Richard Tapper (ed.), *The Conflict of Tribe and State in Iran and Afghanistan*, Croom Helm, London, 1983, p. 9.

anarchy and arbitrary power'.<sup>6</sup> It was the same commentator's further view that Western travellers coming from India would be

surprised at the fluctuation and instability of the civil institutions. He would find it difficult to comprehend how a nation could subsist in such disorder; and would pity those who were compelled to pass their days in such a scene, and whose minds were trained by their unhappy situation to fraud and violence, to rapine, deceit, and revenge. Yet, he would scarce fail to admire their martial and lofty spirit, their hospitality, their bold and simple manners.<sup>7</sup>

For the majority of Afghans in the early twenty-first century, it would be true to say that their daily lot differs little from that of their ancestors. Afghanistan is a 'reciprocal' society in which exchanged favours and barter practice are the norm between communities that must compete and co-operate with each other. They must attempt to manage this despite the magnitude of the social disruptions caused by an ever-evolving conflict, which has been active for more than thirty years. Their defence remains primarily the tight social bonding represented by family ties and local community. This social structure is geared to protect the group simultaneously both from outside threat and from the internal pressures and fissures that snake through all impoverished societies.

Afghanistan has a population roughly the same size as Texas and it is no wonder that the unforgiving combination of rock and sand which the indigenous population must endure has shaped much of their character – reputed by those who know them well to be firm. From a Western perspective, Afghans have historically often been represented as having a callous disregard for others, described by Mr Temple, Secretary to the Chief Commissioner of the Punjab in 1855, as 'savages, – noble savages perhaps – and not without some tincture of virtue and generosity, but still absolutely barbarians nevertheless'.<sup>8</sup>

In 1881, in the wake of the Second Anglo-Afghan War, Denzil Ibbetson<sup>9</sup> wrote,

The true Pathan is perhaps the most barbaric of all the races with which we are brought into contact in the Punjab ... He is bloodthirsty, cruel and vindictive in the highest degree: he does not know what truth or faith is, insomuch that the saying *Afghan be iman* (i.e. an Afghan is without a conscience) has passed into a proverb among his neighbours.<sup>10</sup>

Holdich wrote that the Pathan will 'shoot his own relations just as soon as the relations of his enemy – possibly sooner – and he will shoot them from behind.

6 M. Elphinstone, above note 2, p. 148.

7 *Ibid.*, p. 149.

8 H.C. Wylly, *The Borderland: The Country of the Pathans*, Safdar Mehdi, Karachi, 1998 (originally published 1912), p. 5.

9 Denzil Charles Jelf Ibbetson (1847–1908), ethnographer and British colonial civil servant in India; Superintendent of Census in 1881 and author of the well-received *The Panjab Census Report*, 1881; later (1898) Chief Commissioner of the Punjab and Lieut. Governor of the Punjab 1905–1908. He was made a Knight Commander of the Order of the Star of India (KCSI) in 1903.

10 As quoted in H. C. Wylly, above note 8, pp. 6–7.

Yet the individual Pathan may be trusted to be true to his salt and to his engagements'.<sup>11</sup> During the mid-nineteenth century John W. Kaye commented,

The people were a race or a group of races of hardy, vigorous mountaineers. The physical character of the country had stamped itself on the moral conformation of its inhabitants. Brave, independent, but of a turbulent [*sic*] vindictive character, their very existence seemed to depend upon a constant succession of internal feuds.<sup>12</sup>

Such comments were written at a time when the views expressed were subject to the circumstances of the age. This can be described as one of confrontational skirmishing, where East and West collided in a state of never-ending near or actual warfare. However, over the dust and drifting battle-smoke of that encounter, a discernable grudging respect grew between the opposing systems of power. In a work published in 1890, Edward Oliver wrote:

When you meet a Pathan, you meet a man like yourself ... He will never allow you to abuse him, but makes up for it amply by never making you wish to do so ... He takes his independence for granted, and seldom parades it in the garb of rudeness.<sup>13</sup>

The more critical commentaries are the sort of judgement made without a fully considered appreciation of the life reality experienced by the Afghans. On the ground, the life of the ordinary Afghan is harsh and unforgiving and he treads that path daily on the brink of extinction. Those who knew the Afghans best, and so had contextual understanding, learned that despite the rough edges there was much to admire about them. According to one commentator,

even when he leaves his native hearth behind, he takes his manners with him. He will come down, a stalwart, manly-looking ruffian, with frank and open manners ... He is certain to be filthy and he may be ragged, but he will saunter into a Viceregal durbar as proud as Lucifer, and with an air of unconcern a diplomatist might envy.<sup>14</sup>

Afghan pragmatism is the lifeline that enables them to survive. In their harsh and unforgiving natural environment, Afghans endure with fortitude whatever the world has to throw at them. It is this firm and robust approach to life that enables them to cope with whatever trials that confront them. Without a keen eye for any advantage or opportunity, no matter how slight, the Afghans would be defeated by their environment long before having to worry about being defeated by their enemies.

My view on the character of the Afghans was learned the old-fashioned way, among the Afghan people in their rural communities, on the ground and on

11 *Ibid.*, p. 8.

12 J. W. Kaye, above note 3, Vol. 1, p. 11.

13 H. C. Wylly, above note 8, p. 10.

14 Edward E. Oliver, *Across the Border or Pathan and Biluch*, Chapman & Hall Ltd., London, 1890, p. 224.



foot without supports. That sort of passage places the observer in undiluted and close proximity to his hosts, sharing not only the hardships and miseries of the conditions along the way, but also the simpler joys afforded by the everyday companionship of people living life at the edge.

Being largely impoverished in circumstances, what little they do have they will do a lot to defend, as the alternative – to give it up – has potentially fatal consequences. At the same time, most Afghans, regardless of the little they have, delight in being able to offer some form of hospitality. Then again, they are equally capable of relieving the traveller of what they feel is rightfully theirs simply by virtue of commanding greater force. In 1989 I had a worrying discussion under trying circumstances with a *badmash* (bandit) on the Shomali Plain on this very subject. The *badmash's* view was clearly and forcibly expressed – anything that passed through the space that he controlled rightfully belonged to him. He won the discussion thanks to the loud volume of his argument and (after the shooting finished) the very close proximity of the barrel of his AK-47 assault rifle to my chest.

As a consequence of that victory, the *badmash* secured those items that he viewed as a sample of my excessive wealth – my watch and my trousers! When we parted company, which from my point of view could not have been soon enough, he seemed very pleased with his spoils, while I in turn was perfectly content with my side of the bargain – my life. As I hurried on my way, intent on placing as much distance between myself and the *badmash* as fast as possible, I left with a far sharper appreciation of how and why Afghan points of reference differ from those used in the West. I had faced a memorable challenge to survive an encounter with someone living on the brink of extinction in a hostile environment. The *badmash* faced a far harder challenge – he had to survive that hostile environment every day. The wear and tear of that sort of life has a telling effect: the average life span for an Afghan male at the time of my encounter with the Shomali *badmash* was just over forty-one years of age<sup>15</sup> (rising by 2010 to 44.45<sup>16</sup>).

In trying to grapple with the complexities of the Afghans, one must not only consider their terrain and the weather, social order and conditions within it; it is necessary to also unravel something of their history. This tends to differ in factual detail from the perceived impression most often promoted: that Afghanistan has never been conquered. In actuality, the history of conquest in Afghanistan includes the Proto-Indo Europeans, the Oxus civilization,<sup>17</sup> Indo-Scythians, the Persian empire, Alexander the Great, the Seleucids, the Indian Mauryan empire, the Indo-Bactrian empire, the Khushans, Sassanids, Hephthlites (White Huns), Ghaznavids,

15 Public Data, available at: [http://www.google.com/publicdata?ds=wb-wdi&met=sp\\_dyn\\_le00\\_in&idim=country:AFG&dl=en&hl=en&q=afghan+life+expectancy](http://www.google.com/publicdata?ds=wb-wdi&met=sp_dyn_le00_in&idim=country:AFG&dl=en&hl=en&q=afghan+life+expectancy) (last visited 26 November 2010).

16 Index Mundi, available at: [http://www.indexmundi.com/afghanistan/life\\_expectancy\\_at\\_birth.html](http://www.indexmundi.com/afghanistan/life_expectancy_at_birth.html) (last visited 26 November 2010). Data for Afghanistan is notoriously fluid and therefore hard to pin down. It should be noted that age expectancy data leans heavily on assessments based on surveys targeting urban dwellers rather than the more representative rural population, who can expect a shorter life span.

17 The Oxus civilization was all but lost to history until the Russian excavations in the 1970s.



and Ghurids, the Islamic conquest (which began in the seventh century and continued until the conquest by Abdur Rahman in the late nineteenth century of the last pagans in Nuristan), the Mongols, the Timurid empire of Khorasan and 'Babur the Tiger' from Central Asia. When Shah Ahmad Khan Abdali Durrani came to power in 1747, Afghanistan gained its name for the first time. Rapid expansion followed, with the capture of Lahore (1752), Herat (1753) and Delhi (1762).<sup>18</sup>

Repeated social upheaval on this scale leaves scars in the psychological make-up of the society involved. These are compounded when that society is largely impoverished and inhabits an arid, isolated, mountainous region. As a consequence of their history and their geography, it is no wonder that Afghans are suspicious of strangers, pragmatic as far as survival is concerned (they do what it takes) and hardy (you have to be in order to survive).

## The faith in question

Into the weave of the Afghan make-up something must then be added of their belief systems, all sorely tested by the violence of their history. In the modern time-frame, Afghanistan is Islamic. Like the majority of Muslims, most Afghans follow the Sunni interpretation of that faith. In detail, they adhere to the Hanafi school of thought, one of four established branches (tolerating the other three<sup>19</sup>) who recognize the first four Caliphs as the rightful successors of Muhammad. Those who subscribe to the Shi'a persuasion of Islam, who recognize authority inherited by Muhammad's son-in-law Ali, are supporters of the Jaffarite branch of Shi'a practice.

## Islam and its predecessors

In the West, the most common perception is that Afghans are so bound by their religious convictions that nothing can or could persuade them to change, or has ever done so. This holds fast only as long as the time-frame under the microscope is kept very narrow, avoiding the complications thrown up by wider study of the subject. In fact, such wider study reveals that Afghanistan has repeatedly been subjected to total religious overhaul by outsiders imposing their ways over the old ways.

The earliest faith systems in Afghanistan were animist, followed by pagan beliefs of various hues that fused with the older animist ones. The Greeks imported their own gods and further conversion and fusion occurred before the next marked conversion to the faith of the Hindus. That conviction of faith was overturned by

18 The meteoric rise established a western border that included Meshad (modern-day Iran) and the fertile Punjab plains to the east. Durrani assumed the glittering title of *Durr-i-Durrani* (Pearl of Pearls), but after his death in 1772 Afghanistan went into decline, never to recover.

19 The other three being the Malkite, Shafiite, and Hanbalite.

Buddhism before the Zoroastrians emerged and shuffled Buddhism off the stage. The tide of Islam began to sweep across Afghanistan in the seventh century, the last of a long list of religious faiths to which the Afghans have pinned their hopes and aspirations. In the twentieth century, there was a low and slow tide attempting to convert the masses to communism. Some did convert, or at least were willing to assume the public perception of conversion, in order to accelerate personal career paths.

Thanks to the Chinese Buddhist commentator Xuan Zang's pilgrimage (AD 627–643) and his passage through Afghanistan to sacred Buddhist sites shortly before the arrival of Islam, details of the Afghan cult of Zhun are preserved for posterity. Afghans with faith in the Zhun cult were said to have worshipped a golden idol with ruby eyes. When the tide of Islam swept away the overt worship of idols, the practitioners of that belief system proved reluctant to dispense totally with all the old ways. Instead, they preferred to adapt and recycle some of their past faith to safeguard against an uncertain future. As a consequence of this caution, arguably the ghost of the old Zhun cult survives, with adaptations suitable to Islamic belief needs. The ruby-eyed golden idol of the Zhun devotees became a dragon (which may have been at the root of the cult to begin with, as it was not dissimilar to the pre-Buddhist dragon-god religion of Tibet). Seen as a dragon, rather than as an idol, it allowed an associated relevance to the new Islamic faith advancing through Afghanistan, for in his own land the Muslim Caliph Ali is celebrated as the 'dragon slayer'. In the retelling, within an Afghan context, Ali was depicted as slaying the pre-Islamic dragon god as proof of the greater power of Islam over old faiths. Several geological rock formations are still credited by Afghans as being the ossified remains of the dragon slain by Ali.<sup>20</sup>

The tides of history have washed away most of the details of pre-Islamic faith in Afghanistan. The Taliban were at pains to try and erase as much as possible of the visible evidence that remained – most famously in their destruction of the standing Buddhas in Bamiyan, which had gazed serenely down over the ages as Afghanistan slowly advanced towards its future.

## Urban dwellers and rural peasants

In considering the Afghan response to Islam it is worth mentioning the French academic Olivier Roy's observation that

there are two Afghanistans, the place of innovation (*bi'at*); this is the natural environment of the civil servant, the teacher, the soldier ... all 'intellectuals' and 'bare-heads' (*sarluchak*), held to be unbelievers and arrogant; and secondly the province (*ashraf*), the home of religious tradition (*sunnat*) and values which stand the test of time.<sup>21</sup>

20 Of these, the most notable is Azhdar, close to the site where the two giant Bamiyan Buddhas once stood.

21 Olivier Roy, *Islam and Resistance in Afghanistan*, Cambridge University Press, Cambridge, 1988, p. 10.

Both sides, the city dwellers and the rural peasants, tend to regard the other with near contempt. The peasant finds fault with high-handed urban ways, where leadership seeks to expand centralized authority that is at odds with his world of traditional social values and order. On the other side, the more educated urbanite disdains the peasant for what he sees as his shameful reluctance to embrace modernizing change. Each side avows that they are devout Muslims but neither side believes that the other really is. In truth, both sides accept an Afghan blend of Islam that has proved remarkably adept at assimilating older entrenched beliefs that pre-date Islam. This flexibility within religious belief reflects Islam's willingness to make some accommodation with local belief systems in order to gain a tighter bond with the population involved.

The majority of the Afghan population are Pashtun and consider themselves collectively to be the descendants of a common ancestor, *Qaiz*. To reinforce the credentials of their Islamic status, they declare *Qaiz* to have been a contemporary of the Prophet Muhammad and personally converted to Islam by him. This plays to a receptive Pashtun audience, who therefore assume superiority over all other ethnic groups in Afghanistan because they, by right of their interpretation of the past, see themselves as original Muslims, not mere later converts.

The next most common agreement among Afghans is to disagree on just about everything else – with the emotive nature of the argument rendering the ensuing confusion even more complex. Many of the issues stem from the unsettled internal divisions within Islam itself, that is, between Sunni and Shi'a camps and the further internal sectarian division of those camps into competing splinter groups (such as differing schools of thought involving Imamia and Ismaili among the Shi'a and Sufi *tariqa* among the Sunni, etc.).

Regardless of these issues, when it comes to Islamic faith in Afghanistan, Afghans all profess to be devout Muslims and can be very sensitive on the issue. The degree of sensitivity is related to the bumpy ride that Islam is having in Afghanistan – contending with the wreckage of preceding faith systems and a populace that resists full compliance in order to cling to identities demarcated by regional, ethnic, and cultural divides.

## Islam and Afghan customary law

Beyond the fissures existing over Islamic interpretations of the right path, Islam in Afghanistan has also had to contend with the competing customary laws of Afghan society. This fault line involves issues of authority, religious and social in nature. This is evidenced by a wealth of titles such as *Akhunzada*, *Malik*, *Mir*, *Malang*, *Mullah*, *Maulawi*, *Maulana*, *Pir*, *Sayyed Khan* and so forth and the ever-shifting level of rank, importance, and social influence that they carry.

Of all the customary laws in play, the most influential is that of *Pukhtunwali*, which is applicable to the Pashtuns who form the majority of the population. *Pukhtunwali* is the unwritten code of the Pashtuns, which orders and influences their society. I say 'orders and influences', rather than controls and commands, as *Pukhtunwali* represents an ideal rather than an absolute – not

dissimilar to Western concepts of chivalry. As such, just like chivalry, it is subject both to personal interpretation (which can be very creative) and to common abuse.

The three central pillars of *Pukhtunwali* are: *nang* (honour, a social concept shared by non-Pashtuns); *melmastya* (hospitality, be it ever so humble; this also is near universal among all Afghans); and the sternest obligation, that of *badal* (revenge, also shared, if not so sternly articulated, with other Afghans and in line with the biblical concept of ‘an eye for an eye’). It is said among many non-Pashtun that the Pashtuns ‘half use the Koran and half use *Pukhtunwali*’ as their guiding principles.

On the sensitive and emotive issue of obedience to Islamic faith, the Afghan neither needs nor seeks the comments of outsiders as, rightly or wrongly, he feels more qualified to comment on that subject than any outsider. In their evaluation of each other, Afghans can prove to be the sternest critics. The seventeenth-century Afghan warrior poet Kushal Khan Khattak,<sup>22</sup> in many ways the epitome of a Pashtun, wrote that Afghan believers in Sufi ‘mystics’ were ‘all one’ with unbelievers.<sup>23</sup> He was no less disparaging of the Baluch and the Hazarah as ‘dirty and abominable ... They have neither modesty nor faith’.<sup>24</sup> While he argued for unity among the tribes in order to resist the Mughals, he despaired of them achieving it and captured something of that despair in a poem entitled ‘Pathan’:

Of the Pathans that are famed in the land of Roh,<sup>25</sup>  
Now-a-days are the Mohmands, the Bangash, and the Warrakzais, and the  
Afridis.  
The dogs of the Mohmands are better than the Bangash,  
Though the Mohmands themselves are a thousand times worse than the dogs.  
The Warrakzais are the scavengers of the Afridis,  
Though the Afridis, one and all, are but scavengers themselves.<sup>26</sup>

Stern as Kushal Khan Khattak was in his judgements of other Afghans on their observance of the tenets of Islamic doctrine, he was, like many Afghans, inclined towards a two-tier system in marshalling his views – how he viewed others and how he viewed himself. When it came to measuring his own performance he allowed himself a generous degree of dispensation, writing passionately of his own love for intoxicating wine and women. This was in an age still eroding its pre-Islamic past and wine was still much in evidence in the community of the Afghans, Herat and Kabul both being famed for the quality of their vines.

22 Khushal Khan Khattak (1613–1690) was, as his name implies, Khan of the Khattak tribe, a renowned warrior and a poet who authored over 45,000 poems. See C. Biddulph, *Afghan Poetry of the Seventeenth Century: Being Selections from the Poems of Khushal Khan Khattak*, Kegan Paul & Co., London, 1890.

23 Henry George Raverty, *Selections from the Poetry of the Afghan: From the Sixteenth to the Nineteenth Century*, Williams and Norgate, London, 1867, p. 213.

24 *Ibid.*, p. 187.

25 An early name for the people of Rohilkand, ‘the land of the Rohillas’, now known as the Suleiman Mountains and inhabited by the Yusufzais tribes.

26 Translated in C. Biddulph, *Afghan Poetry*, available at: <http://www.afghan-network.net/biographies/khattak.html> (last visited 15 January 2011).

Then, as now, 'the inherent diversity of attitudes, interpretations and interest which exist in Afghan society'<sup>27</sup> involved some significant contradictions both in how Afghans saw themselves and interpreted Islam and their relationship with that faith; and in turn how they squared this all away with the competing demands imposed by the mores and manners of customary laws that long predated Islam's arrival. As this subject touches upon issues of honour, it is sensitive and prone to emotive interpretations, both personal and communal in nature.

## The nature of armed conflict in Afghanistan

Before and after the arrival of Islam, the traditional Afghan way of war was pure, simple, brutal and effective, and governed by one absolute rule: win or die. That choice was ideally suited to the pragmatic character of the Afghans, used as they were to stark choices. However, it ran contrary to what might be termed the civilizing demands of a new form of warfare prescribed by the tenets of Islam. In grappling with this, it should be borne in mind that not all rules, new or old, are obeyed to the letter of the law, nor even to the spirit of the law, and least of all when warfare is the subject.

### Islamic rules of war

This new way of war that Islam brought was awkward in the hands of the Afghans, not least because they were new to it, but also because it was more complex and at times at odds with the existing rules of engagement. The new rules governed issues such as 'collateral damage' to civilians. This was a grey area under the old system, but under Islamic rules of warfare non-combatants were designated as protected and not to be harmed. The new rules also included restrictions on attacking wounded enemies – under the old system this was an ideal opportunity to inflict fatal damage and proceed to victory, but under Islamic rules the wounded were not to be harmed.<sup>28</sup> Even prisoners, the very spoils of war, were granted protection: under Islamic rules they also were not to be harmed.<sup>29</sup> These were bitter pills indeed in a context where *badal* (blood vengeance) had traditionally formed an integral part of warfare. For the Afghans these new rules went into uncomfortable,

27 Bo Huld and Erland Janson (eds), *The Tragedy of Afghanistan: The Social, Cultural and Political Impact of the Soviet Invasion*, Croom Helm (in co-operation with the Swedish Institute of International Affairs), London, 1988, p. 12.

28 'Do not kill the wounded, do not pursue anyone retreating and whoever throws down his weapon will be spared'. Hadith, al-Zuhri, from Imam 'Ali ibn al-Hussein, as quoted in Imam Muhammad Shirazi, *War, Peace and Non-violence: An Islamic Perspective*, London, 2003, p. 45, available at: <http://www.scribd.com/doc/4084892/Imam-Muhammad-Shirazi-War-Peace-and-NonViolence-an-Islamic-Perspective> (last visited 26 November 2010).

29 'When ye have thoroughly subdued them, bind a bond (on them): thereafter (is the time for) either generosity or ransom: until the war lays down its burdens. Thus (are ye commanded).' Qur'an, 47:4, 1934 translation by Abdullah Yusuf Ali, reissued in 2000 by Wordsworth Classics of World Literature, p. 434.

nitty-gritty detail that even extended as far as not harming trees<sup>30</sup> – arguably long anticipating the emergence of green politics challenging all governments in the late twentieth and early twenty-first centuries!

With his head spinning under the onslaught of the new Islamic rules of engagement, what was the hardy Afghan warrior to do? From the start he did what he was good at, what he was comfortable with, and what he had always done. He remained aloof from the minutiae of the details involved, ever more inclined to stick with the big picture and pick his way through the maze of Islamic rules much as he picked a path through the tortuous maze of his mountains – which often necessitated a zigzagging route in order to circumvent natural obstructions and barriers presented by mountains and rivers. This approach allowed Afghans to embrace the broad concept but cherry-pick the details.

Neither the common crowd nor indeed most of the mullahs chosen to guide them through the Islamic maze had a very tight grasp of the Qur'an. Not only were most of the population non-literate, but even if they *could* read they faced a further barrier to clear understanding of the new religion – the Qur'an was written in Arabic, not native tongues. There was thus a wide margin of latitude in interpretation, some well-intentioned and some wilfully creative to suit personal ambitions. In this process there was ample scope for a style of interpretation with which the Afghans were comfortable; one that also edged the new Islamic rules of war closer to the old ways of war and created an accommodation that satisfied the Afghan sense of honour while pandering to concerns about change – as they had learned in a very hard school that all change had unpredictable consequences. This was an approach that played to Afghan strengths, allowing for the appearance of fidelity to faith while retaining the resilience, flexibility, and pragmatism that had long enabled them to cope with an unpredictable and unforgiving world. We can call this the politics of survival. Pennell described this *potpourri* of motivation as 'a strange medley of contradicting qualities, in which courage blends with stealth, the basest treachery with the most touching fidelity, intense religious fanaticism with avarice which will induce him [the Afghan] to play false to his faith'.<sup>31</sup>

This very Afghan arrangement simply left the competing and often opposed rules of Islam and Afghan customary law to bump along together in the same space at the same time. The Afghans' temperament inclined them to focus less on the hand-wringing worries of the conceptual problem than on what mattered more – living with the consequences, and making the solution work. Hence, when decisions had to be made, they almost always chose the side that best suited their immediate purpose at the time. By such means they could be religiously pious or

30 In AD 632, the year of the Prophet Muhammad's death, Abu-Bakr (the first Caliph) assumed leadership responsibility and gave instructions to Usama bin Zayd, the eighteen-year-old leader of the punitive expedition to harass the Syrian border. This included the order 'do not cut down fruit-bearing trees'. Maliks Muwatta, Book 021, Hadith Number 010, as quoted by Sami Zaatar, *The Prophet Muhammad Said Don't Kill Women and Children*, available at: [http://muslim-responses.com/No\\_killing\\_women\\_and\\_children/No\\_killing\\_women\\_children\\_](http://muslim-responses.com/No_killing_women_and_children/No_killing_women_children_) (last visited 26 November 2010).

31 Theodore Leighton Pennell, *Among the Wild Tribes of the Afghan Frontier: A Record of Sixteen Years' Close Intercourse with the Natives of the Indian Marches*, 2nd edition, Seeley and Co. Ltd., London, 1909, p. 17.

pragmatically ruthless; fanatically dogmatic and yet flexible enough to allow room for manoeuvre. This ideally suited the Afghans, both in their daily lives and on the field of Mars.

By cohabiting and fusing with old beliefs and manners with which it was technically at odds, Islam was eased into a dominant position within Afghan society. Within the framework of this accommodation it became, and remains, the common banner uniting older, unwritten, and coexisting rules that connect the Afghans in their approach to warfare.

### Nineteenth-century Afghan warfare

Outside observers have long been perplexed by the contradictions involved in Afghan interpretations of Islam and their rules of engagement in warfare. Where the British encountered the Afghans in the nineteenth century during invasion or border skirmishing on the North-West Frontier of British India, they found them to be ‘professing Muhammadan,<sup>32</sup> and strict observers of the precepts of the Koran’ but to really have ‘little religion of any sort’ and ‘small reverence for the Mullahs’.<sup>33</sup>

In the months following the Tirah<sup>34</sup> Campaign of 1897–1898 on India’s old North-West Frontier, the British were baffled when they found that recruiting for military service from the very tribes so recently engaged in a bloody encounter with them was ‘never brisker’.<sup>35</sup> This made perfect sense to the Afghans, being no more than a reflection of the flexibility with which they approached the challenges of serving competing systems for ordering their society. Afghans care little for how outsiders judge them – what matters most to them is how they judge themselves.

In truth, East and West were not that dissimilar, the differences being most noticeable in their preferred modes of warfare, with the British employing a conventionally rigid system and the Afghans a less conventional, more fluid system better suited to their environment. In time, the British learned more from the Afghans than the Afghans learned from them, and adopted a style of warfare on the North-West Frontier that was far more like the Afghan approach to warfare – pragmatic, flexible, and opportunistic.

The border warfare of the nineteenth century between the British Indian empire and Afghan tribes was characterized by tit-for-tat encounters involving opportunistic tribal raids followed by punitive columns of British colonial forces intent on exacting suitable retribution as a deterrent to future transgressions, a policy that has been described as ‘butcher and bolt’ – get in quick, wreak as much

32 The term ‘Muhammadan’ is considered offensive by some Muslims because they feel it suggests worship of Muhammad rather than Allah (God). It is retained here in quotation because, being drawn from testimony of that time, it serves to convey some of the confusion inherent in how Islam was interpreted by outside observers during the nineteenth century.

33 E. E. Oliver, above note 14, p. 184.

34 Tirah, originally within Afghan borders, is now in Pakistan, owing to the historical erosion of those borders.

35 H. C. Wylly, above note 8, p. 10.



havoc as possible, then depart as fast as discretion allows. In line with most warfare involving tribes, this sort of conflict had a pattern involving a campaign season in which most of the military activity took place.

With Islam woven into the fabric of Afghan society, mullahs played an important role in these ceaseless conflicts. They often used their position to spur the tribes into martial action in disputes reputedly endowed with Islamic credentials. This differed little, if at all, from the rhetoric to be heard in many parts of Afghanistan today. On occasion, mullahs were able to take advantage of local circumstances, and some capitalized on their personal reputations (for pious behaviour, semi-shamanistic skills for healing, or the provision of charms to ward off misfortune or physical harm) to secure positions of political influence or leadership in the conflicts involved. It was warfare of a very brutal order, where neither side was inclined to take prisoners and wounded left upon the field could expect no quarter. That sort of brutality is frowned upon within the tenets of both Islam and Christianity but was the norm to which both sides, to varying degrees and with differing justifications, generally adhered.

The destruction of a British force retreating from Kabul in January 1842 (the First Anglo-Afghan War, 1839–1842) would have been regarded by the Afghans as a suitable deterrent to another force being sent. They were effective in the destruction of their enemy, but wrong in their assumption that no further force would be sent to exact retribution. The British left no room for error on this score. When they sent a further force into Afghanistan they named it ‘The Army of Retribution’. In Afghan terms this was *badal*, something which they understood very well indeed.

The British field force involved (trapped in Kabul) had first attempted a negotiated departure. The chief British representative in Kabul, William Hay MacNaghten, met with the Afghan Amir’s son, Mohammad Akbar Khan, to thrash out the terms and conditions. This was a tactical diplomatic move that placed him under the clear protection of the customary rules of Afghan hospitality – rules that imposed an obligation on Akbar Khan to protect his guests. That is not what happened. MacNaghten was seized and butchered at the meeting, reputedly by Akbar Khan himself using the pistols previously presented to him by MacNaghten as a friendship gift. Akbar Khan later disputed this charge, claiming that he had not seized MacNaghten but had been trying to guide him to safety. Seized or guided, one thing was certain: MacNaghten was dead and his head on a pike displayed in a Kabul bazaar.

When the British field force set off from Kabul, all guarantees from the Afghans of safe passage were ignored. Contemporary British accounts prefer to focus on the duplicity of the Afghans rather than the folly of their own commander. MacNaghten’s bloody fate should have been enough of a clue that all was not going to go well and that suitable precautions had to be taken for the planned retreat. Instead, the field force fatally offered themselves up as hostages to fortune and in consequence suffered a humiliating defeat.

Unsurprisingly, the British took a pretty dim view of the callous slaughter of almost their entire force. The Afghans saw it in an entirely different light. What



the British regarded as an act of betrayal, all agreements for safe passage having been broken, the Afghans considered merely an expedient means of manoeuvring their target, the British Army, into the least advantageous position in order to improve their chance of victory through its total destruction. Despite disregarding both their own customary laws of hospitality at the negotiations and subsequently the Islamic laws on the treatment of wounded and prisoners, they felt that these events primarily demonstrated the effectiveness of their mode of warfare – an unforgiving sideswipe, combining guile and strength. It was a style of warfare far more geared to guerrilla action than to the mass kinetic encounter of conventional warfare. Guerrilla wars are most often bloody and protracted – a grinding down of the opposing force, rather than knockout decisive encounters. In the end, the British and the Afghans agreed to differ and the British retreated back to India, leaving Afghanistan to settle back into its own rhythm of internal conflicts spiced with border feuding.

The Second Anglo-Afghan War (1878–1880) was promoted by the British as political necessity and by the Afghans as a *jihad*, or holy war. In reality both sides were being disingenuous. It was not concern over Afghanistan invading India that launched the British back over the border but fear that Russia might gain political influence over the Afghans. The Afghan response was not fuelled by defence of Islam but by defence of territory, in which the best recruiting cry was that of *jihad*. The phenomenon of governments misleading their people over their reasons for going to war, so decried in our twenty-first century, is nothing new.

Victory in Afghanistan is as much about perception as about actuality. Afghan concepts of honour are inextricably tied to a sense of autonomy within their own space. Hence the departure of British forces for the second time, in 1880, was hailed by the Afghans as ‘victory’. It was a strange sort of victory, however, since it saw the removal of two Afghan Amirs in rapid succession (Shir Ali and his son Yaqub Khan), the rejection of the next in line (Ayub Khan, brother of Yaqub Khan), the installation of the choice favoured by the British (Abdur Rahman), and the loss by Afghanistan of control of its own foreign affairs (over which Britain retained control for the following thirty-nine years).

With ‘victory’ the Afghan tribes expected a return to how things had been before. This was not to be. Where the tribes hoped for autonomy in their own space, the new Amir, Abdur Rahman, demanded compliance with increasing control by central government. However, the Amir judiciously measured his demands to reflect Afghan society and religious sensitivities, negotiating alliances where they matched his purpose and applying pressure where they did not. To give him his due, as Amir of Afghanistan, Abdur Rahman proved adept at the tricky balancing act that this role required – being widely perceived as supportive of both Islam and the customary laws, while simultaneously attempting to wean the wider population away from those aspects most challenging to his own authority. In many respects, possession of the Islamic banner was seen by all sides involved to be the key. In the ensuing power struggle, Islam was appropriated in support of both the old ways and the new. That Afghans are without a conscience is debatable; the universal truth that political expediency has no conscience is not.

After the dust settled from the Second Anglo-Afghan War, Abdur Rahman worked to lay the foundations of a new version of Afghanistan as an Islamic nation advancing towards modernity. Meanwhile, the country itself eased as much as it was able back to the seasonal norms of factional internal and border feuding. These were often sparked by traditional causes of Afghan conflict, said by the Pashtun to be *Zar, Zan, Zamin* (wealth, women, land). Perhaps, given the arid nature of most of the land and the impoverished circumstances of its inhabitants, a more accurate observation would be ‘wealth, land, water’ and the ceaseless feuding to control all three elements – wherein the defence of ‘honour’ was inevitably invoked when any of these came under threat.

With the state seeking to expand its influence and secure dominance over both Islamic and customary laws, it was inevitable that it would collide with the population in differing regions at differing times over differing local sensibilities. In this respect, Islam itself also remained in conflict with the customary way of doing things – including the Afghan way of war, where all history taught that there were no half measures if success was to be achieved, and that the price of failure was destruction.

## Twentieth-century Afghan warfare

In Islam, *jihad* is interpreted in two ways, the greater struggle being seen as the daily internal battle that a person faces to keep to the true path of Islamic faith. The lesser form of *jihad* is that fought in defence of Islam itself. To truly qualify as *jihad* in an Islamic context, this latter form *must* be a response to an attack on Islam itself. To such an attack, the faithful can legitimately respond by bringing such force to bear as may be required to destroy the aggressor. Before the twentieth century was over, this type of *jihad* was to cast its deep shadow over the whole of Afghanistan – ironically, in wars fought not against the British but against the Russians, the very nation that Britain had fought two wars with Afghanistan to keep out.<sup>36</sup> The subsequent mode of war involved the dynamic interplay between conflict, Islam, and state that history had long prepared the Afghans for, and was unforgiving in its execution.

After the Soviet invasion of December 1979, with the enemy visibly present and perceived as ungodly heathens determined to overthrow Islam in Afghanistan, there was little ambiguity about the legitimacy of *jihad*. The wider the rebellion spread, the more pressure the Soviets applied to contain it. Customary laws and Islamic laws were both put to the sword and sorely tested. With collateral damage to the civilian population acting as an accelerant, the conflict expanded like a forest fire – burning along a visible front with a heat that seemed to spontaneously combust into new fires in unpredictable places. The resulting conflagration spread faster than could be contained by the combined efforts of the Soviet and

36 The Third Anglo-Afghan War, 1919, was fought for different reasons.

Afghan army forces. By the same analogy, the Afghan army part of the containment strategy behaved like a leaky hose, with a large number of deserting soldiers fleeing to the other side.

Traditionally, the mullahs were solely caretakers of the spiritual wellbeing of the community – a role that did not carry with it any automatic right of authority other than as a guide to spiritual welfare. Despite the fact that they often acted as impartial negotiators in the interests of conflict mitigation within their community and its near neighbours, they were, with a few exceptions, fairly low in the social pecking order of Afghan society. Religious credentials granted them a degree of respect, but not so much as to greatly elevate their station.

With the arrival of *jihad*, however, the uncertainties of warfare increased reliance on spiritual support, and the mullahs, as the spiritual guides of the community, had a growing opportunity to exert their authority. Those with a reputation for particular piety, or who could claim holy descent, began to wield more influence. Yet, although Islam was on everyone's lips, in the early phase of the conflict mullahs were simply one part of an egalitarian society under increasing pressure. When it came to leaders, the Afghans looked towards best use of force more than best use of words. While the first response to the need for leadership was most often made by the tribal elders (with *maliks* and *khans* stepping up to the mark), within the local militias command tended to be reliant on consensus support based on performance and force of personality, far more than on titles, and was always subject to revision.

