Considerations for Political and Institutional Reconstruction in Afghanistan

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Introduction

On 11-12 December 2001—one week after the signing of the Bonn Agreement—the Thomas J. Watson Jr. Institute for International Studies at Brown University, in collaboration with the Center for Afghanistan Studies at the University of Nebraska, Omaha, hosted a meeting entitled "(Re)establishing Political Structures in Afghanistan". The meeting brought together a mixture of experts on Afghan law, politics, administration, and society and experts on peace operations, reconstruction, and transitional political arrangements. Those in attendance included participants in the Bonn process, former ministers in the Afghan government, current and former US and UN officials, and several eminent scholars. This combination of expertise allowed an in-depth exploration of institutions in Afghanistan, past and present, to be combined with an analysis of the challenges of redeveloping stable political institutions. The purpose of this meeting was to explore the range of options and issues affecting the design and implementation of institution-building efforts. The following report is a reflection of the issues discussed, and incorporates many of the ideas contributed by meeting participants. The recommendations are the responsibility of the authors alone.

This meeting at Brown University extended the work begun a month earlier, when the US Army Peacekeeping Institute at the US Army War College, Carlisle, PA, convened with the Watson Institute another informal meeting that produced comprehensive mission planning considerations at a critical moment—one day after the fall of Kabul. The report of the discussion amongst Afghan experts and experienced operational planners, principally at the UN and in the US Government, was entitled "Planning Considerations for International Involvement in Post-Taliban Afghanistan" and is available on-line (at http://carlisle-www.army.mil/usacsl/index.asp, www.jha.ac/articles/a075.htm, and www.bjwa.org), or in hard-copy (*The Brown Journal of World Affairs*, Winter 2002, Volume VIII, Issue 2). This document was circulated widely in planning circles in the UN, US and UK, as well as amongst diverse communities, including coalition militaries, humanitarian organizations and development agencies in the lead up to the Bonn process.

The Bonn formula envisions an all-Afghan Interim, and then Transitional, Authority and Administration, with the international community (including the United Nations and multinational peace forces) playing only an "assistance" role—eschewing therefore the options of partnership with an Afghan government, control of parts of it, or complete governorship over it. This choice is a reversal of the increasingly intrusive trend in transitional administration from the international exercise of executive and legislative powers in Eastern Slavonia, Brcko, and Kosovo to global sovereignty in East Timor. Such an arrangement needs to result in greater popular participation on the one hand—by creating the political space for it during the transitional period; while at the same time achieving harmonization amongst international and Afghan actors participating in the governance and reconstruction process.

While the November "Planning" report gleaned some principles for operating effectively and sustainably in the Afghan context, the next step is to better appreciate the universe of the country's political and institutional evolution and determine how best to (re)establish a stable government in the wake of the war against al-Qaeda and the Taliban.

I. The Constellation of Institutions

The political, social, and governmental environment of Afghanistan is presently a fragmentary array of institutions. These include national institutions (an Interim Authority); local institutions (e.g. village, clan, mosque); regional institutions (e.g. province, party/faction, tribe/ethnic group, domestic NGOs); and international institutions (e.g. UN political and humanitarian agencies, the World Bank, international NGOs, interested states and coalition forces, and an International Security Assistance Force). Due to the ongoing conflict—comprising US-led operations against suspected terrorists and competition between Afghan factions—and the lack of supremacy and order among these institutions, they will continue to compete for influence and resources while Afghanistan's basic conditions evolve. As political authority is reestablished, these institutions should be fashioned into a semi-cohesive framework, with basic delineation of powers and non-violent dispute resolution mechanisms.

1. Political Space

As outlined in our earlier "Planning" report, the creation of political space is essential to allow a cohesive and representative system to emerge. Political space requires both a physical area as well as a social environment within which people can meet, negotiate and plan, free from the threat of force. The Bonn Agreement has left undefined many crucial elements of the process of establishing political institutions. Many sensitive issues, such as the means of selecting government representatives and ensuring ethnic and gender participation, will need to be hammered out through extensive negotiations and difficult compromise. If the needs of constituencies are not incorporated into this process, there will be a high likelihood that the resulting political institutions will fail.

2. National Institutions

Previous Models: There are no national institutions currently functioning in Afghanistan. Prior experience with national government has varied between two loose models. The first model is characterized by centralization, concentration of power into the hands of a narrow minority, and subjugation of opposition by force. This approach was most evident in the reign of Amir Abdul Rehman Khan (1880-1901), the Soviet-backed PDPA government (1979-1992), and the Taliban. The second model is characterized by efforts to modernize the state apparatus while co-opting autonomous local authorities through patronage. This model was most evident in the reign of Amanullah (1920-1929) and Zahir Shah (1933-1973). A third model began to emerge in the brief period of political liberalization following the enactment of the 1964 Constitution. This constitution, for the first time in Afghanistan's history, envisioned a system of direct popular selection of representatives with the power to legislate and an independent judiciary.

Recommendations:

- Distinguish National Functions: In striking a balance between these models there is a need to determine which institutions must have a national character, which local, and what the relationship between them should be. While military forces must have a national function to defend borders and ensure internal cohesion and

integration, there may be an appropriate role for local control over basing, recruitment, and non-military policing functions. National institutions will also have a useful role in coordinating social services and economic management.

3. Regional Institutions

<u>Decentralization</u>: The turmoil of the last 23 years has created a strong degree of regional autonomy in Afghanistan. Ethnic groups that were relatively disenfranchised now have autonomous military, and to a lesser extent, political structures. These new political centers will have to be taken into account. Factional party structures at times have functioned as mini-state governments, carrying on foreign relations, issuing visas and even printing currency.

