

**ETHNIC DIVERSITY IN AFGHANISTAN: A CASE FOR
FEDERALISM**

By

Suhail Shahzad



**AREA STUDY CENTRE
(CHINA, RUSSIA & CENTRAL ASIA)
UNIVERSITY OF PESHAWAR**

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**AREA STUDY CENTRE
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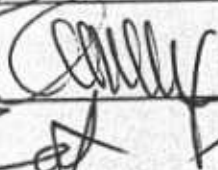
Suhail Shahzad

Approved:

1. Supervisor

2. Internal Examiner

3. Director

Director
Area Study Centre
(Russia & Central Asia)
University of Peshawar

Area Study Centre
Date 14/2/2006

Abstract

In Afghanistan, the state building enterprise began by Amir Abdur Rehman Khan (r. 1880-1901) culminated into the 1964 constitution, seems to have created a sense of nationhood among the various groups making up the country. Despite the recent history of war and feud between various factions, there seems to be a consensus on preserving a united Afghanistan.

This thesis attempts to examine the constitution making process in Afghanistan, especially in the context of relations between the central government and the periphery. If a constitution is 'the soul of a nation', as a South African scholar puts it, I am tempted to add that the constitution-making experience of a nation—the constitutional moment—is an occasion for a nation's self-interrogation on its past, present and future. It is a rendezvous with destiny.

Successful constitutions are characterized by a capacity to strike a balance between the need to enshrine fundamental principles, on the one hand, and provisions for adaptation to changing circumstances, on the other. The latter includes the needs of achieving security and the developmental imperatives of a nation. One of the crucial questions that the drafters of a constitution face concerns the relationship between the central government and the regions and localities comprising the country. What degree of decentralization is granted to the regions is a matter to be determined in each case by the history and politics of each country. Thus, the present study advocating federalism in Afghanistan is divided into the following chapters:

Chapter 1 discusses the established principles of constitutional jurisprudence and its relevance in the context of the constitutional-making process in Afghanistan. Unitary constitution failed in delivering stability and development to Afghanistan, hence, needs

application of federal principles.

Chapter 2 describes and explains the ethnic diversity in Afghanistan. It also discusses the inter-ethnic relations in broader political ambit, policy of the ruling Muhammad zai dynasty towards ethnic minorities, inter-ethnic relations during Afghan Jihad and the subsequent impact of the jihad in terms of fostering ethnic rivalries.

Chapter 3 contains a brief overview of the events leading to the fall of Communist regime in Kabul and efforts to install a multi-ethnic, broad-based government in Kabul under the auspices of the United Nations. The ensuing internecine battle for power, the power struggle amongst various contenders and its impact on the delicate social fabric of the Afghan society, role of regional as well as global powers in widening the schism amongst various interest groups distinguishable on ethnic, linguistic, sectarian and cultural grounds are taken into account. Five regional political power centres are identified. The rise and fall of the Taliban the interim and transitional governments mandated to restore democracy and constitutional order in Afghanistan are assessed.

Chapter 4 narrates the story as to how the administrative edifice of Afghanistan was structured through the ages, more precisely since the days of Amir Abdur Rehman, creator of the administrative set-up still in vogue in Afghanistan. The focuss of attention has been the centre-periphery relations, the judicial structure, the military and the finances.

Chapter 5 studies the constitution making process set in motion by the Bonn Agreement. The Constitution of Afghanistan 2003 is examined especially in the context of administrative structure it has raised.

Acknowledgment

It would have not been possible to carry out this work without the guidance, help and advice of venerable Profesor Ahmed Ali Khan, my supervisor, I owe a great deal to him. His inspiring guidance, constant encouragement and continuous interest helped me to complete my work.

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Ethnolinguistic Groups In Afghanistan



Iranian	Turkic	Other
Baloch	Kirghiz	Brahui
Aimek	Turkmen	Nuristani
Hazara	Uzbek	Sparsely populated or uninhabited
Pashtun Durrani, Ghilzai		
Qizilbash		
Tajik		

Approximate geographical placement of various ethnic groups

Introduction

The present thesis contributes to the wider discussion of finding ways and means for a viable, practible and workable solution to the Afghanistan's Constitutional problems.

Afghanistan looks like a perfect candidate for federalism. Much in its history, geography and social composition suggests that the introduction of a federal form of government might be part of the cure for the country's ills.

The population of 26 million is composed of several ethnic groups (Pashtoon, Tajik, Hazara, Uzbek and others), two main language communities (Dari or Afghan Persian and Pashtoo), and two major school of thoughts in Islam i.e. Sunni and Shi'a. While these elements of diversity create a range of communities with fierce local loyalties, there appears to be at the same time an enduring sense of Afghan identity. They attempt to exercise centralized power, usually associated with the Pashtoon ethnic community which seems to form about 38% of the population.¹ This phenomenon has too often been experienced by other elements in Afghan society as a form of domination and exclusion, creating dissidence and resistance in response.

The combination of sentiments of national (Afghan) identity and powerful local loyalties, based on region, ethnicity, language and sectarian difference, establishes the socio-political conditions for a highly decentralized form of federal government. The idea of combining shared rule at the centre for some common purposes with self-rule in the regions for other purposes offers a possible means of accommodating the deep cleavages in a war-torn country, and releasing the national and local energies that will be required to re-build Afghan society, once the current troubles are brought to an end.

¹ For further details see for example World Almanac, USA 1997.

The political reconstruction of Afghanistan will involve three difficult tasks: reconciliation between groups that have from time to time been fighting each other; disarming and reintegrating combatants; the welding of diverse ethnic groups into a single national community. The last is challenging even when it does not follow two decades of war and as Afghans consider the lessons of their own history for their present choice of institutions and processes, their neighbors in South Asia also have a great deal to teach them about creating and consolidating a multi-ethnic polity. For fifty years, these states have been attempting to fashion themselves into national communities, and have experienced different degrees of success at different moments. From an examination of their histories, Afghanistan may be spared a repetition, not only of its own, but their mistakes.

Afghanistan has a unique geographical position and unique historical experiences, but it shares with South Asia, diverse ethnic populations whose kin live in adjacent regions across inter-state borders. These groups also occupy distinct parts of the country and have historically enjoyed varying degrees of autonomy. None of this need prevent Afghans from pulling together to rebuild their society and state. The experience of three South Asian states (India, Pakistan and Sri Lanka) suggests that such diversity is not an insuperable obstacle to cooperation, and offers the following insights to those involved in the reconstruction of Afghanistan.

The first thing to note about national integration is that it never really happens. Expecting that any contract forged at this moment will (a) be entirely and exactly realized, and (b) remain salient and valid for all time, is unrealistic. In reality, every contract, every vision, every arrangement is constantly re-negotiated between all parties-whether between the ethnic groups that make-up a state or the government and one or more of those groups. Anticipating such re-negotiation goes a long way towards preventing conflict. Freed of

the compulsion to enforce a single national self-image, the state is able to accommodate variations as they arise.

With this object in mind an attempt will be made to determine as to what should be a more suitable arrangement of relations between the central government and various regions inhabited by people with distinct ethnic and sectarian characteristics.

Purpose of the Present Study

The present study seeks to examine the constitutional making process in Afghanistan in its historical, political and sociological context. Main emphasis is placed on studying the developments in the administrative structure of Afghanistan under the various constitutions and especially, the newly adopted constitution of 2003. Thus, in various chapters of the thesis it will be seen as to how the state of Afghanistan was created, and different constitutions adopted. In the entire constitutional legacy of Afghanistan seemingly the ethnic factor has been ignored. It resulted in to fragmentation of the society to the extent that at times it appeared that Afghanistan might disintegrate. A fair and just ethnic policy in Afghanistan could have avoided the catastrophe following the fall of Kabul to the Mujahadeen in 1992. The events that took place during the last three decades in Afghanistan have proved the vulnerability and inherent flaws in the constitutional arrangement.

Thus, the present study is divided into the following chapters:

Chapter 1 contains discussion about the established principles of constitutional jurisprudence and its relevance in the context of the constitutional-making process in Afghanistan.

Chapter 2 tries to explain the ethnic diversity of the Afghan society. It also discusses the issue of inter-ethnic relations into its broader political ambit, policy of the ruling Muhammad zai dynasty towards ethnic minorities, inter-ethnic relations during Afghan Jihad and the subsequent impact of the jihad on such relations.

Chapter 3 contains a brief overview of the events leading to the fall of Communist regime in Kabul and efforts to install a multi-ethnic, broad-based government in Kabul under the auspices of the United Nations. None of the attempts to arrive at a consensual solution, however, were successful. The holy war, hitherto directed against the communist regime, turned into an internecine battle for power. The power struggle amongst various contenders seriously ruptured the delicate social fabric of the Afghan society. Regional as well as global powers also played their role in widening the schism amongst various interest groups distinguishable on ethnic, linguistic, sectarian and cultural grounds. It resulted, at least for the time being, in the clear division of Afghanistan into five regional political power centres. The chaos and vacuum invited yet another force, the Taliban, to fill the void. The use of repressive and brute force by the Taliban restored a semblance of order and a highly centralized administrative set-up. The Taliban, an all Pushtoon militia, failed to maintain a just and equitable ethnic and sectarian policy. Rather their rule worsened inter-ethnic relations. The chapter ends in fall of the Taliban and arrival of interim and transitional governments mandated to restore democracy and constitutional order in Afghanistan.

Chapter 4 narrates the story as to how the administrative edifice of Afghanistan was structured through the ages, more precisely since the days of Amir Abdur Rehman, creator of the administrative set-up still in vogue in Afghanistan. In this regard the focus of attention will remain to be the centre-periphery relations, the judicial structure, the military and the finances.

In chapter 5 the constitution making process set in motion by the Bonn Agreement is thoroughly studied. Further the Constitution of Afghanistan 2003 is also discussed and especially with regard to the administrative set-up it has raised.

And finally the conclusion wherein to see whether the political arrangement made for the Afghans by the Afghans will serve its purpose in the right earnest or there are more sufferings for the unfortunate people, the Afghans.

Methodology of study

In the present study sociolegal, descriptive and analytical methods of research have been adopted. It predominantly consists of library work. Most information on Afghanistan is available on the campus i.e. The Area Study Centre Library, University of Peshawar Library and with material available in the Law College Library. Demographic data on the subject did pose some problem. However data collected by the World Bank, the CIA, International NGO's and random studies conducted by the Afghan Government at various times provided me with sufficient knowledge.

Last but not the least was the first hand information gathered from various Afghan scholars, politicians, ex-officials of various Afghan regimes and tribal leaders currently based in N.W.F.P and Islamabad. With the active and material support of Professor Dr. Sarfraz Khan who has close personal relations with such dignatories many structured and semi-structured interviews were conducted.

Table of Abbreviations & Acronyms

ATTA:	Afghan Transit Trade Agreement.
CIC:	Centre for International Cooperation.
ICG:	International Crises Group.
IMF:	International Monetary Fund.
ISAF:	International Security Assistance Force for Afghanistan.
NGO:	Non Governmental Organization.
NIFA:	National Islamic Front.
PDPA:	Peoples Democratic Party of Afghanistan.
SCN:	Supreme Command of the North.
UN:	United Nations.
UNAMA:	United Nation Assistance Mission for Afghanistan.
US:	United States.
USSR:	Union of Soviet Socialist Republic.
UNHCR:	United Nations High Commissioner for Refugees.
DRA:	Democratic Republic of Afghanistan.
NIMA:	National Islamic movement of Afghanistan.

Chapter I

Origin and Nature of Federalism

In the current political parlance, a State is said to be created with the consensus of the people comprising it and if it is to endure, it must have a Constitution which, generally speaking, does nothing except to create different authorities and to delineate their respective spheres of activities. The Constitution adopted and the shape it takes is reflective of their past, ethos and élan, goals and aspirations and historical and cultural moorings. Though, a Constitution is merely a body of rules, yet, to remain intact, it must be wedded to the living organism i.e the particular society, for which it was written. A Constitution can only, to a very minor degree, provide appropriate remedies against social and economic inequalities of various regions which are caused by time lags. Yet it can counteract them by being in it self a positive symbol of fairness and equality for all regions and groups in the State.

1.1 Unitary & Federal Constitutions

Constitutions of States vary according to their choice of a unitary, federal or confederate form of Government. Whereas the Unitary States, of which Britain and France are prototypes, made for strong and efficient administration, which can take swift action when and where it is required, Confederate rule is likely to be weak and cumbersome. Federalism stands in between the two in respect of strength and swiftness yet shows a tendency towards greater integration and efficiency. The form federalism takes in a particular country is greatly influenced by its Constitutional history, economy, social, political and cultural

background and experience.

Since a federal constitution is a compromise between various centripetal and centrifugal forces, therefore, in order to enjoy the support of diverse ethnic and regional groups, it must:-

- a) Provide for an efficient and workable federal government.
- b) Safeguard the integrity and prosperity of all the federating units within the federation.
- c) Convince all the Units that they are being dealt with on the basis of absolute fairness and equality.²

In simple words states which are culturally, ethnically, linguistically and religiously

Diverse, will opt for a federal solution for the reason that minorities will derive their rights from the constitution, an agreement made by consensus and very difficult to amend.

1.2 Federation and Confederation Distinguished

Federation is a form of government in which sovereignty or supreme power is divided between the government at the Centre and the governments of the federating units. The distribution of sovereign powers is such that each set of government, central or local is, within its own sphere, independent and sovereign which can not be encroached upon by the other. This distribution of powers is the essence of federalism and determines the form of federation. The method of distribution differs from constitution to constitution and federation to federation. There is, however, one general principle, namely, the matters which are of national importance such as defence, foreign affairs, currency, external trade etc etc should be allocated to the federal Government, while such matters as municipalities, police, local industries, agriculture etc. are of local interest, allocated to the units. The two spheres

² Newman, K.J., Essays on the Constitution of Pakistan, Dacca 1956, pp. 117,179,182.

of powers are thus defined and each government is supreme, independent and autonomous within its own sphere of power. This demarcation of spheres varies from one federal constitution to another. Three different schemes of distribution of powers are prevalent in the present day federal constitutions:-

- 1- In the first method the powers of the federal government are enumerated while the residue remains with the units.
- 2- There method is to enumerate the powers of the unit governments leaving the residuary powers to the federal government.
- 3- To enumerate the powers of the central and unit governments in separate lists of powers, namely, the federal list, the provincial list and the concurrent list. This method was followed by Pakistan in its 1956 constitution. The residuary powers are allocated either to the central government or the provincial governments.³

The federal system, thus allows for considerable variety in the division of powers between the federation and the units. Sometimes, as in the case of Canada, all residuary powers may be with the union, sometimes as in the case of the U.S.A.⁴, they may be with the states. The constitution may make either the centre or the units powerful.⁵ As for the structure and character of a federal union, much depends on its previous Constitutional history. In the case of the federal union, whereas the case of Canada is one where a unitary form of government existed before the British North America Act, passed by the British Parliament, instituted a federation. In Australia, there were separate colonies, not sovereign states, which felt the need for common government which was then recognized by the British Parliament. The case of Germany again was one where alliance of sovereign states gradually developed into

³ Haq, M., The 1973 Constitution of Pakistan, Lahore 1985, pp. 155-157.

⁴ Dicey, A. V., Law of the Constitutions, London 1960, p-164

⁵ Ibid., p.45

a confederation, which was later superseded by a genuine federation.⁶

A Confederation is more in the nature of an alliance of independent States which maintain their sovereignty and entrust the Confederate Government, for the sake of convenience, with certain functions. The federal system, on the other hand, while it maintains the autonomous status of the component units, assigns sovereignty to the federal government. A Confederation is always between a transitory form leading either to federation or disintegration. The most notable examples of confederation are the North American States and the Swiss Cantons, before they adopted a federal constitution and the States of the later days of the Holy Roman Empire and the German Bund before their disintegration.⁷

1.3 Inception and Growth of Federalism

The federal form of government was first discussed by the German political scientist 'Althusius' in the 16th and 17th centuries and it has its roots in the structure of the medieval corporations which claimed an autonomous existence within the Organic whole which was the community. He first recognized cities, districts and provinces as microcosms inside the macrocosm (the totality of the State) which included, controlled and protected, but did not absorb them. Both the federation and the units had their prescribed spheres which they could not transgress. According to him the federation alone is sovereign while the Units have their statutory rights which must not be violated. The federation and the units should supplement each other, not encroach upon their mutual spheres of influence. The microcosm, which is the unit, is a smaller image of the macrocosm, which is the federation.⁸

From a political stand point a State should have the following features before it is considered

⁶ Newman 1956, pp. 117-118.

⁷ *Ibid.*, p.119.

⁸ *Ibid.*, pp. 118-119.

as a federal state:-

- 1- A written constitution based on the principle of trichotomy of powers.
- 2- A rigid constitution which is not merely amenable to the whims and wishes of the federal government, if it is to be amended, but also requires the consent of all or majority of the units or the unit concerned for that purpose.
- 3- A formal distributing of powers between the federation and federating units in two separate lists while reserving the residuary subjects either for the federation or the units.
- 4- An impartial, independent and supreme Judiciary having the jurisdiction not only to interpret the constitutional provisions but also to arbitrate in case of a dispute between the federation and units or the units.
- 5- A bi-cameral federal legislature the Upper House of which enjoys equal representation of all the Units irrespective of their area and population to safe guard against the encroachments of the federal govt.

These five features furnish the criterion by which the true character of a federal state is to be ascertained as to its formation and functioning.

Of the modern Constitutions, American Constitution is a model of a federal constitution which not only embodies the above-listed five features but also contains the principles of 'dual citizenship and proportionate representation of all the States in the federal executive. "Under it the field of Government is divided between the federal and state governments which are not subordinate to one another but coordinate and independent within the spheres allotted to them. The existence of co-ordinate authorities independent of each other is the gist of the federal principle.⁹ But this model is not certainly immutable. Countries can introduce modifications and novelties to provide for those situations and conditions which are peculiar to them.

There is a tendency in the modern world (because of technological and economic evolution)

⁹ Mahajan, V.D., Constitutional Law of India, Lucknow 1984, p.13.

for the larger circle to increase its importance at the expense of the smaller circle. All existing federations have shown a marked tendency towards an increase in federal powers due to the fact that the Central government has at its disposal a greater choice of talent, ability, finance and international credit, than each of the component Units.

However, the federal form of government can not go beyond a certain limit without losing its character and turning into a confederation. According to Dr. Wheare exceptions to a completely federal constitution are possible provided the federal principle is predominantly retained in the Constitution. However, if there are too many modifications in the application of the federal principle as a result of which the federal principle ceases to be of any significance, the constitution can not be called a federal constitution.¹⁰

In addition to the above, Dr K.C. Wheare opines that the practice of the constitution is more important almost than the law of the constitution. But that is for the students of political science or comparative government¹¹. A lawyer or a student of constitutional law is definitely not concerned with such an approach, legally all that would entitle a state the status of federation is the distribution of powers between two spheres of government which are capable of judicial enforcement.

There are according to Dicey, three essential legal features in a federal constitution namely:-

- a) Supremacy of a written constitution.
- b) Distribution of powers amongst the various organs of the federation and of the regional units of the federation, by the provisions of that constitution, and;
- c) Judicial review and enforcement of that supreme constitution as law.¹²

¹⁰ Ibid.