Of course, when the peasant Afghan society collided with the force of a modern superpower, something had to give, and the war began with the Afghans suffering appalling casualties. Many of the early leaders were quickly killed, creating for others, including the mullahs, a new path for promotion. By degrees, Islamic credentials began to gain more traction in the competition for leadership roles within the militias raised by the local community, and the militias were now definitively regarded as mujahideen (jihadist warriors) rather than the traditional *lashkar* (the temporary volunteer force raised by the tribes to defend themselves or in support of allies).

The new form of warfare was different from the seasonal pattern of warfare typical of conflicts fought in pre-industrialized societies that the Afghans had so far experienced. In this new way of war, no one 'put the stone on the mountain' – the traditional way of signalling the end of that season's conflict in order to ensure that both sides could attend to the harvest, or plough the soil ready for sowing next year's crop. However, the fault line between the old and the new was blurred because the conflict was unequal – the Soviets fighting the new way and the Afghans attempting to fight the old way. As a result, the battle-space involved both pack animals and helicopter gunships; combat boots and bare feet; prompt medical evacuation and death on a hillside from gangrenous infections; radioed requests for fire support and desperate prayers to God for divine intervention. At the spear-point, these dual systems fought and bled on the same ground but involved widely differing experiences of what the interplay between religion and armed conflict truly meant in an Afghan context.

As the war expanded and the scale of Western and Saudi Arabian covert support increased, the slow promotional path for most mullahs became a fast track. In large part this was due to the way in which the West allowed Pakistan to structure the mujahideen resistance – the more fundamentalist factions being granted the most aid. Within this dynamic, the more radical a mullah was, the more likely he was to secure support from one of the exiled political parties through which aid was being funnelled under Pakistani management. Pakistan limited recognition of mujahideen groups to a seven-party political alliance, each in competition with the others. All covert arms and funds provided by other nations were then channelled through that narrow bottleneck. To obtain arms or funds inside Afghanistan, the mujahideen involved had to align themselves to one of these parties. The parties were dismissively referred to by the mujahideen at the dying end of the equation, inside Afghanistan, as *spag dukhana* (Six Shops<sup>37</sup>), where promissory loyalty was traded for material support.

It was not a system designed to encourage a unified resistance to the Soviet threat. Not even the binding glue of Islam could force the parties to work together. The resulting situation ideally served Pakistan's President Zia ul-Haq's stated objective to 'keep the war simmering but not boiling over'. The pursuance of Pakistani interests came at a price – protracting the pain for the Afghans and increasing the financial cost to donor supporters, such as the United States and Saudi Arabia – and created an ideal environment for exploitation by politically motivated fundamentalist jihadists.

In a country of contradictions it is no surprise to discover that not everything was black and white, with pious Afghans on one side and communists on the other. Despite Afghanistan's Islamic credentials, an Afghan communist government remained in office. The majority of the more educated elite proved unwilling to suffer the hardships and risks of a jihadist life in the mountains with the mujahideen. For the most part, they either sat on the fence and hoped things would improve, sided with the communists in order to try and shape the future in their favour, or actively fled into exile abroad<sup>38</sup> – and still managed to regard themselves as good Muslims. In addition, many ordinary Afghans who remained in the country were conscripted into the ranks of the Afghan army and used as shielding cannon fodder by the Soviets, or served with warlord militias supporting the communist government.

With the departure of the Russians on 15 February 1989, America claimed victory, depicting the situation as a Soviet defeat on the battlefield rather than a withdrawal due to wider concerns about economic implosion. Nobody gave much attention to the Afghans, who paid in blood for the result achieved. They did not

37 Under Pakistan management, the covert pipeline funnelled funds and arms to seven political parties, not six, but not all could be taken seriously.

38 An estimated 3.3 million were exiled in Pakistan and almost two million in Iran. For the more educated and wealthy this was mostly the first step to more distant exile in North America, Europe, Australia, etc. Very few of the educated elite remained to fight against the Soviets, leaving the fighting and dying to the least wealthy portion of the population.

win through the delivery of a few Stinger missiles towards the closing chapter of the conflict, nor by dint of better training (which they almost universally lacked), nor by some cleverly designed master plan (which the divisions within the resistance movement prevented). They won by doing things the old way – they outlasted their invaders and, in the painful trial of endurance that this entailed, Islam was the only consistent comfort they had. Under the enormous pressure of the war, the landscape had been scarred and the people scattered or shattered, but two things remained constant: the Afghans' capacity to endure the intolerable and their commitment to an Islamic faith.

However, while the Afghans were committed to their faith, for some the interpretations of that faith started to change. Not only had the religious authority of the mullahs increased, but many of the mujahideen and the mullahs who guided them had now been exposed to more radical interpretations of Islam. The change began with the influences of the austere brand of Islam favoured in Saudi Arabia, known as Wahhabism.<sup>39</sup> In this offshoot of Islam lay the seeds of the radical fundamentalist interpretation held by extremist jihadist groups on the world stage today, such as Al Qaeda.

Afghans learn, and learn well, to be wary of all outsiders claiming to represent their interests. They have hard choices to make and prefer to make them for themselves, especially when it comes to how they order their society and follow their faith. As such, their convictions and determination are never more firm than when they feel under pressure, with their backs to the wall. For the rural population, central government does not automatically constitute a force guaranteeing greater local stability. From their perspective, more often than not, government seems to involve a determination to deprive them of what little they have, by taxation or hard squeezing through the corrupt practices of those appointed through patronage or purchase to govern over them.

This is a long way from the stability of their own traditional system, no matter how uneven, which is reliant on the consensus authority of a community assembly (known as a *jirga* in Pashto). The *jirga* represents a raw form of democracy not dissimilar to the rough political order of ancient Athens, known as *dēmos kratos* (people power), from which the term *dēmokratia* (democracy) was coined.

## Conclusion

The West now demands support for a very different type of democracy, one designed to a modern, Western template and almost impossible to implement in Afghanistan on the heels of more than thirty years of conflict – political, social, ethnic and religious in nature. The attempt to do so is made against the

39 Wahhabism gets its name from the teachings of the eighteenth-century scholar “Muhammad ibn Abd-al-Wahhab, who hailed from what is now Saudi Arabia and preached a very austere interpretation of Islam, which he claimed was more in tune with the teachings of the Prophet Muhammad.

background of continuing and expanding conflict, further rupturing the fabric of Afghan society and pressuring the Islamic faith of the Afghans into an increasingly more fundamentalist form. Afghans find themselves back in the vice, coerced by outsiders to change their ways, pushed by central government to relinquish control of their own space, and having to deal with the dynamic interplay of Islam and armed conflict within their evolving society.

Within Afghanistan, because of the character of the geography, Afghan society and the people's past, it is easy for the nature of the conflict to become obscured by the 'fog of war' alluded to by Clausewitz.<sup>40</sup> To break free of the smoke-screening rhetoric shrouding the battle-space in the present war, it can be said that, for the people who inhabit the land of Roh, that ancient space we now call Afghanistan, the arenas of both religion and armed conflict are primarily battles for perception.

The evidence is in the mathematics of the conflict. Since 2003 the smaller, weaker side, commanding far less kinetic force, has been gaining ground. For the West, the core of the strategy involved is not in synchronization with the nature of the conflict they confront. Meanwhile, the opposing Taliban force holds fast to what it knows – *how things are perceived* – and exploits that dynamic to great effect, enough to contain and work towards overwhelming the larger kinetic force it faces. If the West seeks resolution by a kinetically led strategy it will founder, as this approach fails to understand properly the true nature of the conflict – the battle for command and control of perceptions. If the outside forces mean well, but are perceived to be wrong and cause collateral damage as they progress (offending the faith and violating the space of the indigenous population), the situation worsens exponentially in tune with their increasing efforts. It is to be noted that, while the West are 'outsiders', it is a mistake to perceive the Taliban as wholly insiders. At its core the modern jihadist manifestation of the Taliban is no less an outside force than the West, merely better camouflaged and more in tune with local dynamics. These differences allow them an early advantage in the perceptual battle-space.

In the physical field, the West is the hornet caught in the spider's web – the more it struggles, the tighter the web becomes, leaving little chance to deploy a decisive killer blow. Escape is reliant on understanding the dynamics of the web and using that information to advantage. The traditional strength of the Afghans is primarily their capacity to endure and outlast their foes – therefore their strategy is to agitate the hornet, to keep it busy, and to wait for it to exhaust itself. The Taliban do not expect to win by storming the ramparts; they expect to win when their exhausted foe loses the will to prosecute the war further, or simply implodes.

When it comes to warfare with the Afghans, having spent considerable time with them under conflict conditions, my best advice would be to listen to

40 'Lastly, the great uncertainty of all data in War is a peculiar difficulty, because all action must, to a certain extent, be planned in a mere twilight, which in addition not unfrequently – like the effect of a fog or moonshine – gives to things exaggerated dimensions and an unnatural appearance'. Carl von Clausewitz, *On War*, Project Gutenberg, Chapter II, Section 24, available at: <http://www.gutenberg.org/files/1946/1946-h/1946-h.htm> (last visited 26 November 2010).

them. In the early part of the nineteenth century, General Elphinstone asked an Afghan elder if the Afghans would not be more content living under the control of a centralized government system. The Afghan was crystal-clear in his response: 'We are content with discord, we are content with alarms, we are content with blood, but we will never be content with a master'.<sup>41</sup>

The same holds true today. The way out of the Afghan quagmire is about altering perceptions by creating and supporting alliances at the local level – as it is perceptions at the local level that matter the most. This argues for greater regional autonomy than the present Afghan government structure allows, with the local allies supporting government as an administrative hub rather than a monolithic behemoth inclined towards corruption and reliant on building and deploying a large kinetic force to subdue and command the population. Where the population is inclined to resist, this creates opportunities for the opposing force to influence perceptions more effectively and by this means garner support.

To gain a better result in the Afghan hills, the West must change the way it fights – beginning with the way it thinks about the dynamic interplay between religion and armed conflict in Afghanistan. The ultimate victors will be the side that understands and takes best advantage of the true dynamics on the ground. In essence, the West must learn the old lesson: to prosper in the Afghan battle-space it is necessary to be more like the Afghans: hardy, fast, pragmatic, and flexible.

41 M. Elphinstone, above note 2, p. 174.





# Transnational Islamic networks

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## **Abstract**

*Besides a surge in terrorist activities, events following the 11 September terrorist attack on the United States have raised a new challenge for the world: the emergence of transnational Islamic networks, predominantly influenced by organizations such as Ikhwan al Muslimeen (the Muslim Brotherhood) and Al Qaeda, which are helping to spread a particular religious ideology across the globe and are also having an impact on pre-existing groups in Afghanistan and Pakistan. This article gives an overview of the role of Islamist networks and their influence, drawn from Al Qaeda and the Muslim Brotherhood, in South and South-west Asia and the Afghanistan–Pakistan region in particular. It also explains how local like-minded outfits have used Al Qaeda’s anti-Western jargon to recruit foot soldiers and enlist support within their society, besides serving as financial conduits for the radical Wahabite/Salafi reformists.*



## **Traditional Islam in South and South-west Asia**

Islam came to the Indian subcontinent in the eighth century with the Arab conquest of Sindh (now the fourth province of Pakistan in the south). In the ensuing decades, however, besides struggles and battles for political domination among kings and sultans of the region, Sufis and saints played a major role in influencing traditional Islam in South (and West) Asia. Tombs of Sufi saints became a place of pilgrimage, thus favouring the expansion of Islam, and also the main means of adapting it to indigenous tradition in a culturally diverse society such as India.

Several spiritual and religious personalities – both Sufis and saints – spread and revitalized Islam in the Indo-Pak subcontinent (as well as in Afghanistan and Central Asia) with their peaceful and inspiring teachings. Scholars and reformers such as Shah Waliullah Muhaddith Dehlvi (1703–1762) and Alf Sāni (1564–1624) had a profound influence on vast segments of Muslim society. Described as the ‘reviver of the second millennium’ for his work in rejuvenating Islam and opposing the heterodoxies prevalent at the time of the Mughal Emperor Akbar,<sup>1</sup> Sāni, an Indian Islamic scholar from Punjab, is said to have given ‘to Indian Islam the rigid and conservative stamp it bears today’.<sup>2</sup>

### The divide between traditionalists and reformists

However, the divide between traditionalists and reformists remained discernible through the centuries. The traditionalist view of Sharia is essentially legalistic and casuistic; it is sometimes connected to the popular forms of Sufism (hence the Barelvi school in Pakistan<sup>3</sup>). On the other hand, as Olivier Roy argues, the reformist fundamentalist position criticizes the tradition, the commentaries, popular religious practices, deviations, and superstitions. It aims to return to the founding texts (Shah Waliullah in India and Abd al Wahab in the Arabian Peninsula), and generally developed in response to an external threat (such as the influence of Hinduism on Islam).<sup>4</sup>

Until the early twentieth century these various movements had largely remained peaceful, but the turmoil for the Muslims of India (sectarian clashes between Hindus and Muslims) coincided with religious uprisings in the Middle East, led by Syed Qutub and Hassan al-Banna<sup>5</sup> in Egypt, as well as the abolition of the Islamic Caliphate in Turkey by Kemal Ataturk in the 1930s. These transnational factors – the First World War, British rule in India, the secular movement in Turkey, and political struggles in Egypt – essentially determined the evolution of Islamic thought over the last century.

### Salafi and Wahabism

The origins of today’s Salafi political parties and movements (Salafi revivalism) can be traced to the Society of the Muslim Brotherhood, created by the schoolteacher

1 Cyril Glasse, *The New Encyclopedia of Islam*, Altamira Press, Walnut Creek, CA, 2001, p. 432.

2 Aziz Ahmad, *Studies in Islamic Culture in the Indian Environment*, Oxford University Press, Oxford, 1964, p. 189.

3 Barelvi is a movement of Sunni Islam originating in the Indian subcontinent. The Barelvi movement was started in 1880 to defend contemporary traditionalist Islamic beliefs and practices from the criticisms of reformist movements such as the Deobandi and Ahl-e-Hadith. This movement in British India was shaped by the writings of Ahmed Raza Khan Barelvi (1856–1921).

4 Olivier Roy, *The Failure of Political Islam*, I.B. Tauris & Co Ltd., London, 1994, p. 31.

5 Hassan al-Banna (1906–1949) was an Egyptian political and religious leader. He was the founder of the Muslim Brotherhood and one of the pioneers of today’s Islamic revival.

Hasan al-Banna in Egypt in 1928,<sup>6</sup> and the Jamaat-e-Islami (Islamic Party) of Pakistan, established by Syed Abul-Ala Maududi in 1941.<sup>7</sup> Roy argues that

although the two movements developed independently, the overlapping of their themes was striking, and intellectual contacts were soon established: it was a disciple of Maududi, the Indian Abul Hasan Ali Nadvi, who undertook the translation of Maududi into Arabic and who met with Sayyid Qutub.<sup>8</sup>

An Egyptian ideologue of the Muslim Brotherhood, Qutub, who was executed by the regime of President Gamal Abdel Nasser in 1966, insisted on *jihad* (armed struggle) to establish the true Muslim state, as *dawa* (preaching) could not by itself achieve God's dominion on earth.<sup>9</sup>

Roy divides the current transnational Islamist movement, now about six decades old, into three geographic and cultural tendencies: the Sunni Arab Middle East, the Sunni Indian subcontinent, and Irano-Arab Shiism:

These groups are as distinct politically as they are geographically, which is why it is more appropriate to speak of an Islamist sphere of influence than of an international union. The largest organizations are those of the Arab world's Muslim Brotherhood (MB), vaguely dependent on their Egyptian leadership ... Next we find organizations on the Indian subcontinent (the various Jamaat-i Islamis of Pakistan, India, and Bangladesh), the Afghan *mujahideen* (Hizb-i Islami, Jamaat-i Islami), and, more recently, the North African Islamists ... As for the revolutionary Shiite movement, it is the only one to have taken power by way of a true Islamic revolution ...<sup>10</sup>

## Common goals

What binds these groups together is (i) a call to fundamentalism to cleanse the society and enforce Sharia, (ii) anti-colonialism, (iii) anti-imperialism

6 The term 'Salafi' is generally used to refer to the first three generations of Muslims: the Sahaba (Companions of Muhammad), the Tabi'un (Followers), and the Tabi' al-Tabi'in (Those after the Followers). Salafis view these three generations as examples of how Islam should be practised. The principal tenet of Salafism is that Islam was perfect and complete during the days of Muhammad and his Sahaba, but that undesirable innovations have been added over later centuries, owing to materialist and cultural influences. The term 'Salafism' is sometimes used interchangeably with 'Wahhabism'.

7 Primary sources for the study of the Muslim Brotherhood and the Jamaat are: Richard P. Mitchell, *The Society of the Muslim Brothers*, Oxford University Press, Oxford, 1963; and Kalim Bahadur, *The Jamaat-i-Islami of Pakistan: Political Thought and Political Action*, Chetana Publications, New Delhi, 1977. Maududi (1903–1979) was a Sunni journalist, theologian, Muslim revivalist leader, political philosopher, and major Islamist thinker. He was also a prominent political figure in Pakistan.

8 O. Roy, above note 4, p. 35. Sayyid Qutub (1906–1966) was an Egyptian writer, educator, and religious leader. His writings about Islam, and especially his call for a revolution to establish an Islamic state and society, greatly influenced the Islamic resurgence movements of the twentieth century.

9 Aneela Salman, 'Religious ideology and lethality: does religious sect have an effect on the lethality of a terrorist organization?', in *Criterion*, Vol. 5, no. 3, July–September 2010, available at: <http://criterionpk.com/2011/02/religious-ideology-and-lethality-does-religious-sect-have-an-effect-on-the-lethality-of-a-terrorist-organization/> (last visited 9 March 2011).

10 O. Roy, above note 4, p. 2

(synonymous with anti-Westernism), and (iv) anti-Americanism. Their obvious targets are therefore foreign banks (e.g. City Bank, American Express), foreign food franchises (e.g. KFC, McDonalds, Pepsi), the World Bank and the IMF (dubbed as American tools for arm-twisting poor Muslim nations), and even governments co-operating with the US or other NATO members (Iraq, Afghanistan, and Pakistan are cases in point). Opposition to, and condemnation of, both Israel and the United States (for their policies vis-à-vis the Palestinians) is the common denominator for all these groups. So is their grudge against the US for its invasion of Iraq and the continued presence in Afghanistan. In this case, the Sunni groups (including Al Qaeda and the Muslim Brotherhood) find a common cause with the Palestinian radical Sunni group Hamas, which was born out of the Muslim Brotherhood, as well as mainstream Shia groups such as Hezbollah, and become mutually supportive entities.

Opposition to India and its hold over the disputed Himalayan state of Kashmir is specific to Pakistani militant groups – Lashkar-e-Taiba (the Army of the Righteous), Harkat-ul-Mujahideen (the Order of Holy Warriors) and Jaish-e-Muhammad (the Army of Mohammed). Meanwhile, all these groups have become force multipliers for the transnational Al Qaeda.

## The Afghan war

The Afghan war against the Soviet Union was a watershed in militant Muslim revivalist movements and gave a new platform to militant Islamist groups from all over the Muslim world. Sheikh Abdullah Azzam was one of the first Arabs to join the *jihād* in Afghanistan. He advocated traditional *jihād* to push Christian encroachments out of all Muslim lands. Osama bin Laden (Azzam's deputy) created a common enemy against whom *jihadi* efforts were to be focused. Thus US troops in Saudi Arabia, and later Somalia, provided the embodiment of that common enemy, thereby changing the focus of Salafi *jihād* to the “far enemy” (the United States and the West in general).<sup>11</sup>

The American CIA and the Pakistani Inter-Services Intelligence agency (ISI) used Muslim fighters from all over the world as proxies against the Soviet Union. Following the Soviet Union's withdrawal in February 1989, the socialist Afghan regime eventually fell to the *mujahideen* in late April 1992. The eventual chaos and factional fighting after the abrupt fall of President Najibullah turned Afghanistan into embattled fiefdoms, thereby enabling the Arab Wahabi-Salafi and Pakistani Deobandi<sup>12</sup> (both Sunni) and pro-Iran Shia groups to step in and influence the course of events there.

11 Marc Sageman, *Understanding Terror Networks*, University of Pennsylvania Press, Philadelphia, 2004, p. 19.

12 A Deobandi is a person who follows the methodology of the Deoband Islamic movement. The movement began at Darul Uloom Deoband (a *madrasa*, or seminary) in Deoband, India, where its foundation was laid on 30 May 1866.

## Saudi Arabian role in the development of transnational networks

During the *jihad* against the Soviet Russians, Saudis not only matched America dollar for dollar but also funded the creation of new mosques and seminaries in the Afghanistan–Pakistan region, as well as creating their own proxies – Sipah-e-Sahaba (SPP) Pakistan, Lashkar-e-Jhangvi, and several others – to counter Shia advances in Sunni regions.<sup>13</sup> In Afghanistan, they took Professor Abdul Rasul Sayyaf, a resistance leader and preacher of Wahabism, under their tutelage and apparently continue to do so.

The issue of funding for militant political organizations is primarily rooted in the Iranian Revolution of January 1979. The Soviet invasion of Afghanistan in December of the same year provided the Saudis with the best opportunity to support religio-political parties financially on the one hand and, on the other, to help create political parties such as those mentioned above to counter the spreading Iranian Shia influence. Indeed, the Saudi monarchs feared that the revolution in Iran might undermine their own influence in the neighbouring countries. As the factional fighting in Afghanistan raged after all the *mujahideen* leaders arrived there in April 1992, the Saudi–Iranian rivalry also intensified. The Saudis and the Pakistanis joined hands to contain the Iranian influence both in Afghanistan and in Pakistan itself by permitting and funding the mushrooming of Sunni religious seminaries all over the country. The continuing Saudi desire is to exercise influence over its proxies in countries such as Pakistan, where two-thirds of the 175 million population are Sunni Muslims.

While the Saudi funding flowed for Sunni seminaries in Pakistan, it also triggered a violent sectarian conflict throughout the 1990s, mostly centred in central Pakistan – the Punjab – where radical Sunni<sup>14</sup> and Shia<sup>15</sup> organizations are headquartered. Most Sunni organizations, from Karachi in the south to South Punjab and to Waziristan in the north-west, share objectives and are bonded together by the overarching Al Qaeda ideology. Pakistan's ISI, craving for so-called strategic depth in Afghanistan, had its own axe to grind. In the mid-1990s, it saw in the Taliban a force multiplier for itself that it thought should be able to counter Russian, Indian, and Iranian influence. In this way, various militant groups emerged, guided and influenced by Saudi Arabia and Pakistan, both nurturing their favourite outfits. Later, the US-led anti-terror war in Afghanistan and the invasion of Iraq provided ever greater grounds for transnationalist movements such as Al Qaeda to raise cadres for an organized resistance to the 'US-led Western imperialism'.

Consequently a synergy or fusion of interests and similarity of causes has emerged between the traditionalist clergy and the radical reformists – largely led

13 Imtiaz Gul, *The Most Dangerous Place: Pakistan's Lawless Frontier*, Penguin, London, June 2010.

14 Such as SSP, Lashkar-e-Jhangvi, Jaish-e-Muhammad, Lashkar-e-Taiba and Jamaat-ud-Dawah.

15 Including the defunct Tehrike Jafria Pakistan.

and influenced by Al Qaeda – in South and South-west Asia: a sort of synthesis between Islamist militants and traditional mullahs, who earlier prospered under the American largesse and now serve as direct supporters or apologists (indirect supporters) for the pan-Islamist missionaries.

That mission – basically to spread the Al Qaeda ideology – also resonated in a video statement by the Egyptian Ayman al-Zawahiri, issued in connection with the Hezbollah–Israeli conflict in the summer of 2006:

The whole world is an open field for us. As they attack us everywhere, we will attack them everywhere. As their armies got together to wage war on us, our nation will get together to fight them. ... The shells and missiles that tear apart the bodies of Muslims in Gaza and Lebanon are not purely Israeli. Rather, they come and are financed by all countries of the Crusader alliance.<sup>16</sup>

## Prominent transnational networks

### The Arab-centred networks

#### *The Muslim Brotherhood*

The Muslim Brotherhood's stated goal is to take the Qur'an and Sunnah as the 'sole reference point for ... ordering the life of the Muslim family, individual, community ... and state'.<sup>17</sup> The movement has officially opposed violent methods of achieving its goals, with some exceptions such as in the Israeli–Palestinian conflict or its attempts to overthrow secular Ba'athist rule in Syria. Sharon Otterman describes its recent history:

The Muslim Brotherhood has been formally banned in Egypt since 1954, but in reality, the Egyptian government has allowed it to operate within limits since the 1970s, keeping it in check with frequent arrests and crackdowns. A more open political atmosphere in 2005, due to both domestic and international pressure, led the government to grant the Brotherhood unprecedented freedom to campaign before 2010 year's parliamentary vote. While the group's 150 candidates officially ran as independents, there was nothing secret about their Brotherhood affiliation. Candidates held rallies, hung posters with the Brotherhood's name, and used its slogan, 'Islam is the Solution'.<sup>18</sup>

16 Ayman al-Zawahiri, as transcribed in BBC, 'Excerpts: Al-Zawahiri video comments', 27 July 2006, available at: [http://news.bbc.co.uk/2/hi/middle\\_east/5220204.stm](http://news.bbc.co.uk/2/hi/middle_east/5220204.stm) (last visited 14 January 2011).

17 Ikhwanweb, the Muslim Brotherhood's official English website, available at: <http://www.ikhwanweb.com/article.php?id=813&ref=search.php> (last visited 9 March 2011). See also Robert S. Leiken and Steven Brooke, 'The moderate Muslim Brotherhood', in *Foreign Affairs*, Vol. 86, No. 2.

18 Sharon Otterman, *Muslim Brotherhood and Egypt's Parliamentary Elections*, Council on Foreign Relations Backgrounder, 1 December 2005, available at: <http://www.cfr.org/egypt/muslim-brotherhood-egypts-parliamentary-elections/p9319> (last visited 9 March 2011).

The Brotherhood was not actively involved in the January–February 2011 uprising in Egypt, the desire for change being led instead by social media and civil society. Indeed, many observers believe that this situation mounted a new strategic challenge to both the Brotherhood and Al Qaeda: the demand for democratic rights rather than Sharia (Islamic law) amounted to a snub to Al Qaeda and a denial of its thesis that Muslim people crave a Sharia-based society. Events in Tunisia, Bahrain, and Jordan suggest that the Brotherhood and Al Qaeda's case for Sharia has suffered a setback in those countries also.

The Brotherhood's core mission is religious proselytizing through preaching and social services, and the network spreads from Egypt to Jordan, Palestine, Kuwait, Sudan, Yemen, Syria, and Tunisia, making it a predominantly Arab-based entity, with Muslim Brotherhood branches in these countries being practically subordinate to the Egyptian centre. The Muslim Brotherhood also sponsors national organizations such as the Islamic Tendency Movement in Tunisia, Justice and Charity in Morocco, Hamas in Algeria, and the Movement of Islamic Youth, Malaysia, a group close to both the Muslim Brotherhood and the Malaysian Jamaat-e-Islami in 1971.<sup>19</sup> Literature on the subject suggests that the Afghan *mujahideen* leader Burhanuddin Rabbani adopted the ideas of the Muslim Brotherhood during his studies at Al-Azhar University in the 1950s.<sup>20</sup>

The Muslim Brotherhood and Al Qaeda have been vocal about Islamic resistance movements in the region because of the challenge and opportunity that they present to political Islam. However, there is a difference between the two organizations, according to Marwan Bishara, an Arab Palestinian political commentator and academic:

The Muslim Brotherhood has supported various resistance movements against foreign occupation, including Palestinian Hamas (offshoot of the Palestinian Muslim Brotherhood), the Lebanese Hezbollah, and the Islamist Iraqi resistance groups. Nevertheless, it also supported their attempts to join the political processes in their countries. Al-Qaeda on the other hand, has supported only the violent expressions of these groups, and whenever they turned to politics, al-Qaeda rejected all their political overtures as surrender to the enemies of Islam.<sup>21</sup>

## *Al Qaeda*

In the last decade, no other organization has influenced political thought across the Muslim world as much as Al Qaeda. It is the vanguard of the global Salafi movement, which includes many sister terrorist groups that share the same ideology.

19 O. Roy, above note 4, p. 111.

20 Jason Burke, *Al-Qaeda: The True Story Of Radical Islam*, I. B. Tauris, London, 2004, pp. 66–67.

21 Marwan Bishara, 'Islam can not always be blamed: it appears Islam is not an appropriate scapegoat after all', Ikhwanweb, 19 January 2010, available at: <http://www.ikhwanweb.com/article.php?id=22699> (last visited 14 January 2011).



The *jihadi* Salafi ideology considers the Saudi Arabian government, for example, to be an un-Islamic regime that needs to be purged of its present leaders.<sup>22</sup>

In his Declaration of *jihad*, Osama bin Laden adopted the historical imagery of Islamic resistance to the European Crusades, describing the enemy as ‘the alliance of Jews, Christians and their agents’ and holding them responsible for ‘massacres in Tajikistan, Burma, Kashmir, Assam, the Philippines, Fatani [as transliterated], Ogaden, Somalia, Eritrea, Chechnya and Bosnia-Herzegovina’.<sup>23</sup> The *fatwa* proclaimed:

The ruling to kill the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate Al-Aqsa Mosque and the holy mosques from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim. This is in accordance with the words of Almighty God, ‘And fight the pagans all together as they fight you all together’, and ‘Fight them until there is no more tumult or oppression, and there prevails justice and faith in God’.<sup>24</sup>

Interestingly, Al Qaeda propounds an intellectual concept that is not based on main schools of Islamic theology but constructs a new ideological starting point by the application of Islamic principles to socio-political change. Bin Laden projects *jihad* as an individual responsibility incumbent on all Muslims to avenge innocent Muslim blood, especially that of Muslim children in Iraq and Palestine.<sup>25</sup>

What distinguishes Al Qaeda from the Muslim Brotherhood is the ideological cohesion that simply transcends geography, culture, ethnicity, and personalities. The Muslim Brotherhood displays its political pragmatism by taking a reformist approach to the countries where it operates. It does not oppose the democratic process, nor does it bar its members from participation in elections, implying that, while sticking to its core mission, it also believes in the peaceful pursuit of political power. This may perhaps also be the reason for regional disagreements and conflicts within the Muslim Brotherhood network. In this regard, Olivier Roy makes a very convincing argument, namely that

first of all, there are several centres: the Egyptian MB [Muslim Brotherhood], the Pakistani Jamaat and the World Muslim League based in Saudi Arabia.

22 See M. Sageman, above note 11.

23 Christopher M. Blanchard, *Al Qaeda: Statements and Evolving Ideology*, CRS Report for Congress, 16 November 2004, p. 3, available at: <http://www.fas.org/sgp/crs/terror/RL32759.pdf> (last visited 9 March 2011). Besides bin Laden and al-Zawahiri, the Iraqi cleric Abu Musab al Zarqawi was the third most revered Al Qaeda figure. Praised by bin Laden as the ‘prince of al-Qaeda in Iraq’, he was later killed in a US air strike near Baghdad in 2006. See Jayshree Bajoria, ‘al-Qaeda (a.k.a. al-Qaida, al-Qa’ida)’, Council on Foreign Relations, updated on 30 December 2009, available at: <http://www.cfr.org/terrorist-organizations/al-qaeda-k-al-qaida-al-qaida/p9126> (last visited 9 March 2011).

24 Fatwa issued by Osama bin Laden and others in Al Qaeda, published in *al-Quds al-Arabi*, 23 February 1998, as quoted in Quintan Wiktorowicz, ‘The new global threat: transnational Salafis and jihad’, in *Middle East Policy*, Vol. 8, No. 4, December 2001, p. 18.

25 A. Salman, above note 9, p. 73.



From these connections and collaborations are established around a network of personal relationships, riddled with disagreements and divisions; their common denominator is not the MB ideology, but the simple desire to re-Islamize the society. These networks are periodically torn apart by conflicts that set the states of the Middle East against one another ...<sup>26</sup>

In contrast, those groups and persons wedded to the core ideology of Al Qaeda rarely display disagreements and are unanimous in pursuing political objectives through sheer violence such as suicide bombings. They disregard, for instance, the Muslim Brotherhood's pragmatism (such as participation in parliamentary elections) and believe in force as the only way to Islamize society and put an end to foreign occupation of the Muslim lands (Saudi Arabia, Kuwait, Iraq, Afghanistan, and Palestine).

Al Qaeda is active in dozens of countries, including the United States, the United Kingdom, Spain, Germany, Yemen, and Somalia. After shifting its central command to Afghanistan during the Taliban rule, the organization introduced suicide bombings to both the Afghan and the Pakistani Taliban, as well as to affiliated groups in Iraq, Yemen, and North Africa. Daniel Benjamin, from the US Institute of Peace, a Washington-based think-tank, notes that 'Terrorism emanating from Yemen is a major security concern for the United States. But al-Qa'ida's core in Pakistan remains an extraordinarily formidable and dangerous terrorist organization whose targeting of the United States continues'.<sup>27</sup>

The discussion on Jamaat-e-Islami later in this section will also explain how local parties provide a cover or serve as an apology for Al Qaeda's global mission, despite the fact that only a limited section of the population supports and sympathizes with Al Qaeda. In a February 2008 poll by Terror Free Tomorrow, a Washington-based non-profit group, only 24% of Pakistanis had a favourable opinion of bin Laden in 2008, as compared to 46% in August 2007. Similarly, Al Qaeda's popularity had dropped from 33% to 18%.

## Hezbollah

Hezbollah's ideology is based on the concept of *jihad* and martyrdom. These are often demonstrated in its acts of suicide terrorism. On 11 November 1982, Hezbollah's first suicide bomber, Ahmad Qasir, detonated himself in the Israeli military headquarters in Tyre, killing seventy-six (the Hezbollah website claims seventy-five) officers. The day continues to be commemorated by Hezbollah as 'Martyrdom Day' in Qasir's honour.<sup>28</sup>

26 O. Roy, above note 4, p. 112.

27 Daniel Benjamin, Coordinator for Counterterrorism/Ambassador-at-Large, *US Counterterrorism Strategy in Yemen*, US Institute of Peace, Washington, DC, 8 September 2010, available at: <http://www.state.gov/s/ct/rls/rm/2010/147296.htm> (last visited 14 January 2011).

28 A. Salman, above note 9, quoting Joseph Alagha, *The Shifts in Hizbullah's Ideology: Religious Ideology, Political Ideology, and Political Program*, Amsterdam University Press, Amsterdam, 2006.

Hezbollah, too, projects itself as a pan-Arab, pan-Islamic movement, pursuing practical politics in a religious garb. Its relations with Iran are based on political-ideological, strategic-policy terms (pan-Islamism), and with Syria on ethno-national identity (pan-Arabism).<sup>29</sup>

Training even Sunni groups and non-Islamic outfits such as the Tamil Tigers has been part of Hezbollah strategy to spread the schemes of martyrdom into other territories. Addressing the organization's military units in December 2002, the Hezbollah leader, Sayyed Hassan Nasrallah, said: 'Martyrdom operations – suicide bombings – should be exported outside Palestine. I encourage Palestinians to take suicide bombings worldwide. Don't be shy to do it'.<sup>30</sup>

## South and South-west Asian-centred organizations

### *Jamaat-e-Islami (JI)*

From its foundation in 1941, Jamaat-e-Islami Pakistan opposed the partition of India. Later, after the emergence of Pakistan as a new state on the world map, it changed its stance and opted to create a constituency for itself in the new state. Unlike other Islamic movements, it presents a more comprehensive and pragmatic Islamic view, embodied by a large number of mostly educated lower- and middle-class political activists, academics, and intelligentsia. It places great stress on political struggle for establishing an Islamic state rather than wasting energy on individuals to make them perfect Muslims.

Jamaat-e-Islami Pakistan overtly runs an indigenous movement to Islamize the state. It does, however, also share the Islamic political ideology and programme with other political parties (such as Jamaat-e-Islami, Bangladesh, or Hizb-i-Islami, Afghanistan). At the same time, it shares an ideological nexus with Al Qaeda, and particularly with those persons and groups who were once part of the Muslim Brotherhood but are now devout Al Qaeda activists. This fusion gives Jamaat-e-Islami the transnational character that transcends the boundaries of a particular country or region. That several people linked to Al Qaeda, such as Khalid Sheikh Mohammed, one of the masterminds of the 9/11 events, were arrested from the houses of Jamaat-e-Islami leaders in different parts of Pakistan also confirmed the link that has existed between Al Qaeda and Jamaat-e-Islami in Pakistan.