<u>Military Forces</u>: The most significant manifestation of this decentralizing trend is the military forces currently controlling the regions of the country. Similar to the period of civil war between 1992-1996, the country is essentially divided into 5-6 regions under the control of autonomous military forces. An uneasy peace now exists, with the heads of each region offering conditional support to the new Interim Administration. However, this state of affairs presently poses the greatest challenge to peace, and must be addressed.

<u>Recommendations</u>:

- <u>Centralize and Regionalize Simultaneously</u>: The challenge of the existing decentralized power structure is to avoid regional autonomy that prevents the development of national institutions. The challenge of centralization is to create national institutions that do not usurp all power and participation from the regions; or that cause those regions to seek alternative political arrangements through force or disintegration of the state. The key to an approach in Afghanistan is a dual and simultaneous process of centralization and regionalization, in order to engage in a harmonized way in the regions and at the center.

- <u>Build Confidence between Rivals</u>: Military leaders must be brought together to re-build relations and to mutually reassure each other that use of force will not be an option for dispute resolution. A mechanism that acknowledges past transgressions without fear of prosecution may also be necessary to reduce tensions.

<u>Integrate Security Arrangements</u>: There must be immediate efforts made to create a non-political, integrated military force that can act as a growing buffer between rival factions and which can incorporate demobilized *mujahideen*.

4. Local Institutions

The core of Afghan society has always been located at the local level. The process of creating a national identity and government collapsed following the Soviet invasion and during the ensuing 23 years of conflict. As a result, the power to administer basic government functions again devolved to the local level. Although not democratic, these

institutions are representative of the local population and, as such, they are a critical resource for political and physical reconstruction.

The Village *Shura*: Informal village-level bodies are the primary functioning structure of decision-making still remaining. The village *shura* (council, or *jirga* in Pashtu) is an *ad hoc* institution that allows broad representation and nominally consensual decision-making. The word '*shura*', from the Arabic '*mashwara*' (to discuss), is best translated from contemporary Dari as 'council or committee'. In some Islamic religious thought, the *shura* is considered the ideal model for governance, and many Islamic governments have used such nomenclature for a variety of institutions. Thus the *shura*, a concept as old as Islam itself, carries certain meanings and associations for most of Afghanistan's inhabitants.

National Connotations of the *Shura*: The *shura* also had national connotations in pre-war Afghanistan. The national assembly in Kabul was known as the *Shura-i-Milli* (national shura), and each province had a *Shura-i-Woloyati* (provincial shura). Also, before the coronation of a new king or in a national emergency, a *Loya-Jirga* (grand council) was called to endorse the selection or address the crisis. Therefore, in the past, the *shura* concept has held significant political currency in the forum of Afghan politics.

The Make-Up of the *Shura*: The *shura* has traditionally been an advisory council formed to solve conflicts, resolve disputes, or deliberate on decisions affecting the community. Such councils are comprised of those whose opinions, negotiating skills and knowledge of tribal and/or religious law are respected, usually including elders, religious authorities, and local influentials. The membership of the council varies according to the issue it is confronting. While the council itself may have no direct means of enforcement, its authority is respected, and those who do not comply with its decisions will find themselves at odds with the community. In Afghanistan, where family and tribal affiliations outweigh all others, non-cooperation or exclusion by the community, perhaps to the point of complete ostracism or banishment, is a harsh if not unbearable punishment.

How the *Shura* Functions: Any head of household can attend the *shura* and all parties attending the *shura* are allowed to speak. The process of reaching consensus is entirely dependent on the inherent understanding of the participants of the social hierarchy within the village. Unless the proper people are represented at the *shura*, a decision will not be made. And all voices in the *shura* are far from equal. But there is no definitive means by which to determine the line of authority in the hierarchy. No one is vested with ultimate decision-making power. But there are certain individuals that cannot be excluded.

Scope of the *Shura*: The *shura* can deal with problems or disputes that arise within the community and it may also deal with the division of labor or resources where communal issues are concerned. For instance many villages have a *mirab*—a person hired from within the community to distribute water via irrigation systems. This person serves as a village civil servant, paid from community resources and responsible for administering the systems and settling minor disputes. He is responsible to the *shura*.

Variations in the *Shura*: Although the concept of the *shura* is familiar to most Afghans, the local relevance of the institution is not equally strong in all areas of the country. In many areas, politics have traditionally been limited to a power elite and the general populace has not enjoyed a participatory role at local or provincial levels. At the village level, informal gatherings may have been called to deal with problems or conflicts arising in the community, but generally decisions were ultimately the domain of a few local elite. However, the past 23 years has transformed the politics of many previously disenfranchised areas, and these traditional limits on participation need to be reexamined.

Recommendations:

- Ensure Local Inputs to *Shuras*: The most successful projects have generally been those requiring substantial inputs (e.g. labor, locally available materials) from the village. Once inputs were demanded from the villages, people had a sense of ownership and became invested in the outcome of every small project.

- Guarantee Informal Access to Authority: Local access to power and resources has not typically been through formal structures. Authority is established and maintained through patronage systems. Resources are often sought through petition (*areza*), wherein a person from a village will go directly to an official for resources or help with a problem. The patronage system is symbiotic due to the fact that the patron derives his/her authority from the act of hearing/granting requests. The patron's legitimacy would be undermined if he did not engage in this practice or were unable to fulfill these obligations. From the outside, such a system can appear exploitative and corrupt, and it certainly makes fairness of distribution difficult to enforce. However, it is important to note that if an expert/outsider is put in the position of the patron without accountability to the population (i.e. without the obligation to hear/grant petitions), this may disrupt an important means by which people can have access. Afghans need to locate themselves in their social context. People must be able to engage in face-to-face encounters and should not be denied this opportunity.

5. International Actors

Coalition and Security-Assistance Forces: International coalition forces continue to operate inside Afghanistan in the war against al-Qaeda and the Taliban. At the same time, an International Security Assistance Force (ISAF) has been deployed to provide a secure environment in Kabul and build confidence between the remaining factions in the country, many of which have not fully acquiesced to the Bonn Agreement.