¹¹ Wheare, K.C., Federal Governments, London 1963, p. 20

¹² Dicey 1960, p. 164.

1.4 Unitary or Federal: A Choice for Afghanistan

Having broadly studied the principles of constitutional law one can safely argue that societies that are multi-ethnic, culturally and linguistically diverse opt for a federalist solution whereas uni-culture, mono-ethnic people have their state formed on unitary lines. In context of the current study Afghanistan is passing through the critical phase of state reformation, thus implying the basic task of constitution-making. As said in the very beginning if the constitution is to endure it must be wedded to the society. For a wedding to remain successful each party must know and cater to the needs of the other party. It is the society which precedes the state and not vice-versa. It would be idle to make political provisions for a society without knowing its fabric. The past constitutional experiments and the causes of their failures in Afghanistan, discussed in detail in the coming chapters, would reveal the fate of unsuitable political institutions, imposed on a society.

Twentieth century Afghanistan witnessed a rapid parade of constitutions. One compilation contains nine documents promulgated between 1923 and 1992, including the foundational laws issued by President Noor Mohammad Taraki of the People's Democratic party of Afghanistan (PDPA) in lieu of a formal constitution¹³. Most significant are the constitutions issued in 1923 by King Amanullah; in 1931 by King Nader Shah; in 1964 by King Mohammad Zahir Shah; and in 1977 by President Mohammad Daoud. The first three embodied constitutional monarchies, in which the king wielded near total authority, while the final one simply shifted this authority to the president.¹⁴ The subsequent documents were products of governments that never exercised significant control of the Afghan hinterland,

¹³ <http://www.crisisgroup.org/home/index.cfm?id=1639&l=1>

¹⁴ The monarchs' enormous power was embodied in the 1923 Constitution of Afghanistan under, Article 1 and 28, under the 1931 Constitution Article. 2 and 73, the 1964 Constitution, Article 8, The 1977 Constitution Articles 75 and 78, vested almost unchecked authority in the President of the Republic.

and that between 1977 and 1992 were bogged down in fierce and unsuccessful counter-insurgency efforts. All these constitutions, despite the ethnically diverse society of Afghanistan, provided for highly centralized administrative set-up.¹⁵

Historically speaking, Afghanistan, a multi-ethnic nation, was cobbled together as a buffer state in late 19th Century by British India and Tsarist Russia. Its first modern ruler, Amir Abdur Rahman Khan (r. 1880-1901), was hand-picked by the British from among the princelings of a warring Pashtoon clan. In return for giving up control of the country's foreign affairs to Britain, he received arms and money to conquer and subjugate the myriad of ethno linguistic groups. Infamous for his cruelty and dubbed the 'Iron Amir' by his colonial masters, he established a firm foundation for an oppressive, corrupt, centralized system of "internal colonialism" directed against some Pashtoon tribes and the non-Pashtoon ethnic groups.

A brief experiment with constitutional monarchy from 1965 to 1973 was aborted by a palace coup followed by the Soviet-inspired Communist regime in 1978 which plunged the country into an abyss of continuous proxy wars.¹⁶ Sadly, the historical tendency to monopolize centralized authority is a part of Afghan political culture, and the Mujahedin parties who came to power in Kabul in 1992 insisted on re-imposing a strong centralized authority (the familiar model of the old monarchy) over the periphery. The aims of the Taliban under Mullah Muhammad Omar, the self-proclaimed Amir al Mu'mineen (Commander of the Faithful) and their strategy of terror were similar to those of the

¹⁵ Roy, O., *Islam and Resistance in Afghanistan*. Cambridge 1986, pp.189, 192.

¹⁶ Shahrani., M.N., 'Not "Who?" but "how?" : Governing Afghanistan After the Conflict'. In: *Special issue on Afghanistan, October 2001*. www.forumfed.org <http://www.forumfed.org/federal/11viewpapers.asp#>

British-installed 'Iron Amir': the military conquest and re-subjugation of all the self-governing non-Pashtoon territories. The similarities between the bloody events of the late 19th and the last decade of the 20th Century have another significant dimension—the use of extremist Islam as a justification for terrorizing the regime's assumed enemies into submission.

The old monarchy, the Taliban as well as the present Hamid Karzais' regime share the common myth first fabricated by British India that the Pashtoon have the exclusive right to rule in Afghanistan. This myth has brought Afghanistan to the brink of total disaster and, if not shattered, will continue to threaten the future viability of a peaceful Afghanistan.

It is for this reason that priority should not be given to the question of who will rule Afghanistan. Instead, we must ask as to how a post-Taliban Afghanistan should be governed. Any attempt to re-impose a strong centralized regime controlled by a single family, clan, tribe, or ethnic group, whether Pashtoon or non-Pashtoon, must be and will be strongly resisted. Strong, centralized regimes in multi-ethnic societies such as Afghanistan tend to breed nepotism, cronyism, and internal colonialism by the ruling clique. Instead, the international community should encourage and empower a government that builds on and recognizes the crucial role of the self-governing local communities that emerged in the period of anti-Soviet jihad during the 1980s. They should encourage a government which accepts the principles of community self-governance at the village, sub district, district, and provincial levels, and is committed to the formation of a broad-based federal structure that reflects the ethnic composition of Afghan society as a whole. The local autonomy and political integrity of every segment

of Afghanistan's ethnic and sectarian social mosaic must be guaranteed by a new national constitution and a decentralized federal governance structure. Only then will it be possible for the peoples of Afghanistan to begin rebuilding their shattered communities and regain their self-confidence in a democratic, multinational Afghanistan. Rebuilding an appropriate governance structure for Afghanistan will require time, patience, and an honest and dedicated transitional government.¹⁷

However, under the new constitution of Afghanistan 2003 a principle of strict centralism is followed. The central government will have the ultimate control of the entire country though powers and authority will be delegated to administrative units, to be called the provinces. The members of the constitution commission rejected outright the idea of a federal state despite the fact that many favoured and supported a 'federal system' which was more suited to the needs of Afghanistan being a pluralistic society.¹⁸

17 Shahrani, M. N., In: The New York Times, Sunday, October 14, 2001.

18 Khan, A. A., 'Overview of Afghan Draft Constitution'. In: The Daily Statesman, Monday November 10, 2003.

Chapter II

Ethnic & Cultural Diversity in Afghanistan: Pre-requisites for a Federal Constitution

In the present chapter we will focus on identifying major ethnic groups constituting Afghan society as well their inter-relations since the rule of Amir Abdur Rehman (ruled 1880-1901) the architect of the modern nation-state of Afghanistan. The Amir while pursuing his agendas of consolidating the state adopted policies which none the less affected the question of ethnicity in Afghanistan.

Although it was the scene of great empires and flourishing trade for over two millennia, Afghanistan did not become a truly independent nation until the twentieth century.¹⁹ The area's heterogeneous groups were not bound into a single political entity until the reign of Ahmad Shah Durrani, who in 1747 founded the monarchy that ruled the country until 1973.²⁰ In the nineteenth century, Afghanistan lay between the expanding might of the Russian and British empires. In 1900, Abdur Rahman Khan (dubbed as the "Iron Amir" by the English), looking back on his twenty years of rule and the events of the past century, wondered how his country, which stood "like a goat between these lions [Britain and Tsarist Russia] or a grain of wheat between two strong millstones of the grinding mill, could stand in the midway of the stones without being ground to dust?"²¹ Constrained by the competing dictates of powerful British and Russian empires, Abdur Rahman

¹⁹ Craig Baxter, "Library of Congress, Afghanistan", n.d
< [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID%2Baf0001\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID%2Baf0001)) > (July 2, 2004).

²⁰ *ibid.*

²¹ *ibid.*

focused instead on consolidating his power within Afghanistan and creating the institutions of a modern nation-state.

2.1 Brief Description of Ethnic Groups in Afghanistan

Afghanistan is home to a multiplicity of ethnic and linguistic groups, as well as several sects within Islam and other religions. Historic and geographic factors created and preserved this diversity although varying degrees of cultural assimilation continuously take place and a considerable degree of cultural homogeneity exists

Ethnicity has been extensively explored by scholars; they often disagree. Any simple classification is bound to have exceptions for Afghan society as it has never been static within fixed boundaries. The picture has been drawn and redrawn throughout the course of its history.

Further, ethnicity means different things to different groups. Every group uses the identification term *qaum* (lit-extended family or common geneology) to explain a complexity of affiliations, a network, of families or occupations. Each has a rich density of meanings. Every individual belongs to a *qaum* which provides protection from outside encroachments, cooperation, support, security, and assistance either social political or economic. Frequently a village corresponds to a *qawm*, but it does not necessarily exist in a precise geographic setting. In a more restricted sense *qaum* refers to descent groups, from family kin to ethnic group. In tribal areas *qaum* refers to a common genealogy from extended family, or clan, to tribe to tribal confederation. Most simply, *qawm* defines an

individual's identity in his social world.²²

Afghans live in clans and tribes. Their ethnicities include: Pashtoon, Tajik, Hazara, Uzbek, Turkmen, Baluch, Nuristani, Qezil-bash, Pasha-Ee and Aimaq.²³

Elements of material culture are used by all ethnic groups to build pride and a sense of social superiority, particularly in mixed ethnic zones. The Nuristani are the most unique in dress, diet and architecture. In other areas distinctions have softened over the years as the improved infrastructure encouraged greater mobility.²⁴ The most striking differences are noted in dress, particularly in headgear. Turbans are characteristic of the Pashtun. The shape of caps, round, conical or peaked, their material and decoration are distinctive indicators between and within many groups. *Chapan*, loose sometimes quilted coats of cotton or silk with stripes of varied colors to indicate specific regions, are worn in the north; *pattu*, shawls, are preferred in the south. For women, color, the width of the skirt, and the type of embroidery are meaningful distinctions.²⁵

Diet also changes from group to group, although bread and tea are dietary staples everywhere. Some bread is round, some oval; some prefer black tea, others green. The Uzbek include many pasta dishes in their cuisine. Dwellings of sedentary groups, mostly made from pressed mud or sun-dried brick, may be domed or flat-roofed, modestly enclosed behind walls or hidden within towering fortress-like enclosures, although open villages do exist in the Hazarajat. Tents used by the nomads vary in shape, material and

²² Roy, O., *Islam and resistance in Afghanistan*. Cambridge 1986, pp. 10-29. In this work Roy tends to overlook the role of the state in determining the identity of qawms.

²³ <http://memory.loc.gov/frd/cs/aftoc.html>

²⁴ Dupree, L., *Afghanistan*. New Dehli 1978, pp. 52-53.

²⁵ Dupree 1978, pp. 57-66.

structure from group to group.²⁶

Each group uses folktales to reinforce the uniqueness and superiority of the one over the other, as well as to describe their individual ideals.²⁷

Historically, complaints about incidences against certain ethnic groups and claims of injustices have created tension and, from time to time, hostilities and acts of revenge within Afghanistan.²⁸ For example, non-Pashtoons argue that the Pashtoon Royal family's monopoly over political power for some 250 years constitutes "national oppression"²⁹. Whereas, the Pashtoons on the other hand, complain that the monopoly of Dari as the official language and the language of instruction (in educational institutions) for the same number of years or even longer represents "cultural oppression."³⁰

Afghan nationalism of pashtunism as mechanism for tribe domination and oppression has been enforced upon society and the people of Afghanistan for over a century. The more recent theorizing on pashtunism has unfortunately been much aided by foreign powers, as well as scholars and writers, albeit at times unwittingly. The result has been the emergence of a false identity of Afghanistan as a country. This false identity has also been mythologized by those same unwitting foreign writers. In some cases, the 'myth' portrayed has been so unreal romantic that it has surprised even the Afghans themselves.

According to Mausavi, the painful events of the 1980 brought about the dismantling of the tribal structure of society in Afghanistan. Consequently, the century old taboo of

²⁶ [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+af0039\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+af0039))

²⁷ *Ibid.*

²⁸ For details see Effendi, Y., 'Afghan pre-Loya Jirga complexities'. In: Jalalzai, M.K. (ed.) *Afghanistan's Internal Security Threats*, Lahore 2002, pp. 371-376.

²⁹ Roy 1986, pp. 10-29. at p. 19.

³⁰ *Ibid.*, p.22-23.

Afghan nationalism was broken. For the first time, serious discussions began addressing the need for the revision of the history of Afghanistan. Although the issues of national identity, Afghan nationalism or Pashtunism remain very sensitive, the events of the past fifty years or so have proven that the evasion of these issues is not only not a solution, but can in fact cause additional problems. For example, it is now widely believed by many in Afghanistan that the main factor leading to the invasion of Afghanistan by the Soviet Union was the lack of a united and powerful central national government.³¹

In applying what has so far been said to the study of society in today's Afghanistan, it is necessary to understand, first, the internal relations and tribal structure of Afghanistan and second the historic links and position of Afghanistan within the region. The study of tribal structure and inter tribal with the study of Afghanistan within the region, reveal that what has until now been named 'national state' in Afghanistan has been no more than a 'tribal state'.³²

The political system of Afghanistan has been based on the protection of the tribal interests of the Afghans, with the ultimate aim of the Afghanistan of the entire country. It is only with a thorough understanding of the above two factors that one may arrive at a realistic identification of the national identity of the inhabitants of Afghanistan. This national identity, while including the identities of all the peoples of Afghanistan, would in no way deny the identity and rights of any tribe or people. On the contrary, such a national identity would be acceptable to all ethnic groups and would enrich and encourage individual tribal identities. The ensuring result would be a socio-political system based on federalism, running on the consolidated power of various social

³¹ Mousavi, S.A., *The Hazaras of Afghanistan*. Curzon 1998, pp.157-159, as quoted by Jalalzai 2002, at p. 91.

³² Jalalzai 2002, pp. 96-99.

groupings striving for development and the improvement of the entire society. A society in which tribal and other sectarian conflicts and contradictions would be resolved to the advantage of national unity; a society in which no tribe or group feels alienated and marginalized, and where no group can claim itself superior to others.³³

The ethnic policy of Afghanistan had never been equitable. Important political decisions always led to serious deprivations for minority groups. For instance, to marginalize the Hazaras role in politics the ruling circle partitioned Hazarajat into the provinces of Bamiyan, Ghazni, Ghor, Uruzgan and Wardak. In so doing the state intended to eliminate the collective bargaining power of the community and to emasculate their political strength. By partitioning Hazarajat the state also intended to deprive the region from international aid allocated for its development and also to minimize the number of Hazaras political representation (on the basis of majority of votes) in the Wulusi Jirga (the House of parliament). For instance Daikundi, with a population of 224,000 was recognized as Wuluswali (sub-province). Other Hazara regions in the north, such as Charkent, Kushenda, Sangcharak and Balihab, each with an estimated 100,000 population, were designated as Alaqadari (district). Suppression of Hazaras went hand-in-hand with the state policy of building Pushtun political domination- To this end the state elevated the pushtun settled regions in the Shahr-e-Safa district, Kandahar with a population of 3,000 to the status of a sub-province, legally qualifying it to send elected representatives to the House of Parliament. Other Pushtun settled areas, such as Alaq Mizan in Qalat with a population of 3,500 and Haji Maidan and Shajoy each with a population of 3,000 had been named sub-provinces so that the Pashtuns in those regions would not be bereft of political representation and would receive financial support from

³³ Ibid.

the central government.³⁴

The civil war in mid-nineties led to more ethnic and religious divisions as atrocious and genocidal crimes were committed in the cities of Kabul in 1993 and 1995 (Sunnis against Shiites), Mazaar-e-Shareef in 1997 and 1998 (Tajik against Pashtoon and then Pashtoon against Tajik and Hazara) and Bamian (Sunni Pashtoon against Shiites)³⁵

As far as the population of various ethnic groups is concerned no comprehensive census, based upon systematically sound methods, has ever been conducted in Afghanistan. Most population statistics rely on estimates and samples. Successive governments have manipulated figures for their own political objectives. UN agencies, hundreds of NGOs, as well as bilateral agencies use different figures to suit their purposes in designing assistance programs. Furthermore, instability caused by the Soviet-Afghan war and the subsequent civil war resulted in massive movements of uprooted peoples. These factors also make demographic sampling necessarily imprecise.

The most scientific demographic survey carried out in Afghanistan was also one of the first. Conducted in 1972-74 by the State University of New York (SUNY) for the United States Agency for International Development (AID), in cooperation with the Afghan government, this survey reported a settled population of 10.18 million. It did not cover the entire country, and the nomadic population was not surveyed. The nomads were separately estimated at slightly more than 1 million.

An official census was later hurriedly taken over a three-week period in June 1979 after the establishment of the People's Democratic Party of Afghanistan (PDPA) government,

³⁴ *Ibid.*

³⁵ Weera, S. & Alison Roberts Miculan, 'History, Culture and Ethnicity in Afghanistan' at www.forumfed.org <http://www.forumfed.org/publications/federations.asp?lang=en>

with UN assistance. This count estimated the population to be 13.9 million, including 800,000 nomads, but it is little credited since only 56 percent of the population was enumerated due to mounting resistance in the countryside.³⁶ Thus, it seems that grossly inflated figures were added for the rest.

Table showing population of main ethnic groups in 1979³⁷

<u>Group</u>	<u>Approximate Number</u>	<u>Location</u>
Pashtuns	7,000,000	Concentrated in South and South east, but settled in most regions
Tajiks	3,500,000	North, Northeast and Kabul Region
Hazzaras	1,500,000	Central Hazzarajat and Kabul
Uzbeks	1,300,000	North
Aimaq	800,000	West
Farsiwan	600,000	West and South
Turkmen	300,000	North
Brahui	1000,000	Southwest
Baluch	100,000	West and Northwest
Nuristanis	100,000	East

³⁶ Dupree 2004, pp. 59-64.

³⁷ For further details see Hyman, A., *Afghanistan under Soviet Doimination, 1964-83*. London 1984.

The *Statistical Yearbook* published in 1983 by the Babrak Karmal government during the Soviet occupation claimed a total population of 15.96 million for 1981-82. Presumably this included over five million refugees in Pakistan and Iran.

Afghanistan's population in 1995 was estimated at 18.4 million by the Population Reference Bureau, a nonprofit agency based in Washington, D.C. This estimate, like others before it, is based on unreliable data, as the Bureau itself cautions. The *Human Development Report 1996* estimates that the population will increase to 26.7 million in the year 2000, using, however, a high growth rate of 6.1 percent. A rate of around 2.2 percent is more typically employed. UNDP calculations give a 1993 crude birth rate of 51/1000, a crude death rate of 22/1000, and an infant mortality rate of 163/1000.

