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STATE RECONSTRUCTION AND INTERNATIONAL ENGAGEMENT IN AFGHANISTAN

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Some remarks on the topics of the conference

- The outreach of the government of Afghanistan is still very restricted. Despite positive changes, its influence in other parts of the country is still very limited and contested.
- A crucial issue is the strong role of regional and local power-holders. Should these power holders be called ‘warlords’ and be side-lined or should they be considered regional leaders and included in the state formation process?
- Regional power-holders are so far not willing to share their revenues with the central government. This is a dilemma for the international community, which provides aid to the central government, the amount of which nowhere near matches regional incomes. The question is how to transform these war economies into economies of peace.
- The Petersburg Agreement has provided a very tight schedule for the establishment of a constitution, the second Loya Jirga and the next elections. Some argue that postponements would risk any chance to consolidate peaceful settlements, while others are afraid that premature elections could trigger escalation of violent conflict.
- There seems to be a tendency to let the discussion on security overshadow the necessity to rebuild and reform the judiciary. To avoid a return of an authoritarian and repressive state, more attention should be devoted to the judiciary, independent media and civil society groups.

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Summary

State Reconstruction and International Engagement in Afghanistan

Introduction

The workshop had as its objective the examination of four aspects of state reconstruction in Afghanistan: achieving security; building fiscal and financial systems; establishing government organisations and institutions; and reforming legal systems. The scholars and practitioners presented and discussed recent research with the aim of informing and influencing the direction of international intervention.

Adam Pain opened the proceedings with an assessment of international interventions in Afghanistan, arguing that the US-led effort, which promotes the establishment of a minimalist state may prove inadequate to securing peace and initiating a process of development in the country.

Panel I – Providing Security

The papers in this panel discussed the continuing strength of regional power-brokers, or warlords, problems of establishing a national army, dilemmas related to demobilisation and efforts to establish integrated security and to launch development in the regions.

1. The **Provincial Reconstruction Teams** potentially could support security sector reform, particularly disarmament, demobilisation and reintegration, and strengthen government administrative capacity at the District and Provincial levels, but their subordination to Coalition military command and the tight time schedule imposed at Bonn may prevent them from achieving this potential.
2. At present **international military intervention** appears to be geared more towards the fight against international terrorism than towards the establishment of domestic security.
3. **Demilitarisation, demobilisation and reintegration:** the new DDR programme - 'Afghanistan New Beginnings Programme' - is well designed, but DDR cannot proceed without the reform of the Ministry of Defence and without a plan to reduce heavy armaments, an acceleration of training programmes in the new national army and the creation of alternative sources of employment and status, especially for middle-level commanders.
4. The training of the **Afghanistan National Army** is slow but making progress and its officer corps has become both more representative and better trained. Further progress can only be achieved by accelerating training and recognising that most recruits will be drawn from previously existing militias.
5. **Warlord power** has been restored following the events of September 11 and positive incentives need to be created to ensure their cooperation in achieving peace and national integration. Attention needs to be given, however, to establishing an ethnically balanced (or ethnically neutral) central Ministry of Defence that has both the credibility and authority to deal with regional power brokers on an even-handed basis.

Panel II – Re-establishing the Fiscal Basis of the State and a Working Financial System

The panel covered a wide range of issues concerning the persistence of a war economy, the establishment of a fiscal system and the rebuilding of the financial system.

1. **Three economies coexist** in Afghanistan today: a war economy, a shadow economy and a coping economy. International interventions must be based on a much more thorough understanding of both local and regional incentives and dynamics within these economies.
2. **Aid** continues to give rise to a ‘parasitic bubble economy’ in Kabul, while neglecting the countryside, leading to an exacerbation of disparities and tension. At the same time, the **international criminalisation of drugs** production and trade sustains criminal and war entrepreneurs.
3. International economic assistance programmes need to pay more attention to **fiscal reconstruction, including considering imposing taxes on expatriates** working for the international agencies within Afghanistan.
4. Given the economic strength of regional power brokers and warlords, the central administration in Kabul will never achieve authority without devising ways to bring real support to the regions. Donors could **invest more resources to be distributed through the central government to the district and provincial authorities** to break the cycle of distrust that leads to poor revenue transfers to the centre.
5. Rapid progress has been made in establishing emergency mechanisms within the financial system and setting the basis for a new monetary system through the **successful launching of a new Afghani currency and the ongoing rehabilitation of the central bank**.
6. An **innovative approach towards the *hawala***, integrating, rather than excluding, the informal payment system from the processes of financial reconstruction may prove to be one of the most important contributions of the international community to the restoration of the Afghan economy.

Panel III – Rebuilding Political Organisations and Institutions

The panel considered the ways in which ethnicity, Islam and local perceptions have affected the processes of political reconstruction in Afghanistan. Attention was devoted to an analysis and discussion of planned elections and whether or not they are precipitous.

1. While **ethnicity** is clearly manipulated and even manufactured by political actors to advance their objectives, it nonetheless serves as one basis of mobilisation, but efforts should be made to foster forms of organisation and representation that are based on other interests and identities.
2. The specific characteristics of **Islam** in Afghanistan need to be better understood by international actors, especially in relation to seeing not only sources of radicalism but also the norms and traditions on which political reconstruction can be based.
3. There is a basis for the Kabul administration to improve its legitimacy in the regions by directly **addressing the needs and demands of local people** who feel hard done by at the hands of regional power brokers. International actors need to sharply increase their knowledge of, and attention to, the realities of people in the rural areas.

4. The international community should consider the possibility of **postponing elections scheduled for 2004**, especially if there is not significant progress in securing the peace. If perceptions that elections are part of an **exit strategy** for the donors sink in, this may ensure a negative outcome to the electoral process.

Panel IV – Re-establishing a Legal System

This panel discussed the design and procedures governing a new constitution, the Islamic characteristics of indigenous legal systems, access of marginalized groups to legal protection and the problems of war crimes and impunity.

1. The **re-establishment of legal and judicial systems will be determined by four factors**: (1) the social legitimacy of the material content of the law and its capacity to encourage political stability and social equity; (2) provisions of implementation in the context of insecurity and unequal distribution of power; (3) the creation of space for negotiation; and (4) the institutional integration of existing pluralistic legal systems.
2. A **new constitution** must be adopted by a mixture of representation through appointments and elections within existing groups and regions. The structure of power outlined in a new constitution must ensure voice to contending regions without undermining the possibilities for central authority.
3. A **secular constitution is highly unlikely** to be adopted. Crucial in the constitutional process will be the designation of what authorities are empowered to decide what is and is not Islamic.
4. Legal reform will necessarily need to take account of traditions of **Islamic law, which are always shaped by existing powerbrokers**, as law is more generally. There are areas of dispute resolution (especially at the family and kin level) and law that have worked well in the past within Afghanistan and these might serve as the basis for legal reform. However, customary law needs to be scrutinised for its discriminatory aspects in the process.
5. While ‘unlocking’ the family, or at least creating more ‘elastic boundaries’ between family and the public, may be a prerequisite for giving **women access to state legal institutions and organisations**, attempts at doing this in the past have proved ephemeral. More research is needed to understand how Afghan women see themselves as Muslims and how they see their relationship to Islam.
6. **Transitional justice**: The international community needs to support efforts to **document war crimes**, even if prosecution of crimes is politically unfeasible at the moment. Mechanisms for reconciliation must be initiated and taken seriously. Some minimal efforts need to be undertaken to exclude those who committed crimes in the past from positions of authority, or at least positions within the communities where the crimes were committed.

Concluding sessions of the Symposium

The concluding session of the Symposium was led off by Barnett Rubin who spoke about, ‘**Perils and Chances for the Rebuilding of Afghanistan**’. The discussion that ensued tied together many of the earlier debates. Participants laid out the key elements of a **research agenda** and the symposium concluded with a five-member panel chaired by Schetter and Putzel.

Introduction

Tobias Debiel and James Putzel opened the proceedings reminding participants of the objectives of the workshop, which were centred on examining four aspects of state reconstruction in Afghanistan: achieving security; building fiscal and financial systems; establishing government organisations and institutions; and reforming legal systems.

In his introductory paper, **‘Empire Lite – State lite- transforming the punctuated equilibrium or a pathway to extinction?’**, Adam Pain focused on three issues: (1) how we understand the phenomena of ‘failed states’, state building and reconstruction; (2) examining what is actually happening on the ground in terms of ‘state building’ and how this reflects dominant trends in the international community – that is constructing ‘state lite’, or a minimalist state, under the wing of what Michael Ignatieff has called ‘empire lite’, or the US-led strategy of intervention; and (3) a plea that we do not simply present our findings to the international community in the context of what was an unproblematised project of state rebuilding launched in November 2001, but rather that we interrogate how ‘state collapse’ has been understood by the donors and subject the strategies being pursued to serious scrutiny.

Pain started with an analysis of the situation in Mazar-i-Sharif, where three rival groups (Ustad Atta’s Jamiat, General Dostum’s Jumbesh and the Hisb-i Wahdat) are fighting for supremacy. All have control over economic resources and military force and neither the international security forces nor the Interim Authority or its successor, the Afghan Transitional Authority (ATA) have moved to suppress the factional fighting – it is ‘clear that peace has not broken out’. This is but one example of how the Karzai administration can be best seen as ‘being in office but not in power’. However, here Pain interrogated the prevailing conception of a ‘failed state’ and explained why he thought it is inadequate to describe the realities of Afghanistan. To consider the state ‘failed’ implies that we are operating in an institutional and organisational vacuum, while to speak of re-construction, re-establishment and re-building the state implies that there was once a successful secular modern pre-war state that can be restored – both very dubious propositions. In fact, in local areas many institutional and organisational remnants of previous state formations, if not wholly functional, still exist and operate as both opportunities and constraints on what is possible. This can be seen in the form of still functioning district courts involved in land transactions or the partially defunct but nevertheless existing provincial and district administrations. For Pain, the puzzle is not why things are so bad, but why they are not worse, and this, he argued, is because of the manifold informal networks that local people have themselves constructed. These, Pain argued, must not be neglected as donors proceed apace with modernisation programmes. .