Neighboring Powers: The factions in different regions of the country have been heavily influenced in the past 23 years by neighboring actors, with whom they have political, ethnic and/or religious ties. There needs to be a concerted effort to reduce interference in factional competition by outside actors. These actors have contributed to inequities through assistance in both military and economic matters. Such inputs will destabilize attempts at ensuring the balance that must emerge in reconstructing necessary institutions. Each of the neighboring countries are concerned about co-ethnic elements,

refugees, terrorism and narcotics. All have some ethnic ties to groups in Afghanistan, but there is a relative lack of irredentist tendencies.

United Nations and the World Bank: Initially, a range of international/inter-governmental bodies will be the primary channel of financial support and expertise to Afghan institutions. An effort to harmonize inputs and approaches will be critical to ensuring rapid deployment of resources as well as minimizing the tendency to undermine agreements through competition and differing standards.

Bi-Lateral Arrangements: As political institutions take root, there will likely be aggressive efforts on the part of other states to cement ties to Afghanistan via bi-lateral, rather than multi-lateral, engagement. In this environment it will become more difficult to harmonize international inputs and policy. Afghanistan's governing institutions will gain leverage as a result – but will also be forced to serve additional masters.

Recommendations:

- "Afghanization" of Harmonization: Political and institutional stability requires that international inputs are harmonized under a system of Afghan control. Executive and legislative powers, as well as legal sovereignty, will be residing with the Afghan Authority, while the international community will have the status of "assisting" that Authority. The Bonn Agreement vests the UN Special Representative with full authority over UN agencies. The World Bank and bi-lateral development agencies will be operating separately, with coordination, but not unified control, though a reconstruction steering committee. There are already two trust funds, one under the World Bank and one under the UN, which will inevitably be much smaller. The ISAF and the coalition forces have very different missions, although operating under one ultimate chain of command, headquartered at US Central Command (Centcom) in Florida. There will need to be a national planning capability established within the Afghan Authority in Kabul that can relatively quickly make sense of the myriad of international actors in the country.

6. Non-Governmental Organizations (NGOs)

Prior International Practice in Afghanistan: Humanitarian agencies on the ground have grown accustomed to working with relative freedom and autonomy. They now need to adapt. They will have to work with or be operationally integrated with UN Secretariat offices, including the Department of Political Affairs and the Department of Peacekeeping Operations, aid agencies and international military forces. The strategic framework and similar arrangements attempted previously have not managed to harmonize the political and humanitarian avenues. This is not a one-way process; as humanitarian agencies have been operating inside Afghanistan for a decade, there is much the political side can learn from them.

The Growth of NGOs: In the early 1990s, the UN made a decision to fund Afghan NGOs—leading to the creation of several hundred NGOs in a brief period. While some of these organizations have established excellent track records in the most trying of

conditions, others existed in name and bank account only. In both cases, these NGOs were often required to cater to the desires of local commanders, who used the NGOs to build support within their patronage network. These practices often led to poor resource distribution and outright corruption. This symbiotic relationship tended to increase commanders' individual legitimacy and thus the factionalization itself. Many NGOs were not accountable, which resulted in subterfuge by some and widespread distrust by many.

National NGOs: There has been limited experience in Afghanistan with national NGOs. The Red Crescent has some history in the country, but was never fully independent of the government. Other former "national" NGOs included the Women's Institute and the Academy of Sciences. Would national NGOs be acceptable to a new administration? Would they be allowed to have resources outside the control of government? Political confidence is required to allow these organizations to function. Resource limitations are so severe at present that those in control of resources may present a political challenge to emerging authority.

Recommendations:

- Ensure Accountability from NGOs: The NGO "business" must be transformed. This mode of operation had its place in the factionalized emergency environment. The proliferation of NGOs, that is sure to intensify in coming months, will result in the arrival of new and inexperienced organizations that could lead to violent incidents and wasted resources. Their operations must not contradict either national or local strategies for political reconstruction by facilitating spoilers or inhibiting popular participation in the process. Registering NGOs is a first step; fostering a code of conduct for operations in Afghanistan can also help. There are dangers in actually requiring NGOs to be licensed for their activities, which can either unnecessarily limit good works or turn licensing into a new form of corruption for authorizing officers. There is a balance to be struck between the need for operational space for effectiveness and accountability to ensure legitimacy of action.

- Build Capacity at Every Chance: In order to fulfill combined roles of building capacity and delivering services, there must be Afghan management and international monitoring of expenditure and competence. Afghans will play the role both of ensuring accountability of the humanitarian and development "enterprise", but will also participate in that "enterprise" to start a process of legitimate Afghanization of the assistance effort.

- Fit NGOs into the Harmonization Strategy: Harmonization is more than mere coordination, which has tended to be no more than an exchange of information on activities. Without overly restricting a degree of positive independence and responsible initiative in the assistance effort, NGOs will now have to do things differently and participate in more of a common process rooted in a long-term vision for a stable government in Afghanistan.

II. Re-Establishment of Political Authority

The Bonn Agreement provides a skeletal outline for the re-establishment of a national political authority in Afghanistan. The Agreement envisions the formation of an Interim Authority for a period of six months. The Interim Authority is to consist of three separate components: an Interim Administration, a Supreme Court, and a Special Independent Commission. The Interim Administration is responsible for administration of governmental functions, control of armed forces, and establishment of, amongst other bodies, judicial, civil service, and human rights commissions. The Special Independent Commission is charged with drawing up and implementing the selection process for the *Loya Jirga,* which is to convene in six months to choose the Transitional Authority. The Transitional Administration, in turn, will serve for 18 months and will be responsible for establishing a Constitutional Commission. Until that time, the 1964 Constitution (minus the king and parliament), Islamic *sharia*, and subsequent laws not contrary to either are the law of the land. Of the three initial bodies, only the composition of the Interim Administration was determined by Bonn. Neither the composition, nor the means of selecting the members of the other two bodies, was determined by the agreement.