Estimates of the average life expectancy at birth, was 43.7 years. Again, growth figures depend on what is taken into account -refugees, war dead estimated to range from three-quarters of a million to a million and a half, birth and death rates - all of which are open to question.³⁸

The average population density was calculated in 1993 at 23.4 per square kilometer, but it varied widely between provinces: from 489.4 per square kilometer in Kabul to 0.7 in Nimroz, a province in the southwest with vast sandy and stony deserts. Residence was also unevenly distributed between rural and urban settlements, with over 35,000 rural settlements, but only sixty-four urban centers. Probably no more than ten of these centers are true cities, and other as towns could be considered. Again, numbers depend on definitions. The United Nations reported that eighty-one percent of the population lived

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<http://lnweb18.worldbank.org/sar/sa.nsf/Countries/Afghanistan/7AA687A0D8FE299985256AFB00742B6D?OpenDocument>

in rural areas in 1993.³⁹

What is important is that the gradual rural-urban migration noticeable over a period of several decades increased rapidly during the 1960s as the government laid out new road systems and quickened development. This trend accelerated during the Soviet-Afghan War as internally displaced persons (IDPs) fled the war-torn countryside for the relative safety of the cities. A number of major cities such as Kabul, Ghazni, Jalalabad, and Mazar-e Sharif absorbed IDPs in great numbers, causing overcrowding and rising demands for city-provided services. By 1985, unconfirmed reports placed Kabul's population at over two million, more than a 100 percent increase in less than a decade. Since the mujahidin took possession of Kabul in 1992, however, the incessant fighting by warring factions for control of the capital has caused the population to swell and diminish according to the level of security at any given moment.

In 1996, approximately 40 percent of Afghans were Pashtun, 11.4 percent of them are of the Durrani tribal group and 13.8 percent of the Ghilzai group. Tajiks make up the second largest ethnic group with 25.3 percent of the population, followed by Hazaras, 18 percent; Uzbeks, 6.3 percent; Turkmen, 2.5 percent; Qizilbash, 1.0; 6.9 percent other. The usual caveat regarding statistics is particularly appropriate here.⁴⁰

2.1.1 Pashtun

The largest and traditionally most politically powerful ethnic group, the Pashtun (or Pakhtun in northern Pakhtu dialects), is composed of many units totaling in 1995 an

32 Afghanistan population estimate by province, districts and sub districts. A graphic presentation by UNIDATA, April, 1991

⁴⁰ *Ibid.*

estimated 10.1 million, the most numerous being the Durrani and the Ghilzai. Other major tribes include the Wardak, Jaji, Tani, Jadran, Mangal, Khugiani, Safi, Mohmand and Shinwari. Like a number of other Afghan ethnic groups, the Pushtun extend beyond Afghanistan into Pakistan where they constitute a major ethnic group of about 14 million.⁴¹

The Afghan Pushtun heartland roughly covers a large crescent-shaped belt following the Afghan-Pakistani border on the east, southward from Nuristan, across the south, and northward along the Iranian border almost to Herat. Enclaves of Pashtun also live scattered among other ethnic groups throughout the nation, where they have settled at various times since the end of the nineteenth century as shifts in populations, some forced, some voluntary, occurred in response to political expediency and economic opportunities.⁴²

Physically the Pushtun are basically a Mediterranean variant of the greater Caucasian race and speak several mutually intelligible dialects of Pashtu; some also speak Dari. Both Pashtu and Dari belong to the Iranian branch of the Indo-European language family. Pushtun are generally Hanafi Sunni Muslims, but some are Ithna Asharia Shias'.⁴³

The Pushtun have provided the central leadership to Afghanistan since the eighteenth century when Ahmad Khan Abdali of Kandahar established the Durrani Empire. This one-time general in Nadir Shah's Persian army was elected to power in 1747 at a tribal *jirgah*, an assembly which takes decisions by consensus⁴⁴. The legitimacy of his rule was sanctioned at the same time by the *ulema* (religious scholars). Ahmad Khan assumed the

⁴¹ Dupree 2004, pp.59-64

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Zada.M., The Role of Loya Girga in the constitution making of Afghanistan.unpublished P.hd Thesis Peshawar.1997

title of *Durr-i-Durran* (Pearl of Pearls) and was henceforth known as Ahmad Shah Durrani and his tribe, the Pushtun Abdali tribe, as the Durrani. When his successors lost the support of the tribes after Ahmad Shah's death in 1772, control passed to the Mohammadzai lineage within the Barakzai section of the Durrani Pushtun.⁴⁵

Mohammadzai dominance continued from 1826 to 1978, interrupted only for a scant nine months in 1929. Then power shifted to the second largest Pushtun tribe, the Ghilzai, who dominated the leadership of the secular Democratic Republic of Afghanistan (hereafter DRA) after 1978, although most were essentially detribalized because of their close association with urban life. This regime was in turn replaced in 1992 by the Islamic State of Afghanistan, established by the mujahidin whose leaders were mostly from the Ghilzai, and a variety of eastern Pushtun tribes, although the President from 1992-1996 was a Tajik. This state has been challenged since the October 1994 takeover of Kandahar by the Pushtun Taliban. The Taliban heartland remains in the south and while the original leadership bid for unity by playing down tribal identities, divisions began to surface after Kabul was taken in September 1996.⁴⁶

Pushtun culture rests on *Pushtunwali*, a legal and moral code that determines social order and responsibilities. It contains sets of values pertaining to honor (*namuz*), solidarity (*namg*), hospitality, mutual support, shame and revenge, which determines social order and individual responsibility. The defence of *namuz*, even unto death, is obligatory for every Pushtun.⁴⁷ Elements in this code of behavior are often in opposition to the Shariah.

⁴⁵ For further details on Ahmad Shah's rule see for example Singh, G., *Ahmad Shah Durrani*. Quetta 1979.

⁴⁶ <http://lnweb18.worldbank.org/sar/sa.nsf/Countries/Afghanistan/7AA687A0D8FE299985256AFB00742B6D?OpenDocument>

⁴⁷ Elphinstone, M., *An account of the Kingdom of Caubul and its dependencies in Persia, Tartary & India*. London 1815, pp.105-151.

Much of the resistance to the largely detribalized leadership of the DRA stemmed from the perception that in attempting to nationalize land and wealth, as well as regulate marriage practices, the DRA was unlawfully violating the prescriptions of *Pushtunwali*. The Pushtun are basically farmers or herdsman, or combinations of both, although several groups are renowned for specialized occupations. For instance, the monarchy and many government bureaucrats were Durrani Pushtun, the Ahmadzai Ghilzai are consulted for their legal abilities, the Andar Ghilzai specialize in constructing and repairing underground irrigation systems called *karez*, and the Shinwari of Paktya monopolize the lumber trade.⁴⁸

2.1.2 Tajik

The Tajik form the second largest ethnic group in Afghanistan. Estimates in 1995 averaged around 4.3 million.⁴⁹ Afghan Tajik live mainly in the Panjsher Valley north of Kabul and in the northern and northeastern provinces of Parwan, Takhar, Badakhshan, and also Baghlan and Samangan. Tajik also extend into the central mountains. There is a tendency of some non-Tajik groups to classify any Dari speaker as a member of this group. Some also tend to categorize any urban resident who has become detribalized as Tajik. This is particularly true in Kabul. Tajik are also found north of Afghanistan's border in their own state of Tajikistan.⁵⁰

Tajik are physically from the Mediterranean substock. They speak various Tajiki dialects of Dari, an Iranian language in the Indo-European language family. Most are Hanafi

⁴⁸ For a detailed study on Pushtoons settlements in various regions/zones inside Afghanistan see, The Ethnic composition of Afghanistan. A six year survey and research. 1991-1996. Wak Foundation for Afghanistan. Peshawar.

⁴⁹ Afghanistan population estimate by province, district and sub district. A graphic presentation by UNIDATA, April 1991.

⁵⁰ <http://memory.loc.gov/frd/cs/aftoc.html>

Sunni, although a sizeable number living in areas from Bamiyan to eastern Badakhshan are Ismaili Shia.⁵¹ Tajik are not organized by tribe and refer to themselves most often by the name of the valley or region they inhabit, such as Panjsheri, Andarabi, Samangani, and Badakhshi. Those living among non-Tajik, such as those living among the Pushtun who refer to them as *dehqan*, often describe themselves simply as Tajik.⁵²

Tajik are predominantly fully sedentary mountaineer farmers and herders, who often make short-range seasonal migrations to alpine grazing meadows during which whole families move up to the mountains to harvest grain and melons. The Tajik areas are famous for a wide variety of fruits and nuts which are acknowledged to be among the finest in the country.⁵³

Many Tajik migrated to the cities, especially to Kabul, which was primarily a Tajik town until Timur, the son of Ahmad Shah Durrani, moved his court to Kabul in 1776 and declared it to be the Pushtun capital. In Kabul the Tajik are still dominant and well-represented in the upper middle class. Many are active in business and in government service; others find employment as cooks, houseboys or gardeners in the houses of foreigners. On the off-agricultural season Tajik may join the workforce at industrial complexes near their villages. Whether seasonally or permanently based in cities, Tajik tend to maintain close links with their rural kin.

Except for the short rule of the Tajik known as Bacha Saqqao in 1928, the Tajik have not dominated politically. Since 1978, however, several Tajik military leaders have gained substantial recognition, the most renowned being Ahmad Shah Masood from the Panjsher Valley. Burhanuddin Rabbani who served as President of The Islamic State of

⁵¹ For details see Dupree 2004.

⁵² <http://memory.loc.gov/frd/cs/aftoc.html>

⁵³ Ibid.

Afghanistan from 1992-1996 is a Tajik from Badakhshan.

2.1.3 Hazara

Afghanistan's rugged central mountainous core of approximately 50,000 square kilometers is known as the Hazarajat, Land of the Hazara. Others live in Badakhshan, and, following Kabul's campaigns against them in the late nineteenth century, some settled in western Turkestan, in Jauzjan and Badghis provinces. Estimated population in 1995 was one million.

Physically the Hazara are Mongoloid, possibly of mixed Eastern Turkic and Mongol origin, although numerous contradictory speculations exist. Scholars agree that the Hazara were established here since the beginning of the thirteenth century. Hazara speak Hazaragi, a Persianized language with a large mixture of Mongol words.⁵⁴ A majority of them are Imami Shia; fewer are Ismaili Shia; while others, particularly in Bamiyan and the north, are Sunni.

The leaders of Hazara lineages, known as *mirs* or *khans*, lost their powerful status in communities after Amir Abdur Rahman subdued them in 1891.⁵⁵ The Pushtun state established a local administration, imposed harsh taxation policies and distributed lands to Pushtun, including fertile pasture lands in areas previously inaccessible to Pushtun nomads.

In the 19th century, the Hazara community was made up of landed (feudal) nobility, peasants and artisans. Feudal landowners of various strata were situated at the top of the Hazara's social ladder. The Hazara ruling classes were known by their own titles, such as Mir Khan and Sultan, who at the same time were chiefs of their tribes. Hazara's lower

⁵⁴ For a detailed discussion see Jalalzai 2002.

⁵⁵ *Ibid.*

social classes comprised peasants,⁷ artisans, herders and nomads belonging to various tribes and communities.

2.1.4 Uzbek

About 1.3 million Uzbek live mingled with the Tajik all across the northern plains of Afghanistan, from Faryab Province to Faizabad, capital of Badakhshan Province. There are many mixed Uzbek and Tajik villages, although each live in separate residential quarters. Uzbek also reside north of the Afghan border in Uzbekistan, Tajikistan and Turkmenistan.⁸⁶

The Uzbek are Mongoloid with considerable Mediterranean admixture. They are Sunni Muslim and speak central Turkic dialects called Uzbeki. Uzbek practice agriculture and herding, but many live in towns where they are known as astute businessmen and skillful artisans as silver and goldsmiths, leatherworkers, and rug makers.

Some Afghan Uzbek refer to themselves by old tribal names; others identify with their towns of origin in Central Asia. Uzbek social structure is strictly patriarchal, giving considerable authoritarian power to leaders called *begs* or *khans*. Marital endogamy is of prime importance. Although interethnic marriages between Uzbek, Turkoman and Tajik do take place, antipathy to marriage with Pushtun is widespread.

Afghan Uzbek originally came from Central Asia and their rise as the dominant political force in north Afghanistan followed the demise in 1506 of the Timurid dynasty centered at Herat. They established eleven strong principalities from Maimana to Kunduz under strong leaders, sometimes independent, sometimes nominally acknowledging allegiance

⁸⁶ Craig Baxter, "Library of Congress, Afghanistan", n.d
< [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID%2Baf0001\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID%2Baf0001)) > (July 25, 2004).

to either Bokhara or Kabul, but always jockeying for power among themselves.

At the end of the nineteenth century Amir Abdur Rahman consolidated these Uzbek khanates under his rule. Later, fresh immigrations took place in the 1920s and 1930s as Russian conquests and local uprisings in Central Asia continued. During this same period many Pushtun settled among the Uzbeks with the result that by the 1960s the Uzbek had become a small minority within the area they once dominated. Since 1992, the Uzbek General Abdul Rashid Dostom, principal leader of the coalition opposing the Taliban, has controlled the predominant centers of power in the north.⁵⁷

2.1.5 Turkmen

Turkmen are another Sunni Turkic-speaking group whose language has close affinities with modern Turkish. They are of aquiline Mongoloid stock. The Afghan Turkmen population in the 1990s is estimated at around 200,000. Turkmen also reside north of the Amu Darya in Turkmenistan. The original Turkmen groups came from east of the Caspian Sea into northwestern Afghanistan at various periods, particularly after the end of the nineteenth century when the Russians moved into their territory. They established settlements from Balkh Province to Herat Province, where they are now concentrated; smaller groups settled in Kunduz Province. Others came in considerable numbers as a result of the failure of the Basmachi revolts against the Bolsheviks in the 1920s. Turkmen tribes, of which there are twelve major groups in Afghanistan, base their structure on genealogies traced through the male line. Senior members wield considerable authority. Formerly a nomadic and warlike people feared for their lightning raids on

⁵⁷ For details see annexure D.

caravans, Turkmen in Afghanistan are farmer-herdsmen and important contributors to the economy. They brought karakul sheep to Afghanistan and are also renowned makers of carpets, which, with karakul pelts, are major hard currency export commodities. Turkmen jewelry is also highly prized.

2.2 Other Groups

2.2.1 Aimaq

Aimaq is not an ethnic domination, but differentiates semi nomadic herders and agricultural tribal groups of various ethnic origins, including the Turkic Hazara and Baluch, that were formed in the sixteenth and seventeenth centuries.⁵⁸ They live among nontribal people in the western areas of Badghis, Ghor and Herat provinces. They are Sunni, speak dialects close to Dari and refer to themselves with tribal designations. Population estimates vary widely, from less than 500,000 to around 800,000. A group of about 120,000 Aimaqs live in Iranian Khorasan.⁵⁹

2.2.2 Arab

Large groups of Sunni Arab living in the vicinity of Bokhara in Central Asia fled to northeastern Afghanistan following Russian conquests in the nineteenth century. By the 1880s they were, with the Uzbek with whom they established close ties, the second most populous ethnic group in present day Kunduz, Takhar, and Baghlan provinces. Smaller groups settled in scattered communities as far west as Maimana, Faryab Province. The Arab is pastoralists who raise sheep and grow cotton and wheat. Some among the eastern groups make summer migrations of up to 300 kilometers to reach the lush high pastures

⁵⁸ For details see HYMAN, A., Afghanistan under Soviet domination Tehran 1985.

⁵⁹ Ibid.

in Badakhshan. Government development schemes, especially those which brought large numbers of Pushtun to the area in the 1940s, relegated the Arab to a small proportion of the population and the Arab ceased to hold a monopoly on long distance migration. Bilingual in Dari and Uzbeki, but speaking no Arabic, they continue to identify themselves as Arab although they have had no contact with the Arabs of the Middle East since the late fourteenth century.

2.2.3 Kirghiz

The Kirghiz are a Sunni Mongoloid group speaking Kipchak Turkic dialects who, were originally from Central Asia. About 3,000 lived in the Pamir mountains east of the Wakhan Corridor, one of the more inaccessible regions in the world where relatively flat valleys suitable for habitation lie at altitudes over 10,000 feet between ranges rising over 16,500 feet. Only a small group remains there as majority moved to Pakistan in 1978 after Soviet and Afghan troops occupied the Wakhan; later, in 1983, resettled in Turkey. The Kirghiz lived in yurts, tended large flocks of sheep and utilized yak which are found only in this area of Afghanistan.⁶⁰

2.2.4 Nuristani

The Nuristani reside throughout a 5,000 square mile area in the east bordering Pakistan that is heavily forested and so rugged that much of it is accessible only by foot trails. The Nuristani designate themselves by the local geographical names of the five major north-south valleys and 30 east-west lateral valleys leading into the major valleys where they live. They speak Indo-Iranian dialects of Nuristani and Dardic called by village and

⁶⁰ <http://memory.loc.gov/frd/cs/aftoc.html>

valley names; many are mutually unintelligible from valley to valley. In 1990 the province of Nuristan was created from parts of the provinces of Laghman and Kunar. The population in the 1990s is estimated at 125,000 by some; the Nuristani prefer a figure of 300,000.

The Nuristani are of the Mediterranean physical type with mixtures from Indian stocks on the fringes. Historians accompanying Alexander the Great in the fourth century BC described this group as differing culturally and religiously from other peoples in the area. They were forcibly converted to Sunni Islam in 1895 during the reign of Amir Abdur Rahman but retain many unique features in their material culture.

The Nuristani are mountaineer herders, dairymen and farmers. They hold a respected place in the social order and many have raised to high government positions, particularly in the army.

2.2.5 Baluch

The homeland of the Sunni Baluch in southwestern Afghanistan is in the sparsely settled deserts and semi-deserts of Hilmand Province, although Baluch enclaves are also found in northwestern Faryab Province. These semi sedentary and semi nomadic populations are famed for camel breeding. They number perhaps around 100,000, although other estimates are lower. Seventy percent of the Baluch live in Pakistan; others reside in Iran. The Baluch speak Baluchi, an Iranian branch in the Indo-European language family; most speak Dari and Pashto as well. Baluch society is tribal, highly segmented and centrally organized under powerful chieftains known as *sardars*.

2.2.6 Qizilbash

The Qizilbash of Mediterranean sub-stock speaks Dari, is Imami Shi'a, and scattered throughout Afghanistan, primarily in urban centers. There are perhaps 50,000 Qizilbash living in Afghanistan. The Qizilbash form one of the more literate groups in Afghanistan; they hold important administrative and professional positions.

The Qizilbash are traditionally considered to be the descendants of Persian Shia mercenaries and administrators left behind by the Safavid Emperor Nadir Shah Afshar (1736-47) to govern the Afghan provinces. Under Ahmad Shah Durrani, who served in Nadir Shah's bodyguard, and his successors, the Qizilbash acquired power and influence at court out of proportion to their numbers. This created resentment among the dominant Pushtun which hardened over the years, especially after the Qizilbash openly allied themselves with the British during the First Anglo-Afghan War (1838-1842). Amir Abdur Rahman accused the Qizilbash of being partisen to the enemy during his campaigns against the Shi'a Hazara in 1891-1893, declared them enemies of the state, confiscated their property and persecuted them.⁶¹

2.3 Inter-Ethnic Relations in Afghanistan

2.3.1 Prior to Afghan Jihad

Linguistically, Afghanistan means the land of the Afghans,⁶² but in fact Afghans are only one among many ethnic groups living there. Historically the term Afghanistan was used

⁶¹ Dupree 1978,p.491.

⁶² Jalalzai 2002.

for the first time in the fourteenth century.⁶³ According to the old administrative devisor, Pushto was spoken mainly in Nangarhar-Kunar, Ghazani-Paktia, Paktika, Kandahar, Kunduz, Laghman, Baghlan, Kabul, Maidan, Pulkhumry and Zabul.⁶⁴ Also there were some Pushtoon tribes of Pakistan who settled in the north gradually. Most Pushto speakers living in the urban areas learn Dari for business purposes and the Persian speaking also learn Pushto.