Being a pragmatic Sunni Islamist party, Jamaat-e-Islami also maintains a good working relationship with the Shia in Iran. Despite being entirely a Sunni movement, it is regarded as the only Sunni party that does not believe in sectarianism and has no differences with Shia Muslims. In fact, Gulbuddin Hekmatyar, the Hezb-e-Islami chief who had been traditionally close to the Jamaat-e-Islami, was rumoured to have found refuge in Iran on a number of

29 Alagha, above note 28.

30 Council on Foreign Relations, backgrounder on Hamas, 27 August 2009, available at: <http://www.cfr.org/israel/hamas/p8968> (last visited 22 February 2011).

occasions in the 1990s and even after the United States unleashed the ‘global war on terror’ in Afghanistan in the aftermath of the 9/11 events. In his latest post-Ramadan messages to Muslims ahead of Eid ul-Fitr, for instance, Hekmatyar advised the Pakistani and Iranian governments in particular not to befriend the United States at the cost of the Afghan nation. Do not endanger your interests by continuing to support the war in Afghanistan, he exhorted the two governments.<sup>31</sup> During my visits to Afghanistan in the early 1990s and early 2000, Hezb-e-Islami fighters would often speak of their contacts and adventures in Bosnia-Herzegovina and Chechnya, and in Kashmir in particular. They talked especially of al-Zawahiri because these non-Arab followers are bound to the Egyptian doctor by the original Muslim Brotherhood ideology.

Over a dozen organizations work either directly or indirectly under the Jamaat-e-Islami Pakistan umbrella. Two of them are political, four are *jihadi*, and one represents a union of religious scholars. There are also four youth and students’ organizations that identify themselves with JI or are inspired by its core ideology.<sup>32</sup> The Al-Khidmat Foundation, a prominent organization under direct supervision of Jamaat-e-Islami Pakistan, for instance, operates as a welfare charity – a non-governmental organization (NGO) – that tries to reach and serve the victims of war or any sort of natural disaster or catastrophe that occurs in the country. In recent years it has rapidly extended its operations countrywide: ‘According to 2001 Yearly Report of Jamaate Islami, Al-Khidmat Foundation spent approximately 40 million rupees on different programs in previous year’.<sup>33</sup> During the August 2010 floods, the Foundation once again joined the fray, with several hundred million rupees and thousands of volunteers to help in rescuing and getting relief supplies to millions of people displaced by the devastating waters of the Indus river.

### *Jamaat-e-Islami’s Kashmir connection*

The Jamaat-e-Islami Jammu and Kashmir (JIJK) was established as an independent political organization in 1952. It presented itself as an organization committed to establishing an Islamic state in Kashmir based on the Sharia, but using democratic means of peaceful persuasion for attaining its goals.<sup>34</sup> However, in the late 1980s, JIJK initiated its armed struggle against Indian rule. In 1989, it instructed its members in the assembly to resign and join the struggle. The JIJK leaders, including Sayyed Ali Gilani, its chief ideologue, allege that infidel forces such as Israel, the Western world, and India are all united to dominate the Muslim world by hatching

31 Maverick Report, ‘Hekmatyar advises Pakistan, Iran not to befriend US at cost of Afghan nation’, 11 September 2010, available at: <http://www.maverickpakistanis.com/?p=8513> (last visited 22 February 2011).

32 Mohammad Amir Rana, *A to Z of Jihadi Organizations in Pakistan*, Mashal Books, Lahore, 2004.

33 *Ibid.*

34 See Yoginder Sikand, ‘Changing course of Kashmiri struggle: from national liberation to Islamist jihad?’, in *Economic and Political Weekly*, Vol. 36, No. 3, 2001, p. 219.

conspiracies and using force against them. Gilani argues that ‘whenever Muslims have ignored the principles of Islam that see no boundaries of region they have lost their power and have become like any other community’. Territorial nationalism, he writes, has proved to be the bane of the Muslims, for it has divided them into different states and, thereby, has deflected them from the task of ‘changing the conditions of the entire human race’.<sup>35</sup>

Besides Jamaat-e-Islami-affiliated outfits in Indian-administered Kashmir, groups such as Lashkar-e-Taiba, Tehreek-ul-Mujahideen, and Harkat-ul-Mujahideen also operate in tandem with one another; this underscores the transnational character of the Islamist reformists who consider use of force as a legitimate tool in gaining their objectives.

### *Tablighi Jamaat*

Tablighi Jamaat is the most influential religious organization in Pakistan. It runs centres at district level where its members gather for Islamic teachings, and it also arranges special congregations from time to time to attract the masses from various parts of the country. It holds annual international three-day congregations in Raiwind near Lahore, in Pakistan, and Tungi in Bangladesh, where almost two million Muslims from across the world usually attend the gatherings. It is the second-largest gathering of Muslims after the annual Hajj (pilgrimage) to Mecca.

Tablighi Jamaat originated in northern India in the 1920s and is ‘a scion of several generations of Ulama [Islamic scholars and religious leaders] associated with Deoband. Maulana Muhammad Ilyas (d. 1944) is taken to be the founder of Tablighi Jamaat’.<sup>36</sup> After the partition of the subcontinent in 1947 the movement took on new energy, most importantly in Mewat, the district where it originated and where Hindus had engaged in ruthless ‘ethnic cleansing’.<sup>37</sup> Tablighi Jamaat has no formal bureaucratic structure and is a highly decentralized voluntary movement with no official name. It is led by a non-charismatic leadership and is in principle averse to personality cults. The name ‘Tablighi Jamaat’ has been publicly adopted but not officially used. It has no offices and no archives, and there are no closed-door meetings.<sup>38</sup>

35 *Ibid.*

36 Barbara Metcalf, ‘Travelers’ tales in the Tablighi Jamaat’, in *Annals of the American Academy of Political and Social Science*, Vol. 588, July 2003, pp. 136–148.

37 *Ibid.*, p. 137.

38 *Ibid.*, p. 138. One can gauge the Tablighi Jamaat’s pull from the fact that, despite being a moderate and liberal Muslim, Farooq Leghari, a former president of Pakistan, attended the Tablighi Jamaat’s annual congregation in the mid-1990s while he was still in office. Another extreme example was General Mehmood Ahmed, a former chief of the ISI, who joined the Tablighi Jamaat after his forced retirement in October 1999 and spends weeks every year in promoting its cause. A number of national cricketers, including the former captain Inzamul Haq, Mushtaq Ahmed, and Yousuf Yohanna, are also currently active members of Tablighi Jamaat; Yohanna, in fact, converted from Christianity to Islam because of the Tablighi Jamaat and now uses Muhammad Yousuf as his full Muslim name. The popular pop singers Junaid Jamshed, Ali Haider, and Najam Sheeraz are a few more examples of how Tablighi Jamaat can influence individuals usually considered areligious; at the height of their singing careers these three

Despite its pacifist stance, Tablighi Jamaat has appeared on the fringes of numerous terrorism investigations. It has gained much public and media attention, particularly in the UK, when it announced plans for construction of Europe's largest mosque there. With its international headquarters in Nizamuddin, Delhi, it has several national headquarters to co-ordinate its activities in over eighty countries, and has a significant presence in North America, Europe, Africa, and Central Asia.

In political terms, Tablighi Jamaat finds itself at odds with other Islamic organizations:

TJ has been facing a lot of criticism by other Deobandi factions of Islam, especially those in the business of Jihad; their contention is that this non-resistant and consistently expanding humanitarian outfit should also gear up for Jihad, one of the compulsory tenets of Islam. The party elders generally avoid responding to criticism from outside though they are forthcoming to questions within the party.<sup>39</sup>

Both in Pakistan and in Bangladesh, Tablighi Jamaat has an interface with the political establishment. The dividing line is not between political and apolitical Islamic movements but between two ways of conceiving politics. While the Islamists work through the nation-state, there are other groups who think beyond borders; 'putting politics most often in parentheses they first build individuals and institutions, which over time may exert a more lasting political influence'.<sup>40</sup>

The Tablighi Jamaat has no visible sources of financing. It depends solely on charities and donations by members or others. Donors are strictly prohibited from displaying their financial support. According to a Tablighi worker, showing off the financial support you give in God's way may corrupt your purpose and thus you lose the essence of Islamic practice.<sup>41</sup>

Critics meanwhile brand the Tablighi Jamaat as the biggest group of apologists for the radical Wahhabi/Salafi Islamists. In fact, it offers a safe refuge to all shades of militancy as well. During a visit to Pakistan's wild and embattled South Waziristan region, for example, I stumbled upon a diary, probably a visitors' notebook, in the compound of a seminary that militants had been using for political brainwashing of activists from all over Pakistan. Written in Urdu, Pakistan's national language, the diary contained comments and memoirs of many militants who had transited through this camp. At least a dozen entries related to the writer's visit to Raiwind, the Tablighi Jamaat's Pakistan headquarters on the outskirts of

prolific artists fell under the influence of the Tablighi Jamaat and now, besides performing either recitations of religious songs and hymns or, in the case of Jamshed, pursuing other business such as branded menswear, they preach Islam. Jamshed also conducts TV programmes from the Tablighi perspective.

39 Waqar Gillani, 'Revolution, not quite', in *News International*, 1 November 2009, available at: <http://jang.com.pk/thenews/nov2009-weekly/nos-01-11-2009/dia.htm#2> (last visited 27 October 2010).

40 Shail Mayaram, 'Hindu and Islamic transnational religious movements', in *Economic and Political Weekly*, Vol. 39, No. 1, 3-9 January 2004, p. 85.

41 Interviews with Tablighi activists, Islamabad, July 2010.

Lahore, the country's second largest city. Almost all spoke of a great 'spiritual sojourn and great emotional experience' at Raiwind, which clearly suggested that Muslims across the board hold the place in great reverence, and it thus also becomes an almost unassailable hideout to those who are averse to the socio-political system and conditions in Pakistan and might want to escape the law or interrogation for some time. Here the zealots sink themselves in meditation for weeks, disconnecting themselves from the outside world, an experience they believe elevates them much closer to God.

### *Dawat-e-Islami*

Dawat-e-Islami is another strand of the Tablighi (preaching) school of thought, founded in 1984 by Maulana Ilyas Qadri, a Bareilvi Sunni scholar. It was apparently intended for diluting the growing influence of Tablighi Jamaat, particularly in the Punjab province. Dawat-e-Islami also routinely sends out its delegations on preaching missions but it lacks the global appeal of Tablighi Jamaat. It is mainly restricted to Pakistan's central Punjab and southern Sindh provinces. The importance given to Maulana Ilyas Qadri's book *Faizan-e-Sunnat* in Dawat-e-Islami is the same as that given to Maulana Zakaria's book *Fazail-i-Amaal* in Tablighi Jamaat.<sup>42</sup> Though Dawat-e-Islami's sphere of influence is limited, its message is global in nature. It mostly collects its funds from local businessmen, traders, landlords, and so forth. However, it also gets substantial financial support from the Bareilvi diasporas in the USA, UK, and other parts of Europe and the Middle East.

### *Ahl-e Hadith and Jamaat-ud-Dawah (Lashkar-e-Taiba)*

Jamaat-ud-Dawah represents the Ahl-e-Hadith school of thought, drawing ideological, political, and financial support from Saudi Arabian sources. Ahl-e-Hadith followers believe in almost no *fiqh* (Islamic jurisprudence), this being the only issue that distinguishes them from the Deobandis. The Ahl-e-Hadith school of thought is affiliated to Salafi Islam, known for its fierce opposition to Sufism<sup>43</sup> and to the established schools of Islamic jurisprudence, insisting that Muslims must go back to the original sources of inspiration: the Qur'an and the Hadith (the sayings and reports of the acts of the Prophet Muhammad). The broad thrust of their beliefs remains the same among the majority of Arabs in Saudi Arabia, the United Arab Emirates, Yemen, Qatar, Egypt, Palestine, Jordan, and Kuwait. They share the same philosophy, for instance, of *jihad*, and that is why they all praise Osama bin Laden

42 M. A. Rana, above note 32, p. 371.

43 Sufism is a mystical-ascetic approach to Islam that seeks to find divine love and knowledge through direct personal experience of God. Sufism and Islamic law are usually considered to be complementary, although Sufism has been criticized by Salafi for what they see as an unjustified religious innovation. Another name for a Sufi is Dervish.

and Al Qaida.<sup>44</sup> Jamaat-ud-Dawah also radiates a global message in harmony with the stated mission objectives of Al Qaeda.

Its precursor, Markaz Da'awat-ul Irshad ('The Centre for Preaching and Guidance'), which has its social and doctrinal roots in the Ahl-e-Hadith school of thought, was set up at Muridke near Lahore in 1986 by two Pakistani university professors, Hafiz Muhammad Saeed and Zafar Iqbal, and with its vicious militant campaign in Indian-controlled Kashmir took the *jihadi* scene by storm, particularly in the 1990s. The Markaz Da'awat-ul Irshad complex, where Jamaat-ud-Dawah is headquartered, is spread over several blocs meant for religious education. Jamaat-ud-Dawah also runs several hundred schools in the Punjab and some parts of Sindh province.

Following the government ban on six militant organizations in January 2002, including Lashkar-e-Taiba, Markaz Da'awat-ul Irshad renamed itself Jamaat-ud-Dawah; the main players remained the same. That is why Jamaat-ud-Dawah and Lashkar-e-Taiba are considered as two sides of the same coin.<sup>45</sup>

Jamaat-ud-Dawah, through various local organizations in Europe and the Americas, has an extensive network, and uses its *jihadist* appeal, as well as reverence for the cause of Al Qaeda, to mobilize funds. Its co-operation with different *jihadi* networks in Pakistan, Afghanistan, and Kashmir also lends it a transnational character. Although based in central Pakistan, it is very well connected with Afghan militant outfits such as the Haqqani network that operates in areas between Pakistani Waziristan and eastern Afghanistan.

Pakistani security officials view this nexus with ever-increasing concern. 'While they may listen to us and refrain from violence in Kashmir, their growing relationship with Arab, Afghan, and other groups has become a formidable challenge', a senior ISI official told me.<sup>46</sup> This amounted to an expression of helplessness vis-à-vis an organization that had been considered a handy pawn in Pakistan's Kashmir policy, but now, because of its contacts with transnational groups, seems to have grown out of control.<sup>47</sup>

44 The primary source for this section is Imtiaz Gul, *The Unholy Nexus: Pakistan–Afghan Relations under the Taliban*, Vanguard, Lahore, 2002, p. 128; and Imtiaz Gul, *The Most Dangerous Place*, Penguin, London, 2010.

45 The organization's headquarters in Muridke, a small town about 30 km away from Lahore, is a sprawling complex spread over 160 acres with a residential colony, two model schools – one each for girls and boys – and a university, Al-Dawat-ul-Irshad. The students attending the university also learn horse-riding. Hundreds of them graduate every year, and hundreds more are swelling their ranks, essentially those driven by the Lashkar-e-Taiba's ideology of 'leaving and living for God'.

46 Author's meeting with anonymous official in Islamabad, August 2010.

47 Particularly since the late 1990s, Jamaat-ud-Dawah (and formerly Lashkar-e-Taiba) has been a major irritant in India's relations with Pakistan. India dubs the Wahabi outfit as the 'Pakistan army's first line of defence', which it says has carried out terrorist attacks not only in Kashmir but elsewhere in India. As far back as 1998, Lashkar-e-Taiba had launched and eventually executed the concept of *fedayeen* (suicide squad) attacks. Several such strikes, including one on the Indian Parliament in December 2001 and the almost simultaneous multiple bloody acts of violence in Mumbai on 26 November 2008, bore the hallmarks of such *fedayeen* attacks. In fact, the November 2008 strikes, including those on the Taj and Oberoi Trident hotels in Mumbai – eleven in all – once again shook the entire region. The three-day carnage was allegedly the work of several attackers who had travelled from the port city of Karachi in



## *Tehreek-e-Taliban Pakistan (TTP)*

Tehreek-e-Taliban Pakistan, or the Pakistan Taliban Movement, emerged as a powerful new entity in 2007 in the context of a series of military operations – US-led missile strikes on the one hand and an incursion by the Pakistan army into the Mehsud area of south Waziristan on the other. Until then, most of its component groups were loosely organized, with ties to the Afghan Taliban. Its leader, Baitullah Mehsud, was killed in a US drone strike on 5 August 2009, and Hakimullah Mehsud became his successor later that month. Initially, a forty-member central *Shura* (assembly), comprising representatives from all seven FATA Agencies – that is, the Federally Administered Tribal Areas, with considerable autonomy, in north-west Pakistan – guided the organization. Its leaders met regularly until the death of Baitullah Mehsud, but a spike in US drone attacks, as well as the Pakistani military operation in south Waziristan, disrupted the organizational command structure, forcing them to disperse in various directions for shelter.

Tehreek-e-Taliban Pakistan employs modern, more lethal techniques, and operates in most of Pakistan's lawless tribal areas bordering Afghanistan with the help of a number of Taliban groups, most of them wedded to anti-Americanism and determined to enforce Sharia. Its creation marked a new and more threatening development, resulting from a realization among most local and foreign militants that they needed a central command figure who could transcend tribal differences. In Baitullah Mehsud, followed by Hakimullah Mehsud, they found a unifying force. Inspired by Osama bin Laden's Al Qaeda, most militant groups in the tribal regions share a common ideology and are opposed to the international coalition against terrorism. Driving foreign forces out of Afghanistan, and enforcing Sharia wherever possible, is their shared goal. They also want Pakistan to end its co-operation with the US and NATO forces based in Afghanistan, and demand that Sharia must replace the existing legal system, which these militants condemn as 'corrupt and repressive'.<sup>48</sup>

Pakistan. These acts of terror provided Indian officials and the media with another opportunity to point a finger at the ISI. The electronic media in India whipped up a frenzy that aroused fears of yet another war between the two now nuclear-armed nations. On 10 December 2008, India formally requested the United Nations Security Council to designate Jamaat-ud-Dawah as a terrorist organization. The following day, the Security Council imposed sanctions on Jamaat-ud-Dawah, declaring it a global terrorist group. Hafiz Muhammad Saeed, the chief of Jamaat-ud-Dawah, announced that his group would challenge the sanctions imposed on it in all forums. Pakistan's government also banned Jamaat-ud-Dawah on the same day and issued an order to seal the Jamaat-ud-Dawah offices in all four provinces, as well as in Pakistan-controlled Kashmir. The United States likewise designated Jamaat-ud-Dawah as a foreign terrorist group posing a threat to its security. In January 2009, the Jamaat-ud-Dawah spokesperson, Abdullah Muntazir, stressed that the group did not have global *jihadi* aspirations and would welcome a peaceful resolution of the Kashmir issue. He also publicly disowned the Lashkar-e-Taiba commanders Zaki-ur-Rehman Lakhvi and Zarrar Shah, who have both been accused of being the masterminds behind the November 2008 Mumbai attacks.

48 Proof of Tehreek-e-Taliban Pakistan's involvement in Afghanistan – and of the close association between the Afghan Taliban and Tehreek-e-Taliban Pakistan – came in early June 2008, when eighteen militants belonging to Tehreek-e-Taliban Pakistan fell to air strikes by Coalition forces on militant positions in

Benjamin notes the links between Tehreek-e-Taliban Pakistan and Al Qaida:

The TTP and al-Qaida have a symbiotic relationship. TTP draws ideological guidance from al-Qaida while al-Qaida relies on the TTP for safe haven in the Pashtun areas along the Afghan-Pakistani border. This mutual cooperation gives TTP access to both al-Qaida's global terrorist network and the operational experience of its members. Given the proximity of the two groups and the nature of their relationship, TTP is a force multiplier for al-Qaida.<sup>49</sup>

The Tehreek-e-Taliban Pakistan caught the US lawmakers' attention after the failed Times Square bomber Faisal Shahzad pleaded guilty of contacts with it.<sup>50</sup> Shahzad's confessions confirmed Tehreek-e-Taliban Pakistan's transnational character. This simply reinforced earlier analysis that the organization had become part of a network that transcends Waziristan and Afghanistan, and had begun colluding with Al Qaeda, the Afghan Haqqani Network (Waziristan and eastern Afghanistan), and the Islamic Movement of Uzbekistan (IMU), as well as Pakistani auxiliaries of Al Qaeda – Lashkar-e-Taiba and Lashkar-e-Jhangvi.

### *Hizb ut-Tahrir (Party of Liberation)*

From a South Asian perspective, Hizb ut-Tahrir spread outwards from the Western cosmopolitan city of London and later descended into the Pakistan–Afghanistan region. Its origin can be traced back to a Palestinian Islamic movement in 1953.

Afghanistan's Helmand province. All eighteen were from Makeen village in the Waziristan Agency. Ruthless attacks on Pakistani military and government targets offer ample evidence that, while publicly Tehreek-e-Taliban Pakistan wants to counter US hegemony, it also wants to keep Pakistani forces on tenterhooks. It has furthermore joined hands with Al Qaeda to stage devastating suicide bombings since mid-2007 – killing government, military and intelligence officials, and women and children across the board – which has turned Tehreek-e-Taliban Pakistan into a major source of instability, besides the anti-Shia radical Lashkar-e-Jhangvi. Pakistan's security establishment treats Tehreek-e-Taliban Pakistan as its public enemy no. 1 for its string of vicious attacks all over Pakistan. The United States also formally designated it as a foreign terrorist organization. Daniel Benjamin, the Ambassador-at-Large for Counterterrorism, formally announced this at a press briefing, thereby making Tehreek-e-Taliban Pakistan the latest addition to a list of forty-seven such organizations banned under Executive Order 13224. See Daniel Benjamin, Coordinator for Counterterrorism/Ambassador-at-Large, *Briefing on U.S. Government's Continued Efforts to Disrupt and Dismantle Tehrik-e Taliban Pakistan*, Washington, DC, 1 September 2010, available at: <http://www.state.gov/s/ct/rls/rm/2010/146597.htm> (last visited 3 January 2011).

49 *Ibid.* Benjamin also described the duo of Hakimullah Mehsud and Waliur Rehman – the two top leaders of Tehreek-e-Taliban Pakistan – as 'dedicated terrorists who are attempting to extend their bloody reach into the American homeland'.

50 About a week after the deadly 30 December suicide attack on the CIA's Forward Operating Base Chapman in eastern Afghanistan, a video showed Hakimullah Mehsud sitting to the left of Khalil Abu-Mulal al-Balawi, the Jordanian doctor who ended up killing seven CIA officials, including the base chief, a mother of three young children, five men, and young woman. The emergence of the video instantly turned Hakimullah Mehsud into the CIA's prime target – if he was not already – because his group had apparently first hosted al-Balawi and then facilitated his onward journey into Afghanistan to hook up with the CIA.

Founded in East Jerusalem by Taqiuddin al-Nabhani, an Islamic scholar and appeals court judge from Palestine, the organization reportedly operates in about forty countries from Africa to Asia, Europe, and Russia. Although officially non-violent, its ideas are very radical, particularly since it advocated the immediate re-establishment of the Caliphate.<sup>51</sup>

Hizb ut-Tahrir is active today in western Europe and the United States, but is banned in most Muslim countries. It believes that the Islamic *umma* (Muslim world) is a single unit of its operations and rejects nationalism. Hizb ut-Tahrir envisages a three-stage plan of action: 1) cultivation of individuals; 2) interaction with the *umma*; and 3) establishment of an Islamic state and implementation of Islamic laws generally. Within the broader context of transnational Islamic mobilization, it falls, rather ambiguously, into the category of the neo-fundamentalist camp as opposed to the Islamist camp. It does not favour the idea of seizing the state and then forcing society to accept Islam, preferring instead to persuade society to accept its ideas, which, it is assumed, would then lead inevitably to a change in regime.<sup>52</sup>

Since October 2001, Hizb ut-Tahrir has quickly established its network in Pakistan, which it now uses to send out daily SMS messages, emails, and fax statements to newspapers, columnists, writers, and TV journalists, urging them to ‘correct their path, shun the US friendship and follow the Quran’. It uses occasions such as the Muslim traditional festivals of Ramadan, Eid ul-Fitr, or 9/11 anniversaries to spread a narrative identical to that of other Islamist networks such as Al Qaeda and the Muslim Brotherhood.

In countries where the party is outlawed, Hizb ut-Tahrir’s organization is said to be strongly centralized, with its central leadership based in Palestine. Below that level are national organizations or *wilayas*, usually headed by a group of twelve, that control networks of local committees and cells. It continues to operate in the UK, albeit with a heated ongoing debate as to whether it should be banned for its radical views.<sup>53</sup>

There are hardly any obvious Hizb ut-Tahrir offices in Pakistan and Afghanistan because the US, too, has designated it as a foreign terrorist organization. Nevertheless, through its electronic messaging it seems omnipresent in Pakistan. What makes Hizb ut-Tahrir a very formidable challenge is its radical outlook and the narrative that it shares with transnational organizations. It may be non-violent, but its statements easily feed into the frustrations of common and ignorant Pakistanis.

51 Mariam Abou Zahab and Olivier Roy, *Islamist Networks: The Afghan–Pakistan Connection*, Hurst & Co, London, 2004, p. 9.

52 Emmanuel Karagiannis, ‘Political Islam in Uzbekistan: Hizb ut-Tahrir al-Islami’, in *Europe-Asia Studies*, Vol. 58, No. 2, 2006, p. 266.

53 Following the 7 July 2005 London bombings, for instance, the British government announced its intention to ban the organization but gave up the idea. According to *The Independent*, Tony Blair put the ban on hold ‘after warnings from police, intelligence chiefs and civil liberties groups’ that it is a non-violent group, and that driving it underground could backfire. See Nigel Morris, ‘PM forced to shelve Islamist group ban’, in *The Independent*, 18 July 2006.

Although limited in its impact in Pakistan and Afghanistan, Hizb ut-Tahrir has advanced into Central Asia as well. It became active in Uzbekistan in the mid-1990s, where its first cells are believed to have been established by the Jordanian missionaries who came to preach Islam in Central Asia: 'By the late 1990s Uzbekistan had become the hub of Hizb ut-Tahrir's activities in Central Asia and Islam has deeper roots there than, for example, in neighboring Kazakhstan'.<sup>54</sup>

## Role of charities/auxiliary transnational networks

The anti-Soviet Union *jihād* not only introduced militant Islam to South and South-west Asia but also heralded a new era in the region. Scores of NGOs began pouring in with the stated objective of helping Afghan refugees and treating wounded *mujahideen*. Arab Islamist networks also encouraged and/or helped local supporters and sympathizers in setting up their own charities, which went on to serve as financial conduits first for the Muslim Brotherhood and then for Al Qaeda.

The way in which these organizations came into being and became crucial facilitators for Al Qaeda leaves little doubt that, without them, Osama bin Laden and his group would not have been able to proliferate in Afghanistan and Pakistan. By implication they can also be called auxiliary transnational networks, including similar Pakistani charitable organizations with close links to the Muslim Brotherhood, Al Qaeda, and the Afghan Taliban.

The roots of the contemporary radicalization and support for terrorism can be traced back two decades to the organizational lessons of the Soviet–Afghan war. At the time, a number of sympathetic NGOs provided various kinds of assistance that proved to be invaluable in the long-term struggle. By clothing their militant activity in charitable ideals, radical militants discovered that they were able to maintain their level of efficiency while working with very few restrictions at an international level.<sup>55</sup>

Signboards of those organizations could be seen all over Peshawar, which most of them used as a regional hub, and were hard to overlook when travelling to the Pakistan–Afghan border town of Torkham. Arab and Arab-European charities mostly had their offices in residential areas such as Tehkal Bala, University Town, or Hayatabad – all of them located along the Peshawar–Torkham road. The US Congressional 9/11 Commission report also concluded that 'entire charities' under the control of 'Al-Qaida operatives ... may have wittingly participated in funneling

54 E. Karagiannis, above note 52, p. 264.

55 Kohlmann provides an excellent overview of how charities grew in the shadow of the Afghan *jihād* and became critical links for funnelling funds to *jihād*ist networks in the region. Evan F. Kohlmann, *The role of Islamic charities in international terrorist recruitment and financing*, Working Paper No. 2006/7, Danish Institute for International Studies, available at: [http://www.wepapers.com/Papers/109824/The\\_Role\\_of\\_Islamic\\_Charities\\_in\\_International\\_Terrorist\\_Recruitment\\_and\\_Financing](http://www.wepapers.com/Papers/109824/The_Role_of_Islamic_Charities_in_International_Terrorist_Recruitment_and_Financing) (last visited 9 March 2011).

money to Al-Qaida'.<sup>56</sup> They played a critical role in the Arab–Afghan terrorist infrastructure by laundering money originating from bank accounts belonging to bin Laden and his sympathetic patrons in the Arabian Gulf, providing employment and travel documents to Al Qaeda personnel worldwide, and helping 'to move funds to areas where al Qaeda was carrying out operations'.<sup>57</sup>

In Europe and North America, Muslim NGOs came to serve an additional role in indoctrinating new generations of international *jihadists*. According to a 1996 French intelligence memorandum, 'these charities – screens for Islamic groups like ... the Egyptian Al-Gama'at al-Islamiyya – permitted a very large recruitment among young volunteers; under the notion of *jihad*, they provided "humanitarian" support for the indoctrination of the youth [and it worked] so well that numerous French converts to Islam joined the ranks of Islamic extremists'.<sup>58</sup>

The first known Arab–Afghan *jihad* cell on US soil led by native American operatives was partly financed by the Sudanese charity Third World Relief Agency.<sup>59</sup> However, much of the funding responsible for underwriting international Muslim charities has originated from the Arabian Peninsula and, in particular, the Kingdom of Saudi Arabia. A well-informed Saudi figure boasted to the *Washington Post*,

No one can control the flow of money from Saudi Arabia ... It is not one person – it is a thousand. We are here. Money comes to us from inside Saudi Arabia. We have private talks with businessmen. Sometimes directly, sometimes indirectly. But it comes.<sup>60</sup>

56 See National Commission on Terrorist Attacks upon the United States (The 9/11 Commission), *The 9/11 Commission Report*, 22 July 2004, p. 170, available at: <http://govinfo.library.unt.edu/911/report/index.htm> (last visited 9 March 2011). According to a US Justice Department brief on the subject, Al-Fadl 'understood from conversations with Bin Laden and others in al Qaeda that the charities would receive funds that could be withdrawn in cash and a portion of the money used for legitimate relief purposes and another portion diverted for al Qaeda operations. The money for al Qaeda operations would nevertheless be listed in the charities' books as expenses for building mosques or schools or feeding the poor or the needy'. United States District Court Northern District of Illinois, Eastern Division, *United States of America v. Enaam M. Arnaout*, Government's Evidentiary Proffer Supporting the Admissibility of Co-Conspirator Statements, Case No. 02 CR 892, 31 January 2003 p. 25. Standing orders were left by bin Laden to keep all transactions involving the charitable groups in cash only; by this method, these NGOs were manipulated as a secret laundry to make Al Qaeda's financial network virtually invisible. The charities would then create false documentation for the benefit of unwary donors, purportedly showing that the money had actually been spent on orphans or starving refugees. According to some former employees of these organizations, more than 50% of their total funding was secretly diverted directly to Al Qaeda and Osama bin Laden. *9/11 Commission Report*, p. 171.

57 *United States of America v. Enaam M. Arnaout*, above note 56, pp. 28–29.

58 'La formation des volontaires pour le djihad en camps d'entraînement', confidential memorandum issued by UCLAT (French Central Anti-Terrorism Unit), 27 December 1996.

59 January 1996 CIA report on 'International Islamic NGOs and links to terrorism', p. 13. See also United States District Court for the Eastern District of Virginia, Alexandria Division, *United States of America v. Soliman S. Biheiri*, Affidavit by Senior Special Agent David Kane (Bureau of Immigration and Customs Enforcement, Department of Homeland Security), Case No. 03-365-A, 14 August 2003, p. 2.

60 Steve Coll and Steve LeVine, 'Global network provides money, haven', in *Washington Post*, 3 August 1993, p. A1.

A staff report of 23 January 2002 in the *Los Angeles Times* also provided good insight into how Al Qaeda used different channels for its financial transactions to Afghanistan and elsewhere for its activities of advocacy, training and execution of threats against US and western interests. The paper said in its investigative report:

Until Sept. 11 Osama bin Laden's terrorists in Afghanistan used the Persian Gulf crossroads of the United Arab Emirates as their lifeline to the outside world. Poor oversight in the loose federation of seven tiny sheikdoms allowed Bin Laden's Al-Qaeda network and Taliban agents to set up clandestine arms-trading and money-laundering operations, according to accounts from American, United Nations, Afghan and U.A.E. sources.<sup>61</sup>

Largely based on the findings of the US Federal Bureau of Investigation (FBI), the report even spoke of a nexus between Russian, African, and Afghan businessmen, financiers, and philanthropists for the financial transactions to Afghanistan.

Terrorists used a Somali warlord's money exchange, an Islamic bank once headed by the Emirates' finance minister, and currency houses that touted their ability to wire \$1 million abroad overnight. The US investigation into the 9/11 attacks on the World Trade Center and the Pentagon exposed trails leading back to the UAE; those attacks finally prompted UAE officials to crack down on Al Qaeda and its front ventures. Some NGOs are suspected of having served as conduits for the Arab money meant for Al Qaeda and the Taliban. Most of these NGOs were run by Kuwaiti, Saudi, and Jordanian nationals, many of them settled in Peshawar. Among them was a former Osama bin Laden associate, Abdullah Ezam, a Jordanian who was killed in a bomb blast in November 1989.

When the Coalition began bombing the Taliban and Al Qaeda network in October 2001, Pakistani politico-religious organizations took to the streets to express solidarity with their friends in Afghanistan, and almost all Arab NGO workers were asked to move to Islamabad for security reasons. Many were even requested by the authorities to leave the country. By January 2002, however, the majority of these people had returned to their bases in Peshawar and resumed their activities, keeping a low profile. Interestingly, the Pakistani and American authorities had until then failed to establish any linkage between these organizations and the Al Qaeda network.

Finally, money changers in Peshawar's bustling Qissa Khani bazaar also played an important role in the financial transactions from Pakistan and the Middle East to Afghanistan, using the traditional *hundi* (or *hawala*) system – a system in which verbal instructions and mutual trust are the key.

As of 2010, most of these organizations had apparently vanished, and most of their top management had either left Pakistan or were keeping a very low profile

61 Judy Pasternak and Stephen Braun, 'Emirates looked other way while al Qaeda funds flowed', in *Los Angeles Times*, 20 January 2002.

and were practically in hiding with locals who were either supportive of or sympathetic to them.

### Pakistan-based charities<sup>62</sup>

After the war on terrorism began unfolding in October 2001, the Al-Rashid Trust, Umma Tameer-e-Nau (UTN), and Lashkar-e-Taiba became special targets, not just because of their anti-America, anti-India, and pro-Taliban missions but also because of their frequent contacts with the Taliban embassy in Islamabad. Mullah Abdul Salam Zaeef, the Taliban ambassador, and his deputies courted scores of such volunteers, including those from the Islamic Relief organization and Dr Bashir-ud-Din Mahmood, a leading Pakistani nuclear scientist, of Umma Tameer-i-Nau.

In all, by 20 December 2001, the US government had designated 158 individuals and organizations as terrorist, including those mentioned above. As for assets frozen under UN Security Council Resolution 1373 of September 2001, Francis Taylor, the then US State Department's Coordinator for Counterterrorism, told a symposium held by the Executives' Club, Chicago, on 14 March 2002 that approximately \$34 million in terrorist assets had been frozen in the United States, while another \$70 million had been frozen elsewhere in the world.

### *The Al-Rashid Trust*

The Al-Rashid Trust was the first Pakistan-based NGO to be involved in relief work outside the country. Though established in February 1996 by Rasheed Ahmed, the Mufti-e-Azam (Grand Mufti, a Muslim religious scholar who holds the authority to issue decrees on socio-political and economic issues concerning Muslim society), its main intervention was seen when it started setting up bakeries in Afghanistan after the World Food Programme (WFP) decided to halt its own bakeries operation in June 2001 – the UN body had been feeding a large number of destitute people and widows in Kabul and other major towns. WFP had taken this step in response to the Taliban regime's refusal to allow the hiring of female surveyors to check who was receiving the highly subsidized bread on old ration cards. The United Nations had already tried in July 2000 to recruit some 600 female surveyors for that purpose, but the Taliban Ministry for Planning had thereupon flatly banned the employment of women by the United Nations or its affiliates.<sup>63</sup>

By the end of June 2001 the WFP had resumed its bakery programme to provide low-cost bread, but the standoff with the Taliban had meanwhile given the Al-Rashid Trust an opportunity to expand its influence across Afghanistan. Since

62 Most of this information comes from Gul, *Unholy Nexus*, above note 44, chapter on 'Financial conduits for al Qaeda'.

63 *Ibid.*



1996, a Trust official said, the organization had been carrying out relief operations in Afghanistan, Kashmir (both Indian- and Pakistani-held parts of the valley), Chechnya, and Palestine. The humanitarian operations were conducted with individual contributions from Muslims all over the world, mostly from Arab countries.<sup>64</sup>

In fact, the Trust set up a central office in the Wazir Akbar Khan neighbourhood of Kabul, where Taliban officials and religious clerics would converge to discuss strategies for food distribution and relief operations. The 'Central Office of the Committee of the Ulema [Scholars] of Afghanistan' had, the Trust official said, become a symbol of the assistance that was flowing into a Taliban-controlled Afghanistan from Pakistan and the Middle East. On various visits to Kabul, I spotted young Arabs and Africans popping in and out of this office, arriving either riding bicycles or driving the pick-up trucks that had become the most commonly used vehicle for combat operations since the war against the Soviet-forces began in the early 1980s.