Therefore the Interim Authority is imbued with two critical, concomitant tasks. The first is to fashion a new political environment in Afghanistan, within which the details of these arrangements can be negotiated and settled without violence. The second task is to oversee the initial phases of relief and reconstruction in a destroyed nation without solid political or administrative institutions. Each of these efforts will require enormous human and fiscal resources, and each is dependent on the success of the other. To the extent that these efforts do not proceed in tandem, they will undermine each other; causing political instability on the one hand, and wasting desperately needed resources on the other. It is possible to avoid the dictum "govern until you bungle", if in this process due regard is paid to the experience of past transitions and applied to the specifics of Afghanistan, rather than the usual "muddling through".

1. Culture of Governance

<u>Legitimacy</u>: "Authority" is power plus the legitimacy of that power. The crisis of legitimacy in Afghanistan stems from a complete collapse of state structures. There have also been the rampant abuses of power by recent pretenders to the mantle of authority. Every governing entity in Afghanistan since 1978 has committed grave human rights abuses with impunity and wielded control at great cost to the people of the country.

<u>Service Culture</u>: The very concept of government in Afghanistan's recent history is embodied by the desire of factions and warlords to rule at all costs, rather than to serve the needs of the population. The traditional symbiosis between the duty of the population towards a ruler and the requirement of responsibility in kingship has been shattered.

<u>Broad Participation</u>: The imperative for broad participation in the new administrative structure fulfills several functions. Due to the factionalization of the country and the regional/ethnic tensions that have emerged from the civil war, all groups will need to play a role to prevent disintegration of the peace. Additionally, developing stable leadership with sufficient capacity to govern the country through the coming challenges requires broadening the pool of available leaders.

<u>Leadership—Social Influence vs. Military Power</u>: Sheer force and the disintegration of the non-war related economy have turned the exercise of power over to those controlling the implements of war. Thus an intricate system of social influence has been disrupted throughout the country. While the former system was also fraught with ethnic, religious, and class tensions, the result now is that many of the individuals who held respect in the minds of the people do not have the necessary power to wield that influence.

<u>Transitional Opposition</u>: No matter how broadly participation is fostered, or how many peaceful attempts at compromise are made in the coming period, certain groups and individuals will remain at odds with leadership and administrative decisions. Rather than planning for the best-case scenario (that all parties will come to an accommodation), there must be mechanisms in place to allow for opposition that does not have to resort to force. There are far too many potential spoilers in and around Afghanistan at the moment not to plan for means by which opposition can be expressed outside of the Interim and Transitional Authorities.

<u>Afghan Loyalty</u>: There is a perception in the Western media and in the US Government that Afghans are mercenary; they have a reputation for defection and a culture in which it is acceptable to change sides despite contractual-style commitments. However, instability of political relations is a direct consequence of the insecurity of the last 23 years. It is true that many Afghans will sell their services as gunmen. Many of them—with US encouragement—took up arms as young boys two decades ago, and now that is the only skill they know and the warlords remain their only employer available. There is a fundamental division in Afghan political thinking between *qaum*, defining those relationships that are based on blood, and which are permanent; and *gund*, which are relations based on temporary need and opportunity. This division needs to be seen as a rational response to political insecurity; not as a moral failing that somehow places Afghans beyond the pale of moral discourse.

Recommendations:

- <u>Security</u>: There must be a secure environment within which a new culture of governance can emerge. Insecurity provides legitimate and illegitimate reasons for certain elements to assert control ands exploit insecurity to gain authority. These are the circumstances under which the Taliban emerged and consolidated authority.

- <u>Re-Connect Power and Legitimacy</u>: There needs to be a re-connection between individuals and institutions that people believe should be vested with authority, and those that actually wield power. The exigency of the situation in Afghanistan gives legitimacy to the procedure and substance of Bonn at present, but that legitimacy needs to be under-girded immediately.

- <u>Transform the Pursuit of Privilege into the Responsibility for Governance</u>: There must be a transition from the pursuit of power, and the privilege of "ruling", to a service culture within the new institutions of the administrative authority. The ministries divvied-up among the factions within the new government must not be

treated as spoils, but rather as responsibilities. These responsibilities provide an opportunity for the military/factional leadership to prove their political viability.

- Foster Participatory Governance: Genuine participation needs to be encouraged by allowing emergent leadership to filter into the national system. Legitimate, capable leadership simply will not take root if it is appointed from the center instead of selected by the people.

- Empower Social Leaders: Local leaders who owe their authority to respect for institutions or past individual leadership (teachers, *mullahs*) must be allowed and encouraged to engage in the reconstruction process.

- Create a Mechanism for Transitional Opposition: In the past, international transitional administrations have lacked a separation of powers, effective local participation, or any space for opposition during the transition. In turn, international administrators have a tendency to foster "governments of national unity" to assume the combined legislative and executive powers they wield. This may be convenient, and gives the appearance of unanimity and an orderly transfer of power as an exit strategy. In reality, it breeds an absolutist form of power that forces any kind of opposition to be outside the acknowledged scheme of transitional governance; and new or old factions will protest and express their grievances in the way they know best, by taking up arms. If transitional administrations—international or Afghan—do not allow for, or indeed encourage, legitimate opposition during the transition, there can be no expectation of space for this in successive regimes. Not only does this result in a structural denial of basic political rights, including freedoms of expression and assembly, but it will foment outright violence and amount to a nullification of the transitional exercise. There needs to be consideration of a forum for airing political grievances outside the standing bodies of the Transitional Authority, and in advance of the drafting of a constitution.