As mentioned in the beginning of this chapter the policies adopted by the various Afghan regimes had long-term effects in aggravating ethnic tensions. Resentment arising out of wars and conquests remains long after the power of conquerors dissipates. This is true with regard to the Uzbeks. The distrust and discrimination between Hazara and Pushtun set during late nineteenth century confrontations is still abundantly present.⁶⁵ The causes of prejudice against the Qizilbash go back to the eighteenth century.⁶⁶

This is most evident in the successive movements of thousands of Pushtun into the northern areas, beginning with the forced relocations policy of Amir Abdur Rahman.⁶⁷ Amir Abdur Rahman also implemented policies of forced migration, moving, for example, some 10,000 Ghilzai families north of the Hindu-Kush, thereby both weakening that tribe and diluting the tribal structures in the areas of settlement. Otherwise Afghans were forbidden to move around the country without government consent, a restriction that remained in force until 1964.⁶⁸

To establish his authority, Abdul Rahman Khan suppressed the Shia community in Afghanistan. To suppress the Hazaras, he proclaimed an anti-Shia jihad, invaded the

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ Wilber, D. N., *Afghanistan*, 2nd edition, New Haven 1962.

⁶⁶ Ewans, M., *Afghanistan: A New History*, Richmond 2001, p.94

⁶⁷ Dupree 1978, p.419.

⁶⁸ *Ibid*.

Hazarajat with Ghilzai support, settled the latter on much of the land and reduced thousands of the former inhabitants to slavery.⁶⁹ In the mid-1890s, he conducted a campaign in Kafiristan and followed up his conquest with forcible conversions, the region thenceforth being known as Nuristan, the 'Land of Light'.⁷⁰

To extend his control over the country, he appointed governors to act as his agents and collect taxes, with firm instructions to put down any incipient revolts. The provincial boundaries, which he established often, divided tribes, and gradually the network of governors began to replace tribal authority, particularly in areas where officials dealt in lands, which had previously been in collective ownership.

The policy of forced migration was again employed as late as 1947-1949 following revolts among the Safi (an eastern Afghanistan pushtoon tribe) Pushtun in eastern Afghanistan. Consequently competition over land with local populations occasioned considerable stress. Equally significant were the effects of successful land reclamation projects, beginning in the 1930s, which offered attractive incentives to new settlers. These invariably favored the Pushtun over local populations. The land settlement schemes in the Hilmand in the southwest, begun in 1910 and massively extended after 1946, were similarly disruptive.⁷¹ Settlers from all parts of Afghanistan were recruited into this predominantly Pushtun and Baluch area, creating new tensions not only among the new disparate groups, but also among new and old Pushtun groups. Local conflicts in all areas, within all groups, most often erupt over disputes concerning property or access to resources, whether it be land, water, money, business or government opportunities, bride wealth or inheritance. Naturally evolving demographic pressures accompanied by

⁶⁹ *Ibid.*

⁷⁰ <http://memory.loc.gov/frd/cs/aftoc.html>

⁷¹ For details see Dupree 2004.

competition form the basis of other conflicts. Also, the tendency of past governments to initiate policies enhancing Pushtun prominence increased the traditional Pushtun military and numerical dominance which allowed them to assert their will over other ethnic groups and maintain their status as the nation's most prestigious group. Thus, there have always been tensions between groups, from petty squabbles to feuds lasting for generations, rising from a variety of causes but rarely from intrinsic attitudes of ethnic discrimination. Considering the disparate and volatile ingredients that exist, Afghanistan's history records remarkably few internal explosions that are specifically focused on ethnicity. It is worth mentioning to describe how the state tried to sponsor the Pushto Language. Infact Pushto has never been a popular language with the officials of Kabul ⁷², perhaps, because of the years of the earlier rules and influence of Iran over many parts of Afghanistan. Persian remained to be the court language. It was during 1931 that, at the instance of king Mohammad Zahir Shah, but without much success, the first course of pushto for the officials was started by Mir Syed Qasim[father of Syed Masud Pohanyar] popularly known as 'Mir Sahib'.⁷³

An official decree in pushto was published in daily *Islah* on March 3, 1937 that during a period of three years the Afghan [pushto] language should be learnt by officials of all the ministries and departments.⁷⁴ The period was extended by three years more when satisfactory results were not achieved during the stipulated three years.

No success was achieved even during the extended term. The emphasis on pushto had, however, on the other hand, created some ill feelings between the two linguistic groups of

⁷² Younas, F., *Afghanistan A Political History*, Peshawar 2003, p. 119.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

the Pushtoon and non-Pushtoons in Afghanistan.⁷⁵

Pushto has, so far at least, not been clearly mentioned as the official language of Afghanistan in spite of the majority of the pushtoons. Article 3 of the 1964 Constitution- the first democratic one-whereas clearly mentions that "From amongst the languages of Afghanistan, Pushtoo and Dari shall be the official languages," Article 35 of the same constitution, some how half-heartedly because of the pressure of the non-Pushtoons in the Loya Jirga, which had to pass the constitution, states: "It is the duty of the state to prepare and implement an effective programmed for the development and strengthening of the national language, Pushto." The efforts of Mohammad Hashim Khan, as Prime Minister, for encouraging the pushto language had not met with much of success and had rather widened differences between the pustho and non-pushto speaking peoples. The earlier Farman was withdrawn by Shah Mahmud and on the recommendations of Minister Najibullah Khan the old system of teaching in Dari in the schools was restored.⁷⁶

Thus, in spite of many incentives, Pushto has neither been developed nor strengthened in Afghanistan.

2.3.1.1 Formation of Minority Ethnic Groups

The minority nationalities of Afghanistan have all along been feeling aggrieved at the hands of the Durrani (Pushtun) rulers of the country for having been treated as second rate citizens, deprived of equal opportunities of material and spiritual development and denied participation in the social and state affairs of the country. But with the passage of time and all round awakenings, however, these ethnic groups started giving vent to their feelings rather openly and through formation of their various political parties, groups,

⁷⁵ Farhang, M.S., *Afghanistan dar Panj Qirn-e-Akhir*, Vol II. Qum 1992, pp:636-639.

⁷⁶ For details see for example Jalalzai 2002.

organizations and movements etc. Their first open criticism was heard during the proceedings of the 12th Term of Afghanistan Parliament, which had been formed after the promulgation of the First Democratic Constitution of 1964.⁷⁷

Their first significant group "Sitam-i-Milii", having anti-Pushtun leftist mutation, was formed around 1968 under the leadership of Taher Badakhshi, a Tajik and member of the original PDPA Central Committee. Taher Badakhshi's main area of operation was Northern Afghanistan, in particular Qataghan and Badakhshan where he propagated that Tajiks, Uzbeks, Turkomans and Hazaras, the minority nationalities, were oppressed and had been deprived of their due national and civil rights by the dominant Pushtun and that they had to fight for regaining the same⁷⁸

Such views were expressed by Abdul Majid Kalakani also, a Tajik and nephew of Bacha-i-Saqoo, in Parwan area, Majid resorted to even armed struggle during Zahir Shah days and inspite of the best efforts of the Afghan armed forces, two brigades having been developed for this purpose in the area, they could not be captured. The group went underground for sometime. The slogan of 'Sitam-i-Miili' was again heard, after the Daud's Coup, in the central parts of Afghanistan.⁷⁹ It was thereafter, echoed in the circles of the junior officers of the Afghan Air force as well. It was the voice then of a not very well organized group but expression of a general feeling of deprivation and suppression amongst the most backward people of Central Afghanistan. The speed with which it was gaining momentum, had unnerved President Daud.⁸⁰ Soon it was traced back to Engineer Abdul Hameed Mohtat, then Telecommunication Minister. A sympathizer had been

⁷⁷ For details see Dupree 1978.

⁷⁸ Younas, F., Afghanistan Political Parties, Groups, Movements and Mujahideen Alliances And Governments (1879 to 1997), Peshawar 1997, pp.780-781

⁷⁹ Dupree 1978, p.783.

⁸⁰ Younas 1997, p.784

found by the group in the person of Engineer Pacha Gul 'Wafadar', a Pushtun, then the Minister of Border Affairs. The simpleton Pacha Gul had, in fact, been trapped in by the clever Mohtat, by playing upon his sentiments. Both were removed from their respective jobs. The fault of Pacha Gul, being not very grave, he was sent out of the country as an Ambassador. But he lost the exalted chair of the member of the Central Committee "Sitam-i-Milli" was believed to be responsible for kidnapping of the US Ambassador Adolph Dubbs on February 14, 1979. The group demanded the release of their leader either perhaps Taher Badakhshi, who was said to have been arrested by the PDPA (Khalq) on accusation of Parchami's (Karmal's) plot to overthrow the Khalqi government. Abdul Majid Kalakani was suspected to be in Jail since the last days of Daud's regime. It was, however, revealed later by the Afghan prisoners that Tahir Badakhshi had been tortured to death. The death was later on also confirmed by Babrak Karmal.⁸¹

In January 1980 the Sitam-i-Milli joined the left over leftists of Afghan Melat to form Jabha-e-Mutahida-e-Milli (hereafter JMM), - United National Front. The Motto of JMM was 'Freedom or Death'.⁸²

The grievances of the minority nationalities were expressed openly by Sultan Ali Keshtmand also, a Hazara-Shia and a two time Prime Minister of the country, in his letter of resignation of July 1991, from the membership of the Homeland Party (the former PDPA), wherein, in addition to other reasons he-stated, "the party politics and action about the National issues and the rights of various nationalities of Afghanistan, which constitute the real subject of the struggle in the present conditions and about the cadre

⁸¹ Ibid.

⁸² Ibid.

issues, based thereon, are not in accordance with the accepted international general principles and the present condition of our society. As I do not agree with such treatments and manners, therefore, I do not consider it necessary to further continue with the membership in the party. I want to devote the rest of my life as an ordinary person of our society to help oppressed people in ensuring their due rights through peaceful means and with complete support to the political solution of Afghanistan issue and its reconstruction".⁸³

In an interview to the BBC, after his resignation, Mr. Keshtmand said, "The Watan party is still Pushtoon dominated and senior government officials are trying to stir up ethnic confrontation and tension for their own interests. The ruling party has to give all ethnic groups their full economic, political and legal rights and must go beyond tokenism. The only way to bring a lasting solution of the conflict in Afghanistan is through a confederation of ethnic based administration, perhaps on the Swiss Model."⁸⁴

During the Soviet-Afghan War, the shared goals of the *mujahidin*--opposition to non-believing atheist invaders and group solidarity--were reminiscent of familial, tribal, and ethnic group construction. As such, the appeal of the *mujahidin* was a strong and familiar rallying cry and source of solidarity for Afghans in their struggle for national liberation.

⁸³ *Ibid.* p.782.

⁸⁴ *Ibid.*

2.3.2 Inter-Ethnic Relations after Afghan Jihad

One of the most serious consequences of the Afghan Jihad has been that it created many factions, sub-factions and differences in the ranks of the Afghan ethnic minorities. It has, at the same time, made them extremely vocal also in their demands, though, at times, becoming unreasonable to the extent of even endangering the very solidarity of the country.

There has been a mushroom growth of the parties and organizations etc. of the ethnic minorities, some springing up a new while others seceding from their parent organizations, for one reason or other, and trying to establish their own independent identities. Yet most of them had very nominal followings and very brief life too.⁸⁵ The politics of Afghanistan has grown too complex to be understood merely in terms of a rift between extremists and moderates, or secularists and Islamic fundamentalists. The basic fact is that the country has fallen to many rival groups, along a pattern that was established by the independent territorial control of the war lords. The territorial division is further complicated by the ethnic factor. The conflict has changed the traditional social and political order of the country. The most important development is the emergence of ethnic identity. Non-Pushtun minority ethnic groups, such as Hazara, Tajik, Turkmen and Uzbek, have acquired a greater sense of empowerment by establishing autonomous centers of power.⁸⁶ The authority of the traditional institutions that mediated social conflicts has declined. This has brought to the fore a new class of leaders, the resistance commanders who exercised political power in their respective areas of control quite

⁸⁵ For details see Annexure A

⁸⁶ For details see Sec. 3.3

independently of the former government in Kabul. These are some of the new political realities, which the Pushtun majority and traditional elites have to recognize. The important thing is that political fragmentation of Afghanistan along ethnic lines presents a serious challenge to national unity and a constant threat to the internal security of the country. In January 1992, some intellectuals of the minority ethnic groups of the Northern Region of Afghanistan drafted Charter of "Equality and Fraternity of the Nationalities"⁸⁷ wherein the name of Afghanistan has been suggested to be changed into 'Khurasan'. As the word Afghanistan, according to them, was synonymous with Pushtun only and do not signify the existence of other nationalities therein.⁸⁸ The Charter also favours formation of autonomous regions with the right of association with or secession from the Central authority. "Each of the local autonomous units has the right to have their own army, security and internal order forces with equal share of the armament facilities. The relations between these armies and the Central Army will be specified by the law".⁸⁹ Article 4 under para D 'In the Military Sphere', proposes so.⁹⁰

In the light of this Charter they are also trying to rewrite the history of Afghanistan a new. Articles on the subject have already started appearing in the magazine 'Junbish'. Amir Abdur Rehman and Wazir Mohammad Gul Mohmand are whereas condemned on various counts therein, Abdul Khaliq, the assassin of King Nader Khan is referred to as a "shaheed" and Bacha-i-Saqao as a 'hero' of the country.⁹¹

The Charter is almost on the lines of the 'Nationalities Programme' of the former

⁸⁷ Younas, S. F., Afghanistan Political Parties, Groups, Movements and Mujahideens Alliances and Governments (1879 TO 1997) VOL.1, Peshawar 1997, pp 801-819.

⁸⁸ Ibid.

⁸⁹ Ibid., p.817

⁹⁰ Translation of the full text of the Charter is at "Annex B".

⁹¹ Younas, S. F., Afghanistan Political Parties, Groups, Movements and Mujahideens Alliances and Governments (1879 TO 1997) VOL.1, Peshawar 1997, pp 801-819.

Soviet Union.

It seems that the authors of the charter have also derived some inspiration from the Truce Agreement concluded between Engr. Ahmed Shah Masood of Panjsher Valley and the Military Command of the then Soviets 40th Army, in February, 1983. Masood, in -exchange for certain assistance and cooperation⁹² was promised by the Soviets:-

1. Creation of, within the context of a unified Afghanistan, Tajik autonomy on the basis of area inhabited by Tajiks, including the territories of the provinces Badakhshan, Takhar, Kunduz, Baghlan, parts of Parwan-Kapisa, and also forms of self-government within this area.
2. Tajik representation and specific positions within the apparatus of the presidency, the National Parliament and the Cabinet of the Ministers of Afghanistan.
3. Official recognition of Jamiat-i-Islami, as an independent party and one possessing equal rights in Afghanistan.
4. Creation, on the basis of the Jamiat-i-Islami formation of a Regular Tajik force and its inclusion in the Armed forces of Afghanistan.
5. Establishing of peace within the frame work of Tajik autonomy.⁹³

To sum-up Afghan ethnic identities emerged more clearly during the Soviet-Afghan war.

Five groups could be easily distinguished: Tajik, including all Sunni Dari speakers; Hazara; Uzbek; Durrani Pushtun; Ghilzai Pushtun and Eastern Pushtuns.

In the next chapter it will be discovered as to how the the Afghan society and state was fragmented in zones identified on ethnic lines.

⁹² text of the protocol at annexure "C"

⁹³ Yunas 1997, p. 784.

Chapter III

Fragmentation of Afghanistan in Various Geographical Zones

The present chapter seeks to examine situation in Afghanistan in the aftermath of withdrawal of Russian forces and the end of cold war. Fighting among Afghans in the years following the fall of Najibullah's government in 1992 exceeded levels of violence experienced even during the wars of Amir Abdur Rahman against the Hazara and the Nuristani between 1891 and 1896.⁹⁴ One may conclude that these conflicts are evidence to the fact that Afghan society may fragment into groups based on sectarian, ethnic, or regional identities. There is no doubt that the Soviet-Afghan War severely disturbed the delicate social infrastructure constructed over centuries. However, to many Afghans, the present turmoil is driven more by political greed and external interference than by ethnic, sectarian or regional considerations. Though traditional structures were not equitable for all Afghan citizens, they did permit extended periods of civic stability. Even in the mid-1990s, there was ample evidence, in a number of areas outside the present arenas of conflict, to suggest that a return to the old order could occur.⁹⁵

Amir Abdul Rehman khan created the modern state of Afghanistan with weapons and cash supplied by the British for their own strategic reasons.⁹⁶ Foreign powers, whose main strategic interests centered on Europe, also furnished weapons, cash, and training to

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http://www.ebroadcast.com.au/search/Society/History/By_Topic/Wars_and_Conflicts/Regional/Afghanistan/listings.html

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http://www.ebroadcast.com.au/search/Society/Issues/Warfare_and_Conflict/Specific_Conflicts/Afghanistan_Civil_War/listings.html

⁹⁶ Dupree 2004, pp. 418-419.

Daoud, Taraki, Amin, Karmal, and Najibullah, enabling them to pursue domestic projects that met the strategic goals of the suppliers. When the Soviet Union broke up at the end of 1991, so did the Russian empire in Asia. Bipolar strategic conflict ended, and the European imperialist map of Southwest Asia was redrawn. Foreign aid to Afghanistan from competing, Euro-Atlantic power ceased, and along with it the century-old project of building of foreign aid-funded, Pashtun-led, centralized buffer state.⁹⁷

Both the United States and the now defunct USSR suspended military aid to their Afghan clients at the end of 1991; Moscow also stopped its shipments of food and fuel. Both announced support for the formation of a U.N. sponsored interim government that would replace Najibullah.⁹⁸ As soon as aid stopped, the northern militias, who no longer needed Najibullah as an intermediary with Soviet aid givers, mutinied against the Pashtun rulers of Kabul and allied with the northern Mujahidin.⁹⁹

The armed forces, the principal remaining state institution, dissolved and were absorbed into the country's regional-ethnic power networks. In the North, most units retained their coherence and were reorganized under new commands. In the South the Khalqi Sarandoy units crossed over to Hikmatyar and became the backbone of his military forces. The army garrisons in the Pashtun areas followed the Khost model: The Mujahidin dismantled the installations, demobilized the soldiers, and distributed the equipment among the segments of tribal coalitions.¹⁰⁰

In the battles for Kabul that followed, alliances formed around the most modernized, hence extensive and mobile, organizations. These coalitions largely followed ethnic

⁹⁷ http://en.wikipedia.org/wiki/History_of_Afghanistan_since_1992

⁹⁸ Rubin, B. R., *The fragmentation of Afghanistan state formation and collapse in the international system*. Oxford 2003, p.265.