Besides the bakeries, the Trust established fifteen medical clinics and dug thirty-eight wells in Jalalabad, Kandahar, and Kabul. The magazine *Arshad* said that they had been helping Afghans regardless of their religion or ethnic affiliation and that 'We have been assisting about 35,000 widows of men affiliated with the Northern Alliance. Taliban consider them their enemies but we do not'. This magazine had been launched a year before the establishment of the Trust, followed by a daily *Islam*. Both publications were obviously pro-Taliban, appreciative of Bin Laden and his outfit, and anti-American and anti-Jewish. They carried articles by people such as Maulana Masood Azhar, leader of the now-banned Pakistan-based militant outfit Jaish-e-Mohammed.

In 2000, for instance, the Trust sent 750,000 dollars in cash to Chechnya alone, alleging that aid sent to Chechnya through the United Nations (described as the enemy) never reached Chechen Muslims. The funds were handed over to the head of an unidentified religious party of Chechnya, headed by Sheikh Omer bin Ismail Daud and Zelimkhan Yandarbiyev, the former Chechen president.<sup>65</sup>

Following a major ban on several militant organizations and their affiliates in Pakistan in 2002, the Al-Rashid Trust's activities came to a halt for a while, but it resumed its work as well as the publication of newspapers after a year or so, under the name Al-Ameen Trust.

## Conclusion

If the comprehensive *9/11 Commission Final Report* and papers such as the one by Kohlmann of the Danish Institute for International Studies, or continued activities of Islamic outfits mentioned in the preceding section – charities and auxiliary transnational networks – are any indication, one can presume that the seeds sown

64 *Ibid.*

65 *Ibid.*

along with the US-led *jihad* against the Soviet Union germinated, and that the war against terrorism in 2001 inspired and reinforced, a global Islamist network extending from Asia to Africa, Europe, and the Americas.

As the 1996 CIA report put it, despite

the intense public focus on the role of Islamic charitable groups in financing and recruiting for terrorism following 9/11, those same organizations nonetheless clearly continue to be manipulated by Osama Bin Laden and his global extremist allies. Given the underlying complex web of financial and personal relationships, such agile front groups are notoriously difficult to clean out or shut down. It is a challenge that has largely defied past efforts aimed at addressing it, including the much-lauded ‘central collecting agencies’ supposedly established by Saudi Arabia and its Gulf neighbors.<sup>66</sup>

Notwithstanding the CIA’s many containment initiatives against these charitable organizations, no systematic approach could be evolved and the focus was placed instead on the arrest of the individual members for terrorism or other illegal acts.

Islamist networks feed off views such as those expressed by Tony Blair with regard to his unquestioning support for the State of Israel and those of the US-led NATO policies on Iraq or Afghanistan, thereby justifying the methods that they apply (suicide bombings or other means of violence). The ideology underlying their mission statements and the operations of Islamist charities (the auxiliary transnational networks) are also inherently intertwined with the world view of leading transnational Islamist networks. They essentially live off one another and, if outlawed, would always find ways to re-emerge under different identities. Politically, this combination of transnational political networks and charities has also largely upstaged traditional Islam in South Asia, for, while these outfits clearly represent a minority view within Pakistani, Indian, or Afghan society, they do instil fear in the hearts and minds of the majority Sunni as well as the Shia populations in these countries, with potentially dire consequences for those who are perceived as being on the ‘other side of the divide’. Particularly in the case of Afghanistan, where the state somewhat lacks cohesion, the scope for these groups to indulge in all kinds of illegal activities that ensure the continuity of their operations is far greater and much less closely monitored. Most recently, a very similar trend was observed in Pakistan’s FATA and Swat areas, but the Pakistani Army later wrested control away from the religious extremists trying to establish an Islamic Emirate of Waziristan.

While the situation warrants comprehensive monitoring and stringent finance-tracking mechanisms to minimize, if not prevent altogether, the exploitation of non-profit NGOs by radical Islamist and terrorist groups, these mechanisms must also be accompanied by bureaucratic oversight of religious

66 CIA Report on ‘International Islamic NGOs and links to terrorism’, January 1996, p. 4. See also United States District Court for the Eastern District of Virginia, Alexandria Division, above note 59, p. 2.

networks disguised as NGOs. But that oversight must be thoughtful, non-provocative, and as non-intrusive as possible to avoid arousing resentment among the community with which the target NGO is associated.

This alone, however, will not be enough to deal with the ability of the transnational networks to proliferate within societies and prey on them with their ideology, or to resurrect their auxiliaries under new identities in one way or another. A major counter-measure must be to create and promote understanding of the dominant majority of Muslims, who are by and large non-violent and firm believers in Islam's fundamental messages of peaceful co-existence. The need to engage Muslims and thus prevent them from falling victim to the narrative of Al Qaeda and its auxiliaries therefore requires a concerted and collective effort by lead nations. Only engagement and a dispassionate discourse on sensitive issues that relate to, and affect, the lives of the large majority of Muslims can help in countering the religiously wrapped political appeal of transnational networks.

If the United States and other NATO countries, particularly in central Europe, keep pressing for enforcement through ever more stringent administrative measures, they will continue to lag behind in the struggle to shut down these potentially lucrative avenues of international terrorist recruitment and financing. Moreover – and this is a much graver challenge facing us all – Western countries will find it increasingly difficult to stop, or even contain, disgruntled Muslims, especially second- and third-generation youth, from walking into the trap that the transnational Islamist networks have laid by exploiting the extremely emotive issue of Palestine as well as internal socio-economic imbalances facing the Muslim community. In this regard, the British government's IMIB (I am Muslim, I am British) initiative could be cited as a good example in which the government proactively engaged the Muslim community and focused in particular on British Muslim young people. Contrary to the open society that Britain has ensured, the French ban on the veil or the Swiss prohibition on the construction of minarets for mosques will certainly not help, and may well further radicalize Muslim youth who see these actions as the government's infringement on the Muslim way of life. Among Muslims the world over, the United States is largely seen as the initiator of the most recent social and political trends against them, from body-checks to singling out Muslim passport-holders for more detailed security checks that many Muslims find humiliating. Governments and states could demonstrate more inclusion, and not exclusion, of the Muslim population. Engagement with Muslim communities would help. Ostracizing them will not.





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Afghanistan campaign 1880. Retreat of the British army.



© CICR/CONNIE, Jean-Louis

The mujahideen, holy war combatants.





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Near Kabul. Tank and armoured personnel vehicles. Thirty years of fighting has left an enormous amount of war junk behind, a lot of it still deadly. Afghanistan remains plagued by landmines and other explosive devices scattered across the landscape (totalling an estimated 800 km<sup>2</sup> of hazardous territory).



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Kabul. Damages caused by the war between warlords following the Russian withdrawal.



© REUTERS/Mian Kursheed

Members of Afghanistan's ruling Taliban wearing traditional dress pass onlookers during a military parade, as part of celebrations to mark the 72nd anniversary of the country's independence from Britain in Kabul August 19, 2001.



© REUTERS/Wolfgang Rattay

Afghan delegations sit around a table in the "Rotunda" conference hall in the chateau-like German government's former guesthouse on Petersberg hill above the town of Koenigswinter near Bonn November 27, 2001. Diplomats hope the talks in the secluded hilltop hotel could set up an interim Afghan leadership council of about 15 people, akin to a cabinet, and a larger group of more than 100 people acting as a sort of parliament before elections are held later.





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Military Police at camp X-Ray on the Naval Base at Guantanamo Bay, Cuba, bring a detainee to an interrogation room, February 6, 2002.



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Zabul province, Kak Afghan district. People coming in hundreds to the central village to get a voter registration card. Taliban actively trying to discourage people from voting.



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Zabul Province, Qalat. Soldier on patrol in the town.



Map of Afghanistan.



# Impunity and insurgency: a deadly combination in Afghanistan

**Norah Niland\***

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## **Abstract**

*The judgement of key decision-makers to ignore the critical problem of impunity – the lack of accountability for egregious human rights violations – contrary to the wishes of the vast majority of Afghans has had devastating, if predictable, consequences. Disillusionment with the continued abuse of power, along with the steady increase in war-related casualties, is a significant driver of the escalating insurgency. Experience over the past nine years highlights an urgent need to address the strategic issue of systemic and structural injustice. It is not realistic to envisage an end to armed conflict and the development of democratic and accountable state institutions while impunity reigns.*

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The ramifications of failing to address the problem of impunity in Afghanistan were immediate and far-reaching and were compounded by the US-led decision to prioritize, and prosecute, the Global War on Terror with the aid of notorious warlords. This article examines how unbridled impunity undermined the safety and wellbeing of Afghans. It reviews how continued human rights violations fed a long list of grievances that were exacerbated by the rising toll of civilian casualties and the absence of measures to hold those responsible to account.

\* The views expressed in this article are those of the author.

Decades of violence and deprivation, coupled with lacklustre attempts to build the essentials for a sustainable peace – security, rule of law, respect for human rights, accountable governance, and economic opportunity – have profoundly shaped Afghan perceptions of what constitutes ‘good governance’. Afghanistan’s complicated evolution as a nation-state has been determined by its geostrategic significance at the crossroads of Central Asia. The emergence of a modern state has also been influenced by Afghan political culture and ever-changing divisions and alliances; this reflects a complex ethnic mosaic and a long history of those with leverage attempting to concentrate, control, or contest the accumulation of socio-religious, political, or economic power.

Afghanistan’s endeavours to develop centralized, legitimate, and effective governance capabilities have faced many hurdles. Inhibiting factors included geography, topography, abysmal levels of poverty, and very low educational levels, as well as tensions within and between different sets of stakeholders that include a profound rural–urban divide. The attempts of King Zaher Shah in the early 1960s to pursue a more open, inclusive, legitimate and viable nation-state came to grief when his cousin, Daoud, engineered a coup in 1973, declared Afghanistan a republic, and pushed modernization. The subsequent turmoil led to the Soviet invasion of 1979 and the eruption of armed violence that has impacted greatly on the lives of Afghans and the political culture of their country since then.

There are different views as to whether Afghans ever had a functioning state system. When the Taliban emerged in the mid-1990s, Afghanistan quickly became a pariah state, thereby adding to the misery of the long-suffering population. Taliban collaboration with extremists came to the world’s attention on 11 September 2001, the day Afghanistan came to be associated with Al Qaeda and was branded a threat to global peace and security. A few weeks after the deadly events of 9/11, the United States (with the support of various allies) launched Operation Enduring Freedom to destroy Al Qaeda’s infrastructure, track down Osama Bin Laden, and remove the Taliban regime. Shortly before, the Bush administration signalled a central role for the United Nations when it indicated that the US would support a ‘political transition and a UN-coordinated reconstruction program in Afghanistan’.<sup>1</sup>

The UN quickly brought together a number of Afghans, most of whom already constituted groups with political agendas or aspirations, and convened a meeting in Bonn. Participants included the Northern Alliance, which enjoyed US military and financial backing, and Afghans associated with the former king Zahir Shah, known as the Rome Group.<sup>2</sup> The UN Secretary-General’s Special Representative for Afghanistan, Barnett Rubin, who was an adviser to Lakhdar

1 Barnett Rubin, ‘Crafting a constitution for Afghanistan’, in *Journal of Democracy*, Vol. 15, No. 3, July 2004, p. 6.

2 Two other groupings, ‘Peshawar’ and ‘Cyprus’, so named after meetings in these locations, also took part. A small number of civil society activists met in a parallel gathering but were not directly involved in the Bonn negotiations.

Brahimi and who organized and chaired the Bonn talks, noted that the meeting 'did not represent the people of Afghanistan, either directly or indirectly'.<sup>3</sup>

The Bonn Agreement was finalized with record speed in nine days. Both it and its implementation suffered serious deficiencies from the outset. The Bonn meeting was dominated by a number of notorious power-holders long despised by the majority of Afghans. Many of these well-known warlords had just been resuscitated by the United States and installed in their former fiefdoms to help prosecute the Global War on Terror launched on 7 October 2001. Importantly, the meeting did not include numerous key stakeholders, such as representatives of victims of the war, women's groups, human rights advocates, and a sizeable chunk of the Pashtun community, particularly those associated with the Taliban and rural norms.

Bonn did not produce a peace accord in the sense of an agreed understanding of future power-sharing arrangements among different Afghan stakeholders. In the Afghan context, a peace consolidation agreement should have been inclusive and designed to undo the structural problems that had led to crisis and conflict. Instead, the Bonn agreement reinforced the very tendencies and personalities that were central to decades of armed violence and the crisis of governance that Afghanistan needed to overcome.

Since the end of the Cold War, the international community has launched numerous post-conflict transition or recovery initiatives. The UN has gained much experience and many insights in the process.<sup>4</sup> Unfortunately, since measures 'taken during the negotiation of peace agreements have important implications for, and are intrinsically related to, longer-term state-building and development',<sup>5</sup> it would appear that not many lessons were applied in Bonn.

Experience also shows that sustainable recovery is a long-haul endeavour. There are no quick fixes for fashioning a legitimate and effective state system in the wake of armed conflict. However, it is vital that post-ceasefire peace-building does not postpone or impede immediate peace dividends, the priority invariably being the safety of individuals and groups. Peace processes that are geared to helping countries recover from the trauma, hardship, and causes of war must seek to re-define and transform relationships between different sets of stakeholders and generate new patterns and structures of societal organization. Critically, efforts to bring about constructive social and political change must enjoy the confidence and engagement of those who have most to gain from a peaceful transformation geared to the creation of just, credible, and effective institutions.

Priority needs to be given to the fabric that holds a society together. In war-torn settings this fabric needs to be redesigned and re-woven so that the past is

3 B. Rubin, above note 1, p. 7.

4 'Scores of UN officials have first-hand knowledge of the discouraging frequency with which negotiated settlements re-erupt into armed conflict, and it has been widely observed that countries return to violent conflict within five years of the successful negotiation of a peace settlement nearly 50% of the time'. Thomas J. Biersteker, 'Prospects for the UN Peacebuilding Commission', in *Disarmament Forum*, 2007, No. 2, p. 37.

5 *Ibid.*

not repeated and the nation develops peaceful means of sharing power, managing resources, and resolving disputes.<sup>6</sup> In other words, the technical aspects of peace-building are secondary to building an inclusive political culture. War-torn societies need to build an environment that is conducive to respect for human rights and to establish a 'rule of law' that is fair, credible, and accessible. Such resources are critical in breaking cycles of fear, violence, and deprivation.

## **Bonn was wrong: the strategic significance of impunity was ignored**

In late 2001, after two decades of armed conflict, Afghans were weary of war. They were desperate for peace. They were reassured that the global community would invest in building a peace strong enough to address the root causes of violence, and robust enough to resist threats by disruptive internal or external elements. Afghans had high expectations, but these aspirations faced huge challenges in the Bonn state-building project. The Bonn process was built on an agreement hammered out among a handful of politicians and former commanders with vested interests and an implementation process skewed in favour of these same power-holders. In addition, the United States had prioritized hunting down Al Qaeda and its Afghan allies in a manner that strengthened abusive Afghan authorities.

To move forward, Afghanistan needed a framework that allowed those in favour of a new, inclusive, and just order to participate in, and shape, the state-building process. The opposite occurred: Afghans who argued for accountable governance were marginalized and mostly found themselves on the periphery of decision-making fora. Commenting in 2009 on the issue of participation, Lakhdar Brahimi said:

We are now paying the price for what we did wrong from day one ... the popular base of the interim administration put together in Bonn under President Karzai was far too narrow. We all vowed to work hard to widen that base once we returned to Kabul. Unfortunately, very little was done.<sup>7</sup>

The provision of cash, guns, and political support to individuals and their power structures associated with egregious human rights violations effectively stacked the deck against those pushing for freedom from the tyranny of violence, lawlessness, and widespread poverty. Arrangements to fill the power vacuum that was inevitable as the Taliban regime was dismantled, including the prioritization of the Global War on Terror over the safety and wellbeing of Afghans, accentuated both the problem and the perception of bias.

6 A positive example is that of Nelson Mandela, who was conscious of the need to challenge stereotypes and convince adversaries that post-apartheid South Africa could live well as the 'Rainbow Nation'.

7 Barbara Crossette, 'Lakhdar Brahimi: Afghanistan's future', in *The Nation*, New York, 23 March 2009, available at: <http://www.thenation.com/article/lakhdar-brahimi-afghanistans-future> (last visited 29 October 2010).



Many Afghans were concerned that arming and funding the men with guns, and their 'legitimization' through the Bonn process, would thwart efforts to end violence and hinder the realization of a genuine reconciliation process that could only proceed with a dedicated commitment to human rights and a society governed by the rule of law. Various studies bear testimony to an overriding pre-occupation with insecurity and the widely held view, among Afghans, that the root causes of violence had to be addressed in order to break the patterns of the past and develop a different system of governance.

### *Afghan perspectives and preoccupation with insecurity and injustice*

The collapse of the Taliban regime and the promises of the Bonn state-building project convinced many Afghans that peace was within reach. A survey conducted in April 2002 found a surge of hope and anticipation of better days, although many Afghans remained concerned about the distribution and misuse of power. 'People are tired of war and violence. They are ready to embrace human rights and turn away from guns but the leaders won't let them. This has to be the job of the UN', said a refugee eager to return home.<sup>8</sup>

A survey in 2003 by a coalition of NGOs, both Afghan and international, found that security issues were the top concern: participants 'consistently talked about being tired of the long years of war, and the negative effects of the conflict on their lives'.<sup>9</sup> Afghans raised concerns 'about the threat to potential long term peace including ... impunity for commanders and warlords'.<sup>10</sup> Commenting on the need for justice, a woman in northern Afghanistan noted: 'courts do not solve our problems properly because of corruption and powerful armed men'.<sup>11</sup>

'A Call for Justice', an extensive survey covering thirty-two of Afghanistan's thirty-four provinces undertaken by the Afghanistan Independent Human Rights Commission, captures perceptions and views of a broad cross-section of Afghan society. Respondents were critical of the role of the international community, noting that, if it had 'seriously addressed injustice, security would be assured today'.<sup>12</sup> Security was identified as the most urgent concern by most participants and was frequently linked to justice issues; a woman in eastern Afghanistan said that 'justice is very important but security and justice are inter-related'.<sup>13</sup>

In 2009, an Oxfam assessment of Afghan perceptions of the costs of war found a great deal of dismay over the continued insecurity and impunity. A woman in Dai Kundi underlined that the government should 'start paying

8 Centre for Economic, Social and Cultural Rights, *Human Rights and Reconstruction in Afghanistan*, New York, May 2002, p. 1.

9 The Human Rights Research and Advocacy Consortium, *Speaking Out: Afghan Opinions on Rights and Responsibilities*, Kabul, November 2003, p. 8.

10 *Ibid.*, p. 16.

11 *Ibid.*, p. 30.

12 Afghanistan Independent Human Rights Commission (AIHRC), *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan*, Kabul, January 2005, p. 13.

13 *Ibid.*, p. 17.

attention to its people'; many respondents called for accountability, noting that the government 'should not appoint warlords'.<sup>14</sup>

Significantly, the Bonn Agreement did not address the central problem of impunity and shied away from the need for accountability. A handful of power-brokers responsible for acts that could be classified as war crimes were antagonistic to any reckoning with the past. A draft paragraph forbidding an amnesty for war crimes was deleted in the final negotiation session in Bonn. This in effect meant that a *de facto* amnesty was established, making it extremely difficult to counter impunity. It also meant that it would be extremely difficult to ensure that power would not be usurped by those best known for their infamous deeds. Reflecting on the Bonn process in 2007, Lakhdar Brahimi concluded that it was flawed, as the overall arrangement was not premised on a genuine reconciliation process that would have enabled Afghans to deal with deeply engrained patterns of abuse.<sup>15</sup>

### Green-lighting impunity

The Bonn Agreement was a disappointment to many Afghans, who were perturbed about the message it conveyed about impunity. Over time, the green-lighting of impunity has become routine. It has been reinforced, for example, at the many international conferences held on Afghanistan, at which the status quo that emerged from Bonn has been endorsed and strengthened. Concrete measures that were needed to make a transition from abusive power structures to systems where no one was above the law never materialized.

The first months of the new Karzai-led interim administration faced many challenges, including a well-documented pattern of human rights violations in northern Afghanistan, where an array of local commanders held sway. The abrupt demise of the Taliban regime meant that Pashtun communities, who form part of an ethnic mosaic in the north, were particularly vulnerable to attack as new power structures emerged. In sharp contrast to the period when the Taliban regime was ensconced in Kabul, the UN was reluctant to raise the subject of such human rights violations, even when Afghans in the new administration requested the UN to use its moral authority to help counter such violence.<sup>16</sup> UN silence on human rights violations became for some time the established pattern in Kabul.

The UN Secretary-General's last report (6 December 2001) before the establishment of the United Nations Assistance Mission in Afghanistan (UNAMA) stressed the urgent need to address protection issues, and indicated that it planned

14 Oxfam, *The Cost of War: Afghan Experiences of Conflict, 1978–2009*, Kabul, 2009, p. 26.

15 Lakhdar Brahimi, 'State building in crisis and post-conflict countries', contribution to the 7th Global Forum on Reinventing Government: Building Trust in Government, Vienna, Austria, 26–29 June 2007, p. 13.

16 Norah Niland, 'Justice postponed: the marginalization of human rights in Afghanistan', in Antonio Donini, Norah Niland, and Karen Wermester (eds), *Nation-Building Unraveled? Aid, Peace and Justice in Afghanistan*, Kumarian Press, West Hartford, CT, 2004, p. 75.

to bolster its overall capacity in this regard.<sup>17</sup> Yet his report a few months later (March 2002) had little to say on the actual human rights situation. Significantly, there was no mention of the protection crisis then unfolding in northern Afghanistan.<sup>18</sup>

UN Security Council Resolution 1401 (March 2002), which brought the UN mission into being and identified its centrality to the implementation of the Bonn process, made no reference to human rights. In early 2002 the UN opted for an integrated peace-building model in line with the 'Brahimi Report'.<sup>19</sup> This model reflected the assumption that a 'coherent' or 'integrated' approach that maximized synergies between different interventions was best suited to building peace. However, the 'human rights and humanitarian protection functions of the original humanitarian office were curtailed and transferred to the political wing of the mission'.<sup>20</sup> As a result, human rights concerns were marginalized and made subordinate to a peace-consolidation agenda that was indifferent to the justice deficit and the aspirations of the vast majority of Afghans.<sup>21</sup>

The Emergency Loya Jirga (June 2002) compounded the failures of the Bonn Agreement. Its stated aim, as set out in the Bonn Agreement, was to create a broad-based and representative transitional administration that would pave the way for the establishment of a new state system, including a revamped constitution and presidential elections slated for October 2004. A dedicated effort was made to have a representative Jirga, but the process was marred by intimidation that distorted the selection process. The Jirga itself was hijacked, under the eyes of the UN, by known warlords; in flagrant breach of established procedures, individuals who

17 Report of the Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, 6 December 2001, UN Doc. A/56/681-S/2001/1157. In mid-2001 the UN Coordinator's Office decided to recruit dedicated protection staff, who began to arrive at the end of 2001. However, these staff were subsequently absorbed into the UN Assistance Mission to Afghanistan (UNAMA), which did not prioritize issues relating to the protection of civilians and incorporated human rights officers into the political team.

18 Report of the Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, 18 March 2002, UN Doc. A/56/875-S/2002/278. Well-documented reports had been produced by aid agencies concerned about targeted attacks on Pashtuns, the arming and abuse of internally displaced persons (IDPs), and inter-factional fighting; these reports also dealt with the role of General Dostum, regional power-broker, who returned to Mazar in late 2001. Karzai sent a ministerial team to investigate; this team subsequently asked senior UNAMA personnel, including the Deputy Special Representative of the Secretary-General, to speak out on human rights violations and to warn that warlordism and impunity would not be tolerated. However, UNAMA was of the view that these were Afghan issues that Afghans had to solve. See N. Niland, above note 16, p. 75.

19 In 2000, the UN Secretary-General, Kofi Annan, launched a review of UN peace operations to produce recommendations for improved peace initiatives. This panel was chaired by Ambassador Lakhdar Brahimi and led to *The Report of the Panel on UN Peace Operations* (commonly known as the 'Brahimi Report'), 21 August 2000, UN Doc. A/55/305-S/2000/809.

20 Alex Costy, 'The dilemma of humanitarianism', in A. Donini, N. Niland, and K. Wermester, above note 16, p. 148.

21 Human Rights Watch called on UNAMA to increase human rights monitors and go public about human rights problems, noting that warlords were to blame for many of the problems that thwarted effective implementation of the Bonn Agreement, but that the international community was also at fault for not helping those Afghans 'who are trying to make the agreement a success'. Human Rights Watch, *Afghanistan's Bonn Agreement One Year Later*, New York, 2002.

were not eligible or had not been selected were allowed into the proceedings.<sup>22</sup> Closed-door negotiations, rather than transparent voting, determined the composition of the transitional government, and many legitimate participants expressed great disappointment about the overall process and outcome.<sup>23</sup>

The Emergency Loya Jirga showed that the international community was more interested in comforting rather than confronting widely reviled individuals who had amassed power through the barrel of a gun. The view that warlords should be embraced and 'legitimized' was voiced by Mr Karzai in an interview during the Jirga, when he said that 'justice is a luxury for now; we must not lose peace for justice'.<sup>24</sup> Notwithstanding widespread concern and alarm among Afghans about the manipulation and distortion of the Jirga process, Mr Brahimi noted a short while later that, in politics, 'choices have to be made'; he added that 'our responsibility to the living has to take precedence' over accountability for the dead.<sup>25</sup>

The institutionalization of abusive power structures, policies, and practices has been one of the defining features of the Bonn-led state-building process. The *de facto* promotion of impunity is a significant reason for the failure to make peace a realistic possibility in Afghanistan. The reverse transition that is now under way, as instability and the insurgency gain momentum, can be attributed in part to the short-sighted polices that prioritized the Global War on Terror over building the rule of law and a viable state structure. Similarly, the same kind of tunnel vision ignored the significance of impunity and continued human rights violations, and the message this sent to perpetrators and advocates of accountability.

The UN mission was seen to perceive human rights 'as a distraction from, or threat to, the more important priority of security' and to be fearful of offending human rights violators 'who were key parties to the Bonn Agreement and whose continued cooperation was deemed vital for the political process'.<sup>26</sup> In 2003, UN mission personnel were of the view that 'human rights observers serve no purpose when there is no state authority to fulfil human rights obligations'.<sup>27</sup> Of course, in the immediate post-Bonn Afghan context, it should have been obvious that state-building required stability and that human rights violations were a key factor in destabilization and the erosion of state authority. Nowhere is there evidence that a sovereign state can be built on a foundation of impunity. The legitimacy of any

22 Others also 'attended, in violation of the *loya jirga* procedures, including the governor of Kandahar, Gul Agha Sherzai, the governor of Nangahar, Haji Abdul Qadir, and Ismail Khan. Zalmay Khalilzad, the U.S. special envoy to Afghanistan, and Lakhdar Brahimi, the special representative of U.N. Secretary-General Kofi Annan, pressured the Afghan *loya jirga* commission to allow regional governors and military commanders to attend'. Human Rights Watch, *World Report 2003*, p. 192, available at: <http://www.hrw.org/wr2k3/asia1.html> (last visited 21 December 2010).

23 *Ibid.*

24 Lyse Doucet, interview with Hamid Karzai, BBC HardTalk programme, Kabul, 14 June 2002.

25 'Transcript of the press conference by the Special Representative of the Secretary-General for Afghanistan, Lakhdar Brahimi', Kabul, 27 August 2002, available at: <http://www.un.org/apps/news/infocusnews.asp?NewsID=212&SID=1> (last visited 29 October 2010).

26 Rama Mani, *Ending Impunity and Building Justice in Afghanistan*, Afghanistan Research and Evaluation Unit (AREU), Kabul, December 2003, p. 14.

27 *Ibid.*

state exists only insofar as it enjoys the trust and confidence of the people whom it is, in principle, designed to serve.

Beyond Afghanistan, at the international level, UN human rights mechanisms failed to influence the blinkered political agendas that held sway in Kabul and other capitals. UN Special Rapporteurs presented useful reports and recommendations, including that of Asma Jahangir concerned with extra-judicial, summary, and arbitrary executions; she called, in 2003, for a commission of enquiry into Afghanistan's history of killings. Under pressure from the Bush Administration, the UN Human Rights Commission rejected this proposal.<sup>28</sup>

Only after completing his assignment in Afghanistan did Mr Brahimi conclude that, in the absence of strong institutions embodying the rule of law, 'human rights will remain elusive and confined to the realm of high-minded international rhetoric rather than reality'. He went on to say that, in Afghanistan, 'the judicial reform process was largely neglected, and I must confess that I personally bear a large part of responsibility for that'.<sup>29</sup>

The UN Assistance Mission in Afghanistan did eventually change tack on human rights and established a dedicated capacity throughout the country that improved its ability to promote and support efforts to ensure that they are duly respected. However, the United Nations has not been able to mobilize the necessary political will among its member states to tackle impunity.

Despite huge constraints, human rights agencies in Afghanistan have made significant strides in recent years in making their presence felt. The human and security costs involved in the erosion of respect for fundamental norms have been widely publicized and debated. A nationwide consultation, 'A Call for Justice', by the Afghanistan Independent Human Rights Commission in 2004 found that more than 75% of Afghans considered that accountability processes were needed to end a long history of violence.<sup>30</sup> This groundbreaking consultation led to the development of an 'Action Plan on Peace, Justice, and Reconciliation', which was adopted by the government and launched officially by President Karzai in December 2006. This plan, however, has effectively fallen by the wayside; outside human rights circles it garners little attention.

Beyond Afghan political circles, manifestations of concern about human rights by those who literally and metaphorically call the shots in Afghanistan have mostly been rhetorical. The US and its allies have been content to provide technical support to strengthen Afghan human rights institutions and capabilities while simultaneously using their political muscle to back personalities, policies, and practices at odds with core human rights principles. On the specific issue of impunity, Afghanistan's partners have been more a part of the problem than the solution.

28 Author's own records. See also Patricia Gossman, 'The past as present: war crimes, impunity and the rule of law', paper delivered at the 'State Reconstruction and International Engagement in Afghanistan' symposium, 30 May–1 June 2003, London School of Economics and Political Science and University of Bonn, p. 1.

29 L. Brahimi, above note 15, p. 15.

30 AIHRC, above note 12, p. 17.

In early 2010 it became known that Afghan authorities had adopted legislation providing a blanket amnesty for egregious human rights violations and effectively denying victims the possibility of justice and redress.<sup>31</sup> It also reinforced the message that powerful perpetrators were immune to prosecution. When the Amnesty Law came to light, it was met by a deafening silence; only human rights entities and the UN publicly raised concerns, thereby indicating that political expediency remains the preferred option of Afghanistan's external collaborators.<sup>32</sup> The constant green-lighting of impunity diminishes prospects for the emergence of an alternative to both the structural and the armed violence that are major drivers of the insurgency.<sup>33</sup>

## Injustice and alienation

Afghans have an innate sense of justice.<sup>34</sup> Traditionally, the minimum that Afghans expected from their rulers was that they be good Muslims, preside over a just order, and ensure security. Given this yardstick, the state-building project in Afghanistan should have been revisited after the Emergency Loya Jirga and corrective action taken. Lakhdar Brahimi, one of the chief architects of the Bonn Agreement, advocated such a review in mid-2003 but 'nobody was listening' and the US was then preoccupied with Iraq.<sup>35</sup>

Meanwhile, disenfranchised Afghans – who in principle should have been the most important stakeholders in efforts to craft a durable peace – had, by 2003, a growing list of grievances that were mostly ignored. There was little empathy with, or concern for, Afghan anxiety about the intertwined issues of impunity, insecurity, lawlessness, and criminality and how these fed a growing sense of injustice and alienation from the state.

Security, or the lack thereof, was the prime concern of Afghans, who were vocal and emphatic on this point whenever they had an opportunity to make their views known. For Afghans, security means being free from direct physical harm. Being secure also means being free from abusive and predatory practices. This is particularly the case when abuse is systemic and the source of political or economic marginalization that is detrimental to individuals or particular groups. Threats to

31 Author's personal records.

32 *Ibid.* See also Jonathon Burch, 'U.N. calls for repeal of Afghan amnesty law', in *Reuters*, 25 March 2010.

33 The term 'structural violence' refers to the underlying causes of conflict or fault lines in a society that 'normalize' harm such as discrimination or exclusion. It has been defined as 'entrenched socioeconomic conditions that cause poverty, exclusion and inequality': Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor*, University of California Press, Berkeley, 2003, p. 40.

34 A survey conducted by the AIHRC found that 'Afghans believe justice to be a general medium through which to improve specific aspects of their life. Justice for many also meant upholding of basic human rights, including the freedom of expression, the freedom to participate in elections and the elimination of discrimination on the basis of race, language and gender. Many also associated justice with the promotion of economic equality'. AIHRC, above note 12, p. 14.

35 B. Crossette, above note 7.



one's dignity and sense of personal honour and integrity are equally of concern, as are acts of intimidation or discrimination.

Injustices and grievances run the gamut from the seizure of personal land, through bribes for government services, to selective poppy eradication that favours some and disadvantages others. A strong feeling of being wronged is associated with the manipulation and marginalization of particular tribes to their political and economic disadvantage.<sup>36</sup> Arbitrary detention, including that which is conflict-related, is a source of great dismay and unhappiness; powerful commanders and those with personal animosities can manipulate dysfunctional systems to have rivals imprisoned.<sup>37</sup>

Corruption is rampant: Afghanistan now ranks as the second most corrupt nation in the world, just ahead of Somalia. Examples of corruption range from 'public posts for sale and justice for a price to daily bribing for basic services'.<sup>38</sup> Afghans paid nearly \$1 billion in bribes in 2009; corruption in the country had thus doubled since 2007.<sup>39</sup> The dismissal of Mr Faqiryar, Deputy Attorney-General, in August 2010, shortly after he attempted to prosecute a senior member of Mr Karzai's inner circle, is illustrative. As noted by Mr Faqiryar, the law in Afghanistan 'is only for the poor'.<sup>40</sup> He could have added that the law is only for those who are poorly connected.

Widespread fraud – one-third of the votes had to be discounted – and a surge in violence made a mockery of democracy in the 2009 presidential elections.<sup>41</sup>

36 Manipulating, manufacturing, or aggravating tribal differences has been very destructive and deadly on occasion. According to the study by General Stanley McChrystal, former Commander of ISAF and US troops in Afghanistan, which formed the bedrock of his counter-insurgency doctrine, the Taliban 'consistently support weaker, disenfranchised, or threatened tribes or groups'. COMISAF Initial Assessment (Unclassified), 30 August 2009, pp. 2–7, available at: [http://media.washingtonpost.com/wp-srv/politics/documents/Assessment\\_Redacted\\_092109.pdf?sid=ST2009092003140](http://media.washingtonpost.com/wp-srv/politics/documents/Assessment_Redacted_092109.pdf?sid=ST2009092003140) (last visited 29 October 2010).

37 A survey conducted by the United Nations Development Programme (UNDP) in 2005 found that '76% of people interviewed' considered the judiciary 'the most corrupt institution in the country'. UNDP, *Afghanistan Human Development Report 2007: Bridging Modernity and Tradition: Rule of Law and the Search for Justice*, Kabul, 2007, p. 61. The Oxfam *Cost of War* study (above note 14) noted that almost 30% of respondents 'reported one or more family members imprisoned at some point since 1979' (p. 16). The Integrity Watch Afghanistan (July 2010) report found that Afghans were of the view that the judiciary and the police are the two most corrupt institutions in the country. Integrity Watch Afghanistan, *Afghan Perceptions and Experiences of Corruption: A National Survey 2010*, Kabul, p. 11.