- Identify Non-Contractual Sources of Commitment: Afghans are capable of dealing with one another and with others in a reliable fashion. Like everyone else, they will do so warily and cautiously. But real compromise and agreement are achievable. Succeeding in this requires a sensitive appreciation of the basis for loyalties and for fulfilling commitments. This may not be the same as Western-style understandings of the black and white letter of the contract. It may instead be rooted in more amorphous qualities of charismatic leadership, social ownership and support, perceptions of history and fairness, traditional identities, evolving balances of power and a variety of other factors.

- Do Not Rely on "Free and Fair" Elections: The conventional notion of internationally organized or supervised "free and fair" elections, understood to result in a winner and a loser, may not resonate in Afghanistan as a legitimate source of authority for the winner, and therefore may not be followed, in contractual terms, by any kind of transfer of power. Instead, without attention to non-contractual sources of authority, election results may be at best one factor in a self-evolving balance of power, and at once self-defeating and a return to past

conflict as those results are challenged. Such "free and fair" elections would more serve the convenience of the international community, to facilitate external recognition of an Afghan party, than it would result in a stable and sustainable government.

2. Representation

This most fundamental of political questions pervades every aspect of the process of re-establishing political authority in Afghanistan. Although the selection of parties involved in fashioning the Bonn Agreement narrowed representation for the purposes of choosing an Interim Authority, not even the participating parties claim to be representative of broad swathes of Afghan society. Thus the project of determining how representatives of all segments of the Afghan population should be chosen is enormous.

The *Loya Jirga*: An emergency *Loya Jirga* is to be convened in six months time. That *Jirga* will be responsible for selecting the Transitional Authority, which will govern Afghanistan for 18 months, and which will formulate Afghanistan's new constitution. The membership make-up and selection criteria are to be determined by a Special Independent Commission to be established by the Interim Authority. It is essential that the selection process for the membership of the *Loya Jirga* encompass the representational concerns encapsulated below.

History of the *Loya Jirga*: The institution of the *Loya Jirga* itself does not have a clear history. The last use of the *Loya Jirga* that is widely regarded as legitimate was in 1964, when the new constitution was promulgated. That Constitution also codified the role and make-up of the *Loya Jirga*. In the 30 years prior to that, it was notably used in 1941 to affirm the King's neutrality policy during World War II. Prior to the 1964 Constitution, the method of membership selection was by the king, with the approval of the provinces. Due to this arrangement, the institution has largely been perceived as a rubber stamp for the monarchy.

Election and Selection: It is also unclear whether representatives, in some cases, are to be elected or selected. It is clear that the members of the Special Independent Commission are to be selected (but not by whom). There is also a need for local and provincial level leadership that was not even contemplated in the final text of the Bonn Agreement. If this leadership is to be appointed by the Interim Authority, careful attention will have to be paid to appointing respected officials. The monarchy had a history of appointing provincial governors from provinces other than those they ruled. The provincial governors were then responsible for choosing the local representatives to the Kabul government.

The Equipopulation Principle: This principle is a fundamental rule of fairness in representation. This rule requires that every voting unit (whether an individual or a district) have an equal vote, and that each representative represents an equal number of voters. Regardless of the means of election, if elections are to occur, fairness suggests that each elector have an equal voice.

Geographic vs. Proportional Representation: One key distinction to be decided on is whether representatives will be selected on a geographic basis, or on the basis of some

other representative criteria, or some mixture of the two. In the case of elections abiding by the equipopulation principle, this will be a decision between electing representatives from administrative entities (such as districts or provinces) or electing candidates (individuals or parties) based on their receiving a certain proportion of the overall vote. There are many possible variations within each of these basic models (e.g. multiple member districts, bicameralism, and minimum percentage requirements), but each model has advantages and disadvantages that may be critical to the success or failure of Afghanistan's future political arrangements.

- *A Mixed Precedent*: The 1964 Constitution created a mixed bicameral system (the *Shura*) with a *Wolesi Jirga* (House of the People), whose members were elected from equally populated districts, and a *Meshrano Jirga* (House of Elders), whose members were selected by the King, Provincial Councils, and by direct elections in the Provinces. In the first elections, candidates were elected as individuals. Political parties did not yet exists and the laws allowing their creation were delayed until the population had some experience with electoral politics.

Geographic Representation: This system would have local administrative entities (provinces or districts) select representatives according to the number of people to be represented within that jurisdiction. For instance, each province could be broken into districts, with each district containing 50,000 people. Each district would be able to select one representative. Such a system would ensure that the national representative body had geographic representation as well. Geographic representation can function as a neutral proxy for ensuring ethnic representation. However, as this form of selection is majoritarian, ethnic and political diversity within jurisdictions is limited.

- *Enumeration:* Creating voting jurisdictions that are equally apportioned will require a thorough and credible enumeration of the population. Annex III of the Bonn Agreement (Request to the United Nations by the Participants) calls for the UN to register voters in advance of the first general election to follow the adoption of the constitution, and to conduct a census of the population. There is substantial disagreement among Afghans and the international community as to the size and composition of the Afghan population. Therefore this work must be done with the utmost attention to both accuracy and transparency. It is worth noting that selection of participants in the first *Loya Jirga* is likely to take place without this information.

- *Existing Administrative Boundaries*: At the moment, administrative boundaries in Afghanistan (district and province) are not based on numerical equality. Even the exact number of provinces is debated. Legislative districts will have to be reapportioned.

- *Refugee Population*: During the last 23 years of war, an estimated 1/3 of the Afghan population left the country. It may be necessary/desirable to incorporate this population into new political arrangements. Refugees could be allowed to choose a geographic area to identify themselves with. If geography is the basis of choosing representation, giving a vote to refugees as a separate community could

cause a geographic/ethnic imbalance, as certain areas are over-represented in the refugee population.