Borrowing a metaphor from evolutionary theory for the title of his paper, Pain introduced the concept of ‘punctuated equilibrium’ to stress the point that states do not emerge in an incremental progressive fashion and bouts of state building can be followed either by reproductive success or marginalisation and extinction. Both the longer-term durability and the spatial reach of any state in Afghanistan is still very much an open question. Regional players ‘stand outside the writ of the Kabul administration firmly based in “borderland economies” such as those built on the opium poppy’. In these circumstances ‘empire lite’ has neither created security nor the conditions under which a local leadership may take over the territory of Afghanistan. ‘State lite’ at present implies that the rules of the game are set by the international community, while funding remains inadequate, as the interim administration unloads responsibilities for future growth onto the ‘private sector’. Pain suggests that a process where private actors receive responsibility for public welfare is

dubious if deployed as an instrument of reconstruction. Similarly, the National Solidarity Programme (2003), based on a paradigm of depoliticised community driven development, may look successful in terms of the number of projects launched, but less so in terms of distributional and livelihood outcomes. It appears questionable whether a 'light state' can deliver reconstruction under the conditions of extreme state frailty now prevailing in Afghanistan.

Panel I – Providing Security

with Vikram Parekh (chair), Dr. Bernt Glatzer, Barbara J. Stapleton, Mark Sedra, Dr. Antonio Giustozzi, and Dr. Tobias Debiel (discussant)

Warfare continues in Afghanistan and 'securing security' is still a long way off. The papers in this panel discussed the continuing strength of regional power-brokers, or warlords, problems of establishing a national army, dilemmas related to demobilisation and efforts to establish integrated security and to launch development in the regions.

In his paper, 'Anatomy and faultiness of the Afghan conflict', Bernt Glatzer identified what he considered the main forms of conflict and political unrest in Afghanistan, as well as the main actors and their motives, aims, strategies and tactics. After 20 years of war, Afghanistan's home-grown institutions of conflict resolution are no longer sufficient to deal with the principal fields of conflict today, which include: the Afghan Transitional Administration (ATA), the centre vs. periphery, the regional centres vs. regional peripheries, politico-ideological conflicts, ethnicity, foreign interventions, the grey economic sector and drugs, and the security sector.

To achieve significant change, Glatzer argued that aid would have to bypass regional power brokers to reach people on the periphery. While people generally identify with Afghanistan rather than separate ethnicities, there is little awareness of the state or understanding of elections planned for 2004, demonstrating the need for a massive education campaign and an increased presence of the Karzai government in rural areas. Ethnic boundaries, he argued, are overemphasised by foreigners and ethnicity is manipulated by political entrepreneurs and warlords to motivate their forces. From Glatzer's point of view, a future state in Afghanistan must be based on broad representation, but this should not be confused with a system of ethnic calculus. Afghanistan is locked in a war economy and a market of violence. While Glatzer sees several problems connected with integrating the warlords into the future state, particularly those who have committed crimes against humanity, at present, there may be few alternatives.

Barbara Stapleton spoke about '**The provincial reconstruction team plan in Afghanistan**'. The PRTs grew out of the US-led Coalition's plan for 'joint regional teams', presented in Kabul in November 2002. The idea was to expand civil-military programmes throughout Afghanistan (thereby facilitating reconstruction and conferring wider legitimacy on the central government) without having to extend the mandate of the UN-sponsored International Security Assistance Force (ISAF) beyond Kabul. A possible shift in PRT focus, away from the small assistance type projects that have characterised their activities to date, towards enabling security sector reform and the implementation of projects focusing on civic and economic development, has been encouraged by the UN with support from NGOs. The Coalition, the UN Assistance Mission to Afghanistan (UNAMA) and the NGO community

recognise that PRTs, as constructed, cannot solve the deepening security problem, particularly visible in the south and east of the country, but PRTs could make a contribution in areas where NGOs cannot operate, such as, supporting government administrative capacity at the district and provincial levels by rehabilitating key administrative structures such as police stations and law courts.

Stapleton argued that it is too early to judge whether PRTs will contribute to the Bonn process or not. Constraints preventing PRTs from meeting their stated objective - expanding the legitimacy of the central government - include the continuing absence of the Karzai administration from visible involvement in the PRT process. The role of PRTs in support of security sector reform and disarmament, demobilisation and reintegration in particular would be their most valuable contribution given the fragility of the transitional period and continuing absence of any effective mechanisms to address the various root causes of instability. Stapleton concluded by arguing that PRT's required time to help build public confidence in the Bonn process, yet the timetable of the Bonn Agreement militates against the gradualist approach envisioned in the PRT plan.

In his paper, '**New Beginnings or a Return to Arms? The disarmament, demobilisation and reintegration Process in Afghanistan**', Mark Sedra argued that in spite of tremendous public support for DDR, the process has yet to be implemented. He identified nine challenges facing the implementation of the DDR.

First, the security vacuum present in much of Afghanistan is the most pressing obstacle, since a minimum of security is required to start the DDR process. Second, there is a research and analysis issue, as successful post-war demobilisation and resettlement require good data for planning purposes, effective logistics and management. Third, it will be necessary to forge a political consensus among key power brokers. Fourth, the Afghan Ministry of Defence should be reformed to make it non-partisan and broadly representative of Afghanistan's ethnic composition. Fifth, there needs to be a greater emphasis on aspects of reintegration. Sixth, delays, inefficiency, an a lack of resources and initiative have marred the entire security sector reform process, while the effectiveness of DDR is dependent on progress made in the other pillars of the security sector reform agenda. Seventh, donor reform is necessary and donor states and organisations need to make long-term commitments to the DDR process. Eighth, previous DDR experiences show that the outcome of reintegration depends, to a certain degree, on the support ex-combatants receive from communities to which they are returning. Lastly, all DDR processes face the danger of becoming over fixated on disarmament, particularly the number of arms collected. Yet, removing all small arms from Afghan society is implausible.

Sedra concluded that the new DDR 'Afghanistan New Beginnings Programme' is well designed and marks a breakthrough in security sector reform. Yet, a number of preconditions should be met prior to initiating the process: a political agreement amongst the country's major power brokers, an expansion and acceleration of the entire security sector reform process, stringent reform of the Afghan Ministry of Defence, and the establishment of a viable security force to facilitate DDR. If such preconditions do not exist, funds should not be channelled to DDR.

Antonio Giustozzi began his talk on '**The Re-building of the Afghan Army**', by saying he was much less pessimistic after a recent research trip than he had been. Several new training programmes had been established, most notably by the French and the British. Even though there was resistance from the Afghan Ministry of Defence, the French managed to force the MoD to change its means of selection of officers in order to make it less partisan and more representative. By April 2003, the large majority of the new candidate officers selected for the

training programmes were being chosen from among those who had three years of military academy training in the past (generally during the Soviet era). This marks a major shift from the early days, when most officers were ex-mujahidin combatants and should favour the slow emergence of a more professional Army. Yet, overall reform of the MoD remains problematic, although such reform is crucial for the political future of Afghanistan.

Giustozzi argued that the model of the state adopted in the Bonn Agreement conflicts with the type of feudal state established during the war period. As a result, there are effectively two states co-existing, one around the central administration and one around dominant power-holders, which is not conducive to establishing stability. This stalemate explains why the ATA has not been too successful in expanding its influence in the provinces. However, there are signs of a slow erosion in the power of regional leaders. A number of small warlords are emerging in areas formerly under the authority of regional power brokers. It was easier for the ATA to negotiate with a small number of big warlords. Nevertheless, from the perspective of the central authority, the big warlords remain a threat, even if they might not necessarily be strong and persistent.

The Discussion

Security was seen as the central issue in reconstructing Afghanistan on which the establishment of authority and a tax regime, or implementing legal reforms, all are dependent. **Tobias Debiel** led off the discussion, which focused on whether warlords were part of the problem or part of the solution, the tensions between US and other approaches to security, incentives for demobilisation, the economic basis for continuing violence and the problems of women.

Regional power brokers

Debiel criticised Glatzer's assumption that warlords realise they will have to subordinate themselves to the central state in the future, arguing that every warlord knows the foreign troops will eventually leave and that power relations will change in their favour. It was generally felt that the slow pace of training in the national army – a deliberate decision by the coalition forces - means that militias will continue to play a role. The only check on warlord power is the presence of foreign forces, but there is a lack of commitment to place more troops, money and resources in the country. Some participants argued that the central problem is not warlord power as such but who holds the Ministry of Defence. Some participants suggested there was no alternative but to work with the warlords and win them over to the central government. They suggested there are indications that some may be willing to cooperate and that many had a 'wait-and-see' attitude. Participants argued for the creation of positive incentives for warlords to integrate, but suggested we lack the kind of 'survey information' needed to determine both what the warlords want and what Afghans want. Others argued that the warlords will be hesitant to give up their autonomy as they would lose their current means of finance - drug trafficking.

Disarmament, demobilisation and rebuilding the national army

Debiel wondered whether a national army could be of much use when the still armed militia have over 70,000 soldiers. Several participants noted that there is a general desire among combatants to lay down their arms. It was pointed out that regional stability depends less on little or big warlords, and more on the 100s or 1000s of mid-level commanders who expect a

viable alternative to their existing sources of influence and power. Under certain conditions they can be integrated into the national army. The MoD has stated that those who have passed through demobilisation can enter the army and indeed positively favours their integration into the army, while the US had favoured the integration of no more than 20%. However, it is unlikely that combatants who are not integrated into the national army will simply put down their arms. One participant suggested that many trained officers had been drawn into the militias over the past two decades of warfare and these could be brought back into the fold of the national army.