⁹⁹ http://en.wikipedia.org/wiki/Democratic_Republic_of_Afghanistan

¹⁰⁰ Davis, A., 'The Afghan Army.' In: *Jane's Intelligence Review* 5, No.3 (March 1993) pp. 134-139.

patterns in composition if not in ideology. Segments of the population whose organizations remained clientelistic and localistic, especially the tribal Pashtuns, could not participate effectively. The emerging ethnic conflict over control of the central state – and even over the definition of Afghanistan – led some traditionalist forces among Pashtuns to look for leadership to Hikmatyar, who alone among Pashtuns commanded the mobile, conventional forces needed in the struggle for power.¹⁰¹

On April 26, 1992, with Kabul torn apart by fighting between non-Pashtun and Pashtun coalitions, the leaders of the seven Pakistan-based parties signed the Peshawar Accord, which provided a framework for an interim government of Mujahidin. But this agreement among exiled political party leaders contained no program for integrating the regionally based political-military organizations into a reconstituted state. Conflicts among these groups eventually rendered the Peshawar Accord ineffectual and called the possibility of a united Afghanistan into question. The Afghan regional structure that predated Abdul Rahman Khan reemerged, but with modern weapons and new forms of political and military organization. No great power now supported with guns and money the rule of a Pashtun dynasty over Afghanistan, which was no longer a buffer between contending empires or alliance systems. Billions of dollars worth modern weapons that had outlasted the strategic interests of their providers circulated in a devastated country with neither national institutions nor national identity.

3.1 National Struggles Among Regional-Ethnic Coalitions.

The internationally supported U.N plan broke down with the disintegration of the state

¹⁰¹ Rubin 2003, p.159

that the interim government was supposed to rule. That state had become little more than a set of apparatuses headed by mutually antagonistic leaders heading distinct ethnic communities but held together by Najibullah's redistributions of external aid.¹⁰² Only that aid rendered these organizations partly autonomous from the regional societies from which their members were recruited, and only that aid gave them coherence as parts of a single institution. As the government's fiscal crisis became deeper, so did the crisis of state autonomy and coherence.

Absolutely essential to the state's continued existence was its control of the land link to the North, protected by the Jauzjani and Ismaili militias. In January 1992 this link broke. Because Najibullah no longer received Soviet aid and was approaching the limits of sustainable hyperinflation, he had to economize. He warned Dostum, whom he suspected of padding his ranks with phantom recruits, that he would reduce the number of salaries he paid. Because Najibullah could no longer rule by redistributing externally supplied resources, he turned to the remaining tool of Afghan rulers: manipulation of social segmentation. He tried to assert control over the northern supply lines by using Pashtun solidarity of regular army officers against the militias.¹⁰³ The Soviet military had shipped a large stockpile of weapons just before the agreement with the United States went into effect. General Mumin, the Tajik commander of the Hairatan garrison where the weapons were stored, has established ties to both Dostum and Massoud. Mumin had long been diverting aid to Dostum and passing intelligence to Massoud, a classic example of the horizontal linkages that erode state autonomy.¹⁰⁴ In late January, Najibullah instructed Gen. Juma Atsak, the commander of the Northern Zone, an Achakzai known for his

¹⁰² Ibid. p. 161

¹⁰³ http://en.wikipedia.org/wiki/Democratic_Republic_of_Afghanistan

¹⁰⁴ Ibid.

Pashtun chauvinist views, to replace Mumin with General Rasul, a Pashtun Khalqi who was much hated for his services as commander of Pul-i Charkhi Prison under Taraki. Mumin refused to leave, and Dostum not only supported him but raised support for the revolt from Sayyid Mansur Nadiri's Ismaili forces. The revolt also enjoyed the support of the mainly non-Pashtun pro-Kamral forces in Kabul, who saw alliance with the northerns as their insurance policy under a hostile new government and who resented Najibullah's assertion of Pashtun control over the North.¹⁰⁵

The Parchami and northern rebels allied with commanders of Hizb-i-Wahdat (belonging to Hazara ethnic origin), Jamiat (predominantly Tajiks) (including SCN), and other northern resistance groups. On March 19, the day after Najibullah announced that he would resign, this coalition seized control of Mazar-i-Sharif, cutting off Kabul from its main supply lines. Dostum (ethnic origin Uzbek) defeated the Khalq Eighteenth Division in Balkh under General Rasul, and the coalition encountered some resistance from Najibullah loyalists at Mazar's WAD headquarters taken by SCN, but otherwise the transition took place with little fighting.¹⁰⁶ The regime military forces and the administration were for the most part undistributed, and the North remained stable. With the collaboration of the militias and Parchamis in Kabul, Massoud's (ethnic origin Tajik) forces took control of the airfields north of Kabul in Bagram and Charikar. Where he not only set up his base but also the northern road to Kabul lay open before him.

Massoud, who commanded legitimacy as a national hero of the resistance, emerged as political spokesman for the alliance, but its most powerful military force consisted of the

¹⁰⁵ For details see Davis 1993.

¹⁰⁶

http://www.ebroadcast.com.au/search/Society/History/By_Topic/Wars_and_Conflicts/Regional/Afghanistan/listings.html

former regime militias. Dostum had over forty thousand men, more than three times as many as Massoud. He formed a new organization, the Junbish-i Milli-yi Islami (National Islamic Movement), together with Nadiri, Mumin, and other Uzbek and Ismaili commanders.¹⁰⁷

The northern alliance easily gained control of all military installations between Mazar and Kabul. In an operation coordinated by Karmal's brother, Mahmud Baryalai, Parchami rebels also seized control of the Kabul airport with troops flown from northern military bases. Baryalai took vengeance on his brother's rival when these forces blocked Najibullah from leaving the country on the night of April 15-16.¹⁰⁸ That same night WAD chief Ghulam Faruq Yaaqubi reportedly committed suicide in the headquarters of the secret police.¹⁰⁹

Led by Karmal's second cousin, Foreign Minister Abdul Wakil, the Parchami rebels who now controlled Kabul denounced Najibullah as a dictator and secretly asked Massoud to enter the capital as head of state. The Parchamis intended to use Massoud as a figurehead who would continue to depend on them. General Muhammad Nabi Azimi, commander of the Kabul garrison, contacted Massoud in the hope of duplicating in Kabul the "Mazar model" of peaceful turnover of power without fighting or damage to the state apparatus.¹¹⁰

Massoud agreed to remain in touch with the Kabul garrison in the hope of managing a peaceful transition, but he refused to enter the capital as head of state. He asked the leaders in Peshawar to accelerate their efforts to form an interim government of

¹⁰⁷ For details see annexure J.

¹⁰⁸ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

¹⁰⁹ Rubin 2003, p.270.

¹¹⁰ Interview with the Parchami, former Central Committee members, New York, April 1992, and Almaty, October 1992. Interview with Muhammad Nabi Azimi, Tashkent, May 22, 1993. As quoted by Rubin 2003.

Mujahidin. In spite of intense Pakistan pressure, however, the leaders in Peshawar argued for ten days over arrangements for a transitional government. In an attempt to avert ethnic conflict, Massoud communicated regularly over his American-supplied radios with Pashtun commanders of the NCS, assuring them that he would not seize power unilaterally.¹¹¹

While the leaders in Pakistan argued, Pashtuns reacted to the northern offensive. In spite of Massoud's assurances, many Pashtuns in both the resistance and government feared an attempt by the northerners to capture power at their expense. Hikmatyar continued to play on Pashtun ethnic fears. In Kabul there had been talk for some time of a "Pashtun solution."¹¹² As the northern forces closed in on Kabul in April, Pashtuns in the Afghan military – mainly Khalqis, but also some Parchamis close to Najibullah – arranged the infiltration of unarmed fighters of Hizb-i-Islami into the city, where they received arms from their co-ethnics in the Interior Ministry.¹¹³ Hikmatyar's conventional military force also crossed over the border from Pakistan and camped south of Kabul, where it was joined by Khalqi units, mostly Sarandoy.¹¹⁴ Pakistan's official neutrality notwithstanding, Hikmatyar continued to recruit fighters and transfer weapons, oil, and supplies from that country, as well as to use offices and bank accounts there. Jama'at-i Islami continued to support him, as did a sector of the intelligence apparatus. The threat of an imminent coup by Hizb prompted Massoud to act before the Peshawar leaders had reached agreement. On April 25, the forces of Massoud and Dostum, already in control of the Kabul airport, entered the city. The non-Pashtun Parchamis, assisted by the Iranian embassy, had also

¹¹¹ <http://webeverything.co.uk/directory/770649.html>

¹¹² Washington Post, October 20, 1991.

¹¹³ Leading figures of the regime who supported Hikmatyar included Defense Minister Watanjar and Interior Minister Paktin, both Khalqis, and Political Director of the Armed Forces Manokai Mangal, a Parchami, whom Najibullah had sent to Peshawar several months earlier to negotiate with Hikmatyar.

¹¹⁴ http://en.wikipedia.org/wiki/Democratic_Republic_of_Afghanistan

armed the Shi'a of Kabul city, and two Shi'a qawmi units of WAD in and near Kabul had joined the northern alliance.¹¹⁵ After violent battles at the Interior Ministry and the presidential palace, the forces of Dostum, Massoud, and Hizb-i-Wahdat expelled the Khali-Hizbi Pashtun forces.¹¹⁶ The defeated Pashtuns, however, had breached the security cordon around the city, and other Mujahidin flowed into Kabul, setting up checkpoints and engaging in looting.

3.2 Formation of Islamic State of Afghanistan

The Mujahideen leaders finally reached agreement on April 26, when they announced the Peshawar Accords. For two months Mujaddidi would be the acting president, to be followed by Rabbani for four months. After six months the government would hold a Shura to choose an interim government for the next eighteen months, at the end of which time elections would be held.¹¹⁷ The acting president will be answerable to a "leadership council," composed of the leaders of Mujahidin parties, Sunni and Shi'a. Massoud became minister of defense. The interim government arrived in Kabul from Peshawar on April 28 and, amid continuing battles in the capital, proclaimed the establishment of the Islamic State of Afghanistan. Perhaps this entity was Islamic but it was hardly a state, and it certainly did not rule Afghanistan. The government had virtually no income. All major customs posts, the government's principal sources of revenue in the absence of foreign aid or natural gas exports, were under the control of regional shuras that kept the

¹¹⁵ Davis 1993, pp. 134-139.

¹¹⁶ http://en.wikipedia.org/wiki/Democratic_Republic_of_Afghanistan

¹¹⁷ http://www.ebroadcast.com.au/search/Society/History/By_Topic/Wars_and_Conflicts/Regional/Afghanistan/listings.html

revenue for themselves.¹¹⁸ Tens of thousand of armed men belonging to a variety of forces – or to none-roamed the streets of the capital looting, fighting, and sometimes groups that constituted its armed forces by distributing freshly printed banknotes that continued to arrive by plane from Russia, where they were printed under commercial contract. (Hikmatyar demanded that Russia stop printing the banknotes, which financed the government that had ousted his forces from Kabul).¹¹⁹ The arrival of the new government intensified competition for power. During the spring and summer of 1992 Shi'a Mujahidin armed by Iran controlled about one-fourth of Kabul city and repeatedly clashed with Sayyaf and other Salafi Mujahidin, who were aided by Arab volunteers.¹²⁰ Hundreds of civilian hostages taken in these clashes in June disappeared.¹²¹ A more serious threat to peace was Hikmatyar's refusal to accept the agreement, which, by making Massoud defense minister, effectively recognized the northern coalition's military control of Kabul. The long-standing rivalry between Hikmatyar and Massoud, between Hizb and Jamiat, became associated with the feud between Khalq and Parcham and took on the dimensions of a battle for the control of Afghanistan between Pashtuns and non-Pashtuns.¹²² Hikmatyar charged that the new government was not a genuine Mujahidin government at all but a vehicle for power-sharing with communists. Besides maintaining his alliance with Dostum, which was militarily indispensable, Massoud had kept on Najibullah's commander of the Kabul garrison and his chief of army staff (both Parchami Muhammadzais), as well as the Parchami former defense minister Baba Jan,

¹¹⁸ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

¹¹⁹ Gregorian, V., *The Emergence of Modern Afghanistan: Politics of Reform* Olesen, A. *Islam and Politics in Afghanistan*, Richmond 1995, pp. 138-140

¹²⁰ http://www.ebroadcast.com.au/search/Society/History/By_Topic/Wars_and_Conflicts/Regional/Afghanistan/listings.html

¹²¹ <http://webeverything.co.uk/directory/770649.html>

¹²² The Guardian, October 14, 1992.

¹²³ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

who now commanded a special forces unit.¹²³ On the other side, Hikmatyar's main military force now consisted of former Sarandoy troops, he was assisted by several Khalqi former ministers and armed forces commanders (all Paktiawal and Ghilzai Pashtuns), and his personal bodyguard consisted of members of a former progovernment Pashtun tribal militia from Helmand. Hikmatyar also enjoyed the support of Jama'at-i Islami of Pakistan, of leftist Pakistani Pashtun nationalists (who were sheltering some of Najibullah's associates), and of former ISI officers. Hikmatyar also received Middle Eastern money, mostly from the Muslim brotherhood, but also reportedly from Qaddhafi and Saddam Hussein. Most of the rank-and-file Mujahidin remained in their regions and villages, where their control was now disputed only by local rivals, not by the state. From May through August, Hikmatyar periodically bombarded Kabul with rockets. According to the United Nations, by August over 1,800 civilians had been killed, several thousands more, injured in the shelling, sought treatment in hospitals where damage to the electrical grid and the water system had curtailed services. Food supplies in Kabul were becoming scarce, shops were closed, and foreign missions withdrew all non-Afghan personnel. By the end of the year over 5,000 people had been killed and perhaps a million had fled the devastated city.

At the end of June, Mujaddidi mounted a campaign to keep his position rather than handing over the presidency to Rabbani. Finally Mujaddidi resigned, however, and Newspaper reports called Rabbani's succession the first peaceful transfer of power in Afghanistan since the death of Amir Abdul Rahman Khan, but in fact, Mujaddidi had no power to transfer. Six months after assuming authority, on October 28, the leadership council reluctantly voted to extend Rabbani's mandate for forty-five days, on the grounds

¹²³ http://en.wikipedia.org/wiki/Democratic_Republic_of_Afghanistan

that continued fighting and the destruction of Kabul had made it impossible for him to summon the shura in the time designated. After the extended term, however, they would elect a president for the following eighteen months. Somewhat belatedly, Rabbani managed to convene a shura of 1,335 men at the end of December. More than a tenth of the members were drawn from Dostum's organization; Jamiat predominated among the rest. Most areas of the country and ethnic groups had some representation, but most of the parties boycotted the shura, charging that it was manipulated by Rabbani, whom, to no one's surprise, it elected as president on December 29.

During preparations for the shura, Massoud attempted to wrest control of the Kabul University campus (where the shura was supposed to be held) from the Shi'a interposed themselves between the two forces. Hikmatyar took advantage of the conflict within the opposing coalition to isolate Massoud, his principal opponent. He tacitly agreed not to shell Dostum's positions, and in January he signed a formal alliance with Hizb-i Wahdat.

These developments attenuated the sharp division between Pashtun and non-Pashtun, but they reinforced the apparently ethnic character of post-Soviet Afghan identified armed forces: Uzbeks under Dostum, supported by Uzbekistan; Shi'a of Hizb-i Wahdat, supported by Iran; Pashtuns under Hikmatyar, supported by Islamists and intelligence officers in Pakistan; and Tajiks under Massoud, who alone lacked a powerful foreign patron, although they had developed some links to the now defeated opposition forces in Tajikistan. Only Hizb-i Wahdat was truly mono-ethnic, and not all members of the various ethnic groups supported the respective organizations, but ethnicity emerged as a

powerful force in practical terms.¹²⁴

As fighting enveloped Kabul once again in January 1993, Saudi King Fahd issued an appeal for peace.¹²⁵ This appeal led to another foreign-sponsored accord on March 7, when most of the party leaders signed an agreement in Islamabad with the blessing of Pakistan, Saudi Arabia, and Iran. The leaders then traveled to Mecca, where swore allegiance to the agreement on the Holy Kaaba. The Islamabad Accords established an interim government, which was supposed to summon a constituent assembly to draft a constitution within eight months and hold elections within eighteen. The accord reproduced the division of powers between president and prime minister that was then tearing apart the government in Pakistan. Rabbani was to remain as president, and Hikmatyar was to become prime-minister. The president (supreme commander of the armed forces) and the prime-minister (who formed the cabinet in consultation with the president) immediately argued over the appointment of the minister of defense. Massoud remained in place, although his official role became less clear. Gunmen attempted to assassinate the president while he was on his way to a confidential meeting with the prime minister, who preferred to camp in the suburbs and shell the capital.¹²⁶

With the help of his Shi'a allies, Hikmatyar managed to enter from the south and west of the city, where he set up an office and convened cabinet meetings. Dostum met with both sides, offering to act as mediator and demanding a formal government position and recognition of autonomy for the regions. In January 1994 Dostum and Hikmatyar

¹²⁴Rubin 1993-94, pp. 83-95.

¹²⁵http://www.ebroadcast.com.au/search/Society/History/By_Topic/Wars_and_Conflicts/Regional/Afghanistan/listings.html

¹²⁶ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

launched a joint offensive against the Jamial-dominated government, Massoud held on, but the fighting devastated new areas of Kabul, including the money bazaar, and spread to the North as well. New waves of refugees fled toward Jalalabad and Pakistan.

3.3 Regional/Geographical Power Centers

In this section it will be observed as to how the collapse of Najeeb Ullah's regime resulted in the civil war, an internecine struggle between the warring factions tearing apart not only the state but also the society. The Afghan society fragmented on lines demarcated on ethnicity. Thus, below we will see the division in Afghanistan into various geographical zones between contending factions.

Between the fall of Mazar on 19 March 1992 and the surrender of Jalalabad on April 23, Mujahidin had negotiated the surrender of all major government garrisons. The transfer of power in the provinces occurred peacefully except in Mazar, where a Khalqi unit resisted Dostum, and in Faizabad, Badakhshan, where the garrison may not have been fully informed about events elsewhere. Regional councils, some including commanders formerly on opposite sides, formed on the oasis of local ethnic and tribal ties.

In the non-Pashtun areas of the North, Northeast, and West, the armed forces and administration (whether government or SCN) remained in place, but under the authority of regional figures rather than of Kabul. The appropriated state apparatus of these areas, where social control was far less fragmented than in the tribal zones, formed a basis for the power of the non-Pashtun groups. The Hazaras also enjoyed an autonomous territorial base in the center of the country. In the South and some other Pashtun enclaves, the state apparatus was divided among tribal segments. Kunar was an extreme case: even school

buildings there had been dismantled and the chairs and tables distributed among various Mujahidin groups. Army garrisons fared no better. Among Pashtuns, the only modernized military force that survived was Hikmatyar's, precisely because it had no regional or tribal base to fragment it.

3.3.1 The North

By the summer of 1993, Dostum had integrated Uzbek and Ismaili militias, along with regime garrisons from Maimana to Pul-i Khumri, into a northern armed force of 120,000 men. Because he was able to offer salaries and career prospects, he reintegrated even Pashtun army officers, including some Khaiqis, who had fled north after their garrisons were dissolved in the South. Mujahidin commanders of various parties also joined Dostum's Junbish. His control of airfields, roads, and fuel depots (replenished by his allies in Central Asia) kept his forces mobile and continued to give him access to and influence in Kabul.

Dostum carved out a political space for himself as the only powerful figure who supported secularism and as an advocate of regional autonomy and the rights of minorities. Many former high party and government leaders, including Babrak Karmal, took up residence in Mazar under his protection.