Proportional Representation: A system of proportional representation would allow political parties to vie for support on a regional or national basis, resulting in a proportional stake in the government based on the percent of the vote captured. A system of proportional representation will likely ensure ethnic and political diversity. However, a system of proportional representation requires political parties and does not ensure geographical representation. The Afghan people have limited experience with a stable political system that includes political parties. There is a danger that political parties in the center and populated by elites will dominate all representation. Likewise there is a danger that hastily organized political parties with disparate funding levels will cause a few well-funded organizations to capture the vote. This degree of centralization may undermine local leadership, which is presently the most intact leadership in Afghan society. A system of proportional representation will not require an enumeration that leads to re-districting prior to a fair election process.

Individual Selection Criteria: Articulating the selection criteria for non-elected representatives (e.g. for the Special Independent Commission and the *Loya Jirga*) will be a delicate process. The Bonn Agreement states that the members of the Interim Administration were selected on the "basis of professional competence and personal integrity … with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women." One over-riding criteria, not included in this list, is power. Which of these criteria will be preeminent in choosing the composition of future bodies? Will there be some mechanism to ensure that a basic minimum of members meeting certain "objective" criteria, such as ethnicity, gender, and religion, are chosen?

Ethnicity: Meaningful representation of every ethnic group in the country is essential for the new government's legitimacy. Years of fighting and disenfranchisement have increased ethnic tensions, and these must be allayed through participation in the new governing authorities. However the means to achieving balance are fraught with peril. Establishing quotas for ethnic groups requires exact enumeration, and limits the potential of groups to increase their representation. Also, if selected on the basis of ethnicity, representatives may be less likely to act on behalf of the whole population. In general, such a system would possibly increase ethnic divisions, making the population feel as though they cannot be represented by anyone outside of their own ethnicity. Overall, geographic representation may provide ethnic diversity. But in districts where there is a mixture of ethnic groups, a majoritarian system of electing a single representative may mean that many are left feeling un-represented.

Gender: Following the demise of perhaps the most dramatically and explicitly gender-repressive regimes in modern times, addressing the role of women in Afghan society has political ramifications that extend beyond those normally associated with political evolution in traditional societies. The most urgent needs of women in Afghanistan are those of Afghan society as a whole: namely food, shelter, education, health care and freedom from armed conflict and landmines. However ensuring due attention to the needs of women will require more than simply directing programs towards them.

Recommendations :

- Establish a Sound Basis for Assessing the Question of Representation: There are still too many unanswered questions to address the issue of adequate representation during the interim and transitional periods. Participation at Bonn was narrow. The selection criteria for membership in the *Loya Jirga*, and for membership in the Special Independent Commission to determine the criteria for the *Jirga*, are entirely unclear. The number and composition of the population is imprecise. The model for selection criteria can affect the long-term models for the kind of government to be entrenched in the constitution. The timetable is swift. A better understanding of the location and make-up of the population, as well as the likely desirable model for the future government, may need to be rapidly assessed if the political question of representation is going to be meaningfully addressed.

- Develop a Political Formula for Ethnic Diversity: Afghanistan's history is retold through each ethnic prism. Dominance by one group has been one model of overcoming this question; but it is no longer a workable or desirable one. At the same time, ethnically-based factions have bred internecine conflict. Ethnicity will need to be one factor in a formula that is rooted in other principles.

- Guarantee a Political Role for Women: Women must have access to the political process. The degree of "publicness" of this role will have to be mediated through local and national cultural norms, but it cannot be relegated to a list of secondary issues to be taken up once more pressing issues have been addressed.

3. Structural Issues

The overall division of authority between and among national institutions and local or provincial level institutions is the other macro-political question to be addressed in the coming period. Establishing a stable political environment will require a balance between diffusion of authority among institutions to create checks and balances, while at the same time avoiding debilitating factionalization.

Consociational Model: Several Afghan groups have advocated in recent years for a federal-type system that would grant relative autonomy to various regions of the country. This model is in response primarily to nation-wide ethnic and tribal divisions, and the desire to guarantee basic rights for each minority population. Afghanistan's history of political centralization is associated in the minds of many with repression. At the same time, *de facto* regional autonomy has existed for much of Afghanistan's history, especially over the last 23 years. Regardless of the ultimate form, some degree of authority will have to be devolved to the local level.

Separation of Powers: The Bonn Agreement has called for the establishment of an independent judiciary while establishing a unified executive and legislative authority for the interim. There must be clear distribution of authority and dispute resolution mechanisms in place to avoid constitutional crises. Iran's recent experience provides a cautionary tale, wherein there is an elected parliament that has been repeatedly stripped

of its authority by a supreme religious council whose relationship to the parliament is not clearly defined.

<u>Recommendations</u>:

- <u>Devolve to Local Government</u>: The selection or appointment of regional/provincial/municipal governors will be a critical short-term issue. Historically, provincial governors were appointed from the center, and were often not from the area they governed, causing tensions with local leaders.

- <u>Establish a Commission on Local Governance</u>: As part of the Bonn process, the Interim Authority may consider establishing an additional body, namely a Commission on Local Governance to build on what leadership is intact in the country; to generally address the specific challenges of dividing responsibilities between the centre and the provinces and districts; to foster local participation in national reconstruction; and to ensure local participation in national institutions and decision-making.

- <u>Consult on Central Representation to the Regions</u>: Appointments of administrative staff of central authorities, such as governmental ministries, should be made in consultation with local authorities.

- <u>Ensure a Culture of Separation of Powers</u>: A missing piece of the doctrinal evolution of international transitional administrations has been the rather obvious concept of separation of powers. Executive and legislative powers have been vested in the hands of a single supreme global governor, the "Transitional Administrator". National histories of absolute authority involved the distribution of power from a monarch to multiple governmental institutions through constitutional processes, both violent and non-violent. So too in internationally-organized or sponsored transitional arrangements, comparable constitutional questions have to be tackled during the transitional period if they are going to have any future afterwards. The very purpose of the transitional period should be to give space to a "culture of governance" that may not otherwise get it. Therefore, in the shift from the interim to the transitional period in Afghanistan, there should be as soon as possible a separation of executive and legislative power, even in advance of finalization of a constitution. Otherwise, a new constitution will not only have to contend with the factionalism of the past, but it will not even have a fertile ground prepared from which it can grow: it will have to compete with the contrary culture of unified, absolute authority of the recent transition.