Channelling resources into DDR, some argued, is a waste of money, since DDR will only be viable with alternative sources of employment, which do not exist. One participant argued that the central problem with **disarmament** is the continued influx of heavy arms. Sedra argued that while it is helpful to collect as many arms as possible, disarmament must come from the collection of heavy arms, not from numerous small ones. Others pointed out that programmes to buy small arms from combatants often just allow the purchase of new weapons.

Tensions between the 'war on terrorism' and achieving security in Afghanistan

Debiel suggested that the war against terrorism is not reconcilable with human security and nation-building. The question now is whether security for outsiders or insiders will become the priority and whether central or provincial security will come first. He asked what the real aim of the PRT initiative is. How can this concept help to stabilise Afghanistan? Who are the contact partners on the regional level? Does such an approach support the stabilisation of a central authority or of the authority of warlords? Barnett Rubin pointed out that the ultimate task of the police and military forces is not to replace the militias but to replace the international forces. There are two distinct sources of insecurity, from enemies of the government and from members of the government.

One participant explained the need to understand the difference between the US-led military operation, 'Enduring Freedom', which is the 'anti-terror coalition' devoted to ensuring Afghanistan will not be a safe haven for terrorists, and the ISAF, which emerged from the Bonn conferences to support security in Kabul and ensure the interim government can do its work. The PRTs, he said, were launched initially under Operation Enduring Freedom and they function under a military chain of command. He said the ISAF operations would likely last longer as more nations were involved. Several participants criticised the PRTs for being too US-based prioritising military objectives and the battle against terrorism over the rebuilding of social and economic structures. While most agreed that it is too early to judge the US-led PRTs, evidence suggests that a shift in their focus is not actually happening on the ground. Others argued that the PRTs originated as an intergovernmental compromise, so they might be partly internally contradictory.

Several participants noted a fatal opposition between the still ongoing **war on terrorism and the state-building efforts** of the donor community. These are two key agendas that are operating at the same time. How does the international community define itself with regard to this question? Others argued that since the attacks on foreigners are not coming from warlords, but from the enemies of government, it is not correct to say that the war against terrorism is contradictory to state-building. It was noted, however, that donors appear to be operating under an illusion that security of the first kind – fighting terrorism - has solved the problem with security of the second kind – the security of the nation state and its inhabitants.

The continuing economic basis for war and the problems of women and children

Participants suggested the need for more attention on the **conflict economy**. Poppy production has done more for development in six months than NGOs have done in six years. Yet, this furthers patronage and clientelism. There have even been reports of the Coalition being involved in the drug trade. One participant criticised the lack of attention to the specific problems of **women** in relation to security. Women need voice and space to get involved. Also, there are no good programmes for adolescents especially to gain access to employment, while the situation in secondary and higher education is disastrous.

Panel II – Re-establishing the Fiscal Basis of the State and a Working Financial System

with Dr. James Putzel (chair), Dr. Jonathan Goodhand, Anne Tully, Senior Economist Åke Lönnberg, Professor Torek Faradi, and Professor Jim Boyce (discussant)

The panel covered a wide range of issues concerning the persistence of a war economy, the establishment of a fiscal system, and the rebuilding of the financial system.

War Economy

In his paper, ‘**From war economy to peace economy**’, **Jonathan Goodhand** set out three dimensions of Afghanistan’s political economy. First, a *war economy* exists, where ‘conflict entrepreneurs’ seek to mobilize both internal and external (regional) resources to fund armed forces and generally use economic disruption as a weapon in war. Second, a *shadow economy* functions where profiteers seek to make profits at the margins of conflicts, but may have an interest in peace wherever this is profitable. It is particularly in the borderlands, in the terms discussed by Adam Pain, that the shadow economy operates. Goodhand pointed out the tensions that arise from the dynamics in a shadow economy and during peace building because of the uneven distribution of benefits and the rise of a nouveau riche elite. Donors like DFID have designed policies for the ‘whole economy’, without due concern for particularities of the shadow economy. Finally, there is a *coping economy*, which is what the majority of Afghans live under today, with survival as the main aim. Here, both the disqualifying effects of household indebtedness and, in some regions, of labour intensive poppy cultivation are important factors.

Goodhand then outlined how international assistance interacts with these three kinds of economies. Pre-war aid clearly contributed to the development of a rentier state and to the structural tensions that led to war. Today, after agriculture, aid is the second largest sector of the licit Afghan economy. Kabul, in Goodhand’s words, has been turned by aid into a ‘parasitic bubble economy’, which stands in contrast to aid’s invisibility in the countryside, a fact that will exacerbate rural - urban disparities and tensions. International agencies today attract the best-qualified Afghans by virtue of better salaries and better working conditions. Aid is also important in respect to the so called forth economy, the “*emotional economy*” because it determines the perceptions of aid actors and their legitimacy.

In response to a question, Goodhand suggested that, unlike in Sri Lanka, another country on its way to peace, almost no detailed knowledge exists on the Afghan economy, making analysis and designing intervention particularly difficult. It is hard to understand potential

incentives when most of what we know dates from the pre war era. Goodhand emphasized the different non-criminal shades combined in the person of a regional leader or ‘war lord’ who next to his involvement in criminal affairs might be profiteer and/or simple farmer. Whether peace conditionalities can be applied depends on the context, but in any case it must be done in a coherent way and, in opposition to the idea of ‘empire light’, heavily funded.

In the discussion participants warned that **aid** might be a disincentive, rather than an incentive, for development by turning the country once again into a rentier state. Participants suggested that instead of criminalisation of the international drugs trade, violence might be reduced in Afghanistan and elsewhere through legalisation and regularisation of drugs. It was reported that the UN drugs unit has not developed a strategy yet, but is still mapping at present. Rumours have it that foreigners are moving in from the wider region to participate in the drugs trade in Afghanistan so far protected by the regional power holders. Participants agreed that if these people should gain a foothold, this could create even more insecurity than during war times.

Fiscal reconstruction of the state

In his **introduction Jim Boyce** pointed out that **fiscal capacity** was crucial for the viability and sustainability of the state, particularly given the short attention span and shifting priorities of external donors. As is clear in the case of Afghanistan, the state’s command over legitimate force and legitimate fiscal capacities are closely interlinked. International engagement and assistance are crucial in initiating a circle, where external resources provide a first foothold for the state, stimulating a growing ability to mobilise domestic resources and furthering the process of state building.

Boyce suggested that among the fiscal capacities of the state, revenue collection is the most important. Some radical or, at least, unconventional thinking was necessary, he argued, to initiate the building of state fiscal capacity. Three principles should serve as a foundation of sound revenue collection: the methods chosen should be easy to handle administratively; they should honour progressivity in order to reduce rather than exacerbate distributive tensions by taxing those with ability to pay; and finally, they should be underpinned by legitimacy.

International engagement ought to be designed to break impasses by bringing in external resources (both in regard to security and funding) that, in the long run, will help to mobilize domestic resources. On the expenditure side, aid would do more to promote capacity to plan and execute policies if channelled through the government, a point that Finance Minister Ashraf Ghani has constantly repeated in the past. On the revenue side, no analogous capacity building process is at hand because aid money bypasses this aspect of state building.

A key issue raised by Boyce is the exclusion of *ferangi* (expatriates) from revenue collection. Although their income is about 100 times higher than the national average, they paradoxically profit from exemptions. Apart from increasing the central government’s share of customs revenues, Boyce suggested three tax measures that would help the international community to play a catalytic role in the revenue arena, analogous to its potential role in the expenditure and security arenas: Firstly, introduction of an income tax on high income expatriates, voluntarily paid and a measure of high symbolic value. Secondly, introduction of income and property taxes on high income citizens because the influx of external resources is a major source of a considerable increase in income for some well-placed Afghans. Thirdly, a customs duty on imported luxuries that is backed up by willingness of international actors to forego exemptions and immunities. These measures could be easily put into practice administratively and work as a nucleus of revenue collection capacity while at the same time would heighten

legitimacy. Both donors and Afghans would share the concern for efficiency and accountability of these collected revenues.

Anne Tully's paper, '**Establishing the fiscal basis of the state in Afghanistan**', reviewed efforts to date to rebuild the fiscal capacity of the state, noting that some fiscal and administrative structures have survived outside Kabul that could be built upon. She distinguished three fiscal capacities, namely collecting revenues, planning expenditures and spending. According to Tully, revenue collection will concentrate on customs tariffs as the main source of national revenue in the foreseeable future. The *de facto* local autonomy in the past has always compromised the fiscal authority of the central government. Of last year's estimated \$500 million revenue from customs posts, only \$80 million were transferred to Kabul. Whereas this focus on tariffs may seem obvious, it is rather remarkable in the ideological environment of international financial institutions where tariffs don't get much support simply because their potentially positive role as an administratively feasible source of revenue is seen as overshadowed by their ostensible adverse impact on efficiency.

Regarding expenditures, Tully stressed the lack of resources at provincial level for non-wage recurrent expenditures and later commented that this weakens the legitimacy of the central government. A vicious circle with a central government not getting any revenues from provinces and as a consequence not willing to supply resources to the provinces has to be broken by transferring one or two months' worth of funds to the provinces, which would help to establish trust. With this rather inexpensive initial funding, the circle could be broken. The lesson learned from this study, she said in reply to questions, was to try and work with the existing system. Budget execution is particularly important on the local level where sufficient funds for schools and health services provide legitimacy to the state. A dilemma arises when the retention of a certain employment level meets the unwillingness of the budget-funding donors to fund excessive numbers of civil servants. The more than 20-year old allocation regulations for employment of civil servants should be updated, she suggested, and this should be done while the civil service is not bloated. In the concluding part of her paper, Tully mentioned the World Bank's policy advice to establish 'realistic employment caps' and to 'constrain any tendency towards excessive hiring'. Boyce hinted at the two-sided character of reality where the politically necessary needs to be economically feasible. Revenue collection must be planned against a realistic relaxation of the budget deficit reductions that are appropriate under the current political constraints.