38 With reference to Transparency International's annual Corruption Perceptions Index (CPI) (November 2009), Al Jazeera noted that government corruption 'along with the exploding opium trade – which is also linked to corruption – contributes to the downward trend in the country's CPI score'. Al Jazeera, 'Afghanistan corruption "worsening": Transparency International ranks country second-worst for public sector corruption', 17 November 2009. See also Transparency International's annual Corruption Perceptions Index (November 2009), available at: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) (last visited 29 November 2010).

39 An Integrity Watch study on Afghanistan found that the average value of bribes paid in 2009 was \$156. The study showed that almost a third of civil servants indicated that they had been forced to pay a bribe to obtain a public service, while 13% of households said that they had paid bribes to secure their own sources of income. Integrity Watch Afghanistan, above note 37, pp. 10 and 12.

40 Dexter Filkins, 'Inside Corrupt-istan: a loss of faith in leaders', in *New York Times*, 4 September 2010.

41 'The fact that candidates with problematic backgrounds and a record of abuse were allowed to run helped undermine the democratic process and the idea of democracy itself; this study on local



This was compounded when, a year later, a financial crisis that threatened to cause the collapse of the Kabul Bank revealed that it had poured millions into Mr Karzai's re-election campaign; two of the bank's main shareholders are brothers of the President and of his Vice-President, Marshal Fahim.<sup>42</sup>

The situation of women and girls, although some gains have been made, remains precarious. Deeply entrenched prejudices and discrimination are accentuated by domestic and other violence including rape and widespread intimidation to deter women from working outside the home. Presidential pardons have been dispensed for convicted rapists and drug traffickers.<sup>43</sup>

Injustices are closely linked to poverty and powerlessness and the inability of many Afghans to carve out a dignified life. Afghans suffer some of the worst socio-economic indicators in the world, with life expectancy for women no more than forty-four years. Grievances linked to widespread grinding poverty are all the more acute when juxtaposed with the profits associated with the \$2 billion private security industry that helps maintain the supply lines for foreign military forces. Private security companies thrive on lawlessness and insecurity and are a major destabilizing factor, given the rivalries and power play involved in the pursuit of lucrative contracts. Such companies are often the fiefdoms of the thuggish commanders who gained prominence in previous eras of fighting.<sup>44</sup> Immune from prosecution, they retain their affection for impunity that is shaping and aggravating an increasingly divisive, predatory, and violent political culture.

A US Congressional study found that 'warlords thrive in a vacuum of government authority, and their interests are in fundamental conflict with U.S. aims to build a strong Afghan government'.<sup>45</sup> It may well be that Mr Karzai agrees and is concerned about the growing number of power structures in competition with his own administration. In August 2010 he announced that he planned to close down private security companies because they 'are not working for the

perceptions found that positive UN commentary on the elections, despite widespread fraud "seems to have created a sense of disillusionment with the political process as a whole and the independence of the UN". Marika Therios and Iavor Rangelow, 'Field notes from Afghanistan: perceptions of insecurity and conflict dynamics', Working paper 01/2010, London School of Economics, April 2010, p. 5.

42 Adam B. Ellick, 'Karzai family political ties shielded bank in Afghanistan', in *New York Times*, 7 September 2010. The same article notes that 'General Fahim is also suspected of involvement in serious human rights violations during the 1990s, according to several advocacy groups. In particular, he was a key commander during the Ashfar massacre in 1992 in Kabul when an estimated 800 ethnic Hazaras were killed and raped'.

43 Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, Kabul, 8 July 2009, p. 23. The report records a long litany of pain and recounts the efforts of Afghan non-governmental organizations and others to challenge deeply engrained discrimination against women and girls.

44 An investigation undertaken by the US House Subcommittee for National Security concluded that the major players involved are 'warlords, strongmen, commanders and militia leaders who compete with the Afghan central government for power and authority'. Dexter Filkins, 'US said to fund Afghan warlords to protect convoys', in *New York Times*, 21 June, 2010. See also 'WARLORD, INC. extortion and corruption along the U.S. supply chain in Afghanistan', Report of the Majority Staff, Rep. John F. Tierney (Chair), Subcommittee on National Security and Foreign Affairs, US House of Representatives, June 2010, pp. 1–2.

45 D. Filkins, above note 44.

benefit of Afghan national interests'.<sup>46</sup> Mr Karzai has repeatedly made the point that Afghan corruption pales in comparison with that of outsiders, whose budgets far exceed the cash flow available to Afghan authorities and individuals.

A UN human rights report noted that a 'growing number of Afghans are increasingly disillusioned and dispirited as the compact between the people, the Government, and its international partners is widely seen to have not delivered adequately on the most basic fundamentals including security, justice, food, shelter, health, jobs and the prospect of a better future'.<sup>47</sup> Such disillusionment with the inability of the state to deliver on the fundamentals of security and justice runs deep. The combination of disappointment over and revulsion against the Karzai regime and its international backers is a powerful incentive in the growing insurgency that is increasingly assuming the characteristics of a civil war. As power and patronage become concentrated in the hands of the few, Afghans are obliged to choose between the Karzai model of governance and that of the armed opposition.

Numerous recent studies have shown that injustice is a major driver of alienation and growing dissatisfaction with the government, which is heavily dependent on the international community for its survival. Research that included some 500 interviews found that Afghans consider corrupt and unjust government to be among the main reasons for the insurgency; a tribal elder in the south-east said that the

lack of clinics, schools, and roads are not the problem. The main problem is that we don't have a good government ... There is a growing distance between the people and the government, and this is the main cause of the deteriorating security situation.<sup>48</sup>

A study commissioned by General Stanley McChrystal, former Commander of ISAF and US troops in Afghanistan, noted that the Taliban established ombudsmen 'to investigate abuse of power in its own cadres and remove those found guilty'.<sup>49</sup>

A study in Kandahar, the heart of the insurgency and Taliban home turf, concluded that the population 'sees the government as an exclusive oligarchy devoted to its own enrichment and closely tied to the international coalition. Anti-government sentiments are exploited and aggravated by the Taliban'.<sup>50</sup> A study funded by the British Department for International Development found that 'the failure of the state to provide security and justice' together with 'perceptions of the government as corrupt and partisan' are influential drivers of the insurgency.<sup>51</sup>

46 Associated Press, 'Karzai: shutter private security companies', Kabul, 7 August 2010.

47 OHCHR, *Human Rights Dimension of Poverty in Afghanistan*, Kabul, March 2010, p. 20.

48 Andrew Wilder and Stuart Gordon, 'Money can't buy America love', in *Foreign Policy*, 1 December 2009.

49 COMISAF Initial Assessment, above note 36.

50 Carl Frosberg, *Politics and Power in Kandahar*, Institute for the Study of War, Washington, DC, April 2010, p. 51.

51 Sarah Ladbury and Centre for Peace and Unity (CPAU), *Testing Hypotheses on Radicalization in Afghanistan: Why Do Men Join the Taliban and Hisb-i-Islami?*, independent report for the Department for International Development (DFID), Kabul, 14 August 2009, p. 7.

Injustice, driven by impunity, and the insecurity that this engenders are a boon to the armed opposition, particularly the Taliban.<sup>52</sup> The Taliban are not loved for their harsh and repressive policies, but their tough approach to criminality and their ability to impose order on the basis of their interpretation of Shari'a law has helped them regain lost ground, particularly in Pashtun areas.<sup>53</sup> In areas controlled or dominated by the Taliban, their brand of justice, including their role in the local settlement of disputes, is one of their first priorities. A member of the British Provincial Reconstruction Team (PRT) in Helmand concluded that the Taliban control of the justice system allows them to gain 'influence and support which tends to undermine the links between communities and government'.<sup>54</sup> Another member of the team noted that Taliban courts were 'the only effective and trusted tribunals of justice. Above all, unlike the state courts, their decisions are not dependent on the ability to pay bribes and will be enforced'.<sup>55</sup> Of course, this does not mean to say that Taliban courts dispense justice in line with international standards or that such courts are better than other traditional dispute resolution mechanisms or the state system, particularly when women and girls need redress; the point is that justice or the lack thereof is a game-changer for many Afghans.

Concerns about the destabilizing role of corruption, injustice, and disreputable governance were echoed by General McChrystal. One of his conclusions was that 'widespread corruption and abuse of power exacerbate the popular crisis of confidence in the government and reinforce a culture of impunity'.<sup>56</sup> However, while the consequences of corruption and predatory governance are now better understood in key decision-making circles, this has not been translated into a commitment to tackle *systemic* injustices that goes beyond a scattering of piecemeal initiatives.<sup>57</sup>

52 A NATO team working on alternative options to combat corruption concluded that US-led efforts to date 'have done little to erase the nickel-and-dime bribes Afghans have to pay to drive down a highway, or see a government doctor – the daily shakedowns that drive the people into the arms of the insurgents, who provide similar services without the graft'. This team concluded that militants are seen to provide 'cleaner' government in areas they control. See Kimberly Dozier, 'US strategists seek Afghan fixes outside the box', in *Associated Press*, 25 September 2010.

53 The reality of the Taliban rise to power is more complex than their founding myth of banding together to end pervasive rape and predation; their repressive rule and massive human rights violations are well known. However, as violence has taken hold, many welcome the Taliban resurgence. Speaking to a disgruntled resident of Kabul in 2006, Kate Clark, then with the BBC, was told that 'from the point of view of security, the Taliban were good', whereas in the current regime bribery was noted to be terrible and 'as for security, you can't reach home if you have money on you'. Speaking to an elderly respondent, Clark was told: 'These days, the officials suck your blood. Even governors take bribes just for doing something legal. The Taliban beat women and there were restrictions, but at least there was no bribery'. Stephen Carter and Kate Clark, *No Shortcut to Stability: Justice, Politics and Insurgency in Afghanistan*, Chatham House, London, December 2010, p. 20.

54 Frazier Hirst, *Support to the Informal Justice Sector in Helmand*, DFID Internal Report, April 2009.

55 Frank Ledwidge, 'Justice and counter-insurgency in Afghanistan: a missing link', in *Royal United Services Institute Journal*, Vol. 154, No. 1, February 2009, pp. 6–9.

56 COMISAF Initial Assessment (Unclassified), above note 36.

57 The 'government-in-a-box' formula that was part of the counter-insurgency campaign to re-take Marjah in Helmand is illustrative; new government officials were appointed but have largely proved ineffective in strengthening the legitimacy of the Kabul administration.

Reform that leads to credible and sustainable change requires a long-term commitment and an approach that eschews alliances with law-breakers who have grown richer and more ruthless while destabilizing the country. Reflecting on the failure to achieve justice, a professor at Kabul University commented a few months ago that without ‘a fundamentally strong judicial system we cannot find our way to justice’. He added that progress is unlikely without ‘all the key parties buying into the idea of the rule of law and then implementing it. And we haven’t seen that really since 2001’.<sup>58</sup>

## **Insurgency, civilian casualties, and impunity**

Two of the most striking consequences of disillusionment, driven by injustice and diminishing confidence in the Karzai administration to restore order and the rule of law, are the spread and intensification of armed conflict and its ramifications for civilians. The recognition that the killing of Afghans is changing the narrative of the war is one of the few issues on which there is consensus across the political spectrum in and outside Afghanistan. The armed opposition, and the Taliban in particular, have been adept at defining the presence of US and other foreign soldiers as an occupation army that disrespects Afghans and their culture. US military and civilian decision-makers have identified the importance of protecting civilians as central to reversing trends in which the insurgents have the momentum. President Karzai has repeatedly articulated his grief and anger at civilian deaths; he is also increasingly of the view that the US-led counter-insurgency is failing and is counter-productive. Meanwhile, the UN has repeatedly called attention to the need to protect civilians. Antagonism to the war is widespread in areas that are most directly affected. Many Afghans are of the opinion that the very nature of the international engagement in Afghanistan led to the resurgence of the armed opposition and intensification of the war that, in turn, has allowed impunity to flourish.

Now moving into its fourth decade, war in Afghanistan has been devastating for Afghans and their society. According to a survey by the International Committee of the Red Cross, almost all Afghans – 96% – have been affected either directly or indirectly as a result of the wider consequences of war, while almost half (45%) indicated that a family member had been killed, 43% said they had been tortured, and a third (35%) had been wounded.<sup>59</sup> Over time, the war has changed, in line with evolving external and internal political realities, giving rise to new dangers and protection challenges. Expectations of peace in the wake of the Bonn

58 Abubakar Siddique, ‘Weak judiciary pushes some Afghans to Taliban’, in *Radio Free Europe/Radio Liberty*, Kabul, 13 December 2009.

59 ICRC/IPSOS, *Our World: Views from the Field: Afghanistan*, opinion survey and in-depth research, Geneva, 2009, pp. 11–12.

Agreement and rapid demise of the Taliban regime were tempered by the continued loss of life during the B-52 bombing campaign.<sup>60</sup>

Despite the fragility of the peace process, the UN, as mentioned above, decided in 2002 to de-prioritize protection concerns and to wind down its humanitarian infrastructure. The dismantling of its humanitarian co-ordination capacity greatly undermined the ability of the UN to intervene proactively when lives were threatened. This was particularly important in terms of the vital back-channel communication networks that had been developed during the long years of conflict to facilitate interaction with, and influence the actions of, all the warring parties.

It was not until 2007 that the protection needs of war-affected communities began to receive dedicated attention from humanitarian and human rights personnel. This initiative came up against numerous constraints, including the widely held perception that the UN was partisan and closely allied to counter-insurgency programmes.<sup>61</sup> The majority of donor UN member states were themselves belligerents pursuing agendas that conflicted with those of the armed opposition. This polarized situation greatly restricted the ability of many protection staff to promote compliance, by the different warring parties, with humanitarian law and human rights standards.

The spread and intensification of armed conflict has resulted in a growing number of civilian casualties, which has, in turn, provoked questions about the rationale for this war. At the end of 2008, systematic monitoring by UN human rights staff found that the civilian death toll had jumped by almost 40% to 2,118, against a total of 1,523 deaths the previous year; 55% of these deaths were attributed to the armed opposition and 39% to pro-government forces, while the remaining 6% were not attributed and were mostly the result of crossfire incidents.<sup>62</sup> Human rights staff recorded a total of 2,412 civilian deaths in 2009, an increase of 14% on the preceding year; 67% of these deaths were attributed to insurgents and 25% to those attempting to counter them.<sup>63</sup> The first six months of 2010 saw an increase of 21% over the same period in 2009, with 1,271 deaths recorded; 72% of these deaths were attributed to the armed opposition and 18% to pro-government forces.<sup>64</sup>

60 There were between 1,067 and 1,201 civilian deaths, as a result of the bombing campaign, in the five-month period from 7 October 2001 to 28 February 2002, according to David Zucchino, 'Afghanistan: US airstrikes were highly accurate but hundreds of villagers still died. Now some survivors want compensation', in *Los Angeles Times*, 2 June 2002.

61 Afghanistan is 'the only complex emergency where the political UN is fully aligned with one set of belligerents and does not act as a [*sic*] honest broker in "talking peace" to the other side', says Antonio Donini, who also noted that the 'UN Secretary General and his Special Representative for Afghanistan (SRSG) have publicly and repeatedly welcomed the military surge and the prosecution of the war'. Antonio Donini, *Afghanistan: Humanitarianism Unraveled?*, Feinstein International Centre, Tufts University, Medford, March 2010, pp. 3–4.

62 UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2008*, Kabul, January 2009, p. ii.

63 UNAMA, *The Protection of Civilians in Armed Conflict, Afghanistan, 2009*, Kabul, 13 January 2010, p. i.

64 UNAMA, *Afghanistan: Mid Year Report 2010: Protection of Civilians in Armed Conflict*, Kabul, 10 August 2010, pp. i and ii.

The armed opposition, which has consistently been responsible for the largest, and growing, proportion of civilian war dead has issued fatwas to its own fighters to limit the number of casualties. International forces have taken specific and effective measures, such as restricted use of air strikes, to lower casualty rates. General McChrystal made reduced casualties and safety of civilians a central feature of his revamped counter-insurgency campaign.

The armed opposition has been able to avoid significant censure among Afghans for its responsibility for the large proportion of deaths resulting from its military activities.<sup>65</sup> The Taliban have successfully managed to depict the conflict as a war of lethal occupation, and a huge swathe of Afghan society has taken great exception to killings at the hands of foreign forces. At the same time, the death of fellow Afghans as a result of suicide attacks and improvised explosive devices – the weapons of choice of the armed opposition, accounting for 43% of all war-related killings in the first half of 2010 – has received much less attention in the court of public opinion.<sup>66</sup> Clearly, intimidation is a critical factor; in the first half of 2010, ‘executions and assassinations [Anti-Government Elements] increased by more than 95%’ compared to the same period in 2009.<sup>67</sup> However, it appears that other factors are also involved in shaping public perceptions, including the changing narrative of the war and deep-seated anxiety as threats to lives and livelihoods multiply.

To a significant extent, Afghans who are most directly affected by the conflict have rejected the rationale for war-making; they have frequently underlined their support for a negotiated end to violence. A survey funded by the US army and conducted in districts not under Taliban control in Kandahar found that 94% of those interviewed favoured negotiations over military confrontation and 85% regarded the Taliban as ‘our Afghan brothers’.<sup>68</sup> Many Afghans are concerned that the mere presence of international forces in their neighbourhood acts as a magnet for insurgents intent on countering counter-insurgency measures. Meanwhile, a survey in south-eastern Afghanistan at the end of 2009 found that, ‘regardless of the region, province, education level or political views, in many cases Afghans blamed international forces as much as insurgents for the increase’ in casualties.<sup>69</sup> Afghans

65 The Taliban proposed the formation of a joint commission to investigate civilian casualties after the UN mid-2010 report on casualties came out; they have frequently rejected the conclusions of such reports, as did ISAF in 2008. On this occasion, it appears that the Taliban may be concerned about their association with the growing number of casualties attributed to the armed opposition, but it is not the first time that they have called for a similar body.

66 UNAMA, above note 64, p. ii. It is worth noting in this regard that a survey commissioned by the US army in Kandahar found that 58% of respondents said the ‘biggest threat to their security while travelling were the ANA [Afghan National Army] and ANP [Afghan National Police] checkpoints on the road and 56% said ANA/ANP vehicles were the biggest threat’. See ‘Ninety-four percent of Kandaharis want peace talks, not war’, in *Inter Press Service*, 19 April 2010.

67 UNAMA, above note 64, p. 6.

68 *Inter Press Service*, above note 66.

69 David Nakamura (quoting Erica Gaston of the Open Society Institute), ‘Afghans blame civilian deaths on US despite spike from insurgent violence’, in *The Washington Post*, 14 August 2010.

also feel aggrieved that ‘foreigners are ensconced behind fortified walls and bullet-proof vehicles while residents are out in the open’.<sup>70</sup>

Antagonism to the presence of international forces that are dominated by the US military has increased over time. This can be attributed, in large part, to the intensification of the war and its cost to civilians. The death of Afghans as a result of air strikes has been hugely emotive and contentious, even as the US military leadership introduced directives to restrict the use of such tactics in areas where civilians are concentrated. The continued use of search and seizure operations, undertaken at night, is greatly resented. Night raids are widely perceived as offensive to Afghan cultural norms; such raids usually involve forced entry to a family’s compound, including areas where women and children are sleeping. Raids frequently occur on the basis of false or concocted information. Also, it is often difficult for families to ascertain the whereabouts of their detained relatives. Even though some of the issues surrounding detention, including the role of the infamous Bagram Theatre Internment Facility in the Global War on Terror, have been addressed or ameliorated, the absence of standard due process guarantees exacerbates the problem of night raids.

According to the UN, at least ninety-eight civilians were killed in night raids in 2009.<sup>71</sup> The Special Operations Forces (SOF), who mostly carry out night raids, routinely indicate that those killed are insurgents; in many instances this has proved not to be the case.<sup>72</sup> An example is that of a botched pre-dawn raid in Gardez in February 2010, when two male government officials, two pregnant women, and a teenage girl were gunned down while attempting to explain that they were not insurgents. A few hours after this incident, General McChrystal’s office issued a statement claiming that the raiding party had been attacked.<sup>73</sup> Traumatized witnesses were adamant that no one tried to resist the SOF. All of those taken in for questioning were subsequently released without charge. The family refused to accept monetary ‘compensation’ offered by the US military, insisting that the perpetrators should be brought to trial.<sup>74</sup>

The growing level of animosity to the actions of pro-government forces can also be attributed to the fact that they are rarely, if ever, held to account when Afghans are killed or harmed in very questionable circumstances. Afghans are often

70 *Ibid.*

71 UNAMA, above note 63, p. 20.

72 General David Petraeus, who succeeded General McChrystal as the Commander of ISAF and US Forces Afghanistan in mid-2010, explained in August that SOF units, in a ninety-day period from May through July, had captured 365 ‘insurgent leaders’ and 1,355 Taliban ‘rank and file’ fighters and had killed 1,031. Commenting on these figures, Gareth Porter noted that there is a direct correlation ‘between the stepped-up night raids in Kandahar province and a sharp fall-off in the proportion of improvised explosive devices (IEDs) being turned in by the local population’, which tends to indicate that the effects of night raids go beyond capture or kill statistics. Note that both acts – i.e. being killed in night raids or being captured and detained somewhere – are of concern to Afghans. Gareth Porter, ‘New light shed on US’s night raids’, in *Asia Times*, 16 September 2010.

73 Gareth Porter and Ahmad Walid Fazly, ‘McChrystal probe of SOF killings excluded key eyewitnesses’, in *Inter Press Service*, 6 July 2010.

74 UNAMA, above note 64, p. 18.



left in the dark as to who exactly is responsible for the harm endured or what motivated particular incidents. During a visit to Afghanistan in 2008, the UN Special Rapporteur on Extrajudicial Killings, Philip Alston, criticized international forces for their reluctance to identify which military units were involved in particular engagements, observing that getting 'clarification from the international forces is like entering a maze' that rarely led to a satisfactory outcome.<sup>75</sup>

Some measures have been taken in recent months to mitigate a number of detention-related issues. However, the larger issue of accountability for actions undertaken by international forces has mostly remained unchanged, notwithstanding some incident-specific special investigations.

Over time Afghans have grown more, rather than less, concerned about the way in which the war is being waged and its ramifications for Afghans at the individual as well as the societal level. Central to this concern is a growing perception that rules are applied differently and without due regard for the rights of Afghans. In routine conversations that I have had with Afghan colleagues, community elders, and civil society activists, interlocutors stress that members of the international community are expected to be law-abiding and should not be contrasted with insurgents who have been openly contemptuous of international humanitarian and human rights norms. It is invariably pointed out on such occasions that the international community has been strong in advocating the rule of law while simultaneously flouting the very standards it propagates. The fact that the international community has embraced those who are the chief proponents and beneficiaries of the pervasive and much resented culture of impunity has led many in Afghanistan to conclude that, unless the war is brought to an end, the country has little chance of emerging from the debilitating and self-perpetuating cycle of 'warlordism', lawlessness, death, and destitution.

## Conclusions

Afghanistan's contemporary history is that of a weak and contested state that has enjoyed neither nationwide jurisdiction nor a high level of legitimacy. The ability of the central administration to deliver on such fundamentals as a modicum of human security – freedom from fear and freedom from deprivation – has been extremely limited. The failure of the Bonn process to acknowledge, or attempt to address, the structural fault lines that had given rise to decades of political turmoil and armed conflict and had torn apart Afghan society effectively condemned Afghans to a repetition of their grim contemporary history.

The experience of other war-torn countries struggling to emerge from armed violence points to the importance of moving rapidly to build on the popular desire for an end to the arbitrary exercise of power and lawlessness. In Afghanistan,

75 Professor Philip Alston, Special Rapporteur of the UN Human Rights Council on extrajudicial, summary, or arbitrary executions, Press Statement, Kabul, 15 May 2008.

the opposite occurred. Most Afghans were weary of war and welcomed the prospect of becoming citizens of a nation where they and their families could live in peace. The vast majority of the population have long aspired to live in a just and fair society where accountability is the norm rather than the exception. Their expectations of the Bonn process were cruelly frustrated when the international community linked arms with warlords and turned a blind eye to the strategic, and peace-defying, ramifications of the 'legitimization' of ruthless and brutal abuse of power. The Emergency Loya Jirga effectively set in motion the reinstitutionalization of abusive power structures. It also signalled that efforts to challenge impunity and change the prevailing political culture would not enjoy the support of those in charge of state-building.

As 2010 draws to a close, it should now be apparent that an Afghanistan at peace with itself and the wider world will only become a viable reality when Afghans and their external partners commit to making a break with the politics and practices of the past. Policies that favoured impunity and instability have proved deadly for Afghans and the development of a functioning state system. The experience of the past nine years shows that impunity is a recipe for the replication of the past. A 'Bonn II', designed to produce a new, inclusive political framework is urgently needed so that all Afghans can aspire, with confidence, to a peaceful future.

# The right to counsel as a safeguard of justice in Afghanistan: the contribution of the International Legal Foundation

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## **Abstract**

*In Afghanistan, rule of law projects have placed a heavy emphasis on rebuilding courts and law enforcement institutions. Little attention has been given to the critical element of defence, particularly criminal defence services for the poor. Yet, without defence lawyers, there can be no rule of law. This article examines the right to counsel in Afghanistan and the indispensable role that defence lawyers are playing in the development of the justice system, illustrated by the experience of the International Legal Foundation. By providing early and effective representation to their clients, lawyers ensure that Afghanistan's new laws and constitutional provisions protecting the rights of the accused are implemented.*

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By many accounts, the situation in Afghanistan today is bleak. Nine years after it was overthrown, a resurgent Taliban threatens to undermine peace-building efforts. The number of casualties on all sides is increasing. Corruption is rampant at all levels of government. Recent elections have been marred by violence and accusations of fraud. This article, however, focuses on a little-recognized achievement in the criminal justice sector: the increasing availability of early and effective criminal defence services for the poor. This has led to a reduction in the rate of arbitrary pre-trial detentions and increased fairness of judicial proceedings.

Though significant, the development of the right to counsel in Afghanistan has received scant recognition. Too often, critics have focused on the areas where Afghanistan's justice system does not comport with international fair trial standards, instead of on the substantial headway being made. This analysis is short-sighted. Without question, the reconstruction of Afghanistan's criminal justice system is still in its nascent stages. Nonetheless, progress has been made in establishing effective, high-quality criminal defence services for the poor, as exemplified by the work of the International Legal Foundation (ILF) – described here – and others.

The right to counsel has long been a part of the culture, history, and laws of Afghanistan.<sup>1</sup> However, nearly thirty years of war, insurgency, and Taliban rule prevented this right from taking root.<sup>2</sup> As a result, when the Taliban was overthrown in late 2001, defence lawyers were virtually non-existent. The vast majority of accused persons were too poor to hire a lawyer and there was no functioning legal aid system. A Legal Aid Department, created in 1989 under the auspices of the Supreme Court to provide indigent defence services, existed in name only.

To rectify this problem, the ILF, in 2003, with support from the Ministry of Justice and the Judicial Commission overseeing the reconstruction of the judiciary, launched the country's first defender office, the International Legal Foundation-Afghanistan (ILF-Afghanistan), and recruited and trained a new cadre of defence lawyers to represent the indigent accused. In 2004, Afghanistan's Grand National Assembly (the *Loya Jirga*) adopted a new constitution, which re-inforced the right to counsel as fundamental for all accused persons.<sup>3</sup> Today, with

- 1 Constitution of Afghanistan, 1964, Art. 26, available at: <http://www.afghan-web.com/history/const/const1964.html> (last visited 30 November 2010); Constitution of the Republican State of Afghanistan, 1976, Art. 31, available at: <http://www.afghan-web.com/history/const/const1976.html> (last visited 30 November 2010); Constitution of Afghanistan, 1987, Art. 41, available at: <http://www.afghan-web.com/history/const/const1987.html> (last visited 30 November 2010); Constitution of Afghanistan, 1990, Art. 41, available at: <http://www.afghan-web.com/history/const/const1990.html> (last visited 30 November 2010); Constitution of the Islamic Republic of Afghanistan, 2004, Art. 31, available at: [http://www.supremecourt.gov.af/PDFFiles/constitution2004\\_english.pdf](http://www.supremecourt.gov.af/PDFFiles/constitution2004_english.pdf) (last visited 30 November 2010).
- 2 While the right to counsel existed in theory, it was virtually ignored in practice until the post-conflict reconstruction efforts began and non-governmental organizations (NGOs) began to establish legal aid offices and train criminal defence lawyers. See UN Assistance Mission in Afghanistan (UNAMA), *Arbitrary Detention in Afghanistan: A Call For Action, Volume I: Overview and Recommendations*, 2009, p. 16, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=49d07f272> (last visited 30 November 2010), which states that: 'Engaging a defence counsel is a relatively new concept in Afghanistan'.
- 3 Constitution of the Islamic Republic of Afghanistan, above note 1, Art. 31.

seventy-three defence lawyers staffing thirteen offices,<sup>4</sup> ILF-Afghanistan remains the nation's primary provider of indigent defence services. Following the ILF's lead, the Ministry of Justice, and other local and international non-governmental organizations (NGOs), including Da Qanoon Ghushtonky, the Legal Aid Organization of Afghanistan, and Medica Mondiale, opened additional legal aid offices. The impact on Afghanistan's criminal justice system has been dramatic.<sup>5</sup>

This article examines the indispensable role that defence lawyers are playing in the reform and development of Afghanistan's criminal justice system. It demonstrates how defence lawyers – as guardians of due process – are essential to any fair system of justice. In particular, the article addresses the following key issues: (1) the historical, cultural, and legal roots of the right to counsel in Afghanistan; (2) the shift from a culture of passive defence lawyers to one of proactive lawyers who defend the rights of the accused; (3) defence lawyers' catalytic effect on the development of the criminal justice system; and (4) the many challenges facing Afghanistan in its efforts to provide free criminal defence services to the poor.

The observations and conclusions contained in this article draw heavily on the ILF's experience in Afghanistan from 2003 to the present.<sup>6</sup> Despite the growing focus on rule of law reconstruction in post-conflict settings, most rule of law reform projects have concentrated on strengthening the judiciary and prosecution, and the police services. There is little, if any, attention given to the critical element of defence. By focusing on the provision of criminal defence services for the poor, the ILF is attempting to redress this imbalance.

## The right to counsel in Afghanistan

On 4 January 2004, the *Loya Jirga* adopted a new constitution, guaranteeing the right to counsel to all accused persons from the time of arrest.<sup>7</sup> Article 31 of the Constitution of the Islamic Republic of Afghanistan provides as follows: 'Upon arrest, or to prove truth, every individual can appoint a defense attorney'.<sup>8</sup> This provision also explicitly mandates that the government must provide free counsel to the poor, stating: 'In criminal cases, the state shall appoint a defense attorney for the indigent'.<sup>9</sup>

4 As of 30 November 2010.

5 Other rule of law efforts in Afghanistan may not be as successful. On 24 September 2010, the *New York Times* reported that the United States had funded a US\$35 million campaign (which included kite-flying) 'to promote the use of Afghanistan's formal justice system'. Rod Nordland, 'Afghan equality and law, but with strings attached', in *New York Times*, 24 September 2010, available at: <http://www.nytimes.com/2010/09/25/world/asia/25kite.html> (last visited 30 November 2010).

6 The ILF is an international, non-governmental organization promoting fair and just criminal justice systems in post-conflict countries and regions in transition by establishing effective, quality criminal defence services for the poor. For further information about the ILF, see: <http://www.theilf.org>.

7 Constitution of the Islamic Republic of Afghanistan, 2004, above note 1, Art. 31.

8 *Ibid.*

9 *Ibid.*

While the inclusion of a right to counsel provision in Afghanistan's new constitution was momentous, it was not novel. Such a right to counsel has roots in Islamic jurisprudence and Afghan culture, and existed in earlier constitutions going back to 1964.<sup>10</sup> Further, Afghanistan acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1983, without reservations, thus consenting to be bound by its provisions on the right to counsel.<sup>11</sup> This history is important because it has shaped current thinking that 'the purpose of representation, whether in civil litigation or crimes, is to vindicate the truth and facilitate justice'.<sup>12</sup>

In a *Hadith*,<sup>13</sup> the Prophet Muhammad suggested that a judge might mistakenly rule in favour of a more skilled, or educated, litigant and thereby cause an injustice.<sup>14</sup> Modern jurists understand this warning to be consistent with allowing an accused person who is incapable of adequately defending himself to enlist the aid of a lawyer to present his case.<sup>15</sup> Thus, the majority view in Islamic jurisprudence recognizes the right of the accused to have access to counsel in criminal cases.<sup>16</sup> Other scholars have noted that the contemporary Islamic system of criminal justice necessitates the assistance of a skilled specialist.<sup>17</sup> This reasoning, which focuses on the complexity of the legal system and vulnerability of the accused, is well established in other legal traditions as well.<sup>18</sup> It is axiomatic that, in

10 See Muhammad Abdel Haleem, Adel Omar Sharif, and Kate Daniels, *Criminal Justice in Islam: Judicial Procedure in the Shari'a*, I.B. Taurus & Co, London, 2003, p. 90; see also the different constitutions, above note 1.

11 Afghanistan acceded to the ICCPR on 24 January 1983. See United Nations Treaty Collection, Status of Treaties, Chapter IV Human Rights, International Covenant on Civil and Political Rights, available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited 30 November 2010).

12 M. A. Haleem *et al.*, above note 10, p. 90.

13 *Hadiths* are recorded life events of the Prophet Muhammad that serve as important tools for Islamic jurists interpreting the Qur'an and *Sharia* (Islamic law).

14 Allah's Apostle heard some people quarrelling at the door of his dwelling, so he went out to them and said, 'I am only a human being, and litigants with cases of dispute come to me, and someone of you may happen to be more eloquent (in presenting his case) than the other, whereby I may consider that he is truthful and pass a judgment in his favour. If ever I pass a judgment in favour of somebody whereby he takes a Muslim's right unjustly, then whatever he takes is nothing but a piece of Fire, and it is up to him to take or leave' (Sahih Bukhari, Vol. 9, Book 89, No. 292). The right to counsel may also derive from the Islamic 'Theory of protected interests', through the right of self-preservation (liberty, physical well-being): see Matthew Lippman, Sean McConville, and Mordechai Yerushalmi, *Islamic Criminal Law and Procedure: An Introduction*, Greenwood Press, Inc, Westport, CT, 1988, p. 64. These interests grant every person the right to do what is in their power to safeguard their rights, including the right of a beneficiary to call on others to assist them in protecting their rights. See Osman Abd-el-Malek al-Saleh, 'The right of the individual to personal security in Islam', in M. Cherif Bassiouni (ed.), *The Islamic Criminal Justice System*, Oceana Publications, London, 1982, p. 83. The right to counsel is a necessary extension of self-preservation since 'it provides the accused with the means to establish innocence and to defend himself' (*ibid.*). Thus, the right to counsel is based on this penumbral right of assistance.

15 Awad M. Awad, 'The rights of the accused under Islamic criminal procedure', in M. C. Bassiouni, above note 14, p. 98.

16 There is some disagreement, specifically in the Hanafi School, as to whether some crimes categorized as *Hudud* (crimes against God) require a right to counsel, but the majority view holds this distinction to be irrelevant. See M. A. Haleem *et al.*, above note 10, p. 90.

17 O. A. al-Saleh, above note 14, p. 84.

18 The United States Supreme Court opinion in *Powell v. Alabama* (1932) established the right to counsel in capital cases and elaborated on the necessity of counsel: 'Even the intelligent and educated layman has

prosecuting crimes, the state has superior resources; it can rely on law enforcement to collect evidence on its behalf, and government prosecutors have experience and knowledge of the intricacies of criminal law and procedure. Without counsel, an accused is at a decided, and often insurmountable, disadvantage.

Consistent with classical Islamic jurisprudence, the informal traditional system also acknowledged the right to counsel in its criminal tribunals.<sup>19</sup> In most, if not all, provinces of Afghanistan, informal criminal tribunals permit that ‘any party to a dispute who does not feel competent to defend himself properly may have someone represent him until a decision is rendered’.<sup>20</sup> While in some circumstances this has increased the equality of the parties involved, in others it has reinforced existing social inequalities. In many parts of Afghanistan, because women are often considered not competent in these matters, they are represented by their male guardians.<sup>21</sup> This does little to advance their social position.