The United Nations moved its major office in Afghanistan to Mazar from Kabul in August 1992, and seven countries established consulates there: Iran, Pakistan, Turkey, Saudi Arabia, Uzbekistan, Turkmenistan, and Tajikistan. Dostum boasted that he had more functioning diplomatic missions than Kabul. In 1992 he visited Uzbekistan, Turkey, Pakistan, and Saudi Arabia, where he was received by high-ranking government officials.²⁰ Mazar also became the center of expanding private trade with the newly

independent states of Central Asia.

Dostum gave refuge to about half of the sixty thousand refugees from the war in Tajikistan who fled to and remained in Afghanistan between December 1992 and January 1993. The United Nations built a large camp near Mazar and assisted the refugees with Dostum's support. Dostum raised his international profile further by collaborating with UNHCR in a voluntary repatriation of Tajik refugees that began in May 1993.¹²⁷ Under pressure from all regional states, including Uzbekistan, Dostum retreated from his earlier separatist rhetoric and affirmed support for a united, though decentralized, Afghanistan. Nonetheless, while Dostum verbally recognized the "juridical sovereignty" of Afghanistan, the government in Kabul exercised no empirical sovereignty over his area. He collected customs at Hairatan and did not pass them on to Kabul; nor was his military force subject to any commands from the Ministry of Defense. He controlled about the same territory as had Murad Beg, the Uzbek khan of northern Afghanistan supported by the Amir of Bukhara in the early nineteenth century.

3.3.2 The Northeast

Most of the Northeast remained under the control of the SCN, which was sufficiently institutionalized to continue functioning while Massoud was in Kabul. The SCN furnished about five thousand troops to the interim government. Massoud had some success in integrating the command structure of SCN with the portions of the Afghan army that fell into his hands (mainly the Kabul garrison and the divisions based just north

¹²⁷ Rubin, B.R., 'Fragmentation of Tajikistan' In: *Survival*, 35 (Winter 1993-94) pp.71-91, at pp.82-83.

of Kabul in Bagram and Charikar).¹²⁸ Massoud lacked any reliable foreign support, however, and his inability to bring security to Kabul or to transcend his regional background tarnished his image as a national leader.

Massoud allowed the exiled leadership of the Islamic Renaissance Party of Tajikistan to establish its office in the SCN capital of Taliqan, and he apparently provided military training to Tajik guerrillas, who wore SCN uniforms.¹²⁹ Tajik nationalism played little role in his decisions, which seemed dictated more by the desires of Arab and Pakistan – the only sources of foreign aid now available – and by rivalries with Hikmatyar and Sayyaf commanders, who were also training Tajik guerrillas.

One major area of the Northeast remained outside of Massoud's control. In central Kunduz, where the irrigated cotton-growing areas have a large population of Pashtun settlers, the Pashtun garrison turned over its weapons to a local Pashtun commander, Amir Chughai of Sayyaf's Ittihad. Dostum controlled Kunduz's major port on the Amu Darya, Sher Khan Bandar. East of Sher Khan Bandar, Uzbek commanders of Hizb-Hikmatyar controlled the town of Imam Sahib, Hikmatyar's birthplace.

Amir Chughai, who had been a minor commander during the war, became the major power in central Kunduz. Most of the thirty thousand refugees from Tajikistan in Kunduz were under his control. With the help of Arab Islamists, who established an office in Kunduz, Chughai supplied weapons and training to the Tajik opposition. Hikmatyar's commanders also provided aid and training to the guerrillas. These activities led to disputes with the United Nations, which finally suspended operations in Kunduz, except for the strip of land controlled by Dostum, through which refugee repatriation also took

¹²⁸ Davis 1993.

¹²⁹ Washington Post, April 27, 1993.

place.¹³⁰ In late 1993 and early 1994 Dostum forces and the shura of Kunduz dominated by Jamiat and Sayyaf, fought repeatedly over control of Sher Khan Bandar and Kunduz city.

3.3.3 The West

In Herat, Ismail Khan peacefully took control of the garrison and the Seventeenth Division. He integrated the regime military commanders into his shura as military advisers and made his rival, the late commander Afzali's brother the chief of security in Herat. Militia who joined Hikmatyar took control of Shindand air base, where they found Iranian agents trying to supplement the planes they had gotten from the Iraqi air force during the Gulf War by appropriating Afghan MiGs. Ismail Khan took control of the air base with some air support from Kabul in October 1992, after Hizb units assaulted Herat city. Ismail Khan's shura defeated and disarmed the militias without bloody battles of the sort that rocked Kabul.

Herat turned into a peaceful center of economic revival.¹³¹ Economic growth enabled Ismail Khan to bring more local commanders under his sway. Herat remained stable through 1993 despite pressures from Iran, which demanded more power for the Shi'a in the Herat shura and began pushing Afghan refugees across the border. In early 1994, Ismail Khan's forces clashed with Dostum's in Faryab, where the two zones of control met. Dostum's air force dropped a few bombs on the city in June.

¹³⁰ Rubin 1993-94, pp. 83-86.

¹³¹ Interview with Ashraf Ghani, New York, March 1993; New York Times, July 27, 1993.

3.3.4 The East

Besides the rival shuras of Kunar established in 1988, the eastern Mujahidin established new shuras in the rival Pashtun areas of Nangarhar (Jalalabad) and Paktia (Gardez). The Jalalabad shura mainly included fighters of Hizb-Khalis and NIFA whose partisan attachments became less important. In 1993 the governor of Jalalabad, Commander Shamali of NIFA, was killed with forty of his men in an attack that NIFA blamed on Haji Abdul Qadir, the shura spokesman from the Arsala family of Hizb-Khalis. Shamali's Ahmadzai tribe demanded badal from the Jalalabad shura and received support from Hikmatyar. They established a base at Sarobi, between Jalalabad and Kabul. Massoud sent SCN forces to dislodge this pro-Hikmatyar group, leading to a month long war in November that displaced thousands of members of the Safi tribe.

Many radical Arab Islamists continued to train in Jalalabad. They were widely suspected of being responsible for the assassination of four U.N. personnel, two expatriates and two Afghans, near Jalalabad in February 1993. This attack led the United Nations to terminate programs in the area and to withdraw all expatriates from Afghanistan. In Gardez a tribal shura led by Mawlawi Jalaluddin took over.

Neither of these shuras established mobile military forces or much needed civil administration. Hikmatyar took over several Sarandoy brigades and WAD units in the region, but the rest of the government's armed forces disbanded, largely without reprisals. The Pashtun tribes of eastern Afghanistan opposed Hikmatyar's attacks on Kabul, but they supported his demand for the removal of communists from the government. Many sympathized with Hikmatyar's attacks against the northern forces, but they did not send troops to help him. They sometimes acted as brokers between Hikmatyar and the

government while pledging loyalty to neither. A weak government suited them, for they were occupied with trade in the profitable opium crop, which was planted right up to the roadside around Jalalabad in the spring of 1992.

3.3.5 The South

The Durrani Pashtuns of southwest Afghanistan, although they were represented in the government, opposed its dominance by "fundamentalist" and non-Pashtun elements. They also firmly opposed Hikmatyar. They organized an "Islamic National shura" of Mujahidin commanders, ulama, and tribal leaders.¹³² Nor did the Qandaharis preserve regime military units or erect any regionwide political or military structures. The stability the South enjoyed in 1992 began to break down in 1993: Hazaras north of Qandahar, encouraged by Iranian aid, became more assertive, and Hizb-Hikmatyar forces in the area attempted to assert themselves against the tribal shura.

Helmand's center, Lashkargah, was taken over by a Khalqi militia that at first joined Hizb and then switched allegiance to Jamiat, but the drug warlords remained the principal powers in the area. In late 1993 Ghulam Rasul Akhundzada dislodged this militia with the help of Ismail Khan.

3.3.6 The Hazarajat

The Shi'a wielded more power in the national political arena of Afghanistan than they ever had before, particularly the Hazaras, both Imami and Ismaili. They were as fully autonomous in the Hazarajat, with their Iranian aid, as Dostum was in the North. They

¹³² "Da Qandahar da aqwamo aw jihadi shura gadah a 'Iamiyyah"; An interview with Abdul Qayyum Karzai, Maryland, April 1992 by Rubin.

also in effect held the balance of power in Kabul between the two main Sunni forces, Hizb (plus Khalq) and Jamiat (plus Parcham). And they enjoyed the support of important figures of the Watan Party and of powerful former government militias.

Outside analysts, as well as many Pushtuns interpreted these developments as signs of Iranian attempts to break up Afghanistan, but in reality the assertiveness of the Hazaras and Qizilbash showed their integration, however uncomfortable, into the national political arena. They raised their voice rather than seeking to exit. Shi'a served on the leadership council of the Islamic State (Ayatollah Muhsini of Harakat-i Islami served as spokesman for a time) and built an alliance with Hikmatyar that seemed to endure, as such things are measured in post-Cold War Afghanistan.

3.4 Ruins of Empire

It is not just, as some now say, that in fighting "communism," the United States strengthened "fundamentalism". As the events in Afghanistan showed, communism and Islamism have much in common, not because they are both extremism, but because both are radical responses by elites trained for a world they cannot join.

The Cold War integrated these groups into a global order: even a structured bipolar conflict constitutes a kind of order. The great powers showered weapons, cash, and attention on the protagonists of this struggle. The principals in neither Washington nor Moscow could make "their" Afghans into reliable agents, but the resources they supplied shattered much of what the peoples of Afghanistan had preserved from their past. The Afghans had to find new ways to survive and interpret their often devastated environment.

The new leaders are not just old leaders with new weapons, and the new Afghanistan is not just the old Afghanistan with a seat in the United Nations. The boundaries and administrative structure of the Afghan state of 1879 to 1978 represented the balance of power within and around the Afghanistan of that time before the nation-state system came to the region, when some (for instance, Pashtuns) lost power and others (for instance, Uzbeks) gained it, the borders to political entities would shift accordingly, as emirates and Khanates moved around a map without clear boundaries.

For a hundred years, these processes were frozen as the local and global hegemonic powers strengthened the rule by Pashtun dynasties over a buffer state. But the increasing dependence of all Afghan rulers on external aid weakened their local sources of power. After 1978 international development made the tension between state and society into a part of the struggle between East and West. The effort to topple an illegitimate regime undermined the fragile state itself.

The regional social forces asserted themselves, but the institutions of the nation-state, which constitute the deep structure of our international system, shape and limit them. When Ahmad Shah Durrani created an Afghan empire independent of both Persian and India empires in the eighteenth century, he minted coins with the inscription "Commandment came from the peerless Almighty to Ahmad the King: Strike coins of silver and gold from the back of fish to the moon".¹³³ Sovereignty may still come from God, but today the right to issue currency comes from the IMF. The international system upholds the juridical sovereignty of the Afghanistan defined by the Anglo-Russian agreement of 1907, despite the lack of any organization capable of exercising empirical

¹³³ Shahrani, 1986. pp.16 & 67

sovereignty over it.¹³⁴ This contradiction virtually forces political leaders into a battle for control of Kabul, a battle to which the regionally segmented social structure of Afghanistan inevitably lends an ethnic character.

In the following chapter it will be seen through the eyes of history as to how the Afghan State was evolved. In Afghanistan, conceivably, almost every political theory has been experimented. From Monarchy to Presidential, conservatism to modernism, then to communism, followed by the Islamic state of Afghanistan, then the Talibans and finally the current scenario. The affects brought about by these changes on the administrative set-up of the state is the theme of the up-coming chapter.

¹³⁴ Jackson and Rosberg, Why Africa's Weak States Persist, October 1982. pp. 1-24.

Chapter IV

Evolution of Administrative Structure in Afghanistan

The present chapter seeks to examine the evolution of administrative structure of Afghanistan. The formation of Afghan state in modern sense of the term can be traced back to 18th century. In 1747 Ahmad Khan, a tribal chieftain of the Abdali clan, was declared as king of the Afghans in a tribal meeting. However, it was after accession of Amir Abdur Rehman Khan that geographical boundaries of the state were demarcated and a modern and efficient system of administration was established. In the First quarter of twentieth century Afghanistan gets its first written constitution and a plethora of reforms. The constitutional developments reach its maturity in 1964 when a new constitution is promulgated. It is followed by Sardar Daud's coup and Republicanism, then the Communist regimes, The Islamic State of Afghanistan, The Islamic Emirate of Afghanistan and finally the post 9/11 scenario in Afghanistan.

4. 1 Administrative Structure of Afghanistan

After decades of violence during which Afghanistan's weak institutions broke down even further, the Bonn Agreement of December 5, 2001,¹³⁵ provided elements of a road map for rebuilding governance and security in the common interest of the people of Afghanistan and the rest of the international community. The Agreement provided a timetable for key

¹³⁵ See Full text of Bonn Accord Annexure E

political benchmarks to be met by the interim and transitional Afghan governments, such as the convening of the Emergency Loya Jirga, the appointment of the Constitutional Commission, the adoption of the Constitution by Loya Jirga, and general elections by June 2004.¹³⁶

All these tasks, however, require the building or rehabilitation of state institutions. Without adequate security and a functional administration, it will be impossible to hold elections and possibly meaningless to adopt a constitution. The Bonn Agreement contains some general guidelines on state building, such as a statement of principle that armed groups should be integrated under government authority and reorganized, and the creation of Commissions on the Judiciary, Civil Service, and Human Rights. The agreement does not stipulate how the reorganization of the armed groups is to take place? or how the recommendations of the various Commissions are to be implemented? It effectively delegates these fundamental questions to the Interim and Transitional Administrations, the Constitution Commission, and the Loya Jirga, and there is no timetable for these essential tasks to complete.

The military action by the US-led coalition and the presence in Kabul of the International Security Assistance Force (ISAF) created conditions for the political coalition formed at Bonn to take possession of the central government apparatus in Kabul.¹³⁷ In other parts of the country, however, various armed groups exercise authority over portions of the administration. Reintegrating these fragments into a common whole constitutes the process of rebuilding the state. This process would connect the central government to the

¹³⁶<http://www.mail-archive.com/conlawprof@listserv.ucla.edu/msg01635.html>

<http://www.mywebsearch.com/jsp/AJmain.jsp?PG=SEASUSH&SEC=ABMANY&ptnrS=zuzeb004YYPK&st=kwd&searchfor=www.constitution-afg.com>

¹³⁷ See Annexure F.

provinces, districts, localities, and nomads. It involves institutions dealing with different functions, including defense, finance, judiciary, police, and service delivery at various levels.

State building requires both a legal framework and political support for it to sustain. The Bonn Agreement almost reinstated the relatively liberal constitution of 1964, with the exception of the chapters about the monarchy and the legislature. The 1964 Constitution provides for a centralized administration, which evolved from the state building model of Amir Abd al-Rahman Khan (r. 1880-1901).¹³⁸

The current reality on the ground consists of a mix of the legally mandated centralization with a military pseudo-federalism based on armed groups built up over the years of war and reinvigorated by US and its coalition partners as part of the war on terrorism. The leadership in Kabul wants to re-centralize the government but is split between advocates of a direct assault on regional forces and proponents of gradualism.¹³⁹

The technocrats returning from the West tend to be in the former camp and the Northern Alliance commanders in the latter. A few leaders, mainly outside the central government, propose federalism or decentralization. The international community involved in assisting Afghanistan in such matters pays lip service to the agenda of strengthening the central government but works pragmatically with a variety of regional forces, reinforcing decentralization.¹⁴⁰ Global trends that see decentralization as conducive to democracy and grassroots development legitimatise such decisions.

¹³⁸ Dupree 2004, p.561

¹³⁹ Rubin, B. R., and Helena Malikyar, *The Politics of Centre-Periphery Relations in Afghanistan*, New York 2003, pp11-15.

¹⁴⁰ Afghanistan's flawed Constitutional Process 12 June 2003 International Crises Group Asia report Kabul/Brussels.

In this connection an extensive field study was conducted by the World Bank to collect on the ground data with regard to the existing administrative practices as well as what type of administration the Afghans would like to have in future.¹⁴¹

This report is based on fieldwork in Kabul, Qandahar, Logar, Herat, Jalalabad, and Bamiyan mainly during visits in May-August 2002, with some follow-up in Kabul afterwards. The pool of people interviewed for this research can be roughly divided into 2 categories: 1) cabinet ministers, governors, wuluswals (district heads) and other high officials, and 2) influential people outside of the power structure. The first group can be subdivided into central and provincial officials, while the second group contains the traditional Afghan civil society: elders, khan (tribal leader), malik (village leaders), former jihadi commanders, religious and spiritual leaders, and intellectuals.¹⁴²

A consensus was found on the following points: warlordism (jangsalari, tufangsalari) was identified as the major source of the country's problems. Ironically, some of the individuals whom others saw as warlords advocated eradication of warlordism, agreement on the creation of a national army and the emergence of a strong central government.

Two main reasons seem to incline ministers, governors, civil servants, and many if not most of those outside the government towards a strong central government. First, they see the central government as their only savior from the tyranny of local commanders and warlords. Second, in the collective memory of the nation, the last time it lived under law and order was during the royal regime, which people remember or imagine, rightly or

¹⁴¹ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁴² World Bank, Afghanistan Research and Evaluation Unit And The Adam Smith Institute, "A guide to government functioning outside of Kabul: early findings based on missions to Heart and Faryab: Working Draft", 28 February 2003, p. 7.

wrongly, as a strong central government. We will argue that other options are available for Afghanistan, and that posing the alternatives in such a stark way makes more likely the repetition of past conflicts.¹⁴³

4.2 A Brief Background to Post 9/11 Situation in Afghanistan

Rulers create states primarily through military might and taxation. Amir Abd al-Rahman Khan used military force to conquer all the territory of Afghanistan and collected revenue from traders and farmers. The revenue, along with aid from the British, sustained the military, which in turn made it possible to control territory and collect revenue.¹⁴⁴ The Amir legitimised his power with a claim to rule in conformity with Islam. In an Islamic state, meting out justice is central to legitimacy. In fact, good or bad governance in the Islamic/Afghan tradition of state is judged based on the degree of justice that prevails throughout the land. Amir 'Abd al-Rahman Khan put in place a strong and elaborate judicial system, which he used to legitimize his state building efforts. Holding Shari'a as the supreme law of the land, he codified customary practices and insisted on the application of a uniform code of law throughout Afghanistan.¹⁴⁵ To enforce laws he established an intricate judicial administration and bureaucratic procedures that connected districts and provincial capitals to Kabul.¹⁴⁶

After having accomplished that, he embarked on establishing a fiscal system. The office of must fiat (finance) became one of the most important departments of the government.

¹⁴³ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁴⁴ Rubin 2003, p.19.

¹⁴⁵ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁴⁶ For details see Dupree 1978.

The mustufi al-mamalik (finance chief of the country) in Kabul oversaw tax collection offices that were established in the country's four provinces. Tax officers sent from the provincial mustufiats to districts and villages collected taxes on agricultural lands and produce, commercial shops, and trade. They sent the revenue to the capital, where the Kabul mustufiat deposited them into the central treasury. In the absence of budgets, money was disbursed to various central and provincial government offices in accordance with the requests of each office and suggestions from the mustufi al-mamalik, subject to final approval by the amir. The central mustufiat intervened in the collection of taxes only in case of a problem, when tax collectors accompanied by policemen were sent from Kabul with authority to use coercion if needed.¹⁴⁷

For enforcing his legal and fiscal systems, 'Abd al-Rahman Khan relied more on an elaborate network of intelligence and security personnel, rather than the army. He applied draconian measures to fight corruption, nepotism, and any violation of his laws.