In response to Boyce's suggestion, Tully said, a tax on expatriates would be difficult to realise, but is in the end a fair suggestion. Others pointed out that, in East Timor, an attempt to **introduce taxes for foreigners** failed because the UN insisted on the privileges its member countries have to agree to when joining the UN. In contrast, American citizens who work for the UN in the US have to pay taxes on their income, which means that taxation seems to be rather a question of power than of regulations. Participants agreed that the introduction of taxes on income of foreigners would be a possible, quick source of revenues, but rather unlikely in reality.

A discussion ensued on how the international community might influence the situation by setting up **incentives for revenue concentration in the hands of the central government**. It was suggested that donors should not undermine any cooperation between regions and the centre, although it is obvious that the question of how to work with the different administrative levels of government is a sensitive one. In Herat, reconstruction is already rather advanced, which is made possible through underreporting of revenues to the centre. Regional leaders most probably want to see their efforts in the provinces directly attributed to themselves. Without any proof of the aptness of the central government (which would perhaps

be visible in the form of progress in reconstruction in Kabul), the regional leaders don't see a reason for sharing their revenues with the central government. In exchange, Herat to some extent is overlooked by Kabul: An electricity problem in the city that could be easily solved through central government negotiations with Turkmenistan is not yet solved because Ashraf Ghani refuses to enter negotiations. In exchange for revenues, the central government will have to give something to the regions; a consistent accounting practice would possibly be a good first step. A review of the lines of authority is needed to get the funds into the districts, a task which seems especially difficult since Afghanistan has no real history of handing money down the line.

The role of the international community has to be weighed up against the necessity of national ownership over reforms. National support is crucial and fiscal principles must be implemented in recognition of local particularities.

Building an Afghan financial system

In his paper, '**Building a financial system in Afghanistan**', Åke Lönnberg described the International Monetary Fund's experience in providing technical assistance (TA) in the particular conditions following war. The central objective of the IMF's TA in a post-conflict situation is to assist countries to 'get the basics right'. From the IMF's perspective, good practices would include the diagnosis of damages, shortfalls and institutional capacity. After briefly describing the history of the financial sector, Lönnberg summarised the situation at the end of 2001, where one-third of the regional branches of the central bank, Da Afghanistan Bank (DAB), no longer existed, and another third was under control of regional leaders or warlords. Only the remaining third, mostly in Kabul and the Northeast, were under de facto control of the DAB headquarters. By that time, three local currencies were co-circulating and a banknote exchange against a new unified national currency started only at the end of 2002. Still, by May 2003, the lack of cash remained an acute problem for all banks operating in the country with only a small portion of their staff being paid. In discussing the transition process, Lönnberg stressed the need to integrate assistance around legal, financial and statistical issues.

He explained a four-phase process in rebuilding the monetary authority and the financial system: (1) *diagnostic phase*, which began before the security situation permitted IMF staff to visit Kabul and continued into their first missions; (2) *emergency phase*, which lasted about six months, dominated by establishing an emergency payments system to facilitate humanitarian aid, setting up a process to stabilise currency and starting rehabilitation of the DAB; (3) *institution-building phase*, which involves the restoration of the wider financial system (ongoing by July 2003); and finally (4) *two-tier banking system phase*, which Afghanistan has not yet reached, when the financial system would reach a condition of normalcy.

Torek Faradi, who spoke to the topic, '**Mono-banking, the hawala system and banking reform in Afghanistan**', reported that Standard Chartered Bank of the UK has announced they will open a branch in Kabul on 15 August 2003. No credit products will be offered. He said some other international investors have indicated strong interest in opening banks in Kabul. (including, the Agha Khan Foundation planning a micro-finance bank that would offer small loans from \$250 to \$1,500).

Hawala system

An interesting discussion took place around the *hawala* money-changing networks. Lönnberg explained how the central bank cooperated closely with the informal system of unregulated moneychangers (the hawala system) in implementing the banknote exchange. This approach was recommended by the IMF against diverse suggestions to outlaw the hawala system or to impose tough restrictions that would have pushed many of the hawala traders underground. Boyce asked for more information on the sources that spoke up against an inclusion of the hawala system, in particular the position of the US Treasury. If IMF didn't follow the wishes of the US Treasury, how was this autonomous stance made possible?

In the discussion that followed, it was explained that Washington's position on the hawala system was based on the moneychangers' involvement in money laundering and, in some cases, funding terrorist activities. It was suggested that in dealing with hawala traders, a case-by-case approach would be best. Cooperation with hawala traders, some of whom had expressed an interest to become regular banks, had so far proven essential. Faradi argued that banks will not be able to replace the hawala system because it is deeply rooted, not only in Afghanistan, but in the region, *inter alia*, in Pakistan and Dubai. The central bank maintains good relations with some of the bigger hawalas. For loans, however, said Faradi, Afghanistan will have to build up a banking system outside the hawala. The integration of the hawala, all agreed, should be realised through establishing rules for their business (e.g., on reporting, employees and boards of directors).

It was suggested that during the Asian financial crisis, the IMF had not sufficient knowledge of the Chinese-controlled financial system in Indonesia, and the same held true concerning the criminal financial sector in Kosovo – and this weakened interventions. The selective approach to the hawala in Afghanistan by the IMF is unprecedented and the situation, though unique, provides important lessons for the future. The hawala is the only genuine financial system in Afghanistan. In rural areas, the system will be indispensable in the future. Patterns of 'trust' allow the system to work and its reach down into the villages is what some participants argued allows it function in a way that is objectively 'pro-poor'. Legitimising the hawala and redirecting their illicit funds into productive investment activities would support the development process in the country. It was noted that reforms might eliminate some of these characteristics from the system.

Currency exchange and the warlords

Lönnberg explained that by 2001, payments through banks had ceased to exist and had been replaced by 'cash transactions in multiple currencies', which had a devastating impact on the pricing system and contributed to welfare losses and other inefficiencies in the economic system. The IMF recommended early establishment of one unified national currency. It was decided that rather than outlawing some of these co-circulating currencies in Afghanistan, it would be better to provide incentives in favour of one nominated legal tender. The Interim Government quickly decided to retain the national currency, the Afghani, but there were three local varieties of the currency in circulation. So it was decided to introduce a new series of banknotes and the conversion took place between 7 October 2002 and 2 January 2003. Torek Faradi argued that during the banknote exchange process it became clear that cooperation with the 'warlords' who are currently the most organised force in Afghanistan was essential. The process of distributing \$460 million worth of new currency during the currency exchange could not have been completed without their help.

Islam and finance

As Afghanistan achieves monetary stability, the next major step in reconstructing the financial system will be the passing of a **new central bank law and a banking law**. According to the IMF, which had studied banking legislation in other Islamic countries, it was important to allow and accommodate Islamic particularities in the new laws. Participants argued for the necessity of more discussion about **Islam** in the context of finance. At universities in Afghanistan, Islamic law is at the centre of attention, yet institutionalised Islamisation is not discussed within the academic community, nor was it mentioned as a separate topic in the debate over finance at the workshop.

In conclusion

Regarding the call for **'national ownership'** of the reforms, participants concurred that there was not only one way ahead and that it was not obvious from the outside which way should be chosen. Whatever choice is made should be internally consistent. National views should be taken seriously, in recognition of the fact that projects will only work if they are connected to local people.

Faradi, looking toward the future, said several attempts to invite **international banks** to come to Afghanistan have come to nothing so far, even though capturing the transactions of donors and NGOs in Kabul seems to be a profitable business. Bringing them in means strong competition for emergent Afghan banks, but the decision to invite these banks was based on a commitment by the donor community to back an open market system and an intention to create normalcy and trust for regular business activities.

Wrapping up the panel, one participant suggested that a **financially viable state** will be possible in Afghanistan within a five year time span. This optimistic view is backed, he argued, by the fact that the inflation rate is at 15% to 20 % right now and thus relatively low. After the banknote reform, the foreign exchange rate has been less volatile and no excess in money supply has emerged. This leads to the conclusion that things could be much worse than they currently are.

Panel III – Rebuilding Political Organisations and Institutions

with Reinhard Schlagintweit (chair), Professor William Maley, Professor David B. Edwards, Dr. Conrad Schetter, Dr. Christine Noelle-Karimi, and Matthew Fielden (discussant)

The panel considered the ways in which ethnicity, Islam and local perceptions have affected the processes of political reconstruction in Afghanistan. Attention was devoted to an analysis and discussion of planned elections and whether or not they are precipitous.

Ethnicity and political reconstruction

The main idea of **Conrad Schetter's** paper, **'Ethnicity and Political Reconstruction in Afghanistan'**, was that ethnicity in Afghanistan is an elite-driven process. He argued that belligerents enhanced ethnic moments to strengthen their position. Instead, there is a network

element to the survival strategy of communities, where, kin networks are important. However, the United Nations are caught in the ethnic trap and clientelism is being conflated with ethnicity. Schetter argued that warlords could be transformed into provincial governments and a multi-party system could be established on the basis of civil and not ethnic issues. When rebuilding institutions in Afghanistan, every effort should be made to play down ethnicity. The architects of a future Afghanistan would be well advised to work against the ethnic polarisation of the country.