Building on this tradition, Afghanistan’s successive constitutions have recognized the right to counsel.<sup>22</sup> Afghanistan’s 1964 Constitution was the first explicitly to provide for the right to counsel, guaranteeing ‘[e]very person ... the right to appoint defense counsel for the removal of a charge legally attributed to him’.<sup>23</sup> The 1964 Constitution was suspended after a coup in 1973.<sup>24</sup> The new government promulgated a constitution in 1976, which also provided for the right to counsel.<sup>25</sup> After several years of Soviet occupation and a failed constitution created by a communist coup in 1980, the communist government reintroduced the right to counsel in the Constitution of 1987.<sup>26</sup> This constitution was quickly replaced after the Soviet withdrawal and an interim government proposed a new

small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he is not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect’. United States Supreme Court, *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

19 Natalie Rea, *Customary Laws of Afghanistan: A Report by the International Legal Foundation*, International Legal Foundation, 2004, p. 1, available at: <http://www.theilf.org/reports-ilfa-customary-laws.pdf> (last visited 25 January 2011).

20 *Ibid.*, p. 9.

21 A male guardian can be the woman’s husband, father, or, failing those, another male family member.

22 Article 51 of Afghanistan’s first Constitution, introduced in 1923, provided that: ‘every citizen or person appearing before a court of justice may use any legitimate means to insure protection of his rights’ (Constitution of Afghanistan, 1923, Art. 51). Arguably, this provision may have indirectly provided for the right to counsel based on the ‘Islamic theory of protected rights’; see O. A. al-Saleh, above note 14, p. 83.

23 Constitution of Afghanistan, 1964, above note 1, Art. 26.

24 J. Alexander Thier, ‘The making of a constitution in Afghanistan’, in *New York Law Review*, Vol. 51, Winter 2006–2007, p. 560.

25 ‘Every person has the right to appoint defense counsel for the defense of a charge legally brought against him’: Constitution of the Republic of Afghanistan, 1976, above note 1, Art. 31.

26 J. A. Thier, above note 24, p. 560. See also Constitution of Afghanistan, 1987, above note 1, Art. 41: ‘The accused has the right to defend himself personally or through an advocate’.



constitution in 1992, with an identical provision on the right to counsel.<sup>27</sup> Soon thereafter, civil war destroyed the government and the Taliban rose to power.<sup>28</sup> The Taliban government did not create a new constitution.<sup>29</sup>

In December 2001, shortly after the overthrow of the Taliban regime, a number of prominent Afghans met under United Nations auspices in Bonn, Germany, to decide on a plan for governing the country. These Afghan representatives signed the Bonn Agreement,<sup>30</sup> re-establishing the 1964 Constitution, which included the original provision on the right to counsel, as the interim constitution over a transitional government.<sup>31</sup> One of the primary responsibilities of the Transitional Government of Afghanistan was to create a new constitution, one that they succeeded in adopting in 2004.<sup>32</sup> Article 31 of the 2004 Constitution provides for the right to counsel and makes it compulsory for the government to provide free counsel to the poor.<sup>33</sup>

While a right to counsel provision existed in earlier constitutions, it had never been properly implemented in practice. Based on Afghanistan's prior track record, there was scepticism in the national and international community about whether the new constitutional guarantees contained in Article 31 of the 2004 Constitution could finally deliver a meaningful right to counsel. Ultimately, the efficacy of this constitutional guarantee would depend on the cultivation of a culture of proactive defence lawyers. Unless and until lawyers fulfilled their roles as defenders, there was little likelihood that this right would carry through into practice, since effective advocacy is the surest way to achieve full-scale implementation of the right to counsel.

## Developing a culture of defence

In 2009, judges interviewed for an independent evaluation of ILF-Afghanistan stated that defence lawyers were 'working hard to keep the system and particularly the prosecutor and police in check'. According to one judge, 'At first the judges did not pay much attention to the defence and did not appreciate the role of defence lawyers in court. To be honest, they opened our eyes to the irregularities that existed in the judicial system'.<sup>34</sup>

27 'The accused has the right to defend himself personally or through an advocate': Constitution of Afghanistan, 1990, above note 1, Art. 41.

28 J. A. Thier, above note 24, p. 561.

29 *Ibid.*, p. 561.

30 'The "Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions", otherwise known as the Bonn Agreement, was signed on December 5, 2001. The Bonn Agreement is a framework for transformation and stabilization of the Afghan political system' (*ibid.*, p. 566).

31 *Ibid.*, p. 561.

32 *Ibid.*, p. 566.

33 Constitution of the Islamic Republic of Afghanistan, 2004, above note 1, Art. 31.

34 Afghanistan Public Policy Research Organization, *ICDAA/ILF: Nationalizing Legal Aid in Afghanistan, External Review*, 2009, p. 11.

A culture of defence can exist only when all actors accept the basic concept that an innocent person may be wrongfully accused, prosecuted, and convicted. Procedural protections provided by law, such as the right to be produced before a court promptly after arrest, are essential to protect the innocent and avoid miscarriages of justice. Ideally, in a fully balanced system, a competent lawyer acts to level the playing field. Where no culture of defence exists and defence lawyers play a passive role, a culture of guilt prevails. In such an environment, defence lawyers ignore procedural rules and do not seek to have them enforced, resulting in arbitrary detentions and, in many instances, wrongful convictions. In a culture of guilt, defence lawyers are ignorant, indifferent, or, worse, pass judgement on the accused.

In a justice system that weighs in favour of the prosecution, unskilled defence lawyers often seek the application of procedural protections arbitrarily, basing their actions on their own personal values and subjective belief in their clients' innocence or guilt. As a result, the authorities have no incentive to 'play by the book', since failing to do so rarely carries any negative consequences. Illegal detentions can become the norm rather than the exception. Because the system focuses on conviction and punishment, rather than the process of uncovering individual guilt or innocence, authorities cast a broad net, enmeshing the innocent and guilty alike in the criminal justice system. The rich, whether innocent or guilty, have the resources to pay their way out; the poor, whether innocent or guilty, are often detained without recourse.

Establishing a fair and just criminal justice system requires constructing or reconstructing a culture of proactive defence advocacy. Only once defence lawyers come to recognize that any person can be the victim of abuse of authority will they begin to appreciate their critical role in protecting their clients' rights and begin systematically to apply new legislation. Through their efforts, the changes intended in the legislation will begin to take hold. The right to counsel is not intended to protect the guilty; rather it is the most basic element in ensuring the right to a fair trial and, therefore, in protecting against the arbitrary exercise of authority.

Before NGOs began to open legal aid offices in Afghanistan in 2003, the role of defence lawyers within the justice system was limited. The few lawyers there played a largely passive role, mitigating their clients' sentences and pleading for mercy, but rarely fighting to prove their clients' innocence. ILF-Afghanistan's Country Director, Shabir Ahmad Kamawal, worked as a defence lawyer before joining the organization in 2006; like others, he engaged in the typical practice of lawyers at the time. Instead of defending a client in court, lawyers would have the accused, or their family, explain the case to them and then write a defence statement on their behalf, without any hope that it would persuade the judge or affect the verdict. In addition, defence lawyers were not used to interviewing clients or witnesses, nor would they ever visit a crime scene. Rarely would defence lawyers even attend a trial.

Adding to the problem, Afghanistan's justice system was ill-prepared to accommodate the evolving role of defence lawyers. As judges were unaccustomed to lawyers appearing in their courts, they had difficulty understanding their role

and responsibilities.<sup>35</sup> Defence lawyers were routinely denied access to their clients in jail. In many instances, they were also deterred from presenting a defence in court. Consequently, the ILF's first objective in Afghanistan was to train lawyers to take a more proactive role in the defence of their clients. At the same time, it acted to educate the Afghan justice community more broadly about the role of counsel.<sup>36</sup>

While the ILF ultimately succeeded in instilling a culture of proactive defence advocacy in its Afghan staff lawyers, the change was gradual, occurring over several years of international mentorship. For the first four years of ILF-Afghanistan's operations, experienced international criminal defence lawyers provided individual case-by-case mentoring to ILF-Afghanistan's staff lawyers. The international lawyers offered legal and technical expertise and assisted with the day-to-day representation of clients, including shadowing local lawyers at court appearances. This expert day-to-day mentoring resulted in major improvements in the practice of lawyers in Afghanistan, shifts in lawyers' assumptions about their role in the justice system, and the establishment of a true culture of defence where none previously existed.

As Mr. Kamawal recalls, 'my colleagues and I were gradually transformed as we saw how proactive advocacy could make a difference in our client's cases'. Once, while defending a murder case, he was surprised to hear the prosecutor admit that he was making a very strong argument on his client's behalf. The judge was so astonished that he made sure the court reporter noted the prosecutor's admission. Mr. Kamawal remembers reflecting at the time on the change that had occurred: 'While before I would sit in an office and write defence statements that I knew would have no effect, now I was in court convincing even the prosecutor of the correctness of my arguments. For the first time, I felt I was making a real difference'.

Perhaps most significant to the establishment of a culture of defence, ILF-Afghanistan's lawyers were taught by their mentors to question the government's evidence in every case. As an illustration of the obstacles that the ILF faced when it opened its first public defender office in Kabul, out of all of the female candidates interviewed for staff attorney positions, the ILF could only find one applicant who would agree to represent a woman accused of

35 In its January 2009 report, *Arbitrary Detention in Afghanistan*, UNAMA noted that: 'Coupled with the presumption of guilt, [the] lack of familiarity with the function and purpose of defense counsels appears to create hostility toward the right to defense counsel by the police, prosecutors and Courts, as demonstrated by the consistent failure to inform detainees of their rights to defense counsel and limitations placed on defense attorney's [*sic*] access to investigation, proceedings, and documents' (UNAMA, above note 2, p. 16). While it is true that many police, prosecutors, and courts continue to impede the right to counsel in Afghanistan, the UNAMA report fails to take into consideration the many improvements that have been made since the reconstruction effort began.

36 See *ibid.* The UNAMA report incorrectly generalizes that 'engaging defense counsel is seen as a sign of guilt, rather than a critical protection against abuse of power and arbitrary detention'. While undoubtedly many individuals still believe this to be true, Afghanistan's defence providers have made enormous progress in educating the justice sector, as well as ordinary citizens, about the important role of defence lawyers in the justice system.

adultery.<sup>37</sup> None of the other women interviewed could fathom how a woman could be wrongfully accused of this crime.

ILF-Afghanistan's first case illustrates the effectiveness of the ILF's mentorship model: after finally obtaining access to the detention centre in Kabul, one of ILF-Afghanistan's staff lawyers met with her first client, a young man accused of adultery. Adultery in Afghanistan is defined as the engagement in any consensual sexual activity outside of marriage.<sup>38</sup> The young man told his lawyer that he was married to the woman in question; according to the prosecutor, the couple were not married. The lawyer, assuming her client's guilt, planned to seek mercy from the judge. She did not initially question the government's assertion and so dismissed her client's claim of marriage. When asked by her international mentor about investigating her client's story, she said: 'Why? It's in the [prosecutor's] file. He is not married'. She could not comprehend that the prosecutor might not have the correct facts. However, after her mentor convinced her to investigate the case independently, she discovered that her client had been entirely truthful. The mullah who performed the marriage testified to that effect. This proved to be a transformative event for the lawyer. One year later, when the same lawyer was representing another client in court, the judge began to berate her for representing an 'infidel'. The lawyer proudly and courageously replied to the judge: 'Everyone has the right to counsel'.

In another case, ILF-Afghanistan's client was charged with stealing a car out of the parking lot of the Ministry of Foreign Affairs. The client insisted that he was innocent, telling his lawyer that the parking lot of the Ministry had a security camera. His lawyer was sceptical but, with encouragement from his international mentor, he requested the security tape. The tape clearly showed that the alleged stolen car had not, in fact, been taken and that ILF-Afghanistan's client had driven out of the parking lot in his own car.

## Defence lawyers as catalysts for reform

In 2002, the ILF conducted a detailed assessment of Afghanistan's criminal justice system to determine: (1) the rights of accused persons under Afghan law, and (2) the extent to which these rights were being implemented in practice. This assessment revealed gross and systematic violations of the rights of the accused during all stages of the criminal process. Without access to counsel, people languished in detention for months or years without charge or trial. Drug addicts were

37 Under the Afghan Penal Code of 1976 that is currently in force, 'A person who commits adultery ... shall be sentenced to long imprisonment': Afghan Penal Code, Art. 427, published 7 October 1976 (15 Mizzan 1355 AH) in the *Official Gazette*, No. 347. English translation available at: <http://www.lexadin.nl/wlg/legis/nofir/oeur/lxweafg.htm> (last visited 30 November 2010).

38 The legal definition of adultery in Afghanistan comes from the Hanafi school of *Sharia* law: Adultery (*Zina*) is any sexual act between a man and a woman who are neither married nor have a slave/master relationship. See *Sharh-e Fatehull Qadeer*, Vol. 4, p. 138; *Bahrull Raiq*, Vol. 5, p. 3; *Badaye ull zaye*, Vol. 7, p. 33.

imprisoned to force them to overcome their addiction. Debtors were imprisoned to force them to pay their debts. Some never had their day in court. Time limits for detentions were rarely applied. Many were not released when sentences expired.<sup>39</sup>

Defence lawyers play an indispensable role in the criminal justice system. By providing early and effective representation to their clients, they ensure that laws and constitutional provisions protecting the rights of the accused are implemented meaningfully and effectively. Their presence provides a vital oversight mechanism that prevents arbitrary detention and mitigates torture and other abuse by law enforcement authorities. Lawyers also protect the right to defence, endeavouring to avert wrongful conviction. Indeed, a defence lawyer is so fundamental to the right to a fair trial that the deprivation of one virtually ensures the prospect of indefinite detention and almost certain conviction.

A good defence lawyer in the courtroom is one of the best ways to improve judicial practice. By consistently citing the statutes that protect their clients' rights and challenging the prosecutor's evidence and arguments, these lawyers forced courts to become more vigilant, adhering to constitutional provisions and procedural rules and taking time to review the defence lawyers' evidence carefully. Periodically sending judges for national and international training will never have as great an impact; the consistent presence of well-trained, well-resourced defence counsel is far more efficacious.

Over the last seven years, defence lawyers in Afghanistan have advocated successfully for more effective enforcement of laws that protect the rights of accused persons. Since 2003, ILF-Afghanistan has provided representation to more than 16,000 indigent Afghans accused of crimes. Given the high number of accused persons subjected to arbitrary and prolonged pre-trial detention, ILF-Afghanistan prioritized their representation. This early intervention has had an impact: since 2007, early representation has resulted in the pre-trial release of an increasing number of the organization's clients from detention.<sup>40</sup> From 2007 to 2009, the number of ILF-Afghanistan clients released from pre-trial detention increased from 13% to 23% (see Figure 1).<sup>41</sup>

Legal rights take on meaning when they are argued in the context of a case. Two days after the 2004 Constitution was adopted, ILF-Afghanistan began seeking the release of people who had been imprisoned for failure to repay a debt. While the text of the provision concerning debt may seem clear and its meaning unambiguous, the judiciary initially resisted implementing the new law because of the traditional existence of debtors' prisons. This practice might have quietly

39 During the initial pilot phase of the ILF's project in Afghanistan, the ILF's Executive Director, Natalie Rea, and two Afghan lawyers studied Afghanistan's criminal laws and practices in the country's detention centres and courts.

40 Owing to differences in early case-tracking methods, complete data on pre-trial release vs. detention are not available for years 2003–2006. During that time, ILF-Afghanistan represented roughly 900 clients. Pre-trial detention statistics for cases handled in 2010 will be reported on the ILF's website, [www.theilf.org](http://www.theilf.org), in January 2011.

41 In 2007, ILF-Afghanistan represented 1466 clients, of whom 196 were released from pre-trial detention. In 2008, 964 of 3971 clients were released pre-trial; in 2009, 1101 of 4879 clients were released pre-trial.

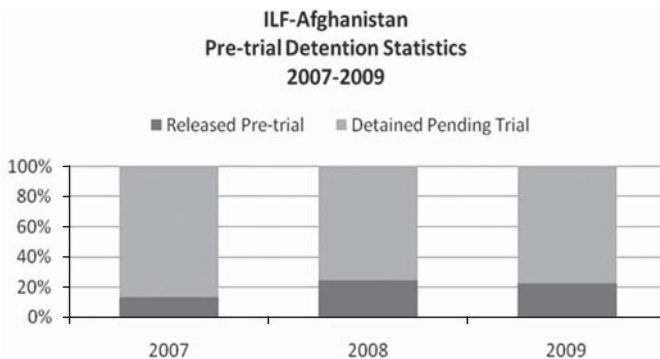


Figure 1: ILF-Afghanistan pre-trial detention statistics, 2007–2009. ‘Released pre-trial’ includes release on bail, release on guarantee, pre-trial dismissal, and release on presidential decree or release by special commission.

continued if not for a lawyer’s intervention. Arguing that Article 32 of the new Constitution prohibits debtors’ prisons,<sup>42</sup> ILF-Afghanistan successfully convinced courts to order their clients’ release. The first case argued by ILF-Afghanistan on this issue involved a man who had been convicted of fraud, sentenced to a term of imprisonment of four months, and required to repay the debt. By the time that ILF-Afghanistan met this client, he had been incarcerated for over six months because he could not afford to repay the debt. In the context of this case, the court had to agree with ILF-Afghanistan’s argument. The man had to be released because he had served his custodial sentence and was unlawfully being held for his debt only, in direct violation of the Constitution.

Similarly, as soon as Afghanistan’s new criminal procedure code, known as the Interim Code of Criminal Procedure (ICCP), was enacted, ILF-Afghanistan began to assert its clients’ new rights.<sup>43</sup> The ICCP guarantees fundamental rights essential to a fair trial, including the presumption of innocence<sup>44</sup> and prohibitions against arbitrary detention.<sup>45</sup> Additionally, it emphasizes procedural rules such as time limitations on pre-indictment detention,<sup>46</sup> a defendant’s mandatory right to be present at certain phases of the proceedings,<sup>47</sup> and rules excluding illegally

42 ‘Debt shall not curtail or deprive the freedom of the individual’: Constitution of the Islamic Republic of Afghanistan, 2004, above note 1, Art. 32.

43 The Afghanistan Interim Code of Criminal Procedure for Courts, or Interim Code of Criminal Procedure, available at: <http://www.asianlii.org/af/legis/laws/icc175/> (last visited 30 November 2010), was enacted in 2004.

44 ‘From the moment of the introduction of the action until when the criminal responsibility has been assessed by a final decision the person is presumed innocent’ (*ibid.*, Art. 4).

45 *Ibid.*, Art. 6.

46 ‘When the arrest performed by the Judicial Police is sanctioned ... the arrested person shall be released if the Saranwal has not presented the indictment to the Court within fifteen days from the moment of the arrest ...’ (*ibid.*, Art. 36).

47 ‘The suspect and the defense counsel have the right to be present during searches, confrontations, line-up procedures and expert examinations as well as during the trial’ (*ibid.*, Art. 38(2)).

obtained evidence.<sup>48</sup> Importantly, the ICCP shifted the focus to the rights of the accused. Over time, ILF-Afghanistan used these new provisions of the ICCP to persuade judges to take a more active role in legal proceedings, both by advocating for the rights of their clients in individual cases and by conducting training workshops for judges.

One of ILF-Afghanistan's first challenges under the ICCP was to the illegal pre-indictment detention of its clients. The ICCP limits the period in which a prosecutor can file an indictment to a maximum of thirty days (twice fifteen days) and requires the release of the detainee if the deadline is not met.<sup>49</sup> When the ICCP was enacted, prosecutors and police contested this provision, arguing that they would not be able to investigate a case in so little time. Sympathizing with law enforcement, the judiciary initially turned a deaf ear to any defence argument for release under this provision. Since, historically speaking, judges had little power over the prosecution, courts were accustomed to acquiescing to the demands of prosecutors.

Although ILF-Afghanistan ultimately convinced the courts to release their clients when indictments were not filed within the thirty-day period, progress was slow. On one occasion in 2004, the judge considering the motion for release turned to the international lawyer mentoring at ILF-Afghanistan and asked: 'Do you think he is guilty?' The international lawyer answered that the client was presumed innocent. The judge insisted: 'That is not the question; the question is, do you think he is guilty?' Though not successful in that case, ILF-Afghanistan lawyers continued to file motions until the courts began to accept their analyses and arguments and to release detainees if the indictment deadline was not met. The impact of ILF-Afghanistan's applications for their clients' release led to prompt investigations, timely indictments, and/or early release.

Early representation also ensures a minimum of supervision over investigative procedures. The ICCP gives counsel the right to be present during investigation; Article 38 provides, in part, that 'defense counsel has the right to be present at all times during the interrogation of the suspect', and '[t]he suspect and the defense counsel have the right to be present during searches, confrontations, line-up procedures and expert examinations as well as during the trial'. If the investigative activities are conducted in the absence of the accused and/or his defence counsel, the evidence is insufficient on its own to prove a fact.<sup>50</sup>

While the law clearly provides distinct rights for defence counsel, judges, police, and prosecutors were reluctant to accept that a defence lawyer should do anything other than participate as a passive observer. When ILF-Afghanistan

48 'The evidence which has been collected without respect of the legal requirements indicated in the law is considered invalid and the Court cannot base its judgment on it' (*ibid.*, Art. 7).

49 *Ibid.*, Art. 36.

50 See *ibid.*, Art. 55: '[t]he records of the testimonies of the witnesses as well as of the expert exams, collected during the investigative phase, can have the value of evidence as basis for the decision only if it results that the accused and/or his defense counsel were present during the operations and were in a position to raise questions and make objections'. See also *ibid.*, Art. 7.



lawyers began visiting crime laboratories with their international mentors and questioning the testing methods, their role became clearer and judges started to take notice. For example, in drug cases, ILF-Afghanistan lawyers argued that there was no system to ensure that the drugs being tested had been in the custody of the accused, making a positive test meaningless to his or her innocence or guilt. They repeatedly contested the evidence at trial and the courts eventually agreed. As a result, cases were dismissed, clients released, and testing procedures improved.

In addition to the individual and systematic impact on the lives of the many poor Afghan defendants that they serve, defence lawyers also play a crucial role in developing the rule of law in Afghanistan. They frequently provide expert commentary on proposed laws related to criminal matters and legal aid services, and have remained vigilant against attempts on behalf of the legislature to erode the rights of accused persons and limit the role of lawyers. Recently, the UN Office on Drugs and Crime (UNODC) has been leading efforts to draft a new criminal code. Afghanistan's law enforcement agencies, long dissatisfied with the ICCP, have advocated the inclusion of provisions that would curtail many fundamental rights of the accused, including the right to counsel.<sup>51</sup> Initially, defence lawyers were not involved in the drafting process. When they became aware of this new draft, the Afghanistan Independent Bar Association insisted on defence lawyers having a voice, and has since worked with the defence bar to draft provisions that ensure adequate protections for the rights of the accused.<sup>52</sup>

While defence lawyers have affected many significant reforms, many challenges remain. Recently, lawyers practising in the anti-narcotics' courts went on strike because of government interference with their work. One of ILF-Afghanistan's lawyers was arrested for representing Guantánamo detainees. While the Afghanistan Independent Bar Association has been vigilant to protect its members, these incidents indicate an enduring hostility to protecting the rights of the accused. Furthermore, many accused persons lack access to competent counsel. In many areas of the country, there are still no indigent defence providers.

51 For example, the chief of the Afghan Attorney General's Office (AGO), concerned about messages being passed between defence lawyers and their clients that were 'against the national interest', proposed to limit the rights of detainees to speak with their lawyers. See Proposed Criminal Procedure Code, April 2009, Art. 5, Sec. 11, fn. 11 (English translation by Justice Sector Support Program and UNODC). The Afghanistan Independent Human Rights Commission objected to any limit to the right of lawyer-client confidentiality. As the AGO was in the minority, the draft was changed to guarantee suspects and accused persons 'The right to communicate freely and confidentially, orally or in writing with his counsel and without the authorities listening to or reading such communication' (*ibid.*, Art. 5, Sec. 11).

52 The Afghanistan Independent Bar Association sent an email to UNODC on 27 July 2009 voicing its concerns about the draft law. Subsequently, the President of the Bar Association met with UNODC, who agreed to provide them with a copy of the draft law. Furthermore, as a result of these discussions, UNODC invited the Bar Association to a conference in Austria on 27 October 2009 to share its views. The Bar Association sent an official letter to all provinces about the fact that the draft law was eroding the rights of lawyers, and instructed all defence lawyers to review the draft law and give their views. Information obtained from conversation between ILF-Afghanistan staff and the President of the Afghanistan Independent Bar Association, 29 November 2010.

## Towards a government-funded public defender system

Afghanistan must ensure that the poor have equal access to justice by establishing, in the long term, a nationwide, government-funded indigent defence system. The ultimate goal of this system should be to ensure that high-quality legal representation is provided to every man, woman, and child, regardless of their financial circumstances. Without high-quality criminal defence services, particularly for the poor (who constitute the majority of defendants in any criminal justice system), there is no check against arbitrary and abusive treatment by authorities and no one in the courtroom to protect the rights of the accused.

Until recently, Afghanistan's government-run legal aid centres were largely ineffective. In 1989, the Afghan government established a Legal Aid Department under the Supreme Court.<sup>53</sup> The purpose of this department was to provide criminal defence services to the poor; however, for many years it did not actually represent any clients, existing in name only.<sup>54</sup> After the fall of the Taliban, the Legal Aid Department began accepting cases, but it employed few lawyers, all of whom provided largely passive representation. They did not visit clients in detention centres, investigate cases, or actively defend their clients. In 2008, the Legal Aid Department was transferred to the Ministry of Justice.<sup>55</sup> Beginning in 2009, the World Bank agreed to fund the expansion of the Ministry's legal aid centres, with the requirement that the Ministry had to professionalize staff and increase pay in order to ensure quality.<sup>56</sup>

The Afghan government has expressed a commitment to develop an effective indigent defence system by: enacting a constitutional provision mandating that it provide free counsel to the indigent accused,<sup>57</sup> granting permission to NGOs to set up legal aid offices, and, more recently, itself establishing legal aid centres that provide meaningful defence services to the poor. In a 2005 policy paper, entitled *Justice for All*, the Ministry of Justice expressly stated the government's obligation to build a legal aid programme:

Afghanistan needs a legal aid program. Legal aid in criminal cases is mandatory under the Constitution. It is a practical necessity if the state justice system is to

53 See website of the Afghan Ministry of Justice: <http://www.moj.gov.af/?lang=en&p> (last visited 30 November 2010).

54 See Ele Pawelski, 'Defining justice in Afghanistan: development of a national legal aid system', in *Windsor Review of Legal and Social Issues*, Vol. 27, 2009, p. 195: 'Afghanistan has had a short history of defence lawyers, and only nominal government legal aid services'. See also UNODC, Afghanistan, *Afghanistan: Implementing Alternatives to Imprisonment, in Line with International Standards and National Legislation*, 2008, p. 53: 'The Supreme Court has a legal aid office but it has been extremely inadequate'.

55 See website for the Afghan Ministry of Justice, above note 53.

56 Information obtained by ILF-Afghanistan staff during a January 2009 meeting with a Deputy Minister of the Ministry of Justice and the head of the Ministry of Justice Legal Aid Office in Kabul.

57 Constitution of the Islamic Republic of Afghanistan, 2004, above note 1, Art. 31.

have any role at all in protecting the rights of vulnerable people. Skilled legal aid lawyers will accelerate justice reform.<sup>58</sup>

In recognition of its limited resources, both human and financial, the Ministry of Justice also detailed in this policy paper a national strategy for implementing its obligation to provide counsel for the poor:

To be meaningful, legal aid must be available first at the Primary Court level. It could initially be made available in serious criminal ... matters. The Government foresees a small number of resources (either state employees or private lawyers when they exist) in provincial capitals, with one legal aid person in larger districts.<sup>59</sup>

While it is important for the Afghan government to recognize the practical and economic limitations to establishing a full-scale indigent defence system, concerns about money or lack of qualified defence lawyers should not be used as an excuse to limit the right to counsel. Rather, the government should prioritize its use of resources and continue to promote the growth of the defence bar.<sup>60</sup>

The international community should assist this effort by investing in legal aid projects, but be wary of infusing too much money. While, in the short term, Afghanistan needs international donors to fund indigent defence, too much aid can be problematic, as it can lead to corruption and a system that is unsustainable in the long term. In structuring and funding legal aid programmes, donor agencies and NGOs must keep in mind that the Afghan government's resources are finite and that legal aid expenditures will only constitute a small portion of the national budget.<sup>61</sup> The international community can also play an important role in educating the government about the fundamental nature of the right to counsel and encouraging it to spend as much on defence as is spent on prosecution.

Donor agencies and NGOs can play a further important role in ensuring that the Afghan government's legal aid programme maintains the high standard set by NGOs' legal aid programmes. This will require a solid investment of human and financial resources, as well as training and mentoring by existing legal aid organizations. If government-provided public defence is underfunded and/or ineffective, it will reflect negatively on the government's ability to provide high-quality defence

58 Government for the Islamic Republic of Afghanistan, Ministry of Justice, *Justice for All: A Comprehensive Needs Analysis for Justice in Afghanistan*, Kabul, May 2005, p. 10, available at: <http://www.rolafghanistan.esteri.it/NR/rdonlyres/B0DB53D0-A1F9-468E-8DF0-3F485F1959A7/0/JusticeforAll.pdf> (last visited 30 November 2010).

59 *Ibid.*

60 As of 23 November 2010, there were 964 lawyers, including 152 women, registered with the Ministry of Justice (phone conversation between ILF-Afghanistan and the Afghanistan International Bar Association).

61 The US budget for indigent defence services is also small: 'The state and federal governments together allocate over half of their criminal justice spending to the investigation and prosecution of crimes but only about two percent to indigent defence' (Kyung M. Lee, 'Reinventing Gideon v. Wainwright: holistic defenders, indigent defendants, and the right to counsel', in *American Journal of Criminal Law*, Vol. 31, Summer 2004, p. 373).

representation to the poor and will further erode public confidence in government services.

Moreover, an effective public defender system must be developed with local involvement. It is critical that the Afghan government, donor agencies, and NGOs work together to develop and implement a strategy for local ownership over the indigent defence system. For example, it would be unwise to open duplicate public defender or legal aid offices in provinces already being served while other regions go without any. One way to ensure that a national public defender programme is developed in the most effective manner is for the government to collaborate with NGOs that are providing direct services and monitoring problem areas for themselves, and progressively to transfer responsibility to the government for overseeing the national programme. Using this model, ILF-Afghanistan is currently working jointly with the Ministry of Justice to establish public defender offices.

## **Conclusion**

While Afghanistan unquestionably faces enormous challenges ahead, it has made progress in strengthening the rights of accused persons and the role of defence counsel. Without question, defence lawyers have been catalysts for the incremental progress currently being made in Afghanistan's criminal justice system. The next step is to invest in the development of a fully functioning national indigent defence system, with the full-scale support of the Afghan government and the international community. Unless and until Afghanistan and the international community establish an effective indigent defence system, there is little guarantee that the country's criminal justice system will protect the right of the accused to a fair trial.

# State-building in Afghanistan: a case showing the limits?

**Lucy Morgan Edwards**

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## **Abstract**

*Since the 1990s, the concept of ‘state-building’ has become the means by which intervenors have attempted to tackle ‘state failure/fragility’. The ‘ideal’ referred to when attempting to do this – both theoretically and in practice – has been that of the classic ‘nation-state’ as developed by Max Weber. To answer the question posed by the title above, the article first looks generally at the evolution of the current state-building paradigm and global governance discourse. Second, a background of historical attempts at state-building in Afghanistan is given. Third, an assessment is made of the international community’s approach to Afghanistan since 2001. Finally, the appropriateness of replicating a Weberian state-building model onto more traditional societies such as Afghanistan – where modes of governance and authority are often informal, complex, and characterized by historical and charismatic sources of legitimacy – is addressed. Until now, such contexts have barely been acknowledged, still less understood, by intervenors. Today, however, some academics are beginning to outline an alternative response to state fragility, recognizing more traditional sources of legitimacy and a hybridity of political order.*

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By 2010, nine years after the events of 11 September 2001 (9/11), the Afghan state appears to be characterized by a centralization of power. The situation is similar to that faced by the Soviets in 1987, in that the state is fiscally unsustainable and the government is only able to function in cities.<sup>1</sup> Moreover, the state is run by a political elite whose objectives seem diametrically opposed to those of the

international community – a dynamic similar to one identified in Somalia.<sup>2</sup> Like the Soviets halfway through their ten-year engagement in the 1980s, the international community, struggling to extricate itself from its nearly decade-long engagement in Afghanistan and faced with a steady deterioration in security since 2005–2006, is starting to focus on expensive militaristic ‘stopgap’ measures. These have been characterized by Kipping as ‘somewhat similar to the 1980s’.<sup>3</sup> They are also a desperate attempt to shore up the state security apparatus, and include the establishment of militias whose loyalty is questionable.<sup>4</sup> For example, the Afghan National Auxiliary Police were deemed a ‘quick fix effort’<sup>5</sup> to stabilize the south but were in reality led by their former militia commanders, often in pursuit of somewhat criminal agendas. In 2008 there followed the Afghan Public Protection Force, which US Special Forces, encouraged by the Sunni militia ‘Sons of Iraq’<sup>6</sup> experience, hoped would replicate that development in Afghanistan. But, like other irregular security forces, this too was criticized as potentially fuelling ethnic problems owing to the arming of communities in conflict with others. There was also the issue of a further weakening of the state’s claim to a monopoly on the use of force.<sup>7</sup> In 2009 further initiatives to set up militias were taken, including the Ministry of the Interior’s Civil Defence Initiative.

With the ongoing justification for the war being to ‘dismantle, disrupt and defeat’ the Al Qaeda terror network, efforts to strengthen and sustain the Afghan government have been a secondary priority ranking far behind military operations.<sup>8</sup> Relatively late in the day, much of the rhetoric now relates to the issue of ‘ungoverned space’ and ‘governance’. Nine years into the war, however, there remains huge uncertainty in that regard. The Center for American Progress states that:

building legitimate, responsive and self-sustaining Afghan government institutions is essential if the United States and its NATO International Security

- 1 Martin Kipping, *Two Interventions: Comparing Soviet and US-led State-building in Afghanistan*, The Afghanistan Analysts Network (AAN), Thematic Report, January 2010, available at: [http://aan-afghanistan.com/uploads/AAN\\_Two\\_Interventions.pdf](http://aan-afghanistan.com/uploads/AAN_Two_Interventions.pdf) (last visited 8 February 2011).
- 2 In Somalia, continued instability ensures the government an ongoing revenue stream and allows it to maintain a façade of ‘importance’, as discussed in Ken Menkhaus, ‘Governance without government in Somalia: spoilers, state building, and the politics of coping’, in *International Security*, Vol. 31, No. 3, pp. 74–106.
- 3 M. Kipping, above note 1, p. 13.
- 4 *Ibid.*
- 5 Robert M. Perito, *Afghanistan’s Police: The Weak Link in Security Sector Reform*, United States Institute of Peace (USIP), Special Report No. 227, August 2009, p. 9, available at: [http://www.usip.org/files/afghanistan\\_police.pdf](http://www.usip.org/files/afghanistan_police.pdf) (last visited 8 February 2011).
- 6 Fred W. Baker III, ‘Petraeus parallels Iraq, Afghanistan strategies’, in *American Forces Press Service*, 28 April 2009, available at: <http://www.defense.gov/news/newsarticle.aspx?id=54107> (last visited 8 February 2011).
- 7 Waheedullah Mohammad, ‘Can Afghanistan’s new “Guardian” militia restore security in the provinces?’, in *Terrorism Monitor*, Vol. 7, No. 20, p. 5.
- 8 Colin Cookman and Caroline Wadhams, *Governance in Afghanistan: Looking Ahead to What We Leave Behind*, Center for American Progress, May 2010, p. 1, available at: <http://www.americanprogress.org/issues/2010/05/pdf/afghangovernance.pdf> (last visited 8 February 2011).

Assistance Force allies are to withdraw their military forces from Afghanistan and keep them out over the long term without the country descending into civil war and regional proxy fighting. To accomplish this, Congress, the Obama administration, and the American public need a clearer understanding of the full dimensions of Afghan governance and the many international actors and programs whose activities affect the issue.<sup>9</sup>

The outlook is not good: some studies demonstrate a low success rate in externally led state-building projects over recent decades. For example, Doyle and Sambanis surveyed 121 processes of post-conflict peace-building from 1945 to 1999, and found that less than half had achieved an end to war and violence. More difficult goals, such as a basic level of political openness, were even more problematic. Significantly, the activities of external peace-keeping forces had negligible effect on the likelihood of success, although a sustainable peace was a little likelier in those countries with a UN-mandated intervention force.<sup>10</sup> Meanwhile, Paris compared eleven UN peace-building missions from 1989 to 1999. He found that only two had been successfully concluded (Namibia and Croatia), two had failed (Angola and Rwanda), and the remaining seven presented a mixed outcome.<sup>11</sup>

To assess whether Afghanistan constitutes ‘a case showing the limits’ to state-building it is first necessary to define the concepts of state-building aimed for, and also to determine the historical role of state-building in Afghanistan.