III. Institutional Reconstruction

In addition to establishing a stable, representative government, institutions responsible for implementing the work of government need to be established. This considerable undertaking requires long-term commitment of resources and attention. The challenge of reconstructing Afghanistan will require competent, non-self-interested leaders and implementers. Initially, some substantial portion of budgetary inputs and technical competence will come from abroad, providing further challenges to domestic leadership. Similarly, the most devastated and neglected regions of the country will require inputs from regional centers. Thus there must be an immediate focus on institutional reconstruction at all levels of government and society.

1. Priorities

Basic Needs: Developing institutions that can help the Afghan people to provide for their most immediate needs will be a top priority. The sectors of food and agriculture, heath care, education, and demining are clear top priorities to sustain the population and stabilize the environment. Larger infrastructure projects, requiring greater financial and technical inputs, will increase as government stability and capacity increases.

Human Resources: Afghanistan's greatest loss was its human resources. A program is needed to bring back talented, educated and trained Afghans to work and help rebuild the country. Many are currently stuck with menial jobs in Pakistan and can be induced to return. Other Afghan elite or intelligentsia in the wider diaspora may also be attracted back for the short term to help build local capacity, but they may require international salaries. The International Organization for Migration (IOM) has initiated such projects. Alternatively, a Voluntary Services Overseas (VSO)-type plan could be implemented, whereby "volunteers" are given minimal salaries and provided with travel and accommodation expenses.

Recommendations:

- Conduct a Skills Audit: A rapid and systematic assessment is required of the existing human resources and level of education and training amongst the population. If this task is not given importance in the beginning, it will probably never get done, as is typical in past transitions. It is difficult to build a public service, and therefore staff a national bureuacracy, without knowledge of the gap between available resources and requirements. It is equally difficult, and potentially misguiding, to determine any international role in assisting the national administration without knowledge of Afghan capacities. Otherwise, Afghanization of the process can be undermined: internationals doing jobs that Afghans can do, or not doing jobs that Afghans cannot do, will distort the outcome and sustainability of intstitution-building.

- Ensure Capacity-Building for the Transitional Authority: There needs to be a degree of independence from funding/donor sources so that Afghans themselves have something to bring to the table. There can be some conflict of interest if the agencies responsible for outlining the requirements for capacity-building are also

providing the internal resources for implementation required by the nascent political authority.

2. Fairness

One explanation proffered for the collapse of Afghanistan's state institutions in the past has been the issue of "fairness". Inequitability has been identified as a source of deep and long-term dissatisfaction, and in turn has fueled conflict.

Fair Distribution of Resources: Kabul in particular and other regional centers dominated resource distribution in the past. There was a so-called "six mile rule," by which population centers and a six mile wide ring around them received almost all of the resources. Despite the relative hierarchy of ethnic groups in Afghanistan under previous regimes, poverty was not exclusive to disenfranchised groups.

Accountability: A means of ensuring accountability of decision makers is critical to building legitimacy. While there is a separate Supreme Court envisioned in the Bonn Agreement for judicial questions, there is no independent means to hold the interim and transitional authority, as well as the role of the international community in its myriad forms, accountable to the wishes of ordinary Afghans. "Ombudsman" offices have been created to fulfill this function in the past. However in transitional administrations they have tended to be controlled by an executive, and often, therefore, self-defeating, as they can be too cautious about criticizing policy decisions or oversights.

Ethnic vs. Meritocratic Balance: Ethnic affiliation, rather than merit-based criteria, has too often been the primary criteria for selection of leadership and professional positions. A long history of ethnic hierarchy in Afghanistan fostered educational and wealth imbalances which have led to a further imbalance in even merit-based selection. Fairness requires that broad-based representation and participation will require an increase in ethnic diversity at all levels. However, fairness also requires that selection of personnel for the upcoming reconstruction period must also consider some relatively objective merit-based criteria.

Gender Equality: The means of incorporating women are likely going to be very different in village and urban environments. The village *shura*, for instance, is a primarily patriarchal structure by which male heads of household are the lone decision-makers. There has been some limited success, however, at instituting women's shuras in rural areas. In the urban context there is greater possibility for women's participation through the workplace, educational institutions and other non-governmental organizations (e.g. the women's council). In Afghanistan, unlike in other countries with a colonial heritage to draw on, women's rights have been home-invented, which is a unique achievement and a strong history to draw on to tackle any specific circumstances.

Appointment of Provincial Leadership: In the past, provincial level leaders, representatives or managers tended to be appointed by the central government. Often these officials were not selected/approved by local leaders, sometimes they were not even from the areas they governed. Local leaders should be the primary resource for developing and nominating centrally appointed leadership.

<u>**Recommendations**</u>:

- <u>Develop Objective Distribution Criteria</u>: To ensure fair resource-distribution, criteria for allocation are needed to ensure resources reach all areas outside cities. This will require Afghan approval, though perhaps with a role for international review and an appeal process with written decisions in the event of denials of requests.

- <u>Create a Mechanism to Appoint Local Leaders</u>: There should be a local nomination process to select local leaders for centrally appointed functions.

- <u>Create a Transitional "Court of Appeal"</u>: A mechanism that functions like a transitional "court of appeal" is required, in advance of the finalization of national constitutional questions. Without such a mechanism, the Authority in Kabul could fail to respond to ordinary grievances and find itself isolated and without popular support.