Matthew Fielden argued that Schetter's conclusion that an ethnicisation of the masses during the war failed was an exaggeration. Contrary to Schetter, he suggested that insights into social behaviour advanced by anthropological research in the past are helpful in understanding ethnicity in the present. While Schetter concluded that Afghans do not see the state as key to accessing resources, Fielden pointed to several cases where land was in fact distributed by the state. Schetter's statement that 'ethnicity is created by those in power' can be contrasted with other studies, which have observed that ethnic identities have created different modes of interaction in everyday life. Similarly, the notion that 'different ethnic groups have lived together peacefully in the past', can be questioned via the accounts of previous studies. Schetter re-emphasised that there needs to be a shift from cultural to social matters. Problems of clientelism and nepotism need to be better understood. Actions are shaped not by ethnic identities, he argued, but by belonging to one or another network group.

Schetter clarified that his motivation was to identify how the international community tried to find its way in Afghanistan, which they did by adopting an ethnic discourse. At the Petersburg conference, Brahimi based institutional structures on ethnicity. Since then, it seems impossible to depoliticise ethnicity. He admitted that his paper had over-hypothesised group identities. Yet, until today, it is unknown how many ethnic groups exist in Afghanistan. No clear boundaries are evident between ethnic groups, and people change their ethnic identity, when it suits them. He re-emphasised that ideas built on the endeavour to categorise ethnic groups are bound to fail. It is not even possible to locate ethnic groups in Afghanistan geographically. With respect to Fielden's comments regarding the reported importance of ethnicity in pre-war times, he responded that, in the 1970s, ethnicity mattered as a framework of orientation. Yet, it didn't matter so much for shaping actions.

Some participants supported the argument that **ethnicity** is only used as a political tool, while others insisted that existing ethnic tensions are a reality. Barnett Rubin argued that Afghans themselves have debates about ethnicity and ethnicity is used as an instrument. Whether or not those who use it believe in it can be debated. Whether ethnic groupings were or were not a uniquely elite issue in the 1970s was also a source of disagreement. Some argued that a differentiation between ethnic categories and ethnic groups might be useful. The ethnic discussion is important when dealing with history and space and debating demographic patterns. This is a two-track issue, on the one hand to understand different identities, while on the other, giving people space in the political arena to overcome these identities. It will be important, some argued, to have elections in order to build organisations that go beyond ethnicity

Participants agreed that the design of institutions will be very important in shaping people's identities. Yet, there seems to be a structural tension between creating organisations that are representative and organisations that are not reinforcing identities. Several participants believe representative forms to be most important, if a degree of trust in new institutions is to be established.

Islam and political reconstruction

David Edwards, in his paper, ‘**Background Comments on Islam and political reconstruction**’, advocated the need for humility over “what we know”, the need to address “how we know” “what we know”, the importance of historicity, and the need to disaggregate “Islam.” He argued that political mobilization in Afghanistan proceeded haphazardly during the 19th and 20th centuries. Islamic networks then were less orchestrated than they were in the 1980s and 1990s. He sees Afghans as “more comfortable” with royal than with religious rule, while stressing the importance of Sufi networks and the importance of the meaning of Islam. Secular foreign organisations often find it difficult to deal with faith-based organisations. Edwards proposed that government can be de-coupled from religion if religious leaders are shown respect and given advisory roles.

Fielden asked Edwards to specify why he thinks that Marxists and Muslim Youth follow similar strategies at Kabul University. He also criticized what he said was an “over-emphasis” on Sufi networks. Fielden questioned Edwards’ comment that anthropological research of the 1960s and 1970s represented only a tiny slice of Afghan society, but agreed with the need for caution over making generalisations from these studies about Afghan society today. Fielden also questioned Edwards’ argument that political mobilisation is only carried out via Sufi *pirs*, as village *mullas* and *khatibs* also articulate local opinion. *Maulawies* and *ismaeli shahs* carried political influence. Against Edwards’ statement that Islam is the only unifying identity in Afghanistan, Fielden suggested that national sentiment also exists.

Edwards pointed out that there are multiple Islams in Afghanistan. The US has made the mistake of focusing too much on the radical aspects of Islam and not on the normative ones. With respect to the political process, he wondered how representatives of Islam can be mobilised and whether that is practical. One of the reasons why the political parties were successful during the Soviet era is that they defined the meaning of war. Islam has to be part of defining the meaning of Afghan history. Edwards suggested that the Kabul government needs to appropriate the agendas of Islamic parties and to define its role in Islamic terms – e.g. by taking care of *mujahidin* veterans. From his point of view, the key areas for discussion are Islamic versus secular law and secular versus religious education. He defended his emphasis on Sufi networks by arguing that Sufis and clerical Islam are never clearly differentiated. The state, he concluded, had problems developing in Afghanistan because of the absence of public space.

James Putzel suggested that the international revival of Islam has clearly played a role in Afghanistan’s politics over the last two decades. In many places, the barriers between Sunni and Shiia are breaking down through radical interpretations of Islam and surely this will continue to have an impact in Afghanistan. Others argued that the role of Islam in Afghanistan is particular, and pointed out that killings between Sunni Wahabis and Jafari Shias in 1998 indicated continued antagonism. Barnett Rubin said Afghans had accumulated ample negative experience of foreigners with radical interpretations of Islam and had little sympathy for such views. Yet, in the South, the Taliban are still quite popular. While this might mainly be the language of protest of the periphery towards the centre, without change at the periphery views could harden. Some participants emphasised the difference between a politicised version of Islam and a core faith identity. Fielden made the point that there is a risk, in the shadow of the operation to destroy the Taliban, of losing the middle ground. The moderate middle ground needs to be accommodated and given voice, otherwise, the religious terrain may become more radicalised.

Local perceptions of state and law

Christine Nölle-Karimi's paper focused on local perspectives on the Loya Jirga process around Mazar-i-Sharif. She argued that the elections revived Afghanistan as a 'political space'. At the same time, they made Kabul the centre of political gravity, while reaching all parts of the country. The election was able to draw in all players, even critics. Yet, she observed widespread bribery, intimidation and coercion – the “usual means” employed by both “liberals” and *ex-mujahidin*. She argued that “ethnic entrepreneurs” perceive the need to “do business with Kabul”, however, centre-region encounters were still limited. After the Loya Jirga elections, people were “back to local politics.” She concluded that there is a ‘heterogeneity’ of opinion at the micro-level.

Fielden asked Nölle-Karimi to expand on heterogeneity and on what she meant by ideas of local leadership on the fringes of warlord control. Nölle-Karimi pointed out that the recent political process had the effect of sharpening ethnic contours in Afghanistan. While urban centres contain every single ethnic group, ethnic distinctions become clearer in rural areas. She said she saw no clear division between religious and non-religious leadership. As an explanation as to why pre-war political conventions were partly revived, she pointed out that several political players wanted to set themselves apart from the political conventions of the war. Jumbesh's attempt to portray itself as a political party fits this need. She agreed with Fielden that not all political players got to participate in the Loya Jirga process because accusing rivals of having Taliban and Al-Qaida links was a way to eliminate them.

Fielden questioned Nölle-Karimi's proposition that the state could be a possible counterweight to entrepreneurs while there was apparently distrust of Kabul at the local level. He also questioned the reported absence of home-grown legal structures. In response Nölle-Karimi explained that during the Loya Jirga, Kabul became the centre of gravity. The state is increasingly becoming an alternative to the local power structures that are in place now. People have expectations of the state, revolving around its capacity to deliver services and settle disputes. She clarified that she doesn't think that home-grown legal structures are absent. Yet, whatever legal structures are in place, are controlled by the present power brokers. The question is whether the commanders are able to bend local mechanisms to suit their own purposes, or whether there is a need to gain legitimacy.

Nölle-Karimi argued that local level perceptions must be understood by those offering technical assistance. One needs to know which level of local organisation to address. Several participants stressed the need to understand dispute settlement mechanisms. Local leadership is framed around its capacity to settle disputes among individuals. Many Afghans have reservations about taking disputes beyond the immediate family environment. There are conflicts over access to land and water that predate warlordism and the Jihad.

Also, Nölle-Karimi argued that no one is thinking about how women might participate in the political process. Women often form the tail-end of male organisations, so even there they tend to serve male interests. She wondered how women might be incorporated into the process and what sort of agreements could be reached without imposing anything externally. Participants suggested that one way to incorporate women into the political arena would be to design a process that rewards a high turnout of voters, if women participate in the election.

The Afghan transitional administration and national elections

William Maley's paper, **'The Viability of the Afghan Transitional Administration'**, focused on the importance of sustained international material and symbolic commitment as well as on the importance of personalities. The Bonn process gave office to those who had most steadfastly opposed the Taliban. He observed a critical loss of momentum in 2002. Another key point made was that, while actions on the local level can be individually rational they can be collectively destructive. Because of the constitution's importance in determining centre-regions relations, tensions have arisen over the "nature" of the state. He suggested that an institutionalisation of politics must precede electoral exercises. There is a need for security if elections are to occur.

Fielden asked if the US had any other reservations over ISAF expansion, apart from wanting to conserve the relevant air assets to use against Iraq. Maley responded by saying there was no coherent US policy, but rather policy was a result of interactions between different bureaucratic agencies. Fielden suggested that, while there is indeed an urgent need to reconstruct institutions, it is also important to see what home-grown structures are there already. With respect to Maley's emphasis on the constitutional process, Fielden said there was a risk of making the process too elite driven. He disagreed with Maley's statement that "the claim that the Taliban brought security was specious," pointing out that the security brought by the Taliban was important and formed part of their popularity. While Maley maintained that it is for external backers of the ATA to determine how long it will remain viable, Fielden argued that the ATA needs to embed itself domestically.