## Concepts

### Differing theoretical traditions of the ‘state’ and state ‘functions’

Historically, philosophers ranging from Machiavelli to Thomas Hobbes, John Locke, Max Weber, John Stuart Mill, and John Dewey (among others) have held a variety of views about the state and its functions. However, the model that has emerged as the basis of today’s world order is that of the ‘nation-state’ as espoused by Max Weber during the 1918 Bavarian Revolution and the First World War. He defined the state as a human community that claims a monopoly on the legitimate use of force within a given territory, and noted the intimate relationship between the state and violence.<sup>12</sup> Lockhart and Ghani (former World Bank employees who wrote much of the 2001 Bonn Agreement that prescribed the state-building project for Afghanistan) assert that Weber articulates a ‘clear, functional view of the state,

9 *Ibid.*, pp. 1–2.

10 Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations*, Princeton University Press, Princeton and Oxford, 2006.

11 Roland Paris, *At War’s End: Building Peace after Civil Conflict*, Cambridge University Press, Cambridge, 2004.

12 See e.g. Max Weber, *Economy and Society*, edited by Guenther Roth and Claus Wittich, Bedminster Press, New York, 1968.



and describe its “basic functions” as the legislature, the police, the judiciary, and the various branches of civil and military administration’.<sup>13</sup> In such a model, however, state institutions are distinct from civil society, having their ‘own interests, preferences and capacities’.<sup>14</sup>

## Evolution of the state-building paradigm

### *State-building strategies*

Over the past decade, the issue of state fragility – and state-building as a response to it – has become a major area of interest for the donor, peace-building, and security communities, marking a shift from the 1980s belief that the ‘market’ (the rhetorical term then was ‘structural adjustment’) could solve these problems.

Various interventions by the international community have taken place in Afghanistan, Bosnia, Liberia, Sierra Leone, Haiti, and Iraq, with ‘state-building’ perceived as the dominant ‘solution’ for places deemed to have ‘failed’.<sup>15</sup> A variety of definitions exist, which encompass ‘failure’, ‘weak’, or ‘fragile’,<sup>16</sup> but there remains a vagueness and sometimes a blurring of distinctions between these.<sup>17</sup>

Boege *et al.* assert that the focus of the security and development environment is on the ‘lack of willingness or capacity [of state institutions] to perform core state functions in the fields of security, representation and welfare’.<sup>18</sup> The authors recognize the existence of a consensus that different degrees of state fragility or different stages of state failure can be identified, that the phenomenon is increasing, and that the solution generally recommended is ‘state-building’.<sup>19</sup> This encompasses: ‘sustainably strengthening state institutions in addition to enhancing the capacities of state actors for control, regulation and implementation, particularly in the core fields of state-hood, namely internal security, basic social services, the rule of law and legitimacy of government’.<sup>20</sup>

13 Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World*, Oxford University Press, Oxford, 2008, pp. 116–117.

14 Achim Wennmann, *Grasping the Strengths of Fragile States: Aid Effectiveness between ‘Top-down’ and ‘Bottom-up’ Statebuilding*, Swiss Agency for Development and Cooperation (SDC) and the Centre on Conflict, Development and Peacebuilding (CCDP) at the Graduate Institute, Geneva, CCDP Working Paper No. 6, 2010, p. 16, available at: [http://graduateinstitute.ch/webdav/site/ccdp/shared/6305/Working%20paper\\_6\\_BD.pdf](http://graduateinstitute.ch/webdav/site/ccdp/shared/6305/Working%20paper_6_BD.pdf) (last visited 8 February 2011).

15 *Ibid.*, p. 2.

16 Tobias Debiel, and Axel Klein (eds), *Fragile Peace: State Failure, Violence and Development in Crisis Regions*, Zed Books, London, 2002.

17 See Tobias Debiel and Daniel Lambach, *Global Governance Meets Local Politics: On Western State-building and the Resilience of Hybrid Political Orders*, paper presented at the Global Conference of the International Peace Research Association (IPRA) 2010, Sydney, Australia, 6–10 July 2010.

18 Volker Boege, Anne Brown, Kevin Clements, and Anna Nolan, *On Hybrid Political Orders and Emerging States: State Formation in the Context of ‘Fragility’*, Berghof Research Centre for Constructive Conflict Management, Berlin, 2008, p. 3.

19 *Ibid.*

20 *Ibid.*

Bøås and Jennings<sup>21</sup> contend that ‘fragile states are seen through the dominant lens of Western security interests’ and that in this context they appear as little more than fertile breeding grounds for the export of terrorism or safe havens for terrorists.<sup>22</sup> As such they become a threat to ‘the national security of the USA’ and to ‘international security’. Hence, ‘rebuilding states’ is seen as a challenge that US policy must take on. As such:

The focus of state-building generally is very much on the security dimension, with building the capacity of security agencies (police, military, customs and border protection) as a priority field of external assistance. This becomes an avenue for security agencies to address development issues, to ‘securitise’ these issues and thus add to the legitimacy of the military and other security agencies which are expanding their areas of activity.<sup>23</sup>

In Afghanistan, the result since 2001 has not necessarily been an effective means of ensuring security in ‘ungoverned space’.

### *The 1990s ‘global governance’ discourse*

The current state-building paradigm emerged largely from the ‘global governance’ discourse of the mid-1990s, according to which rapid de-borderization, globalization, and turbulence formed the basis for a new concept. Rosenau referred to a ‘bifurcation’ in world politics, whereby the sphere of non-state actors gained relative influence ‘acting according to its own goals, instruments, modes of cooperation and patterns of legitimacy’.<sup>24</sup> Based on these assumptions, global governance was defined as ‘systems of rule at all levels of human activity – from the family to the international organization – in which the pursuit of goals through the exercise of control has transnational repercussions’.<sup>25</sup>

### *Concepts of ‘global governance’, including the ‘right to protect’ and the ‘right to rebuild’*

Debiel and Lambach describe how the global governance ideas were soon embodied within the prescriptive frameworks of the UN system (Commission on Global Governance, 1995), resulting in new debates on ideas of national sovereignty and ultimately the ideal of the ‘responsibility to protect’ formulated by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, which ‘juxtaposed the view that state sovereignty was not only a right to prevent interference from outside with one that considered [the said responsibility] also to

21 Morton Bøås and Kathleen M. Jennings, ‘Insecurity and development: the rhetoric of the “failed state”’, in *European Journal of Development Research*, Vol. 17, No. 3, p. 388.

22 V. Boege *et al.*, above note 18, p. 3.

23 *Ibid.*, p. 4.

24 James N. Rosenau, *The United Nations in a Turbulent World*, Lynne Rienner, Boulder, CO, 1992, p. 20.

25 James N. Rosenau, ‘Governance in the twenty-first century’, in *Global Governance*, 1995, No. 1, p. 13.

be an obligation of the state towards its citizens'.<sup>26</sup> The authors suggested that the 'responsibility to protect' might shift from national to global level if gross human rights violations occurred and were not stopped.

An implication of this concept was that 'spaces in which the state is either not willing or able (or both) to secure the safety of its citizens, should and can be globally governed';<sup>27</sup> the corollary was that the concept of 'responsibility to rebuild' became an aspect of the ICISS report.<sup>28</sup> In other words, the international community gave itself the responsibility/right to tackle the problem of 'ungoverned space'. But, ten years on in Afghanistan, it has yet to achieve success in this domain.

Wennmann, referring to the security, donor and development 'communities', adds: 'Despite different institutional perspectives, the debate over fragile states has reflected an implicit consensus in these communities that a strong and functioning state is the instrument to solve the challenges of poverty, armed violence, and sustainable development'.<sup>29</sup> As such, the Weberian/Westphalian nation-state model came to be perceived as a solution to state failure, and the interventions of the late 1990s were characterized by a top-down, centralized focus with emphasis on controlling the use of force. Usual tasks included providing infrastructure, training civil servants, and initiating organizational reforms.<sup>30</sup> However, although the approaches produced quick results, 'the role that informal actors and institutions, culture and identity play'<sup>31</sup> was downplayed. Meanwhile 'the political dimensions of seemingly apolitical reforms were grossly underestimated'.<sup>32</sup>

## Historical overview of the state in Afghanistan

### Rule of the monarchy

Before 1747, when Ahmad Shah Durrani established a confederacy at Kandahar under the unifying name of Afghanistan (the 'Land of the Afghan'), Afghanistan was known as '*Sarzameen-e-Bay*', the lawless land. Autocratic rule continued under Durrani, who managed to unify the tribes. At the end of the nineteenth century, unification was more pronounced under the forceful 'Iron Amir', Abdur Rahman Khan, who used a mix of force and guile to cement the tribes together. The first Afghan constitution was enacted in 1923 under King Habibullah.

Divisions between modernizers and traditionalists (a tension that continues to exist in Afghanistan) became more evident in the summer of 1928, when

26 T. Debiel and D. Lambach, above note 17, p. 2.

27 *Ibid.*

28 *Ibid.*

29 A. Wennmann, above note 14, p. 2.

30 Ulrich Schneekener, *Fragile Staatlichkeit: 'States at Risk' zwischen Stabilität und Scheitern*, Nomos, Baden-Baden, 2006.

31 T. Debiel and D. Lambach, above note 17, p. 3.

32 *Ibid.*

Habibullah's son, King Amanullah – looking towards what Kemal Attaturk was doing in Turkey – tried to introduce modernizing reforms. These included the establishment of a Western-style constitutional monarchy and the abolition of the veil. However, the *Loya Jirga* – which itself is a version of direct democracy similar to the traditional *Landesgemeinde* or cantonal assembly of the older Swiss cantons – rejected most of the proposals. An insurrection followed, begun by Shinwari tribesmen who burnt down the king's palace (and the British Consulate) in Jalalabad. This led to Amanullah's eventual exile, opening the way for General Nadir Shah, who had defeated the bandit forces, to occupy Kabul.<sup>33</sup>

Nadir Shah became king in 1930, after his legitimization by a *Loya Jirga*. His 1931 constitution was essentially a promulgation of an 'autocratic monarchy allied to religious conservatism'<sup>34</sup> in an attempt to consolidate power by appeasing the mullahs who had brought about the downfall of his predecessor. Accordingly, the first article of the new constitution officially decreed that the religious law of the Hanafi school of Sunni Islam was to be the basis of law in Afghanistan. Nadir Shah's reign ended with his assassination in 1933 by a high-school student in Kabul.<sup>35</sup>

His son, Mohammad Zahir Shah (1933–1973) succeeded him and his rule lasted for forty, relatively peaceful, years. In 1964, the third Afghan Constitution created a constitutional monarchy with a legislature. Although *Sharia* (Islamic law) was referred to, the basis of law became that of a secular legal system because the constitution introduced an independent judiciary. Most power, however, remained with the king.<sup>36</sup> In 1965, elections were held and resulted in a lower house of parliament, the *Wolesi Jirga*, which was broadly representative and included anti-royalists. The king had allowed the establishment of the People's Democratic Party of Afghanistan (PDPA), which had two wings, Khalq and Parcham, comprising rural Pashtuns and left-leaning urbanites (who were often *dari* speakers) respectively.

## The Soviet era

Soviet influence had continued to gain traction throughout the 1970s and, in December 1979, resulted in the invasion and occupation of Afghanistan. An interim constitution followed in 1980, even as various resistance groups began to organize themselves from their base in Peshawar. They ranged from traditionalist groups interested in restoring the former king to minority Shi'a groups and the more fundamentalist Islamist groups of strongmen such as Gulbuddin Hekmatyar and Abdur Rab Sayyaf. The aim of most of these groups was not democratic rule but a redefinition of Islam in Afghan society.

33 Angelo Rasanayagam, *Afghanistan: A Modern History*, IB Tauris, London, 2004.

34 *Ibid.*, p. 23.

35 *Ibid.*

36 *Ibid.*

## The Mujahideen and Taliban era

The West provided aid and ordinance to the resistance groups and, by the time the Soviets were defeated in 1989, Afghanistan faced a new crisis: the economy was now based on drugs, the country was flooded with weapons, and Afghan civil society had been decimated. This situation enabled the Taliban, since they set about restoring order, to gain the support of the populace in much of the country. Though seen as ‘occupiers’ in the cities of Kabul, Mazar, and Herat, they thus easily gained control over most of Afghanistan and – despite UN sanctions – refused to give up Osama bin Laden and believed that they could win the remaining territory in the north-east still occupied by the Northern Alliance.

### Attempts to broaden loyalty from traditional structures to a concept of ‘nationhood’

As early as 1973, the US anthropologist Louis Dupree identified a tension within Afghan society between those desiring to promote the concept of ‘nation-state’ and those who preferred a more traditional society based on ‘kinship’. Dupree defined the ‘nation-state’ as: ‘in the western sense, more a set of attitudes, a reciprocal, functioning set of rights and obligations between the government and the governed – with emphasis on the individual rather than the group’.<sup>37</sup> In contrast, he wrote that ‘tribalism’ occurs ‘in non-literate societies ... when kinship replaces government and guarantees men and women born into a specific unit a functioning set of social, economic and political rights and obligations’.<sup>38</sup>

This tension still exists in Afghanistan today and encompasses differences between rural and urban traditions, between youth and older people, between modernizers and traditionalists, between diaspora Afghans and those who remain within Afghanistan. Interestingly, Dupree identified diaspora Afghans as those pushing for the nation-state ideal.

Shahrani repeats Dupree somewhat when he says that previous attempts at political reform in Afghanistan during the twentieth century had not enjoyed success in broadening loyalty from clan-based or tribal networks to a concept of nationhood.<sup>39</sup> Although he adds that much of the difficulty has been historically related to limited literacy and problems in communication and transport networks, a lack of revenue also curtailed the state’s attempt to legitimize power, so that successive leaders had to play one group off against another (with political and financial incentives). His view is that, over time, the central power was forced to turn more and more to regional leaders for financial and military assistance, thereby enabling tribal and traditional structures of authority to become entrenched. Some commentators argue that this phenomenon has succeeded only

37 Louis Dupree, *Afghanistan*, 1980 edition, Rama Press, New Delhi, 1980, p. 659.

38 *Ibid.*

39 M. Nazif Shahrani, ‘Afghanistan: state and society in retrospect’, in Ewan W. Anderson and Nancy Hatch Dupree (eds), *The Cultural Basis of Afghan Nationalism*, Pinter Publishers, London, 1990, pp. 41–49.

in accelerating the tendency of religious and ethnic pluralism to develop into social fragmentation.<sup>40</sup> Others would contend that this has always been so in Afghanistan, and is echoed today because Hamid Karzai's ability to hold onto power is largely determined by patronage (in this case, the spoils of foreign aid and lucrative sinecures, i.e. 'police chief' positions).

During the nineteenth and early twentieth centuries, the British were Afghanistan's main source of revenue during nation-building exercises. From the 1950s, both the USA and the USSR provided support, and in the 1980s the USSR provided massive financial investment while occupying Afghanistan. Latterly, there have been contributions (during the Mujahideen era) from the US and other Western nations, and since 9/11 the West has been providing most of the revenue to shore up the state.

## The post-9/11 intervention

The post-9/11 intervention comprised three elements: military, political, and security sector reform.

### The military response: Operation Enduring Freedom and NATO

The military effort in Afghanistan has been under the remit of both Operation Enduring Freedom (OEF) and – since it moved beyond Kabul in 2003 – the UN-mandated International Security Assistance Force (ISAF) under NATO command.

The attacks of 11 September 2001 led to the unprecedented invoking by NATO of Article 5 of the North Atlantic Treaty, according to which an armed attack on one member state is deemed an attack on all. NATO thus committed itself – for the first time – to an operation beyond its immediate borders. Though there was political will by NATO to contribute troops, US General Tommy Franks, then leading Operation Enduring Freedom, made clear that he wanted exclusive control over the theatre of operations beyond Kabul.<sup>41</sup> As such, ISAF was confined to Kabul. On 11 August 2003, NATO assumed leadership of the ISAF operation, ending the six-month national rotations.

A key part of the OEF strategy – the use of Northern Alliance militiamen as ground forces to oust the Taliban – was perceived as a means of averting the need for the US to commit ground troops in significant numbers. Instead, the strategy was to support a disparate group of mostly Tajik warlords based in the north and east with over one billion US dollars' worth of cash and

40 Barnett Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, Yale University Press, New Haven and London, 1995.

41 Lucy Morgan Edwards and Shambhu Simkhada, *Defence, Diplomacy and Development (3Ds): A New Approach to International Relations?*, report commissioned by and written for the Swiss Agency for International Development and Cooperation (SDC), 2008.

weapons.<sup>42</sup> The fact that the Northern Alliance had been involved in an ongoing civil war with the mostly Pashtun Taliban was overlooked, even though other Afghans criticized their use as inevitably leading to a lopsided political settlement. This development was accelerated when the US bombed Taliban front lines in October 2001, as the Northern Alliance were thereby enabled to take Kabul, and with it the key ‘power’ ministries of Defence, Interior, and Foreign Affairs.

## The Bonn Framework 2001–2005

The political response was mapped out by the international community, the UN, and certain Afghan groups in December 2001 in Bonn. Afghan representatives from different exile groups – but crucially not the Taliban, and with few significant Pashtun tribal leaders present – signed the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions.

The Bonn Agreement was intended to ‘initiate a state-building process’.<sup>43</sup> It envisaged the initial establishment of an Interim Authority followed by an Emergency *Loya Jirga*, to be held in 2002, at which a Transitional Administration would be established and legitimized until presidential and parliamentary elections elected a government in 2004.<sup>44</sup>

Under the Interim Administration a constitutional drafting committee was set up to prepare for a Constitutional *Loya Jirga*. The Constitution was intended to establish Afghanistan as a state with executive, legislative, and judicial branches of government. A Judicial Commission was to rebuild the justice system in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions. A Supreme Court was also to be established.

## Security Sector Reform (SSR)

Alongside the Bonn process and Operation Enduring Freedom, G8 donor countries decided on a ‘lead nation’ approach to SSR in 2002. The Security Sector was divided into five pillars: Germany would lead on police reform, the US on military reform, Italy on judicial reform, the UK on counter-narcotics, and Japan on the disarmament, demobilization, and reintegration (DDR) of former combatants.<sup>45</sup> That approach marked the beginning of what would become the main plank of the West’s perceived ‘exit strategy’ from Afghanistan, namely by building up Afghan security forces.

42 Gary C. Schroen, *First In: An Insider’s Account of How the CIA Spearheaded the War on Terror in Afghanistan*, Ballantine Books, New York, 2004.

43 Joint Electoral Management Body Secretariat (JEMBS) background document, 2005.

44 *Ibid.*

45 Cyrus Hodes and Mark Sedra, *The Search for Security in Post-Taliban Afghanistan*, International Institute for Strategic Studies (IISS), London, August 2007.



## Outcomes of the approach adopted

### The military response

Although the Taliban regime was soon toppled, the movement was not so easily destroyed but merely retreated to remote parts of Afghanistan and safe havens in Pakistan, from where it has – since 2004 – mounted an increasingly successful insurgency campaign.

Afghanistan was a ‘quickly won’ war, but a failed peace. The US decision to use the Northern Alliance as a proxy to rout the Taliban was widely criticized because:

The more this [i.e. payoffs by the Coalition] ... happened in the name of hunting down their prized catch, Osama bin Laden, the more the Americans undermined the interim administration and destroyed hopes of building a viable central administration for Afghanistan.<sup>46</sup>

Moreover, the return of strongmen (often after several years of exile abroad) to the fiefdoms that they had occupied prior to the arrival of the Taliban enabled commanders ‘to use the money and arms they received to invest in drug production and engage in land grabs, predation, political intimidation, and ethnic cleansing – a major source of insecurity for Afghans’.<sup>47</sup>

This set the stage for anarchy in the provinces and led to a feeling by many Afghans of alienation from the state, which was not perceived to be serving their interests. By 2005 insecurity had spread beyond the Pashtun belt and the south to many areas of the north and east, enabling the Taliban to make their presence increasingly felt.

### The Bonn Process

The feeling that many significant Pashtun leaders (as well as the Taliban, of course) had been sidelined from the meeting in Bonn and the political settlement that followed amplified the feeling (for Pashtuns) of alienation from the central government.

The last-minute participation of fifty unelected governors (in reality ‘warlord strongmen’) in the 2002 Emergency *Loya Jirga* was dubbed the ‘big tent’ approach by the presiding US Ambassador, Zalmay Khalilzad. Meanwhile, the UN chief, Lakhdar-i-Brahimi, told journalists that it had been necessary in order for ‘peace’ to be able to take precedence over ‘justice’. Others disagreed with the approach, believing that this was only a temporary solution akin to ‘renting peace’,

46 John Kampfner, *Blair’s Wars*, Free Press, London, 2003, p. 146.

47 Barnett R. Rubin, *Afghanistan’s Uncertain Transition from Turmoil to Normalcy*, Council Special Report No. 12, Council on Foreign Relations Press, March 2006, pp. 5–6.

which would soon give way to anarchy.<sup>48</sup> As Debiel and Lambach assert, such an approach to state-building was characterized by a top-down focus promising quick results but downplaying the role of informal actors and grossly underestimating ‘the political dimensions of seemingly apolitical reform’.<sup>49</sup>

The ability of the warlords to shape the outcome of the 2002 Emergency *Loya Jirga* has had a long-term deleterious effect on the state-building process, not simply because it enabled them to claim the political legitimization of the international community (whereby, instead of being called to account for their often dubious history of alleged rights abuses, they were now sharing out ministerial positions with the approval of international diplomats). It also enabled strongmen to influence key appointments both regionally and at central government level<sup>50</sup> and to affect the composition and outcome of the constitutional drafting committee and ultimately, therefore, the Constitution. The corollary is an extreme form of centralized government that protects the interests of an elite group of strongmen with whom Karzai maintains allegiances. It has also put a brake on judicial reform<sup>51</sup> and hampered the reform of security institutions both locally and centrally.<sup>52</sup>

Despite the enthusiasm by the international community for the completion of presidential and parliamentary elections in swift succession (arguably driven by US/UK domestic politics whose imperative was to demonstrate the ‘success’ of democracy in Afghanistan), law, order, and security have continued to break down in the countryside. Narco-trafficking and corruption are now known to reach the highest levels of the Afghan government, as shown by the recent corruption scandal at the Kabul Bank, the interference in the Anti-Corruption Commission by President Karzai himself, and the fact that the Afghan Deputy President, Zia Massoud, was alleged to have been found in Dubai with US\$ 52 million on his person.<sup>53</sup>

## Security Sector Reform

In 2005, one of the ‘flagship’ programmes of SSR – that aiming to disarm, demobilize, and reintegrate (DDR) tens of thousands of combatants and called the Afghan New Beginnings Programme (ANBP) – was trumpeted a success by the

48 The author was present at the Emergency *Loya Jirga* in June 2002 and has written about what happened in her forthcoming book, *The Afghan Solution: The Untold Story of Abdul Haq, the CIA and how Western Hubris Lost Afghanistan*, to be published in 2011.

49 T. Debiel and D. Lambach, above note 17, p. 3.

50 Sarah Lister, *Understanding State-building and Local Government in Afghanistan*, Crisis States Research Centre, LSE, Working Paper No. 14, London, 2007, available at: <http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/phase2papers.aspx> (last visited 8 February 2011).

51 C. Hodes and M. Sedra, above note 45.

52 S. Lister, above note 50.

53 Various articles published by the *New York Times*, including that on the Kabul Bank by Dexter Filkins, and leaked cables published by WikiLeaks in November 2010.

international community.<sup>54</sup> Though its prospective target was originally 140,000 combatants, the numbers were reduced first to 40,000, then to 10,000.<sup>55</sup> Crucially, ANBP also only tackled the demobilization of so-called 'official' Afghan army units, that is, those militias of the Northern Alliance leader Mohammad Fahim, who, in late 2001, had taken over the army units left by departing Taliban.<sup>56</sup> As such, ANBP did nothing to tackle the more serious problem of the 'unofficial' militias belonging to the strongmen controlling the countryside. These were known as 'illegal armed groups' and there were estimated to be some 1,800 such groups throughout the country in 2005.<sup>57</sup> Although a Disbandment of Illegal Armed Groups (DIAG) programme was mooted by the UN in 2005, in reality neither NATO nor the Coalition had the political will to undertake such a programme because the militias had links with the strongmen, who – since 2001 – had been allied with the Coalition. Indeed, many of these strongmen were now in government or, in 2005, about to be elected as members of parliament.<sup>58</sup> There has also been widespread criticism of the ethnic imbalance of the Afghan National Army, which remains largely Tajik and dominated by Northern Alliance generals.<sup>59</sup>

Meanwhile reform of the justice sector has been very weak. Besides lagging behind schedule, it has been hampered by some of the leaders, who themselves have known fundamentalist leanings and extremely chequered histories. For example, Abdur Rashid Sayyaf is thought to have had undue backroom influence, including the appointment in 2002 of Mullah Shahrani as Chief Justice (who promptly reintroduced the hated religious police). Overall then, the decision by the West to sponsor strongmen who many believe ought instead to have been indicted for their previous rights abuses<sup>60</sup> has had extremely negative consequences for the post-9/11 state-building project in Afghanistan.

In her assessment of state-building at the local level in Afghanistan, Sarah Lister concludes:

Disarmament, the reform of the police, and the judicial sector and close attention to the quality of senior appointments are all measures that would have contributed to shifting 'the rules of the game' in Afghanistan from informal patronage based systems, and towards a more depersonalized, formalized and rationalized exercise of power through the state. Instead their neglect at a

54 S. Lister, above note 50.

55 *Ibid.*, p. 13.

56 *Ibid.*

57 C. Hodes and M. Sedra, above note 45.

58 Author's experience of meetings between the international community and Afghan government on DIAG in Kabul, 2005. See also Andrew Wilder, *A House Divided? Analysing the 2005 Afghan Elections*, Afghan Research and Evaluation Unit (AREU), 2005, available at: [http://www.areu.org.af/index.php?option=com\\_docman&Itemid=&task=doc\\_download&gid=254](http://www.areu.org.af/index.php?option=com_docman&Itemid=&task=doc_download&gid=254) (last visited 7 January 2011).

59 'Afghanistan's troubled National Army: fixing the unfixable', in *The Economist*, 19 August 2010, pp. 39–40.

60 Patricia Gossman, *Casting Shadows: War Crimes and Crimes against Humanity: 1978–2001*, Afghan Justice Project, 2005, available at: <http://www.afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity19782001.pdf> (last visited 8 February 2011).

critical period has enabled local powerholders to continue to use the state as a means to exercise power, resisting or co-opting attempts to create new structures and impose bureaucratic rules.<sup>61</sup>

## **Constraints on the West's ability to conduct a successful post-9/11 state-building exercise in Afghanistan**

### **A historical perspective of state-building**

Boege *et al.* remind us that, although processes of state formation in the Western world were undertaken over a period of centuries and often involved much violence, since the era of decolonization Western state forms have been 'delivered' relatively fast to many parts of the Global South. This 'delivery' has tended to be guided by 'the replication of European political models'.<sup>62</sup> At the time of independence, these newly formed 'states' therefore:

lacked roots in the recipient societies, particularly where there was no unitary form of rule pre-existing colonial government. The global delivery of Weberian systems was not accompanied by the development of the economic, political, social and cultural structures and capacities that had provided the basis and framework for an efficiently functioning political order in the course of the evolution of the state in European history. ... An identity as 'citizens' and the 'idea of the state' does not meet with much cultural resonance within these societies, as people are relatively disconnected from the state, neither expecting much from state institutions nor willing to fulfill obligations towards the state (and often with little knowledge about what they can rightfully expect from state bodies, and what the state can rightfully expect from them).<sup>63</sup>

Hence interveners have often failed to understand what really constitutes 'political order' in regions of fragility. This is also reflected in the experience of recent attempts to transpose the 'ideal' of the European nation-state to the South. To understand true 'political order' in such regions, therefore, Boege *et al.* recommend moving beyond the narrow 'state-centric' discourse to understand the importance of 'legitimacy' and hybrid political order.<sup>64</sup>

Just as Dupree noted in 1973, Kevin Clements in 2009 recognized the essential elements of indigenous or tribal society whereby:

Most of the customary sources of legitimacy are based on norms of trust and reciprocity. The core constitutive values that lie at the heart of traditional legitimacy are the values that enable kin groups, tribes and communities to

61 S. Lister, above note 50, pp. 15–16.

62 V. Boege *et al.*, above note 18, p. 6.

63 *Ibid.*

64 *Ibid.*, pp. 6–13.

exist, satisfy basic human needs and survive through time. Traditional legitimacy rests on complex patterns of power, responsibility and obligation, which enable social groups to exist and co-exist.<sup>65</sup>

### The link between 'legitimacy' and 'capacity'

A reason for the West's failure in assisting former colonial states since independence lies in an underestimation of the inextricable link between capacity and legitimacy. Since independence, many such states have had difficulty in establishing their legitimacy and effectiveness.<sup>66</sup> Clements says that the same problem exists with fragile states, and defines legitimacy as 'a complex set of beliefs, values and institutions (endogenous and exogenous) about the social compact governing state–society relations'.<sup>67</sup> He asserts that legitimacy:

helps generate social and political trust and predictability; public acceptance of dominant power relations and an awareness of reciprocated rights and responsibilities. If these are not present the possibility of state systems being able to act effectively, or claim legitimacy, is very slight indeed.<sup>68</sup>

Clements cites as a possible explanation for the underestimation of the link between capacity and legitimacy the fact that concepts of legitimacy most often invoked by donors are 'almost exclusively seen in Western enlightenment terms and as some variant of the Weberian ideal type of rational-legal legitimacy'.<sup>69</sup> Consequently, such analyses focus solely on 'process and performance' legitimacy or that of institutional sources of 'rational-legal types of legitimacy (e.g. security of the state, rule of law, provision of public goods etc.)'. Very little attention is paid to traditional community and social institutions, nor to the 'interactions' between the 'two different sources of legitimacy, namely those located within the state realm and those located within the social and community realms'.<sup>70</sup>

Clements stresses that 'rational-legal legitimacy ... as found in western OECD states is only one type of legitimacy in fragile states'. Donors, he says, 'will have to engage with other types of legitimacy if they want to help build effective, resilient and legitimate states in fragile situations'.<sup>71</sup>

65 Kevin P. Clements, 'Note on building effective, legitimate and resilient state institutions', Headline Seminar on Deteriorating Governance, presented at the World Bank, Washington DC, April 2009, p. 4, available at: [http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1224016350914/5474500-1257529177557/Notes\\_Clements\\_Institution\\_Building\\_HS\\_Apr8\\_09.pdf](http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1224016350914/5474500-1257529177557/Notes_Clements_Institution_Building_HS_Apr8_09.pdf) (last visited 25 January 2011).

66 Paul Collier analyses these factors in *The Bottom Billion*, Oxford University Press, Oxford, 2008.

67 K. P. Clements, above note 65, p. 1.

68 *Ibid.*

69 *Ibid.*, p. 2.

70 *Ibid.*, p. 3.

71 *Ibid.* Clements indicates that the argument in his paper is based on the three 'ideal types of legitimacy' as espoused by Max Weber, i.e. 'legitimacy based on (1) Rational grounds – "resting on a belief in the "legality" of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (legal authority). (2) Traditional grounds – resting on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under

## The failure by intervenors to distinguish ‘limited access’ from ‘open access’ orders

North *et al.* suggest that different dynamics within states (as regards political and economic opportunities) can be characterized as either ‘limited access orders’ or ‘open access orders’.<sup>72</sup> In the latter, governments structure access to political and economic opportunities competitively via markets, merit, and elections. In the former, access to political and economic opportunities is limited to elites who are apparently dissuaded from fighting one another because they are better off ‘participating in a patrimonial network than by challenging the authorities violently’.<sup>73</sup>

The mistake of the international community (in Afghanistan) has been a failure to distinguish between ‘limited’ and ‘open access’ orders. This, according to North *et al.*, has led to a failure of development policies:

because they try to transplant elements of the open access order – such as competition, markets, and democracy – directly into limited access orders. These reforms threaten the rent-creation that holds the society together and in many cases challenge the very logic on which the society is organized. Not surprisingly, the elite and many non-elite resist, sabotage, or subvert such reforms in limited access societies that are not ready for them.<sup>74</sup>

In other words, Afghanistan continues to embody a system based more on kinship and patronage, such as a tribal people relate to, than on a rational-legal system, which is found in a Weberian state. The problem is that intervenors have proceeded to intervene on the basis that a rational-legal type of political order system can exist in a tribal society that has hitherto functioned on the basis of patronage and ‘traditional’ authority.

Sometimes there is an assumption by intervenors/donors ‘that there is some natural trajectory whereby local “traditional” sources of legitimacy evolve in the direction of a rational-legal political order’.<sup>75</sup> There is also the danger of relying

them (traditional authority); or finally (3) Charismatic grounds – resting on devotion to the specific and exceptional sanctity, heroism and exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority)”. *Ibid.*, p. 3, note 5, quoting M. Weber, above note 12, p. 46. Clements explains how Weber has thus ‘firmly linked the question of legitimacy to specific modes of production, particular types of decision-making and law-making processes and wider theories of social change’ (*ibid.*).

72 Douglass C. North, John Joseph Wallis, Steven B. Webb, and Barry R. Weingast, ‘Limited access orders in the developing world: a new approach to the problem of development’, The World Bank, Policy Research Working Paper No. 4359, Washington DC, 2007, available at: [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2007/09/19/000158349\\_20070919115851/Rendered/PDF/WPS4359.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2007/09/19/000158349_20070919115851/Rendered/PDF/WPS4359.pdf) (last visited 8 February 2011).

73 A. Wennmann, above note 14, p. 26.

74 D. C. North *et al.* above note 72, p. 5.

75 Organisation for Economic Co-operation and Development (OECD), *The State’s Legitimacy in Fragile Situations: Unpacking Complexity*, Conflict and Fragility Series, OECD, Paris, 2010, p. 54.

on ‘local “champions” of a rational-legal approach to reform’ in advancing a Western state model, whereas engaging with a wider range of stakeholders might be more realistic.<sup>76</sup>

Since 2001 the West has engaged in Afghanistan mostly with a ‘patrimonial network’ limited to the elites of the Northern Alliance strongmen (with Karzai as the Pashtun figurehead). However, this key elite has failed to build a relationship with a broader constituency – particularly the majority Pashtun population – by providing protection, welfare, jobs, and justice systems. The Taliban has therefore filled the vacuum, providing jobs and justice, especially in the south, where the Pashtun majority have felt alienated.

The above encapsulates the problem described by Dr Ken Menkhaus, whereby the objectives of the international community – in building a strong state – can often be at odds with that of the local governing elite, whom the international community is essentially ‘propping up’ (in the fragile states concerned).<sup>77</sup> For this elite, continuing instability equates to continued funding (in the case of Afghanistan, for so-called ‘Taliban reconciliation schemes’, building up the Afghan National Army, aid money, and so forth).

### The weakness of global actors in local situations

Much of the problem for intervenors (or ‘global actors’) is that, despite often having advantages in terms of resources, they still find themselves outmanoeuvred by local counterparts. Often this has to do with the fact that policy is decided far away in the intervenors’ capital city, and by the time it reaches the personnel representing them in base camp (or ‘the bush’) that policy bears little resemblance to realities on the ground: ‘The personnel in the metropolitan headquarters or in the base camp do not possess knowledge of local power structures and as a result perceive the space of the intervention as being void of any power structures’.<sup>78</sup>

Kipping has compared the 1980s intervention in Afghanistan by the USSR with that of the present day. He concludes that – like the USSR then – the West is now further ‘militarizing’ its intervention in response to a failure that is characterized by an inability to project the state beyond major urban centres into rural areas.<sup>79</sup>

76 *Ibid.*

77 K. Menkhaus, above note 2.

78 Klaus Schlichte and Alex Veit, *Coupled Arenas: Why State-building is so Difficult*, Junior Research Group ‘Micropolitics for Armed Groups’, Humboldt University, Berlin, Working Papers Micropolitics No. 3, 2007, p. 26.