- <u>Establish a Watchdog Commission</u>: In addition to a formal mechanism for ensuring accountability that may be petitioned by ordinary Afghans with a grievance, a more analytical body is needed comprised of prominent as well as expert Afghan and international members to monitor spending and reconstruction. Such a monitoring Commission could ultimately become a permanent research and advocacy institution for monitoring of Afghanistan's political future and infrastructural well-being.

3. Interface between International, National, and Local Institutions

As each institution defines and develops its role, it will rely on and/or conflict with other institutions at different levels. Establishing a hearty political and societal environment, critical to the success of Afghanistan's new institutions, will require individuals to develop organizational infra-structure and share power at all levels. Long-term integration needs to be taken into account along with short-term needs. Instability also allows fluidity, and institutions supported by resources now will become embedded in a new political culture.

<u>Role of Provincial/Municipal Leadership</u>: The role of non-national leadership must be defined. To what extent does any executive authority reside at this level? There must be a non-Kabul based resource for international, national, and local entities working on the ground to meet and settle disputes. Over-centralization of implementation overseers will cause substantial bottlenecks and delays in resource distribution and problem-solving.

<u>Elites and Ethnicity</u>: Differences between elites of different ethnic groups are less than differences between classes within ethnic groups. A university educated Kabuli Pushtun may be only slightly more at home in the central Hazarajat as is the Westerner with some knowledge of local language and culture.

Dependency: Reliance on the international community for a continuous flow of resources can hamper indigenous development and undermine local control. Although a short-term strategy requires "handouts" in the form of foodstuffs, future programs should focus on inputs with general benefit and projects requiring local participation.

Displacement: The proportion of the Afghan population that has been displaced either internally or internationally is staggering and, as such, requires special attention. This has disrupted many traditional leadership structures, and has the potential to unbalance new ones as displaced persons return or reassert influence. Thus, it will be critical to provide a means by which displaced Afghans can participate at all levels.

Development of Village-Based Organization: Effective reconstruction and participatory governance will rely on the village organizations. Recent experience in Afghanistan and the region by programs such as the those of the Agha Khan Rural Support Program (AKRSP), Oxfam, and UNOPS point to a critical role for village-level organizations in participatory development and reconstruction. A key element of these programs is institutional development at the village level, which provides the framework for community members to take advantage of outside assistance as well as to use their own resources more productively. These organizations can supplement, but should not undermine, bureaucratic structures. Similarly, community empowerment and local governance projects have been tried by the World Bank and other development agencies in other parts of the world. Despite their short-comings, there is still great potential for such projects to be adapted, from past experience and to the specifics of Afghanistan, to be worth seriously considering.

Waqf Model: The idea of an independent village-based foundation like a *waqf* (an endowment for religious institutions which governs and manages separately from civil authorities) may be worth investigation. A small resource base for projects and individual or group loans to communities, along micro-financing lines, could generate greater local initiative.

Recent Experience With *Shuras*: The *shura* has been explored in recent years by the relief and development community as a decision-making institution. Several organizations have explicitly set out to foster the creation of "development" or "reconstruction" *shuras* to act as local interlocutors. This experience has been mixed, as dramatic differences are evident between *shuras* even from one village to the next within a given region. Much of the ability to function as a planning and resource distribution entity depends on the personalities involved. The ability to interact at the local level also depends significantly on the quality of organizational staff responsible for the interaction. Staff from the region, albeit not necessarily from the village itself, are most likely the best interlocutors.

Participation Through the *Shuras*: Community participation has become conventional wisdom throughout the development world. The grass-roots approach is touted in the dual rhetoric of *community participation* and *sustainable development*. Thus the *shura* concept at the local level provides what appears to be an ideal venue for reconstruction and development: a village-based, representative body, accessible to the entire community, known for its conflict-resolving abilities, and which is steeped in cultural and religious heritage. Some assistance agencies have utilized the *shura* concept, not only to

streamline delivery of assistance and encourage administration, but to turn each community into its own development agency. The local *shura* is used to this end as a springboard for participation, planning, training, and distribution of material support.

Initiating a *Shura*: Typically, an NGO field worker will contact, or be contacted by, an influential member of the community and they will call a meeting in the village. At this first meeting, the field worker will ask for a gathering of representatives from each household in the village or villages, and he will explain the process by which the NGO works. Each sector—e.g. agriculture, veterinary, engineering, education, health —and their range of activities will be briefly outlined.

Role of the *Shura*: The field worker then goes on to explain that the village must form a local *shura* to make decisions about development needs and work with the NGO to implement projects. Because these projects, in a variety of sectors, should benefit most members of the community, the *shura* must have representatives from each home in the village, landowners and landless alike. The *shura* must also select a representative, who will act as a liaison between the *shura* and NGO staff. Once the *shura* has agreed on which projects are most important to their community, it will meet with the field worker again and work together on establishing proposals for these projects. At this time, either the second or third meeting with the community, technical staff from the various sectors will probably accompany the field worker to discuss programs and proposals with the community. Although, recent experience has also shown that elite technocrats do not necessarily respect local managers (e.g. the *mirab*).

Recommendations :

- Harmonization: Assessment and decision-making for resource distribution must be harmonized to ensure that resources are uniformly targeted and that alternate planning and implementation strategies do not undermine the reconstruction process.

- Ensure Domestic Ownership: International actors must ensure that institutions and projects are domestically "owned" – requiring full participation in producing and allocating resources.

- Develop and Support Village-Based Organizations: Recent experience in Afghanistan shows that village-based organizations can be powerful tools for reconstruction. Programs that develop these organizations should be encouraged through national and international channels.

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The Building Democracy After War Project is a multi-year project of the Watson Institute of International Studies at Brown University. This central goals of this project are 1) to improve our understanding of the relationship between transitions from deadly conflict and the promotion of democracy; and 2) to improve international and national-level policies in conflict areas so that peace-building efforts foster participatory governance, so that democracy-building efforts sustain, rather than undermine, peace.