His appointments, promotions, and demotions were above all based on loyalty to the state—in this case, the amir—rather than family and tribal affinity. By the end of his rule, he had sown the seeds of a highly centralized state.¹⁴⁸

As did the current government, Amir Abd al-Rahman Khan took power immediately after the Second Anglo-Afghan War of 1879-1880. The nation was in disarray, there was a political vacuum, a foreign imperial power played a significant role in the affairs of the country and subsidized the Afghan monarch, and, finally, he inherited a disorganized administrative structure and institutions. The current government in Kabul seems to be in a very similar situation, but it cannot and Afghans would not want it to revive the

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

tyrannical methods used by Abd al-Rahman to build state power.¹⁴⁹ Much has changed since then. Almost all the minority nationalities have acquired a great sense of awareness and political influence. The international scenario too would not allow practices inconsistent with civilized norms.

The Amir's successors continued to develop the state institutions in the first half of the twentieth century, with a brief interruption during the 1929 revolution. The state remained highly centralized, though weak. Under all constitutions, appointments and promotions of top administrative posts in the provinces, districts, and even sub-districts were strictly the prerogative of Kabul. All provincial offices had to report to and receive instructions from Kabul.¹⁵⁰

The 1923 Constitution vested responsibility for the administration of the government in the council of ministers, but the de facto quasi-autonomous nature of the ministries' branch offices in the provinces gave the state an element of decentralization in its daily functions. Perhaps in recognition of the reality imposed by the state of transport and communications, the constitution stated that provincial administration was based on the basic principles of decentralization of authority (ghair-i markazi budan-i qudrat) and clear delineation of duties and responsibilities. Top officials of all ministry branches in the provinces were nonetheless appointed by Kabul. In this period the large provinces were divided into smaller ones, starting a process of subdivision that has continued so that there are now thirty-two provinces.¹⁵¹

Governors and district heads continued to be appointed from the center. In addition, the

¹⁴⁹ For details see Rubin 2003.

¹⁵⁰ Chishti, N. M., *Constitutional Development in Afghanistan*, Karachi 1998. See also Gregorian, V., *The Emergence of Modern Afghanistan: Politics of Reform and Modernisation, 1880-1946* Stanford, 1969, p 251.

¹⁵¹ For details of the provinces see annexure L.

king established the office of ra'is-i tanzimiya, usually translated as governor general.

Each governor-general, usually a military general and a highly trusted and close associate of the monarch, was responsible for a grouping of provinces similar to the older, large provinces or the military zones (hawza) of the 1980s. These officials were not permanently posted in the regions under their control. They reported directly to the king on the activities of the governors and provincial administration. Their primary function was that of a troubleshooter, however, no subsequent constitution mentioned this post.¹⁵²

Despite the authoritarian rule of three successive prime ministers during the first part of the reign of Zahir Shah (before New Democracy, established by the 1964 constitution), institutions such as the judicial and the military continued to develop.

Though a similar institutional development occurred in the area of taxation, Kabul authorities could not follow a strict and uniform tax policy, mostly due to political concessions in the tribal areas of the south. Indirect taxation became the state's most dependable source of domestic income. Most revenue came from taxes on foreign trade and a few state monopolies (petroleum, tobacco), as well as foreign aid and, after 1969, sales of natural gas to the USSR.¹⁵³

The constitution of 1964 sanctioned the Afghan state's centralized, unitary nature.

Section XIII, Article 108 of the 1964 constitution establishes the unitary nature of the administration, while Article 109 provides for the establishment by law (never enacted) of provincial and district shuras or councils.¹⁵⁴ President Daud's constitution of 1977

¹⁵² Dupree 1978.

¹⁵³ Shahrani, M.N., 'State Building and Social Fragmentation in Afghanistan: A Historical Perspective'. In: Banuazizi, A. and Myron Weiner, (eds.) The state Religion and Ethnic Politics: Afghanistan, Iran, and Pakistan. Syracuse 1986, p.47.

¹⁵⁴ Dupree, 1978

provided a framework to strengthen the power of the local shuras and formally include them in decision-making for implementation of development policies, but the 1978 coup d'état intervened before the government could implement these measures.

Under the 1964 constitution, as before, the central government appointed governors, district heads (wuluswals), and sub-district heads ('alaqadars) through the ministry of internal affairs. In daily work, the 'alaqadar was subordinate to the wuluswal, and the latter to the governor, who in turn, would report to the interior minister. All ultimately were subordinate to the prime minister and the king. Though not required to do so by law, Kabul usually filled those posts with people who were not natives of the areas to which they were assigned, in order to assure their independence of local influences.¹⁵⁵

Most government ministries had a department representing them in the provinces; some had offices in wuluswalis. Government structures and procedures at provincial and district levels were designed as mini replicas of the central government. For example, the head of the department of education (riyasat-i ma'arif) in a provincial capital was appointed by and reported to the ministry of education. At the district level, there were education directorates (mudiriyyat-i ma'arif), the head of which the ministry in Kabul would also appoint, but who would report and receive instructions through the department in the provincial capital. Their relationship with the governor or the wuluswal was a consultative one only¹⁵⁶.

After having gone through establishment of state institutions and several modernization and reform processes until 1978, three decades of war practically dissolved the state and

¹⁵⁵ For details see Kamali 1985.

¹⁵⁶ Craig Baxter, "Library of Congress, Afghanistan", n.d
< [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID%2Baf0001\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID%2Baf0001)) > (July 2, 2004).

replaced it with warlordism. Though parts of the administration remain, these are no longer connected into a coherent national state. During the Soviet occupation and mujahidin resistance in the 1980s, few provinces remained under the Kabul government's control. In most places where the central government had the power to appoint governors, it could protect its interests only in the provincial capitals. Many of the governors and wuluswals actually lived in Kabul.¹⁵⁷

Some local elites and populations seized the opportunity to free themselves from control or surveillance by Kabul. The countryside was either the domain of mujahidin commanders, often at war with each other, or contested. Mujahidin (and, eventually, regime militia) commanders thus became de facto rulers of the areas under their control, or fought with each other in areas that lacked stable control. This pattern did not so much decentralize governance as destroy it.¹⁵⁸

As the state structures crumbled, non-governmental organizations (NGOs) and the UN filled the gap in providing basic services to the population in sectors such as agriculture, education, and healthcare. The local commanders sought to attract or blackmail these organizations in order to legitimise their power over the population. In the absence of a legitimate, recognized, and reliable government to work with, the NGOs and UN agencies established their programs through direct relations with communities, represented by local leaders and commanders, thus setting a precedent for internationally recognized decentralization.¹⁵⁹

Hence, as today's Afghan government undertakes its difficult enterprise of state-building.

¹⁵⁷ Rubin, 2003

¹⁵⁸ *Ibid.*, pp. 11-15.

¹⁵⁹ Kluijver, R., Study of the Sub- National Administrative Structures in Afghanistan, N.Y. Wardak p.3

It has to take under consideration both, the tradition of centralized state institutions that is still alive and even exaggerated in the collective memory of the nation, and the politico-military ground realities of fragmented power that are a legacy of decades of war. The challenge ahead is to strike the right balance between constructing a state that assumes its national responsibilities, while allowing room to implement development projects at the regional, provincial, district and community levels. The debate among Afghans today seems in essence, whether it is a strong central government or federal systems that can best serve the needs of the country? Though to some it seems at a superficial level. Both terms now serve as largely symbolic referents for political agendas. The actual alternatives available are much greater and may allow for political compromise on a system that will have the potential to safeguard the unity of the country, include people from all regions as citizens, and provide a framework for security, rule of law, and reconstruction.¹⁶⁰

4.3 The Current Administrative Structure

On the ground examination of the current governance methods and administrative structures and procedures, including the judicial, fiscal, and military/security sectors reveals that the pre-1978 structures and bureaucratic procedures have largely been revived in civil administration. This is truer in the internal makeup of central, provincial and district level governments than in their relations with one another, which have taken on new and diverse dimensions. The military/security field has undergone profound changes; particularly visible are the remnants of the communist-era security and

¹⁶⁰ <http://67.114.30.217/AfghanReality/reconstruction/>

intelligence apparatus, which was also adopted, with modifications, by the first mujahidin government (1992-96).¹⁶¹

A significant administrative change is the new role of the governor. Prior to 1978, the Governor chosen and appointed by the center, was essentially the chief of civil and police administrations in a province. The judiciary functioned independently of the governor and reported directly to the judicial authorities in Kabul. The military units stationed in the provinces reported directly to the ministry of defense in Kabul. Even education, health, and other service ministries functioned in the same way. Provinces and districts did not have their own budgets; provincial departments spent from the national budget of their ministry, not out of a provincial budget. This system limited the scope for any political activity at the provincial level except by lobbying or use of family connections to obtain benefits. Local officials were almost never natives of the areas they governed, in order to assure their independence from local factions and their loyalty to the central government.

Today, provincial governance reflects a different and somewhat complex picture. Nearly all officials are drawn from dominant armed faction in the areas. Most regions in Afghanistan today are under the predominant influence of figures who exercise extra-legal power like governors-general, combining military and administrative functions over several provinces. Unlike the *rais-i tanzimiya* in the past, however, today's governors-general exercise considerable autonomy from the central government rather than being agents of central authority. Whether they are officially provincial governors (Ismail Khan, Gul Agha Shirzai, Haji Din Muhammad), military generals (Abdul Rashid

¹⁶¹ For details see Rubin 2003.

Dostum, Ata Muhammad, Hazrat Ali), or incumbents of other offices (Vice-President Abdul Karim Khalili), they have gained these positions of power not by appointment from the center, but owing to their commanding position in armed militia forces, in most cases affiliated with one or other faction. While all governors and generals have received letters of appointment from the president as required, they received these appointments because they have power. The big so-called warlords have brought smaller armed groups of their province or region under their command or influence. Some poorer or weaker provinces acknowledge the suzerainty of a neighboring governor or regional commander, creating de facto zones. Ismail Khan in Herat and Gul Agha Shirzai in Qandahar are governors without official military positions, but they are simultaneously the de facto chiefs of the military forces not only of their own, but also of their neighboring provinces. Abdul Rashid Dostum and Ata Muhammad are military generals without official administrative positions, but they have divided up, and occasionally fight over, the civil administration in the Northern Provinces. They have appointed governors and other high officials and set policy in the provinces under their influence. A more complex case is that of the eastern region where Hajji Din Muhammad is the governor of Nangarhar and Hazrat Ali is the military commander of the Jalalabad garrison. There is an uneasy condominium, as they belong to different factions. The relative balance of power between the two may be due to the fact that the governor of Nangarhar enjoys local tribal support and some influence in neighboring provinces, while the military commander has strong backing from the defense ministry in Kabul.¹⁶²

Further divergence from the past is visible in the intra-provincial appointments and chain

¹⁶² ICG interview with U.N staff, Mazar-i-Sharif, April 2003. In: *ICG Asia Report*, No 56, Kabul/Brussels 2003, at p.6

of command. Most provincial strongmen—be they governor or military ruler—appoint wuluswals. The governor of Herat, for example, has appointed all wuluswals of his province. In districts close to the provincial capital or with larger Tajik population, the wuluswals have managed to exercise control. In some districts, where the inhabitants are predominantly Pashtun, the governor's Tajik appointees are accused of practicing gross ethnic discrimination. In Chisht, for example, there exists a parallel power structure to that of the official district government. In the district of Shindand in Farah province, bordering on Herat, where Ismail Khan also attempted to appoint a wuluswal, the situation has escalated into open military confrontations between the governor's forces and those of the local Pashtuns, under the command of Amanullah Khan. The latter has received some support from Gul Agha Shirzai, governor of Qandahar.¹⁶³

The governor of Nangarhar also claims that in most cases he has appointed wuluswals and district security chiefs who are not natives of their districts of assignment. R Qandahar is a somewhat a typical case in that the governor experimented with district-level elections. First, he authorized shuras in each wuluswali to elect the wuluswals. Three months later, the governor shifted all the elected wuluswals from their original districts to other ones. "Only two did not accept this arrangement in the beginning," said the deputy governor of Qandahar. "One finally accepted it; the other became jobless."¹⁶⁴

The district of Spin Boldak, which is inhabited predominantly by the Achikzai and the Nurzai tribes, seems to have presented a particular problem. According to Qandahar high officials, the two tribes "could not resolve their problems and nominate a wuluswal." The

¹⁶³ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁶⁴ Helena Malikyar, Barnett R. Rubin, "Center-periphery Relations in the Afghan State: Current Practices, Future Prospects" (December 2002) Center on International Cooperation, New York University <http://www.cic.nyu.edu/pdf/WBCPAfgh.pdf>.>(June 2004)

deputy governor explained, "Finally, the Governor sent a sayyid as their wuluswal."¹⁶⁵ The sayyid, a member of a religious descent group outside the Pashtun tribal structure, is originally from the district of Panjwa'i and was brought to Spin Boldak with the help of the governor's armed forces.

The tribal chiefs in Spin Boldak, however, vehemently deny such a disagreement during the elections process and claim that the governor manipulated the process to serve his economic interests. They claim that they had agreed among themselves on a wuluswal, but that the "government paid a handful of troublemakers to create problems and provide an excuse for the governor to bring in his own man."¹⁶⁶ According to a prominent Nurzai khan, "The governor does not have any particular tribal or ideological competition with us. The entire issue is over the control of commercial trucks."¹⁶⁷ In the exceptional case of Spin Boldak, the governor has directly appointed all government officials from among individuals who do not belong to any of the two strong tribes of the region and come from other districts or even provinces. The military commander in the district is a Wardak, while the mayor is another sayyid from Panjwa'i. The manner and real reasons for his appointment notwithstanding, the wuluswal seems to be well aware of the limits of his power in the heartland of Achikzai and Nurzai tribes. He seeks advice from the leaders of those tribes, showing them their due respect.¹⁶⁸

On occasions, strong commanders have even appointed governors in the provinces in their zones of influence. In the immediate aftermath of the fall of the Taliban, General Dostum appointed the governors of Jauzjan and Faryab, who in turn, appointed the

¹⁶⁵ Ibid

¹⁶⁶ Ibid

¹⁶⁷ http://www.cic.nyu.edu/conflict/conflict_translations.html

¹⁶⁸ http://www.cic.nyu.edu/conflict/conflict_translations.html

wuluswals. These governors had also served under the Taliban, however, soon after taking office in February 2003, Interior Minister Ali Ahmad Jalali named new governors to those posts after consulting with Dostum, who reported raised no objection.¹⁶⁹

When the new governor of Jauzjan tried to take up his post, however, factional fighting broke out. In Ghor province, where the governor was named by the central government, the deputy governor was appointed by Ismail Khan. The governor, who is from a district in the south of the province, could not even enter the provincial capital, Chaghcharan, which is located in the district to which his Herat-appointed deputy belongs. The deputy governor therefore conducted the affairs of the province with financial support from Herat.

4.4 The Military

The zonal division of Afghanistan has changed the administrative shape of the country, though the causes of this change lie deeper than bureaucratic decisions. In the communist period, for the sake of military expediency, the Kabul government divided the country into four military zones: Northern, Western, Southern, and Eastern, under the commands respectively of the garrisons of Mazar-i Sharif, Herat, Qandahar, and Jalalabad, plus a separate zone under the direct command of the Kabul garrison. These zones closely approximated the four provinces into which Afghanistan was divided at the time of Amir 'Abd al-Rahman Khan' and they also coincided with the headquarters of the major regional commanders (warlords or governors general) today.¹⁷⁰

¹⁶⁹ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁷⁰ Rubin, B.R., *The search for peace in Afghanistan*, Yale 1995.

The mujahidin government maintained this arrangement, but the Taliban dissolved it. Shortly after the creation of the Interim Authority of Afghanistan on December 22, 2001, the four zones were resurrected, with mostly the same personalities running them as in the mujahidin government. Kabul recognized this territorial arrangement, insisting that it was only for the sake of facilitating coordination of military operations against al-Qa'ida and the remnants of the Taliban. The governors-general, however, have gone far beyond the military purposes of the zonal arrangement. Some have appointed governors, unusual, and military commanders in the provinces within their zone. Recently, Kabul tried to dissolve the zonal system altogether, but has not yet had the power to implement that decision.¹⁷¹

President Karzai opposes the zonal system, which he sees as supporting the current regional power structure and undermining the authority of the central government. In an interview, he supported his decision to invite all governors to attend the Emergency Loya Jirga in June 2002 by noting that Dostum, Ismail Khan, and other regional leaders were there. "If the governor of Herat is there, why shouldn't the governor of Farah be there?" he asked. "Otherwise we are back to the zonal system."¹⁷² As part of its policy of trying to recentralize the government and build a national army, Karzai's government has attempted to abolish the zones. The national army is meant to be the principal instrument of abolishing the zones and re-establishing a centralized government.¹⁷³

Several of the regional governors general, however, insist that the zonal system (which

¹⁷¹ For detailed account of emergence of Taliban in Afghanistan see for example Ahmed Rashid., Taliban: Militant Islam, Oil and Fundamentalism in Central Asia. New Haven & London, 2000.

¹⁷² <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁷³ Johnson. C, William Maley, Alexander Their and Ali Wardak., 'Afghanistans' political and Constitutional development'. Overseas Development Institute. January 2003, p.20.

they call "federalism," somewhat misleadingly), be retained, along with regionally based security forces. Ismail Khan, for instance, remarked, "I am rather skeptical about the success of building a national army." He further explained that, a national army cannot be created by asking each one of us to give men. They asked me to send them men, and I did. But my men's loyalty lies with me. They would do what I tell them to do. The same is true with others. How can you form a national army like this?¹⁷⁴ R. Pashtun leaders, with their historical attachment to a centralized state, articulate the opposite point of view. "A national army is the only way to end gunlordism," said Qandahar Governor, Gul Agha Shirzai, "but for it to be successful, it should be formed under close supervision of the UN and the US." By this he meant that the Minister of Defense, Marshall Abdul Qasim Fahim, should not be in charge of the national army, otherwise, it would cease to be national. In other words, while Ismail Khan opposes a centralized army, Shirzai favors it in principle but resists centralizing it under the current central government, which he views as flawed.¹⁷⁵

Other criteria, according to the Governor of Qandahar, for the success of the national army are:

Sons of reputable families should be chosen from each and every province, proportionate to the population of each province. They should not be talib, ikhwani, or communist.