79 M. Kipping, above note 1.



## The link between a ‘legitimacy deficit’ and deteriorating governance

A major problem with externally imposed state-building projects is a failure to understand the local context and hence what constitutes legitimacy locally. Accordingly:

Unless there is a close connection to deep sources of individual and collective (kin, clan, community) identities and belonging; externally imposed or supported systems will never generate that ‘taken for granted’ trust and legitimacy that exists between state and people in the West.<sup>80</sup>

The result is a breakdown in relationships and – in fragile societies – deteriorating governance. The salient indicators of deteriorating governance include abuse of power, declining security, corruption, exclusion, and failure to serve the public. Clements has identified further indicators of deteriorating governance as including:

- a) polarization between endogenous customary/traditional institutions and actors and exogenous imposed/introduced institutions/actors with regard to the reach and significance of the state;
- b) reliance by political leaders on external sources of legitimacy (aid, development organizations, neighbouring states, etc.) rather than indigenous sources of legitimacy;
- c) disagreement (along customary/non-customary lines) about accepted rules for decision-making, e.g. when community actors rather than state actors deliver welfare and education services more effectively than the state, or when customary leaders invoke traditional beliefs to invoke concepts of public/community good versus state predation;
- d) when external actors withdraw their legitimization of states or regimes;
- e) when religious leaders stand in opposition to states and mobilize the faithful to oppose the state;
- f) when there is open competition over which ‘legal system’ should take precedence, e.g. in relation to endogenous/exogenous settlement of ‘land disputes’;
- g) when state power is challenged and lacks the legitimacy to govern by peaceful means;
- h) when taxes are low or non-existent and states rely on ‘unearned income’ such as oil, diamonds, aid, logging, customs duties.<sup>81</sup>

Many of the above characteristics (or indicators) of deteriorating governance are currently found in Afghanistan.

Some academics, referring to Somalia, argue in favour of a ‘third way’ of ‘ordered anarchy’ beyond the centre. Their view is that external actors should focus

80 K. P. Clements, above note 65, p. 3.

81 *Ibid.*, pp. 4–5.

only on basic functions – for example, minimum security and protection of trade routes – while aid should be sent directly to the regions on the basis of institutionalized relations with warlords and of central government acting as mediator.<sup>82</sup> However, such an approach possibly overlooks the complexity of patterns of legitimacy at the local level. For, in Afghanistan, warlords are often not necessarily historically legitimate – particularly in the south and east – even though external proxies have changed power patterns over the past decades, endowing such strongmen with ‘force’.

There is a challenge for intervenors in understanding what constitutes traditional/customary legitimacy in fragile situations, because these elements are in constant flux and must be continuously reinterpreted to suit local conditions: ‘sources of traditional legitimacy matter a lot in fragile situations and external actors have to work with their advocates to the widest possible extent in order to promote progressive state formation, stable peace and development’.<sup>83</sup> Given this difficulty, the design of intervention strategies ‘capable of generating higher levels of political legitimacy in such circumstances’ can be extremely challenging. Additionally there is often confusion about differing types of legitimacy, including which types reside with the state as legislative, executive, and judicial institutions, which lie with governments or regimes, and which lie with communities and social institutions. A particular problem is knowing the internal dynamics of these various arenas. Hence, more research is needed.

Clements focuses on the interaction between state and non-state actors who enjoy ‘grounded legitimacy’, that is, the interaction that is rooted in ‘frameworks of customary tradition and values, from which people derive their social meaning’.<sup>84</sup> One could even call this ‘customary governance’. This, he says, would surprise Weber today because, although the introduction of Western values changed ‘popular understandings of culture and custom’, it did not manage to destroy most of the central ‘integrative elements’. As such,

people living in societies that have strong indigenous cultures have a choice of utilizing customary provisions and/or relying on state provisions. If the state is unwilling or unable to provide any meaningful security or other public goods, there is a strong willingness to resort to customary sources.<sup>85</sup>

The Taliban have – since 2001 – recognized this and filled the vacuum left by the international community and the Karzai government with a parallel

82 Marina Ottaway and Anatol Lieven, *Rebuilding Afghanistan: Fantasy versus Reality*, Carnegie Endowment for International Peace, Policy Brief No. 12, 2002, available at: <http://carnegieendowment.org/publications/index.cfm?fa=view&id=883> (last visited 8 February 2011).

83 K. P. Clements, above note 65, p. 3.

84 *Ibid.*, p. 4.

85 *Ibid.*

administration system in many provinces, including shadow governors and justice systems.<sup>86</sup>

## Ways forward

### The need to reconceptualize thinking and accept alternative (or ‘customary’) governance mechanisms

Over recent decades the discourse on state fragility and the state-building policies allied to it have tended towards a replication of the Western-style Weberian/Westphalian state, despite the fact that this form of statehood barely exists outside the world of the Organisation for Economic Co-operation and Development (OECD). In recognition of this problem some thinkers are advocating reflection on the concept of a ‘post-modern nation-state’ order.

In Afghanistan, for example, intervenors would need to take greater account of traditional legitimacy:

It is clear however, that legitimacy needs much more systemic attention in its own right and should be placed at the heart of the discourse on state effectiveness. States can only govern authoritatively and with minimal coercion if their citizens/peoples accord them legitimacy.<sup>87</sup>

The corollary of traditional legitimacy is the need to recognize and work with ‘hybridized governance mechanisms’, also sometimes referred to as ‘customary governance’ or ‘mediated states’. For example, in writing about Somalia, Menkhaus says:

The government relies on partnership (or at least co-existence) with a diverse range of local intermediaries and rival sources of authority to provide core functions of public security, justice, and conflict management ... Mediated states are intrinsically messy, contradictory, illiberal, and [involve] constantly re-negotiated deals – not ideal choices for governments but often the best of bad options for weak states.<sup>88</sup>

The concept of ‘hybrid political order’ is gaining traction, with advocates saying that this opens up new options for conflict prevention and development, as well as for new types of state-building. It also offers an alternative interpretation of governance in fragile states, case examples of the limitations of externally led state-building, and ultimately a reinterpretation of whether ‘state fragility’

86 Ken Guest, RAM Seeger, and Lucy Morgan Edwards, ‘The tribal path: commanding the prime battle space: a more hopeful strategy for Afghanistan’, in *Small Wars Journal*, March 2010, available at: <http://www.the-beacon.info/images/Tribal%20path%20May%202027.pdf> (last visited 11 January 2011).

87 K. P. Clements, above note 65, p. 1.

88 K. Menkhaus, above note 2, pp. 74–106.

and ‘patronage’ systems (as opposed to rational-legal systems) are such a bad thing.<sup>89</sup>

The idea of understanding and working with a ‘hybrid political order’ is discussed further in the following sections, in particular its potential as a means of improving ‘state effectiveness’.

### The need to understand the ‘context’ of ‘customary governance’ in fragile states in order to improve state effectiveness

Donors and intervenors need to understand better the ‘context’ of fragile societies/states before engaging with them. A first step is to recognize that such places often exhibit features whereby:

diverse and competing claims to power and logics of order co-exist, overlap and intertwine, namely the logic of the ‘formal’ state, of traditional ‘informal’ societal order, and of globalisation and associated social fragmentation ... In such an environment, the ‘state’ does not have a privileged position as the political framework that provides security, welfare and representation; it has to share authority, legitimacy and capacity with other structures.<sup>90</sup>

When such customary arrangements work well (be they economic, social, or political), they can be an effective means of delivering consensus, security, representation, and welfare to people. In many of the more remote regions of Afghanistan, for example, these customary governance arrangements are the only source of such benefits.

Because such arrangements (or customary governance) can play a positive role in expanding the reach, power, and effectiveness of the state, it makes sense for intervenors not to dismiss them as ‘too complex’ to work with, or as remnants of an outmoded system of governance to be ignored. Unfortunately, this has tended to be the case in Afghanistan since 2001. Thus elements of these customary ‘systems’ have sometimes stood in opposition to the post-9/11 state-building project, while the Taliban – who have understood their relevance – have made more use of them, ultimately to their strategic advantage.<sup>91</sup>

### Bridging formal and informal institutions

In other words, rather than simply being ordered along the Weberian model, we need to recognize the hybridity of political order that often exists in fragile societies and post-colonial states. Wennmann, in advocating a bottom-up approach to state-building, says that ‘hybrid political orders’, ‘mediated states’, and ‘pockets of

89 V. Boege *et al.*, above note 18.

90 *Ibid.*, p. 10.

91 K. Guest, RAM Seeger and L. Morgan Edwards, above note 86.

authority’ in fragile states should be leveraged by development assistance agencies because:

They are forms of authority that often go unrecognised but show that something can work in fragile states, and that they follow a particular political or economic logic or order that, alas, does not always coincide with Western perceptions of the way a state or society should work. There may be much to gain for development policy from reaching out to these existing governance arrangements and recognising them as a policy opportunity. Rather than building parallel state structures that marginalise functioning structures already delivering protection, welfare and justice to local populations, donors should explore the implications of integrating them into a long-term transition process. The starting-point for statebuilding should, therefore, revolve around what *is* there rather than what *should be* or *is not* there; hence emphasising the need for assessments of strengths rather than weaknesses.<sup>92</sup>

There is also a need to see the legitimacy accorded to traditional authorities and charismatic leaders as a resource underpinning contributions to governance and law and order at local level, and ‘as a potential resource to be drawn upon by the state system through greater interaction and engagement with local communities and their leaders’.<sup>93</sup> There is a need for intervenors to use ‘bridging institutions’ in order to open up use of this potential resource for purposes of state formation. In Afghanistan, the Tribal Liaison Office has tried to propose ways in which informal and formal systems of governance and justice can be bridged so that the concepts (and benefits) of statehood can be leveraged by local actors (and vice versa).<sup>94</sup> This work has only lately begun to be appreciated by donors (and intervenors).

The OECD<sup>95</sup> makes useful recommendations for external actors on how to improve the way they intervene, and in particular on the need not to intervene without a very comprehensive actor/issue analysis. Clements, who is also one of the key OECD working group contributors, adds that there is a need to understand that:

The main problem is not the fragility of state institutions as such, but the lack of constructive linkages between the institutions of the state and society ... Focusing on states alone often results in the external legitimization of internal legitimacy.<sup>96</sup>

92 A. Wennmann, above note 14, p. 27, emphasis in original.

93 See K. P. Clements, above note 65, p. 5.

94 Masood Karokhail and Susanne Schmeidl, ‘Integration of traditional structures into the state-building process: lessons from the Tribal Liaison Office in Loya Paktia’, in Heinrich Böll Foundation (ed.), *Issue 1: Afghanistan*, Publication Series on Promoting Democracy in Fragile States under Conditions of State Fragility, Berlin, 2006, pp. 59–78, available at: <http://www.tlo-afghanistan.org/sites/default/files/About-TLO/Boell-Afghanistan-en-Integration-of-Traditional-Structures-into-the-State-building-Process.pdf> (last visited 10 January 2011).

95 OECD, above note 75.

96 K. P. Clements, above note 65, p. 5.

Intervenors must also understand how traditional governance and charismatic movements assert themselves (for example, in the face of social and economic change) and how customary institutions interact with state institutions (and other social agencies) to generate or hinder positive change that includes and reaps benefits for marginalized societal groups.

Multilateral development agencies, too, must change their attitude to face-to-face relations and value them as much as they have previously valued bureaucratic forms of organization. Alongside this they must change their attitude to ‘time-frames’ because ‘[d]eveloping knowledge and understanding of the local everyday life of the people on the ground requires a long-term presence. Trust, built on personal relationships, might be more important than bureaucratic accountability procedures’.<sup>97</sup> There is a need to take into account

traditional forms of accountability that reach beyond conventional donor understandings of accountability. Notions of moral obligation and inter-personal accountability in the context of kin and other customary relations can be drawn upon; they are not merely sources of clientelism and corruption (which is the conventional donor perspective), but they can also be sources of social welfare and security.<sup>98</sup>

## Suggestions for further research

The OECD has recognized these issues and is trying to push donors to do the same. Its International Network on Conflict and Fragility (INCAF) has a remit to improve understanding of state-building processes. A recent report by this group explains why the promotion of ‘rational-legal’ political institutions as a means of strengthening state capacity and legitimacy in fragile environments has largely failed. The report makes a variety of recommendations, including the importance of understanding ‘country context’ rather than ‘the promotion of a particular donor-led agenda’ as a starting point for intervenors.<sup>99</sup>

However, the OECD report sometimes fails to distinguish between legitimate sources of local governance and governance ‘imposed’ by strongmen who have asserted themselves as a result of external patronage over the past three decades and – since 2001 – through the international community’s failure to exclude known rights abusers from political office. In this sense, the international community has been complicit in allowing a crisis of impunity to develop in Afghanistan that will be hard to reverse, given the increasingly ‘globalized’ relationships (such as mafia linked with illegal activities) and sources of income enjoyed by the strongmen.<sup>100</sup>

97 *Ibid.*, p. 6.

98 *Ibid.*, p. 7.

99 OECD, above note 75.

100 Alex de Waal, ‘Dollarised’, in *London Review of Books*, Vol. 32, No. 12, 24 June 2010.

Further research would be useful to clarify, for example, how traditional systems of integrity, transparency, and accountability work; how hybrid political orders function at various levels (e.g. province, district); how legitimacy at this level is generated; and where the limits of traditional and charismatic legitimacy lie with respect to youth, urbanization, shadow economies, and organized crime. It would also be useful to find out whether traditional legitimacy can meet the aspirations of young people; how communities arrive at consensus over who is a legitimate or charismatic leader; and how they ensure that such leaders play a positive role in development, governance, community problem-solving, disputes, and so forth. Furthermore, there is the question of how electoral processes impact on the legitimacy of leaders and how such processes relate to the legitimacy of such charismatic and traditional leaders.<sup>101</sup>

The overall conclusion of the OECD report is that intervenors must focus on ‘legitimacy’ instead of on capacity development and institution-building – as they have done in Afghanistan since 2001. Its individual conclusions reflect ways of limiting the ‘indicators of deteriorating governance’ identified earlier:

Legitimacy matters because it transforms power into authority, allowing rule by non-coercive means. In fragile situations, a lack of legitimacy undermines constructive engagement between state and society, which weakens state capacity and thus contributes to fragility. Multiple sources of legitimacy often compete and conflict. Conflicts between external sources of legitimacy and internal sources contribute to fragility. Large variations in perceptions of legitimacy between different areas and among different communities confront governments (and donors) with different judgements about when to negotiate with and accommodate competing, non-state actors and when to ignore or attempt to suppress them. Conflicts between pre-existing customary practice, and ‘introduced’ laws and institutions can also undermine the legitimacy of public institutions. Challenges from leaders with authority that derives from charismatic legitimacy pose a threat to those whose authority is based on both rational-legal and ‘traditional’ sources of legitimacy.

All of this contributes to fragility because it impedes constructive relations between state and society, and leaves the state unable to impose the ultimate rules of the game, and to provide a shared social and cultural framework within which people think and act.<sup>102</sup>

Ultimately the OECD recommends that: ‘Donors working in fragile situations need to invest far more effort in gaining a detailed, empirical understanding of local sources of legitimacy – of both state and non-state actors and institutions – and in monitoring the impact of their own interventions’.<sup>103</sup>

101 K. P. Clements, above note 65.

102 OECD, above note 75, p. 59.

103 *Ibid.*



## Conclusion

Since 2001, the Afghan example has taught intervenors the limits of the Weberian state model in stabilizing a fragile, tribal society that never had a strong centre. Even within that context, however, Western intervenors failed to address salient issues that have ultimately affected the legitimacy (as seen by Afghans) of their state. These included what many Afghans perceived to be the unjust political settlement in Bonn, the failure of the ‘peace versus justice’ strategy (and the concomitant inclusion within the government of an ‘elite’ cadre of strongmen whom many Afghans associated with rights abuses), a failure to deliver services and justice locally, and a military strategy that has appeared to operate in complete detachment from the political situation.

There has also been widespread resistance by intervenors to the need for a longer-term perspective and for a greater attempt to understand and to work with the Afghan context. One example thereof is continued (and sometimes deliberate) conflation of the term ‘warlord’ with ‘tribal’ or ‘tribal legitimacy’ and general dismissal of the idea of engaging with tribal contexts as ‘too complex’. There may be political reasons for this – for example, the desire for ‘quick-fix’ solutions to demonstrate ‘success’ to the domestic electoral audience of the intervening state.

Yet, as the work by several authors and the OECD shows, there is clearly a need for intervenors (whether military, development, or donors) to reconfigure their objectives for – and their approach to – state-building in fragile contexts such as Afghanistan. A longer time-frame and greater understanding of complex local contexts will be needed. Only then might it be possible to say whether Afghanistan is indeed ‘a case showing the limits’ or not. For, as Chesterman *et al.* say:

States cannot be made to work from the outside. International assistance may be necessary but it is never sufficient to establish institutions that are legitimate and sustainable ... international action should be seen first and foremost as facilitating local processes, providing resources and creating the space for local actors to start a conversation that will define and consolidate their polity by mediating their vision of a good life into responsive, robust and resilient institutions.<sup>104</sup>

104 Simon Chesterman, Michael Ignatieff, and Ramesh Thakur (eds), *Making States Work: State Failure and the Crisis of Governance*, United Nations University Press, Tokyo, p. 384.



# The future of Afghanistan: an Afghan responsibility

**Taiba Rahim**

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## **Abstract**

*Bad news about Afghanistan is a daily reality. War has plagued the country for three uninterrupted decades. Afghan women and men face daunting survival struggles. The majority of them have known nothing else but war. Considerable responsibility lies on the shoulders of Afghans themselves, who have caused extensive suffering for their fellow countrywomen and men. This article, however, argues that the future of Afghanistan lies in Afghan hands. The solution to its current problems cannot and will not come from outside. It is time for Afghan men and women to confront their problems, to address their divisions, and to envisage home-grown solutions.*

.....

Hardly a day goes by without more bad news about my country, Afghanistan. Radio, television, and the Internet tell the same story over and over again – of violence, destruction, division, corruption, and despair.

I was born in the province of Helmand in 1968 and have known peace in Afghanistan only during the first few years of my life. For the last three decades, we have had no respite from war. Afghan men and women struggle grimly for survival, trying to provide their children and relatives with the bare necessities, to obtain health care or employment, and to stay out of harm's way.

Civilians are injured or killed daily – by car bombs and suicide attacks or during air raids and ground fighting. Afghanistan is strewn with mines that cause horrifying injuries years after they were laid and render vast swathes of agricultural land unfit for cultivation. Ordinary Afghans, oppressed by the various armed groups in the land, endure untold indignities and live in constant fear.

Poverty and the protracted armed conflict have created a grim socio-economic situation. For example, life expectancy for women in Afghanistan is 43 years, compared to 82 in Switzerland (Swiss women had a life expectancy of 43 years in 1880). The figures are no better for Afghan men.<sup>1</sup> The maternal mortality rate is estimated to be 1,700 per 100,000 live births in Afghanistan, compared to 5 per 100,000 in Switzerland. The infant mortality rate (the number of children who die before the age of one) is estimated to be between 160 and 180 per 1,000 live births (the rate for Switzerland is 5 per 1,000). The under-five mortality rate is estimated to be 257 per 1,000 live births (the figure for Switzerland is 5 per 1,000). In other words, 25% of all Afghan children never reach the age of five.<sup>2</sup> Indicators in the field of education are no less depressing. Literacy rates are among the lowest in the world. It is estimated that between 72% and 75% of Afghans cannot read or write.<sup>3</sup>

This mix of circumstances has had a catastrophic impact on millions of Afghans, most of whom know no life without war. Nevertheless, it must also be said that Afghans themselves bear a great deal of the responsibility for this state of affairs, as it is they who have caused such widespread suffering among their compatriots.

Over the last few years, I have come to understand that, in addition to its many torments, Afghanistan suffers from an inability to speak for itself and to write or shape its own history. Every day, the opinions and certainties of foreign observers inundate my country and are broadcast throughout the world. And every day, the international media, think tanks, and spokespersons from the international community speak about us and write about us, about who we are, about the reasons for the state we are in, and about what we should do to extricate ourselves from our current predicaments.

The years of war have eroded Afghanistan's ability to formulate its own identity and thus to shape its future. In the following pages, I will argue that the future of Afghanistan lies in Afghan hands. The solution to our current problems cannot come from outside. Solidarity and support from abroad will always be important, but it is time for Afghan men and women to confront their problems, to address their divisions, and to envisage homegrown solutions. I will present a selection of the key challenges that lie ahead and the issues that have to be tackled.

## In search of Afghanistan's soul

The idea of *governance* is given a great deal of attention in conflict analysis and development studies. Whether it is Liberia, Somalia, or Afghanistan that is under

1 See World Health Organization, 'Country profile: Afghanistan', available at: <http://www.who.int/countries/afg/en/> (last visited 21 December 2010).

2 See United Nations Children Fund (UNICEF), 'Afghanistan', available at: [http://www.unicef.org/infobycountry/afghanistan\\_statistics.html](http://www.unicef.org/infobycountry/afghanistan_statistics.html) (last visited 21 December 2010).

3 *Ibid.*

consideration, one finds numerous references to the importance of such things as a well-organized and clearly structured distribution of power, the rule of law, and transparent and accountable institutions.

Discussions about governance, besides sounding technocratic at times, convey the impression that ‘good governance’ is a universal remedy, one that will solve all your most pressing problems. In reality, matters are far more complex: taking a close look at governance issues in Afghanistan is like setting out on a trip to discover the soul of the country.

In Afghanistan, authority has traditionally been exercised at the most local level: by clan elders or tribal leaders. This decentralization of power has made it difficult to hold the country together. It was only in the mid-eighteenth century that the kingdom of Afghanistan was unified by its ruler Ahmad Shah Durrani; in 1776, his son Timur transferred the capital from Kandahar to Kabul. Ever since, Afghanistan has endured the mismatch of a decentralized soul and centralized rule from the capital. For more than 250 years, kings, prime ministers, and presidents – and foreign occupiers – have all failed to exercise authority in a manner that binds the whole country together and gives it a common purpose.

It is difficult to escape the impression that whoever has ruled in Kabul has continued to apply the principles of local politics. For Afghans, ruling in Kabul has been simply another way of serving one’s own interests and those of one’s family and extended clan. There is an old Afghan saying that describes this well: ‘Every Afghan dreams of one day taking control of Kabul. Yet, as soon as he does, he loses the rest of country’. Foreigners have suffered the same fate. Though undertaken for different purposes, both the Soviet and the US-led invasions failed because of their insistence on holding and providing support for the capital and a few other urban centres.

I experienced the strength of the love–hate relationship between the capital and the rest of Afghanistan when my family moved from the province of Helmand to Kabul. I was a teenager then and my father was determined to see his sons and daughters go to university. Kabul was thus full of promise at the time for people like us, but one could not fail to feel the gap between the city and its inhabitants and the rest of the country.

Kabul was the place that attracted the investments, where infrastructure was built and where opportunities existed. People from the provinces were regarded as backward and uneducated, and almost as if they were foreigners. While such attitudes exist in other countries also, in Afghanistan this disconnectedness was reinforced by the absence of a manifest will to unify the entire population in all its diversity within a truly national project. A closer look at the country’s history shows that some of its rulers would ‘discover’ the notion of unity only when their authority was being challenged or when they were in danger of being overthrown. Afghans have failed throughout their history to develop a vision for the country as a whole, and have also failed to make the capital look beyond itself and serve the interests of the entire nation.

## Building a common identity

Every nation and every society – in fact, every human being – has an identity, which rests on a set of experiences or myths, values, and aspirations. Let us explore what these may be for Afghanistan. If one were to ask men or women in my country what it is that makes us *Afghan*, I believe that most would first say, the Muslim faith. There are, of course, some Afghans of other faiths, but the core of Afghan identity has been guided and nourished by Islam for centuries. Recent events notwithstanding, the Afghan practice of Islam has been characterized by moderation, modesty, and amiability.

I grew up in a family that was devoted to the tenets of Islam. My father was a deeply religious man, who believed that it was his responsibility to ensure that his children were educated in the national system, even as they lived by the teachings of the Qur'an. The years of war, the weight of traditional tribal codes, and foreign influences have led to a more radical and at times brutal interpretation of Islam. Nevertheless, there is no doubt that Islam will remain a strong binding element in the identity of Afghanistan.

When one looks beyond matters of religion and faith, the situation becomes more complicated. Many Afghans are likely to describe the country's identity as having been formed by the numerous instances in which its people rallied to take on and defeat invading foreign armies. Outsiders have called Afghanistan the 'graveyard of empires'<sup>4</sup> and this iron determination to preserve their independence is generally a source of pride for most Afghans. After all, there are not many countries in the world that can say that they have never been colonized. And yet, a closer look suggests that defeating the British and the Soviet forces is far from sufficient to establish a common national identity. Who wants to live in a graveyard?

Afghans have indeed endured numerous attempts by foreigners to invade and rule them. It is true that we have resisted many of those attempts successfully and that we can be proud of wanting to rule ourselves. However, we have never been able to decide how we want to use our hard-earned independence. As soon as we are left to ourselves, we are riven by divisions; we have no shared purpose. If you were to sit down with an average Afghan family or to have tea with a group of village elders, they would answer your questions about Afghan identity by referring to the battles that Afghans have fought rather than to anything connected with the development of the country. No one would mention anything like a national literacy campaign or a major irrigation scheme.

In order for our country to achieve some degree of stability, Afghans must first develop a positive self-image and a national agenda in which every Afghan is included. This entails addressing some demanding issues.

4 See Seth G. Jones, *In the Graveyard of Empires: America's War in Afghanistan*, W. W. Norton & Company, New York and London, 2009.

## Bridging the urban/rural divide

I have already referred to the gap between the capital and the rest of the country, but deeper emotional and social fault lines run between the urban centres and rural areas. Successive generations of national leaders have failed to devise policies that integrate the rural populations into a national plan.

I have often heard comments from abroad about the irrationality of the violence and destruction inflicted by Afghan factions on their towns during this unending war. When Kabul fell to the mujahideen in 1992, who then began fighting among one another for control of the city, much of the destruction was in part the result of fighters from the countryside settling accounts with the capital. There is no justification for the brutality that led to so many civilian casualties. It is, however, necessary to analyse the roots of some of that violence and anger, which lay partly in feelings of humiliation, built up and endured over decades and centuries.

People have asked me why the fighters did not just move into the homes and palaces instead of destroying them. It is important not to overlook the fact that Afghans from rural areas have never been made to feel welcome in the capital of their country. Their contribution to the national economy and to the creation of the nation's wealth was not acknowledged and so they turned their resentment against the cities and their inhabitants. It goes without saying that it would never occur to me to condone their brutality. In fact, my family and I, alongside thousands of other inhabitants of Kabul at the time, were witnesses and victims of that destruction and the impact that it had on people's lives and on Afghanistan's image abroad.

After 2001, things began to change somewhat and the Afghan parliament, as a result of the elections held on 18 December 2005, began to be slightly more representative of the country's regional diversity. Nevertheless, in terms of *governance*, we are still far from finding the right approach. Indeed, much of the emphasis has again been placed on institutions in Kabul. In other words, there is once again a concentration of law-makers and decision-makers in Kabul, where they perpetuate the country's long-standing tendencies towards centralization. No one denies that good people are needed in the capital, but their purpose must be greater than simply generating investment for the capital and bringing progress to it.

Instead, they should be building a new Afghan political consciousness that seeks to transfer aspects of law-making and decision-making authority to the provincial level. Afghanistan needs to develop a countrywide consensus on what constitutes national responsibility and what falls under the authority of the various regions. Investment and development – ambitious rural development schemes, micro-economic initiatives, and education plans, for instance – would then be better distributed throughout the country. The cities of Kabul, Herat, Mazar, Kandahar, and Jalalabad cannot be the only places to which people turn in search of opportunities. Better economic and social opportunities for people in the places where they now live will lead to a safer Afghanistan.



Sadly, an illustration is provided by the Afghan refugees who have come home or been forcibly sent back after years of living abroad, primarily in Pakistan and Iran: most of them are to be found in overcrowded Kabul. This is only partly because their places of origin have become extremely unsafe; there is also, for economic reasons (usually to do with agriculture), nothing for them to return to. Similarly, some of the earliest flaws in the US-led invasion could be seen in the refusal to engage in nation-building and to secure the country beyond Kabul, and, most crucially, in the inability to ensure that rural areas would also enjoy the benefits of the international presence.

A stable Afghanistan cannot be built at or from the centre. A genuine political process must be developed by the government in Kabul but it will be effective and durable only if rural Afghanistan feels, and is, part of the whole.

## **Afghanistan as the sum of all of its ethnic groups**

The Afghan Constitution decrees that:

The nation of Afghanistan is comprised of the following ethnic groups: Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pashai, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and others.

The word Afghan applies to every citizen of Afghanistan.<sup>5</sup>

The sentiment is to be welcomed, yet few Afghans would claim that this ‘nation of all Afghans’ once existed, or exists today, in any way that is meaningful. For a very long time, many people equated being Afghan with being Pashtun. The Pashtuns were the founders of Afghanistan and provided the country with its ruling families or clans for over two hundred years, until the very early years of the war in the 1980s.

War is destructive and causes immense suffering, but it can also sometimes transform societies in unexpected ways, notably through the maturation of previously marginalized and oppressed constituencies and communities. However, the conditions today do not reflect the sentiments expressed in the Constitution. If the war were to come to an end tomorrow, one of the biggest challenges for Afghanistan would be to learn to think and act beyond ethnic boundaries. There are few political parties that advocate a vision or platform that includes all ethnic communities, Afghanistan’s history and its conflicts having generated a powerful brand of ethnic politics.

The unease between the various communities is widespread, the result of accumulated suffering and an entrenched lack of trust. People do not know how to live together and this is a powerful impediment to building a unified country. The level of trust between the various communities is almost as low as it has ever been.

5 The Constitution of Afghanistan, Chapter 1, Art. 4, available at: [http://www.afghan-web.com/politics/current\\_constitution.html](http://www.afghan-web.com/politics/current_constitution.html) (last visited 21 December 2010).

In truth, if Afghanistan is to have a stable future, there are few things more important than genuine openness and greater co-operation between the country's ethnic communities in addressing the most pressing socio-economic challenges.

Because it has allowed itself to be dictated to by the differences that divide Afghans, and has failed to define what unifies the various communities, Afghanistan knows almost nothing of what it is to be a nation. Beyond the ideas expressed in the Constitution, the question for Afghans is whether we will be able in the future to develop the shared sense of history, culture, and purpose implicit in the idea of a 'nation'.

## Dignity for women and for men

An issue that generates frequent and substantial international attention is that of the situation of women in Afghanistan. I have written and often spoken about the subject, and it lies very close to my heart.<sup>6</sup>

Afghan society is ruled by tradition and is extremely conservative. Men have exercised immense power in society and in politics from the very beginning. Women, in contrast, are marginalized and oppressed. They endure extreme hardship, especially in rural areas, and war has made matters far worse. Women have been subjected to shocking acts of violence and abuse and have had to cope with even more humiliation, poverty, and exclusion.

Despite the anger and resentment that all this provokes in me, as in many other people in Afghanistan and abroad, I believe deeply in the need for moving away from the persistent depiction of Afghan women as victims. The first step towards preserving their dignity – our dignity – is to identify the strength that exists in Afghan women. We want to be – in fact, *are* – agents of our own development. We are not mere statistics, illustrating well-intentioned articles about our condition. We do not want to be on people's minds or portrayed on the covers of international magazines, to serve as objects of virtuous pity or to provide justification for clinging to unsuccessful military strategies.

We want less to be talked about than to be listened to. For that to happen though, Afghan women must assume responsibility and develop a forward-looking discourse and action. Nothing will be given to us free of charge. We will face a long and demanding struggle, one that we must undertake by ourselves. It should not be forgotten that, although there have been periods of strong international interest and commitment during the last thirty years, there have also been prolonged periods of silence and diminished attention, to say the least.

6 Taiba Rahim, 'An identity of strength: personal thoughts on women in Afghanistan', in *International Review of the Red Cross*, No. 847, September 2002, pp. 627–641.

This realization must lead Afghan women to take the initiative in shaping or establishing the roles and responsibilities of men and women in a way that is more balanced and equitable. Many women are actively doing so, sometimes at great risk to themselves. Several women today are working as politicians, teachers, or nurses in hospitals. Despite the risks involved, they are determined to assume these responsibilities and contribute to change.

While creating appalling amounts of suffering, the war has also led to transformations in Afghan society. Afghanistan is a country with a huge number of widows. While traditional values ensure that some of them are still welcome in their wider families, many have to fend for themselves, finding sustenance for their children and assuming new and more active roles and duties. The number of Afghan women in parliament, while arguably the result of international pressure, is further proof of a changing environment.

Improving prospects for Afghan women must be part of a broader effort, one that also seeks to improve the situation of Afghan men. No one must deny or minimize the terrible oppression and cruelty inflicted on Afghan women both before and during the war, by individual men and by parties to the war. However, any honest review of what men have endured over the past three decades will lead to the same grim conclusion: they have been killed, tortured, mistreated in other ways, and humiliated, in very large numbers.

Today, in towns and villages across the county, honest Afghan men are in search of employment, means of subsistence, and dignity. In most instances, their quest is in vain. To overlook this fact and its adverse impact on the prospects for a better Afghan future would be very problematic. I have said that we must go beyond urban/rural and ethnic divisions. I believe just as firmly that strategies for improving the situation of women in my country must include plans for improving the situation of men as well.

## **A commitment to education**

The war has now lasted so long that increasingly few Afghans have any personal memory of Afghanistan at peace. For many Afghans, peace will seem the remotest of possibilities and beyond reach. During certain of my presentations, on Afghanistan or on the situation of women, audiences react with disbelief when I speak about some of the steps, such as local initiatives to improve educational standards, that I think are necessary – and possible – for securing a better future for the Afghan people.

It is difficult for me to fault foreigners for believing that there is no hope for my country. The news that they hear is unremittingly bad. The image that they have of Afghans is associated with war, brutality, extremism, and the oppression of women. For many Afghans, the situation – suicide attacks, air raids, kidnappings, extortion, poverty – is indeed very bleak. There is, however, one fundamental fact that will always distinguish the way in which my compatriots and I contemplate our country's future: we live in Afghanistan; it is our land. Therefore, regardless of

how desperate the situation may seem or be, we must look for solutions, and remain hopeful. This is not naivety, just realism.

Every Afghan must understand that he or she has a duty in this regard. Pessimism and despair will achieve nothing. In my own case, I drew strength from my father's vision: he left his village in central Afghanistan because he wanted his children to receive an education. I created an Association<sup>7</sup> in 2007 with the intention of returning to that region and building a school there to honour my father's courage. Since then, I have completed three school-building projects and am now embarking on a health project.

In my view, education is crucial for enabling people to extract themselves from poverty, exclusion, and underdevelopment and write their history. The results of my projects have gone beyond my initial expectations. First, I take great pride in the fact that these are projects by Afghans, with Afghans, and for Afghans. That they were designed and implemented by a daughter of the region has not gone unnoticed. I see this as a contribution to cultural change. Furthermore, when I visited the communities in 2010, I became aware that many families were sending their children to school now that they had been provided with an acceptable environment for studying. In other words, parents saw an alternative to sending their children to the fields. This was true for both their sons and their daughters.

I want to stress this because one of the questions I am most often asked is whether my projects focus on schools for girls. If conditions in my country are to improve, it is vitally important that girls be provided with an education; but it is no less important that boys be educated. Much of the violence directed at women in Afghanistan is the result of tradition and lack of education. It is important to understand that if more girls go to school but boys do not, many of Afghanistan's problems will remain. Therefore, the schools I am building are improving conditions for girls *and* boys.

The approach I have taken is to work with central and provincial authorities. My projects were formally approved by the ministries of education and of health. They did not conceal the fact that the remote communities I was focusing on were not their priority. Therefore, they had allocated no funds for these areas. They nonetheless provided me with the necessary authorization and support. I wanted to make sure that my projects fitted national objectives and agendas. I also made sure that local authorities in the villages concerned contributed their share: they gave the land for the projects and committed themselves to maintenance in the future. I will hold them to their commitments. I wanted to show them that one should not always wait for others to solve one's problems.

Finally, I wanted to make a small contribution to changing the image of Afghanistan abroad. I wanted to show that Afghans had initiative and could make things happen. Most of my fundraising has taken place in Switzerland and a few other countries. To date, over 700 individuals and institutions have helped fund

7 The Nai Qala Association, available at: <http://www.nai-qala.org> (last visited 31 January 2011).

my projects. I find this quite remarkable, considering the many reasons that could be given for not putting money into Afghanistan. I believe that they did so because they have begun to hear a different story about Afghanistan, that it is a country like any other, where men, women, and children are in search of security, respect, and dignity.

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