With respect to the upcoming elections, Maley outlined several problems. Elections cannot be meaningful without adequate security. The cost and logistical complexity of elections, especially in a state where local infrastructure has substantially collapsed, are challenging. Elections are supportive to democratisation only if they are accepted by the political elites. These problems will confront UNAMA with growing unpleasant dilemmas. On a final note, Maley asked what the endpoint in a wider sense is if elections are the endpoint in a narrow sense. Will a change of government be used as an exit devise for international donors or as a devise for empowering ordinary Afghans?

There were serious concerns expressed by participants about having elections in 2004. The 2002 Loya Jirga election would not have qualified as 'democratic' by international standards. There has never been an election that has decided who is in power in Afghanistan. It was argued that presidential, rather than parliamentary, elections would be crucial. Several participants called for the creation of an elite consensus before the elections. This needs to be done without falsifying elections to avoid exacerbating conflict and violence. Participants debated whether, in the eyes of an Afghan, the legitimacy of the outcome of an election will be in the result or in the process.

Several participants argued that the US and UNAMA see the upcoming **election as an exit strategy**. In recent post-war and transition processes elections have almost always been promoted precipitously. A badly held election could lead to collapse and violence. Elections are in part an exit strategy and in part a means of avoiding responsibility for the shape of 'transition'. Participants wondered whether there is still a way to change the election deadline. It was suggested that because of cost and logistical complexity pre-registration might not be necessary. Others pointed to the international reluctance to dispense with pre-registration.

Participants debated the notion of the **legitimacy** of a new institutional structure. What is it that makes institutions legitimate? Participants agreed that legitimating institutions takes time and cannot be done within a year. Also, the content and nature of informal institutions needs to be taken into account. Some participants perceived a tension between institutions that are

representative and just and institutions that are stable. It was argued that if institutions are to be stable, power relations might be more important than representativeness.

Panel IV – Re-establishing a Legal System

with Adam Pain (chair), Alexander Thier, Dr. Martin Lau, Dr. Ali Wardak, Dr. Patricia Gossman, Sippi Azerbaijani-Moghaddam, and Dr. Julia Eckert (discussant)

Introduction

Julia Eckert opened the panel by stating that the creation of a viable, accessible and effective legal system was severely inhibited by the lack of security. In the papers presented here re-establishment of legal and judicial system is seen as being determined by four factors: the *material content* of the future law (both in terms of its social legitimacy and its qualities to produce political stability and social equality); *implementation in a situation of insecurity* and unequal distribution of power; space for *negotiations*; and finally, the *institutional integration* of the existing pluralistic legal systems. Eckert identified dimensions of law that need to be discussed, among them the necessity to ‘unpack the state’, i.e. analysing its different components (centre/regions) and its various functions (provision of security, services, infrastructure). Implementation will depend on legitimacy of the new system, another aspect that needs to be ‘unpacked’, not in terms of culture or religion but in terms of access, efficacy and the provision of rights. Legitimacy will largely depend on the way in which injustices will be averted or perpetuated.

Unpacking of ‘Afghan culture’ or ‘Afghan moral order’ (what are they, what role do they have?) should be undertaken in order to prevent misconceptions. These issues are not relevant only as items on a research agenda, but are a necessary basis of knowledge for the formation of policies that, if merely based on assumptions about these dimensions of law, would close the doors for negotiation. Because the question of who will hold authority to define and interpret what is ‘Islamic’ or ‘un-Islamic’ is not yet resolved, working with mere assumptions would mean presupposing a result. These considerations lead to the question of whether the international community can open and protect existing spaces for negotiation or how far international donor policies may actually close such spaces. The international community will have to work on policies that prevent a further closing of doors.

Furthermore Eckert stated that the war had effected fundamental changes in local authority structures. This poses the question as to how far traditional organisations are viable, and how they have been transformed in terms of the people who operate within them and control them, as well as the procedures that they follow. Research is needed on these questions, as hardly any knowledge exist on the current workings of local institutions of dispute regulation.

Designing a constitution for Afghanistan

Alexander Thier’s paper, ‘**The Making of a Constitution in Afghanistan**’, argued that two main issues have informed the constitutional process: first, issues of material content including, decisions on the separation of power, the division of competences between centre and regions and the role of Islam; and second, procedural issues related to adoption of the constitution, including selection of members, election procedures etc). Thier suggested a mixed procedure with appointments of delegates through the ATA, self-election of members

from within the Emergency Loya Jirga and through geographic quotas. Regarding a separation of powers, Thier warned against giving too much power to one person and preferred a parliamentary system where the integrative character of coalitions guarantees stability. With respect to the relation between regions and the centre (centralisation / decentralisation), Thier pointed out that strong central authoritarianism has encountered resistance in the past.

Eckert asked Thier for his opinion on the possible changes in perception that the war has created with regard to (de)centralisation. The role that Islam will play in a constitution (inclusion of Islamic principles, conformity with Islamic norms or Sharia as a basis for all laws) is important, as is the allocation of responsibility for the decision whether a law conforms to Islam and what is to be considered Islamic. Eckert asked for more information on incentive structures to be included in a constitution. She enquired about institutional ways to overcome the complicated number games involved in all political decision-making at the centre.

Thier responded by explaining that the process of creating a new constitution should not be seen as creation of a document that would stand on top of all other law, but should rather allow for future negotiations between parties. In that sense, a constitution will have to be a compromise about a shared future and a minimum consensus. This said, the process still remains one of elite agreement. While short-term incentives for potential spoilers are necessary, in the long run, what is viable for the central Afghan state will be more important. A revision of the constitution after 10 years seems advisable. Thier suggested that the best way to move forward is to leave enough vagueness in a constitution so that problems do not get artificially institutionalised.

Regarding the division of substance and process in constitution making, he argued that substance is controlled by process. The process itself needs legitimacy, and the public debate that will start after the imminent publication of the draft will not have a wide reach. The consultation process should be based on what is in the draft and less on what could be in it. The selection of members of the Emergency Loya Jirga showed that the way in which the process was conducted mattered.

On incentives, he remarked that the constitution would have to take into account current power relations. The goal is to transform conflict into institutions that will help to manage power relations. This is also relevant when it comes to choosing people to occupy central government positions, which preferably should be done through negotiation rather than through majority vote. A parliament will be difficult to begin with, but is nevertheless necessary, and parties must feel part of the government.

At the regional and local level, perceptions of power have changed, with regional leaders feeling no need to subordinate to the centre or to participate in government. Since, on the local level, there are meaningful institutions whose representative functions are yet unknown, the constitution should leave room for future shaping. In Thier's view, the ideal form of government would not be a purely centralised state, but rather one with space for devolution of authority.

Islam will be utilized, simply because of its enormous use to certain people. An Islamic reform council might attract too much power, but choosing the institution or person that will decide on what is Islamic law is essential and will make an enormous difference. The 1964 constitution did not bestow one institution with that power. Thier opined that the authority might be given to a supreme constitutional court or rest with the legislature itself. He sees a conflict between open spaces for future negotiations and the fact that if power brokers are to participate in a new government structure, they will want to know about their future position.

A consultant to Afghanistan's Constitutional and Judicial Reform Commissions noted that a broad election in Afghanistan is not very probable. Participants suggested that some mixture of old and new processes should be considered, building on the *loya jirga*, suggesting that delegates who will decide on the constitution might be chosen from both the former *loya jirga* and new parties. After decades where rulers like the king, the Marxists and the Taliban were remote from the people, the potential for 'changes from bottom up' are slight and the basis for participation will have to be created over time.

Some saw the introduction of federalism as highly unlikely because at present, neither capacities nor resources are available to set up more than one government. Given the concept of a strong ruler that apparently dominates in Afghanistan, a weak president does not seem to be an option for the new constitution. In the debates during the constitutional drafting process, however, a 'shadow god-like' ruler was not considered. On the other hand, the integration of the diverse forces is also not yet visible in the draft.

Religion was depicted as an important normative issue with implications for practical politics. One participant argued that a secular approach in state reconstruction should be favoured because only in a secular context, can people be considered as citizens. In reality, however, a purely secular state is not on the cards. The question of how foreign clerics could gain such a huge influence in Afghanistan in the past deserves closer attention. However, many agreed that authoritarian versions of Islamic rule had been severely de-legitimised in Afghanistan by the experience of the Taliban.

Islamic law and the Afghan legal system

In his paper, '**Islamic law and the Afghan legal system**', **Martin Lau** noted that the Taliban's rule and practices were widely denounced as un-Islamic by Islamic scholars in Afghanistan. Lau agreed with these scholars on the possibility for reform through reinterpretation of Islamic law. Eckert enquired why Lau assumes that no government will be able to exclude religion from the agenda.

In his response, Lau mentioned that the re-emergence of Islamic law in Pakistan, for example, was not caused by an interest in law and order but rather in order to provide a justification for the ruler who usurped power. Pakistan provides an important lesson because there, a traditional court ruled against the introducer of Islamic law because the court felt that the usurper had changed the law to fit his purposes. In places such as Northern Nigeria or Malaysia, movements pressing for Islamic law have a similar agenda. In Afghanistan, both Mujahidin and Taliban used Islamic law for their own purposes, and Lau insisted that no future government will be able to run the state on a purely secular agenda.

Lau drew a dismal picture of the current judicial system with a lack of legal documents and no access to law books. From her own experience, Eckert doubted that, in the absence of secular law texts, judges in today's Afghanistan rely on Islamic law, adding that might rather be relying on a mixture of Islamic law and their memories of pre-war legislation. Lau described the overall legal uncertainty and the lack of legal knowledge of all parties involved in legal procedures, be they jurists, litigants or victims. Regarding the independence of the judiciary, Eckert reported that in Herat, judges were dissatisfied with being appointed by the regional government and preferred to have greater independence through appointment by the centre. Like Thier, Lau argued that most former state rules were never implemented outside of Kabul and other bigger cities. Contradictions created by non-harmonization of consecutive legislation should be prevented in the future. With regard to specific areas of dispute (water, land etc.), however, state law seems to have remained valid over the years.

Participants reported that secular courts are still in use and both the personal memory of pre-war legislation and the judicial infrastructure still exist. Ideally, a new functioning legal system should leave room for modernity and tradition. The integration of these two factors into a harmonious system was seen as an important challenge. The desirable concurrent use of a multiplicity of forums, however, raises the question of hierarchy. To ensure consistency, it is important to know what the decisive interpretation of Sharia or customary law will be in the future. Historically, in the 1930s, Jamiat (a group of clerics) had the authority to interpret legislation; in the 1960s, parliament had a religious block that interpreted legislation. No decision has yet been taken on the role that will be allotted to Islam in the future constitution. In his final statement, Lau recommended a robust approach to the issue of Islam within the constitution in order to prevent a hijacking of the process by certain political forces.

In his paper, '**Jirga, Human Rights and Building a Post-War Justice System in Afghanistan**', Ali Wardak identified four key dimensions of justice, i.e. the *Sharia* in its popular understanding ('folk Islam'), *Jirga*, (traditional institution of conflict resolution), the *interim legal framework* and *international human rights principles*. Eckert suggested that folk Islam in Wardak's understanding would probably differ throughout Afghanistan. Wardak argued that the war has devastated the formal justice institutions, but traditional structures of authority and conflict resolution remain largely intact and operational. In Wardak's integrated model of a post-war justice system in Afghanistan, district courts would be supplemented by a jirga unit for minor criminal and all types of civil cases, and a human rights unit with a proactive right to look into past and present human rights abuses. In cases of dissatisfaction with jirga decisions, cases would be referred back to the district court. Eckert emphasized that the right to appeal might in practice be unevenly distributed (e.g. access for women).

Relating to traditional structures of authority, Ali Wardak explained that the extended family was mainly responsible for resolving minor private issues. The kinship group, in its geographical area, handled more or less public issues (*maraka*), whereas a tribe or clan got involved in the resolution of serious issues (*jirga*). Ethnic groups have rarely been mobilised to resolve conflicts in Afghanistan, whereas the State authorities were generally let in whenever conflicts were not resolved through traditional structures of authority. In the continuum from family to state, the higher authority level, the weaker is the actual authority. The legal corpus should include Sharia (as part of the belief system of the people that covers all aspects of life), Jirga/Shura, the interim legal framework and international human rights principles. The interim legal framework in this model constitutes the centre of gravity and acts as a medium of communication between the demands of the moral order of Afghan society and the requirements of living in an increasingly 'globalised' international community. Wardak argued that the incorporation of *jirga/shura* and a Human Rights Unit into the formal justice system would not only make the justice system more widely accessible, humane and cost-effective, it would also enable ordinary people to feel ownership over it.

Including marginalised groups

In her paper, '**Including Marginalized Groups in the Legal System**', Sippi Azerbaijani-Moghaddam focussed on the inclusion and exclusion of women in legal organisations. Women, unlike other marginalised groups (e.g. Hazara, Kuchis, Ismailis), have not found ways to participate so far. Some spaces for compromise seem to have opened up after the collapse of the Taliban, but Eckert inquired whether these spaces might perhaps already be closing again. Azerbaijani-Moghaddam argued that there are two counterproductive strategies in creating more space for negotiations, namely a postponement of the discussion and a brash anti-Islamic feminism. She suggested the use of Islam to justify gender equality. Here,

experiences of other Islamic countries might be valuable. She recommended codification of customary law once all discriminatory aspects have been purged, a task that appeared rather difficult to Eckert. ‘Unlocking’ the family is a prerequisite for giving women access to state legal institutions. Eckert asked what ‘unlocking’ the family would mean in practice, considering that women are integral parts of the family.

Azerbaijani-Moghaddam observed that on a micro level, there is little research available on gender when it comes to non-classical gender issues such as communications or energy. On a macro level, no vision, plans or discussions are discernible. Afghanistan has no classical women’s movement and many women feel that they are living on borrowed time, waiting for a backlash that will cut their newly gained liberties. She explained what ‘unlocking the family’ meant in the Afghan context. As Nancy Dupree has suggested, a major step would be the extension of space available to women from the family house to the family compound. In reflecting on the term ‘unlocking’, Azerbaijani-Moghaddam felt that ‘making boundaries elastic’ was probably a better image and could best be done from within the system and through negotiation. Currently, there are two attitudes detectable: the first one is based on the assumption that culture doesn’t change – which leads to fear and prevention of conflict at all cost. A second attitude favours a smashing down of walls that infringe on women’s rights. Finding a middle ground was the main task ahead. Azerbaijani-Moghaddam expressed regret for the fact that there was neither sufficient interest nor funds to shed light on questions such as how Afghan women see themselves as Muslims or what their relationship to Islam is.

One participant expressed doubts that customary law could be purged of discriminatory practices, especially in a situation where women don’t get a voice in or access to the *loya jirga*. On the family level, an unsuccessful attempt to unlock the family was undertaken during the Communist era. The Taliban tried to usurp rights that traditionally belong to the family. In a traditional marriage, women gain power with the growing duration of their marriage, therefore, elder women will have a vital role in the reform process. In order to achieve positive results, innovation should substitute for accusations. To some participants it seemed doubtful that elastic boundaries could be moved without an effective women’s movement. Others expressed the hope that a not yet existing women’s movement will emerge to fill the gap.

Azerbaijani-Moghaddam suggested that adolescents were another marginalised group neglected in international discussions including the discussions at the workshop. Their situation has been made worse by the floating, insecure state and a loss of social skills and values making the world a very dangerous place for the young.

War crimes, impunity and the rule of law

Patricia Gossman in her paper, ‘**The Past as Present: War Crimes, Impunity and the Rule of Law**’ explained the need to initiate a process of transitional justice, preferably with the institution of a body that takes stock of all atrocities committed and based on testimony of witnesses and victims alike. In her opinion, no country can prevent re-eruption of conflict without a judicial assessment of past human rights abuses. She suggested several steps in the process, including the institution of a commission, an inquiry into existing documentation and inspections of mass grave sights, exposure of senior leaders in exile and exclusion from office of middle level officials who were responsible for past abuses. Eckert remarked that this procedure raises the question whether or not the political requirement to work with spoilers is feasible in this respect and whether it might not de-legitimise the process if only those who were not current power holders were prosecuted.

Gossmann said that transitional justice need not start with arresting people. The process should start with talking to people. Among the different options available to equip people to deal with their past, burying the past or addressing it through amnesties are compromises. There is a demand for a process that allows people to live with their past. Consultations are necessary to clarify what is possible in the context of Afghanistan. Warlords must be included in the process, and all kinds of mechanisms for reconciliation have to be established. Right now, there is no complete record about what happened to whom. The past is deeply engraved in the present, as when a Kabul officer responsible for a massacre is still in his position and still works in the same area of the city. If it is too early to hold him accountable, removing him from the place where the massacre was committed would be a first step. A human rights commission that assembles records and makes documentation available through translations is a political signal that impunity won't last forever. The pressure might suffice to make some high-ranking officials think about their retirement. Afghan transgressors living outside Afghanistan, some of whom are protected by the countries in which they live, should not be let off the hook as this would create further injustice.

Participants described the current transitional justice process as fragmented. A panellist recommended that an Afghan human rights commission should be mandated to start a consultation process and the establishment of an independent commission for data compilation should be taken into consideration. Until now, the USA has shown no interest in any resolution from the UN Human Rights Commissioner on human rights in Afghanistan. The Bonn-meeting had discussed a proposal for prohibition of amnesty, but although this attempt was not meant to single out a particular group, it failed. The question of impunity will resurface with the next loya jirga or in the election process; therefore, clarification is necessary on whether or not it would be possible to screen out some people.

It was suggested that in the absence of the proposed institutions for transitional justice, local 'baddies' should be screened out via allocation of aid resources. Participants felt that, on the national level, the scope for initiatives to tie allocations of aid to justice seeking is limited and as is the influence the international community might exert. An agreement is necessary among the major donors on the extent to which power brokers should be included in the talks. Participants predicted that repressed traumas will surface individually. Traditional justice organisations should therefore be made sensitive to new demands, for example related to the deeper psychological problems of defendants. What makes people take responsibility for their actions changes through time; sensitivity towards these changes is also essential.

One participant pleaded that a stereotyped idea of the meaning of human rights in Afghanistan should be countered with the fact that Afghan conceptions of human dignity are close to Western notions of dignity. Human rights are not alien concepts to Afghans and participants agreed that any misconception on that account should be corrected.

Outlook – Perils and Chances for the Rebuilding of Afghanistan

by Professor Barnett Rubin

Barnett Rubin noted the curious lack of consistency in the rebuilding of Afghanistan. Why was the tight reconstruction schedule agreed on when everybody knew it was impossible? It was probably the only strategy possible at the time. Yet, the standards put forward for Afghanistan require not only stable institutions, but attention to political culture, and the distribution of wealth. Eliminating nepotism is impossible because helping members of one's family is currently not considered corruption, but a social duty. Many of the problems that

Afghanistan is struggling with exist because agreement was hammered out in 10 days. The imperative to hold democratic elections was included because of the US and Iran. Participants in the Bonn conference would not have agreed on a reasonable timetable as they feared this might mean 'open-ended' international engagement.

Afghanistan does not have a functioning state, but one which exists due to international force. A chain of patronage exists supported by money and rank. The international community calls for the development of a national army and economy, but at the same time militias and the war economy are actually working. It is clear that the existing structures of power are not acceptable to the Afghan people. But if such structures were to be abolished, the result would not be a functioning system, but rather chaos. The existing flawed and limited institutions are probably the only ones that can work. In geo-strategic terms, a landlocked country without resources is not likely to develop a functioning political system better than those of its neighbours. Currently, the Afghans are basing their political decisions on the assumption that international intervention will soon diminish. From this perspective it is understandable that they need to keep together their patronage-based military organisations. Yet, the people today are not the same Afghan people as before - they are changed by their experience of the last 20 years. They know what they expect from the state. Many Afghans are multi-lingual and fairly cosmopolitan; many have been educated and living abroad. They want to be part of the modern world.

In conclusion Rubin emphasised that the distribution of power and legitimacy in Afghanistan are not the result of public opinion. There is an opportunity for positive development, but we should not have the expectation that Afghanistan is going to be up to international standards in 18 months. He also reminded the audience that democracies were never built on democratic principles and that many of them are still flawed today.

Discussion

Participants agreed that, while standards to which to aspire are important, policy design should match realities. The international community's actions can be paradoxical and counter-productive. The US-led intervention in Afghanistan destroyed the existing central state structures and now the same actors are attempting to reconstruct the state. According to Rubin, there would have been another way of fighting the war in Afghanistan by putting more Americans on the ground instead of financing the warlords. However, domestic concerns prevented the US from doing this. Rubin pointed out that the warlords are not traditional tribal leaders of Afghanistan. They established their authority with the support of the US within the last two years.

Some participants criticised Rubin's point that the militia and the war economy work, arguing that they are insecure, unstable and threatening. It was stressed that only ISAF provides security. Also, regions without militias are more peaceful. Rubin replied that he is, of course, in favour of change. Yet, just because people want something it does not mean that they have the resources to get what they want. Only a few regions have actually achieved peace and it will take time for these to become the norm. He repeated that a simple abolition of militias would not result in a just security force system. Rubin called for a strategy to incorporate people while pursuing change.

With respect to the warlords, some participants stressed that alternatives existed. Yet, potential new authorities have yet to be recognised. Kabul's efforts to secure international legitimacy may lead to a decline in domestic support. Kabul as the centre remains important because it provides access to resources. There is a need for processes of dialogue between the

periphery and centre. Warlords have to be included because the centre needs their authority in the region, but dialogue with communities needs to be integrated. The parliament could be a significant improvement, ensuring some kind of say in the national process. On disarmament, the Bonn agreement only specifies that “all armed forces shall be under the authority of the interim government and shall be reorganised according to need.” This was a way of introducing demobilisation without explicitly mentioning it. All participants agreed that without demobilisation, there will be no democratic process.

Participants also discussed whether it was necessary to start information campaigns on what the Afghan state should look like. Some argued that the upcoming elections will fail if people are not well informed of what they are about. Others argued that Afghans are well aware of what they want and expect from elections. The issue of transitional justice was also raised. Some processes that will begin to look critically at the past should be started as soon as possible. Others argued that transitional justice is very difficult, when war criminals are still in power, and justice, courts and laws will have to be built on the basis of existing power.

Research Agenda

Participants discussed the need for further research:

- There is a desperate need for more detailed knowledge. Not much field work has been done over the last 20 years. More detailed field work is necessary to avoid inappropriate generalisations. There have been cases where premature, or overly generalised consultancy reports had an immediate impact on policy, as they were the only information available.
- Several consultancy reports, scoping missions of NGOs and unpublished field work reports exist that could advance the current understanding of the situation in Afghanistan. These findings should be compiled and made available and be incorporated into ongoing academic research.
- Yet, there is a tension between producing viable research and quickly informing policy makers. There is a need to think about how viable research can be done as quickly as possible. Anthropological studies should be done in the same villages where research was done in the 1960s/1970s to estimate what has changed during the war years.
- Little is known about how war affected authority structures at the local level and how it might have changed dispute resolution mechanisms. There is a risk of arriving at incorrect conclusions when relying too heavily on pre-war research. Very little research exists on warlords and on gender relations within Afghan society.
- Some participants also felt an ambivalence towards policy oriented research. They asked what our knowledge tells us about states and pointed out that research is about learning as well as about testimony. Research funders should not overly determine the orientation of research. There is also a need for work that is not entirely Afghanistan-centric.
- In order to reach Afghani policy makers and practitioners, research needs to be made available in Farsi and Pashtun. There is a need to think about Afghan capacities for

research. Ideally, every research undertaken in Afghanistan should include Afghan research training. Capacity building in this area was considered very important.

Instead of producing another website on Afghanistan research, attempts should be made to link together existing websites on this topic. Existing knowledge should be built upon. The Afghan Society within the UK could be revived.

Conclusion

with **Dr. Conrad Schetter** (co-chair), **Dr. James Putzel** (co-chair), **Dr. Patricia Gossman**, **Barbara J. Stapleton**, **Dr. Jonathan Goodhand**, **Professor William Maley**, and **Dr. Ali Wardak**

Reflecting on the workshop, **Conrad Schetter** emphasized that the lack of in-depth field research ‘on the ground’ in Afghanistan is one of the factors that makes recommendations to policy makers difficult. **Patricia Gossman** noted that Afghanistan has now to decide how to deal with the legacy of 23 years of war. She appealed to the international community to fund a process allowing Afghans to address their past, e.g. putting together an historical record of war crimes. International support would send a signal that impunity will not last forever.

Barbara Stapleton identified security as the precondition for development in Afghanistan and emphasised the failure of the international community adequately to address the widening security gap. The deployment of Provincial Reconstruction Teams is seen in a number of ways - as a means of doing at least something with the limited resources available, as a cheaper option to the expansion of ISAF’s mandate, or as a cover for the Coalition’s exit strategy. In any case, PRTs are not resourced or mandated to solve the security problems of the country. Discussion of the possibility of changing ISAF’s mandate is reportedly back on the international agenda due to NATO leading ISAF from August 2003, but Stapleton warned that any political decision to alter ISAF’s mandate to address security issues beyond Kabul may take at least six months to translate into military objectives. Meanwhile, continuing delays in implementing a meaningful demobilization, disarmament and reintegration process and the years required to create an ethnically representative, de-factionalised army and police force as well as a functioning judicial system, will lead Afghans to draw their own conclusions on the question of the international community’s commitment to the future stability of the country.

Jonathan Goodhand reported that the war economy, built up over a period of 20 years, continued in Afghanistan after the Bonn agreement and was even reinforced by international actions. When priorities of superpowers shifted and investments stopped, Afghan warlords sought other means of income. Warlords will have no interest in peace, if peace means a strong central state. With opium-money and fighters under their control, warlords are still considerably stronger than the under-funded central government. Goodhand asked for a major rethink with respect to the magnitude of aid provided, as well as the means by which it is delivered. Until now, aid resources for alternative livelihoods outside the war economy are still not sufficient, delivered too slowly and only to easily accessible regions. The aid sector currently attracts the best-qualified Afghans by virtue of better salaries and better working conditions, thereby absorbing capacities urgently needed in state building and research.

William Maley characterised the Bonn process as hanging by a thread. ISAF still plays a minor role and the biggest part of the resources pledged by international donors goes into emergency aid rather than long-term projects. If, in accordance with the Bonn agreement,

elections are held in June 2004, Maley pointed out that their freedom and fairness will depend on the realization of security for candidates and voters, as well as the provision of substantial funds and personnel for the logistically complex pre-election preparations. All permanent Security Council members bear a responsibility and Germany should use its authority to help avoid dangers around the process of political transition.

Ali Wardak explained that the Bonn agreement reinstated the 1964 constitution plus all ‘existing laws’, with some modifications regarding the king and parliament. He criticised the vague formulation of the agreement where the term ‘existing laws’ includes all laws enforced between the 1960s and 1978. The Bonn agreement authorized the interim authority to create a constitutional and a judicial commission. The constitutional drafting committee in its work focused on the provision of a draft constitution, which is now completed and submitted to a constitutional commission. A first judicial commission has been formed and its mandate comprises resolutions on law reform, human resources, structure and functions of the legal system as well as legal aid and access to justice. Wardak concluded with a statement in favour of integration of traditional justice into the newly created systems.

James Putzel expressed the hope that, with its contributions, the academic community could help avoid further uninformed interventions by the international community. Errors of past interventions have already been repeated in Afghanistan. The USA, as the dominant power in the interventions, seems to be primarily interested in breaking up its enemies and less in peace building. Consolidation of peace, on the other hand, is at the centre of discussions in Germany and some other European countries. Rebuilding a state is the precondition for the reduction of poverty, for growth and development. It requires strengthening public authority in the fields of security, fiscal capacity, political organisation building and law. The inflow of aid in post war states should be used to finance the creation of capacity within the public authority. In practice, far too often legal reform is undertaken without detailed knowledge of traditional norms and dispute resolution mechanisms. Instead of pursuing early elections that provide a convenient exit for international actors, conditions that would allow for free and fair elections should be created. In this respect, peace is indispensable.

Discussion

Some key issues emerged from the final discussion:

- There was a general consensus that **elections should be postponed** if peace is not secured;
- **Ethnicity** continues to be used by political actors - indeed constructed and created by both local and international actors – and needs to be countered with measures like the professionalisation of appointments and a focus on social categories rather than cultural ones, while further research should be carried out on multiple and shifting ethnic and other identities.
- The **sectoral division of labour** between the countries involved in reconstruction (US: army, Japan: DDR, Italy: judicial reform) was criticised as being impracticable and counterproductive.
- In addition to **research** ideas already mentioned, work on the categories commonly used (mis-used) to analyse Afghan society (‘radicals’, ‘conservatives’, ‘Taliban’) is needed.