They should come with a certificate from their community elders guaranteeing their good character and intentions, undergo medical examination and be interviewed individually by a delegation. We must bring back the national mentality whereby the Pashtun would feel responsible to defend the honor (namus) of the Tajik and the Tajik would do the

¹⁷⁴ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

¹⁷⁵ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

same for the Pashtun. Only with re-establishment of national mentality, we can have a successful national army.¹⁷⁶

Tribal leaders in Spin Boldak and in Arghandab districts of Qandahar who do not find many common points with the governor, agreed with him on the recruitment strategy. "Instead of asking gunlords and commanders to introduce people for army training, they should ask the tribal elders. They should also ask the tribal elders to guarantee each individual's honesty and strength of character."¹⁷⁷

There are several major points over which there is disagreement. One is whether or not former jihadis and jihadi commanders are integrated into the new national army or demobilized. As expected, most commanders and high officials affiliated to groups from the former Northern Alliance /United Front favor the inclusion of former mujahidin as well as fighters in other qawmi militias. Ismail Khan, for instance, said, "I have trained jihadis into disciplined fighters. They fought in the jihad. They sacrificed for their country. They deserve to be rewarded. They cannot and should not eliminate jihadis from the scene."¹⁷⁸

Echoing this view, General Khan Muhammad, Commander of Qandahar's Military Corps, but a long-time ally of Burhanuddin Rabbani's Jamiat-i Islami said: Some say the mujahidin are not professional soldiers. I say commanders are national figures. Today's reality is such that all depends on the commanders and without them we can make neither a national army nor a central government. It is only these commanders who can defend the country against enemies. General Khan Muhammad believes that only jihadi

¹⁷⁶ http://www.ebroadcast.com.au/search/Society/History/By_Topic/Wars_and_Conflicts/Regional/Afghanistan/listings.html

¹⁷⁷ <http://webeverything.co.uk/directory/770649.html>

¹⁷⁸ *Ibid.*, p.25

commanders can be trusted because in the professional army officers one finds either those who were trained in the King's period who are now "too old and weak, and have mostly lived away from the country for many years," or officers who started their military careers during the communist period and got promoted for their services to communist rulers and their patrons, the Russians. "The people hate and distrust these officers because of their collaboration with the Russians and because they destroyed the country."¹⁷⁹

Former professional military men from the pre-1978 period and many civilians vehemently oppose this arrangement, arguing that this would defeat the very purpose of creating a professional national army. "There is no lack of good officers," argued. General Abdul Rahim Wardak, a member of the High Commission for Defense in Kabul. Wardak a US and UK-trained professional soldier from the time of the King and Daoud Khan, headed the military committee of Pir Gailani's National Islamic Front of Afghanistan during the jihad and served on the Rome delegation in Bonn. "It is easy to distinguish between the communist and non-partisan professional officers," he explained. "Looking at their records, those who received quick and out of order promotions during the communist era should not be appointed in key positions. The rest are professional officers who should be used at this time."¹⁸⁰

The General further believes that the former mujahidin cannot be trained as professional soldiers. "It is too difficult to un-train and then re-trains them. You cannot teach an old dog, new tricks." He does not completely dismiss the inclusion of the old jihadis in the

¹⁷⁹ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁸⁰ http://www.cic.nyu.edu/conflict/conflict_translations.html

new army. "Most of them may not have the stamina or the mentality to undergo a rigorous training program, so, they should be used in other areas of the army and separate training programs should be devised for them."¹⁸¹

A number of powerful commanders in Herat, who are currently working under Ismail Khan's command but secretly claim to be opposed to his rule, stated their opposition to integrating jihadi commanders, including themselves, in the new national army. They believe that for as long as those with "jihadi mentality" are a part of the ruling elite, Afghanistan will see neither stability nor economic development. "We fought during jihad and defended our homes and villages after that. We deserve to be honored for our past services, but these are new times. Our time is over."¹⁸²

There are some possible compromise positions. Although General Khan Muhammad holds an uncompromising position in favor of the prominence of jihadi commanders in the new army, he understands their inadequacy for today's situation and added that for a national army to be successful, commanders must be transferred from their place of origin to another province. "As long as a commander stays in his home province, he can challenge the authority of the Central Government, thereby keeping it weak."¹⁸³

The Governor of Qandahar, himself a former jihadi commander, said that to appease the former mujahidin commanders, the new army should initially include them.

Like General Wardak, he believes that those trained in warfare in an unstructured manner during jihad will not last long in the professional army. After having a taste of the rigorous training and highly disciplined life, he thinks, most "will leave on their own

¹⁸¹ http://www.cic.nyu.edu/conflict/conflict_translations.html

¹⁸² http://www.cic.nyu.edu/conflict/conflict_translations.html

¹⁸³ http://www.cic.nyu.edu/conflict/conflict_translations.html

accord.”

The Defense Ministry’s original proposal for the creation of the new national army, demobilization and disarmament, which is better known as “General Baryalay’s Plan,” allowed jihadi commanders to register their arms and accordingly receive allocation of resources for their men. This plan integrates jihadis into the configuration of the new army and registers the numbers and qualities of their arms. General Wardak found this plan objectionable on the grounds that, there are commanders who have stored lots of arms over the years.¹⁸⁴

Those commanders not belonging to or having friendly relations with the Shura-yi Nazar have been and are in the process of being disarmed. Also, the Taliban managed to disarm most of the Pashtuns, but not the non-Pashtuns. Consequently, if we apply General Baryalay’s formula for disarmament and reintegration of armed forces into the National Army, only a select segment will be in the position to turn in lots of arms, and in return, register large numbers of soldiers and officers to be included in the National Army’s budget.

Though most Afghans seem to believe in the creation of a national army to support the state and to replace warlords and commanders with a security structure regulated by law, there is serious concern over the control of the new army by Shura-yi Nazar, which dominates the security structures in Kabul. “If the control of the new army is given to one of those gunlords, it will not do any good,” said the Arghandab wuluswal.¹⁸⁵

Hajji Din Muhammad, the Governor of Nangarhar believes that “if only one faction holds

¹⁸⁴ <http://67.114.30.217/AfghanReality/reconstruction/>

¹⁸⁵ <http://www.crisisgroup.org/home/index.cfm?id=1639&l=1>

control of the armed forces the people will not submit and will not agree to disarmament.”¹⁸⁶ He said that in the beginning of the Interim Government 800 arms were collected from Hisarak district of his province, but as soon as it became known that only one faction—Shura-i Nazar—was going to be in control of the Defense Ministry, only one gun was turned over to the government. “Under current circumstances the people are not sure if the arms that they submit to the government will be used against them.” The Governor of Nangarhar also identified economic development, significant reconstruction projects and creation of jobs and alternative means of income as an important factor in the success of disarmament and creation of a national army.

Hence reform of the defense ministry has emerged as key to the formation of the national army and the demobilization or integration of regionally-based militias. General Wardak believes that the national army should be completely de-politicized and the Ministry of Defense should reform and overhaul itself in such a way as to give the nation confidence that it is “truly a national institution.” This is one example of a more general point: the reintegration of the center and the provinces requires not just negotiation of power-sharing between the two or the integration of the provincial structures into the existing central structures, but the reform of the central structures so that they enjoy greater legitimacy in the provinces and the capacity to deliver security and other services, which they currently lack. Marshall Fahim does not disagree in principle but argues that the “existing forces,” who resisted the Soviets and the Taliban, have earned the right to a choice of integration into the new forces and that they should be demobilized gradually, with full honors. In August 2002, to indicate his agreement to the goal of making the

¹⁸⁶ <http://67.114.30.217/AfghanReality/reconstruction/>

ministry of defense more of a national institution, Fahim informed President Karzai that thirty senior defense ministry official, mostly from Panjsher district, had agreed to vacate their posts for successors from other ethnic or political groups. He asked to keep eight positions, among the most important for the existing appointees. In February 2003, the government announced appointments to fifteen of those positions, mostly Pashtuns, but also some Uzbeks and Hazaras.¹⁸⁷

General Wardak, who was responsible for identifying and recruiting those new appointments, has also proposed that the minister of defense be a civilian with strong managerial skills and experience, as it is in the United States and many other countries. Instead, "The Loy Diristiz [the highest ranking uniformed military officer, equivalent to chairman of the joint chiefs of staff in the US system] should command the armed forces. Of course, in a normal system, the ultimate commander in chief is the president or head of state.

A small group of people dissents from the entire process and argue that Afghanistan does not need a national army. According to this group, including Qayyum Karzai, president of Afghans for a Civil Society, and Engineer Yusuf Pashtun, Minister of Construction and Urban Development, Afghan armies have never defended the country successfully. Instead they have been used to intervene politically and suppress the people. At present the primary need is for internal security, which is the function of police, not the army. Pashtun, for instance, contended that the creation of a national army should be postponed to a later time:

An army is for defense against aggression, especially from neighbors. Can we build such

¹⁸⁷ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

an army that could withstand the enormous armed forces of Pakistan and Iran? Instead, we must try to secure an international guarantee for Afghanistan's territorial integrity. In short, first we may not need an army at all. Second, investing in the police force will guarantee internal security and will keep things away from becoming politicized.

Those who think a national army can eliminate the current warlords and local commanders will have to wait long before the new army is strong enough, both in terms of quantity and quality, to achieve that goal. In the meantime, debate continues on how this national army should be built.¹⁸⁸

4.5 Judicial System

Not surprisingly, those in the judiciary are more adamant about Kabul's return to real power, which in their opinion will entail a return to the judiciary's former prominent role. Under the 1964 Constitution the judiciary was an independent branch of the government and therefore immune to interventions from the executive, especially the military. Also, the judiciary in Afghanistan is one of the oldest and best-developed state institutions. The cadre of professionals in this sector is a large and trained one, though the pattern of emigration of the past twenty years has led to the attrition in particular of those trained in state law (*qanun*) in favor of those trained in Islamic law (*shari'a*). In addition, the traditional view of state and governance equates them with the notion of *'adalat* (justice). Dispersing justice, therefore, is the principal *raison d'être* of the state and the determinant of good or bad governance.¹⁸⁹

¹⁸⁸ http://www.cic.nyu.edu/conflict/conflict_translations.html

¹⁸⁹ For further details see Kamali 1985.

All the justice officials interviewed favored a uniform national system of law in the country. The three areas in which we conducted our interviews, however, as well as Kabul, are all predominantly Sunni. All constitutions of Afghanistan (other than some passed under the Communist regime) have made special mention of the Hanafi school of jurisprudence, recognized by Afghanistan's Sunni Muslim majority, as do portions of the 1964 Constitution that are in force today. Shi'a political groups have at times advocated a form of federalism in which courts in predominantly Shi'a areas would be free to make use of the Ja'fari school, which they favor. At this writing, omitting any mention of a specific legal school appears to be gaining favor as a way of avoiding discrimination in favor of any sect in the constitution. The public debate over these provisions of the constitution will show to what extent this remains a live issue in Afghanistan.

In provinces that are relatively free from the firm rule of powerful warlords, justice is, for the most part, left to the local shuras (councils). The state intervenes only when the shura fails to solve a problem, when a case concerns a matter of state security or interest, or if the parties involved are relatives or friends of the local commander, governor or wuluswal. Inhabitants of Muhammad Agha district of Logar province, for example, claim that when a crime occurs, the Saranwal (magistrate) refuses to build a case, the judge is not interested in listening to the case, and the police release the accused.

The plaintiff and the accused, in short, have to rely on traditional ways and means outside of the state structure to obtain justice. "When there is a case of crime," admitted the district saranwal, "we first try to let the local shura deal with it. If that does not solve the problem, the government intervenes." The district director of security defended his department by explaining, "If we let go of a suspect, it is not because of negligence,

personal relations, or bribery, but rather because we do not have the resources to maintain a decent detention facility and 24-hour guards. It all comes down to finances.”¹⁹⁰

In provinces ruled by powerful warlords, such as Qandahar and Herat, the executive and military authorities often intervene in the justice system, sometimes using the threat of falsely informing the US forces about ties to the Taliban. In Arghandab district of Qandahar, when a criminal with ties to the government was arrested, the Provincial Security warned the District Saranwal “to close the case or they would send him to Guantanamo Bay,” said the uluswal. Magistrates complain that they receive demands from the “authorities” to drop cases that they have built against criminals who happen to be members of the militia forces of the local warlords or commanders. In many cases, they claim to receive serious threats. “The powerful ones pressure judges to do unlawful things,” explained a Herati judge. “If the judge does not accept, they make life difficult for him.” But, mostly, as survivors of many years of the rule of gun, they do as they are told by the “gunlords” before the matter turns ugly. Though this is the general state of the affairs in the judiciary, exceptions occur when the judge or the saranwal comes either from a powerful tribe, or has his own militia force. “If we step on the law to accommodate the mighty armed men, then we are in effect destroying our reputation,” said the Chief Justice in Qandahar. The Chief Magistrate of Qandahar often finds himself rejecting unlawful requests from commanders, including the governor. He is able to do so largely because, besides being a man of principles, he enjoys strong backing from his Achakzai tribe, which competes for power with the governor’s Barakzai tribe.¹⁹¹

As for relations and the degree of cooperation between the provincial judicial structures

¹⁹⁰ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

¹⁹¹ http://www.cic.nyu.edu/conflict/conflict_translations.html

and the capital, the cases studied showed variations. The chief justice of Qandahar, for example, says that he maintains a working relationship with his counterparts and superiors in Kabul, without making an issue of it with the governor: We are on good terms with the Supreme Court. We correspond daily and exchange files and cases regularly. Regardless of how relationships are in the larger political and military scheme of things, with prudent behavior we have managed to restore a certain degree of the kind of relations that should be between the Supreme Court and us. Politicians and gunlords come and go. We, the machinery of the state, should do our work apolitically and according to procedures.¹⁹²

The provincial Magistrates in Qandahar also claim that they report daily to Kabul and receive answers to their questions on procedural matters. "We obey the center and implement the center's—i.e., the attorney general's (Loy Saranwal's)—commands," said the chief magistrate of Qandahar. "When we ask the center for guidance on specific issues, we receive an answer within 8 to 10 days, depending on the complexity of the issue." The chief magistrate and the chief justice explained that this relationship has been made possible primarily by their strong conviction that professionalism should come above politics, and also by the fact that many of the heads of departments in Kabul, both at the Ministry of Justice and at the Supreme Court, are either their university classmates or old colleagues.

In Herat, by contrast, the justice system, much like everything else, is tightly controlled by the governor and his men. Except for ordinary cases, the chief justice as well as the chief magistrate work as mere clerks, following orders that come from the wilayat

¹⁹² Rubin 2003.

(governor's office). According to some of the high officials in the judicial system in Herat, because of political tensions in the province, fictitious criminal cases are sometimes framed for political purposes. The same is true for a large number of women imprisoned under false charges.

Officials of the Herat saranwali and provincial high court said that they regularly send reports of their work to the relevant offices in Kabul. They claim, however, that they rarely receive instructions or guidance, and never material assistance from Kabul.

Complaints about Kabul's lack of responsibility on financial matters are also prevalent in Logar and Qandahar, where one official claimed:

Kabul sends us money only for salaries, not for all other expenses.

Lunch money and a percentage are added to the base salary (the highest ranking saranwal's base salary is approximately \$40 per month). The UN, through the ministry of finance in Kabul and the 28 mustufiat here, pays the added amount. That money only covers 25 percent of the salary 75 percent is paid by Qandahar wilayat.

Besides salaries, we do not receive money for other office and operational expenses.

Provincial administrations seem to maintain some horizontal relations. For example, the saranwal of Qandahar claimed, "we have good relations with some other provincial saranwalis, notably with Ghazni." He further boasted, "The saranwalis of Qandahar and Ghazni are considered the best in the country and their work has spread throughout the country and used as model in other provinces."¹⁹³

Judicial officials of Qandahar, Herat, and Logar agreed that the scope and quality of

¹⁹³ http://www.cic.nyu.edu/conflict/conflict_translations.html

existing laws are very good. There is, however, confusion over the definition of "existing laws." In the Qandahar saranwali and high court in July 2002, no one had yet seen a copy of the Bonn Agreement. The officials had heard only that the Bonn Agreement had established the 1964 Constitution as the basis of law in the interim and transitional periods. The officials said that in the decrees issued by the Head of State, Zahir Shah and Daud Khan's laws and regulations are used. "Existing laws could be all the laws from the time of the King, Daud Khan, the communists, the first government of the mujahidin and the Taliban," explained the saranwals. They said they rely heavily on Daud Khan's Penal Code and saranwali regulations, while also using some laws and regulations promulgated during the rule of Najibullah.

Judges in Herat believe that the current weakness of the justice system is the failure to apply the existing laws. "Laws exist. Their application is rare. Procedures are not followed." The chief saranwal and chief justice in Qandahar both expressed frustration over not having many professionals in their employment. "Due to circumstances, notably, lack of funds, lack of security in the country, and heavy interference from commanders, not many professional judges and saranwals agree to come back to work for the state." A number of such legal professionals are still in exile in Pakistan, while others have turned to trade or other means of earning an income.¹⁹⁴

In some wuluswalis there is not even a judge or a saranwal. In others, the appointed judges are not professionals at all, and, because of lack of professionals, we have had to fill the post with someone who does not know the law. In one case, the judge is self-appointed.

¹⁹⁴ <http://67.114.30.217/AfghanReality/reconstruction/>

In another, the judge is a blind man. The chief saranwal of Qandahar admitted, "Even here in the provincial center, it is difficult to convince a professional to work with us for such a small salary, whereas NGO's pay much more."¹⁹⁵

To remedy the problem of not having professionals in place, the chief justice and the chief saranwal have instructed all wuluswalis in Qandahar that do not have a judge or a saranwal to send their cases to the provincial center. Sometimes judges from the provincial capital are dispatched to wuluswalis to settle cases. The mobile judges are usually sent after a backlog of several cases piles up in one wuluswali. "Together with the saranwali, we took this initiative to provide a temporary solution to the judicial problems of the wuluswalis," explained Qandahar's chief justice. "Under present difficulties, delayed justice is better than none at all."¹⁹⁶

4.6 Fiscal System

Afghanistan before 1978 had one of the world's weakest fiscal systems. Domestic revenue as a percentage of gross domestic produce did not exceed 10 percent, tying with Nepal for the lowest in the world.¹⁹⁷

The major source of tax revenue was customs duty on international trade, with sales of state monopolies (tobacco, petroleum products) also a source of income, along with sales of natural gas to the USSR and foreign assistance.¹⁹⁸

¹⁹⁵ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

¹⁹⁶ http://www.cic.nyu.edu/conflict/conflict_translations.html

¹⁹⁷ Indu.B, Sheryl Keller and Brad Schwartz. 2002. Achieving the twin objectives of efficiency and equity. (ADB ERD policy brief series, No. 6) March 2002. www.adb.org

¹⁹⁸ Dupree 1978.

The bureaucracy set up for tax collection by central governments in the past still exists, if in a weakened form, but it now generally functions not as part of a national state but under the control of regional governors-general. The Taliban re-centralized tax collection, though most of their income and expenditures remained outside the budget with no formal accounting. After September 11, 2001, however, the revived commanders brought back with them the fragmentation of state functions that had characterized the government in 1992-1996. A vivid example is a reported incident in Balkh. The customs house reportedly had about \$8 million collected during the latter part of 2001 on hand, when General Dostum arrived, announced he needed the funds to pay his troops, and confiscated it.

Customs revenues have become a point of contention between Kabul and the provinces where major customs posts are located, as well as among rival commanders and provinces. The major ports of entry for dutiable commercial goods are Spin Boldak (Pakistan-Qandahar), Torkham (Pakistan-Nangarhar), Hairatan (Uzbekistan-Balkh), Islam Qal'a (Iran-Herat), and Turghundi (Turkmenistan-Herat) Since the mid-1990's Pakistan has banned twenty-some commercial items from passing through its borders into Afghanistan under the Afghan Transit Trade Agreement (ATTA), which provides for duty free import into Pakistan of goods under seal for re-export to Afghanistan. The ATTA had become a major vehicle for smuggling into Pakistan, and these were items that were either smuggled back into Pakistan or never left.¹⁹⁹

Smugglers sold them in special bazaars (Bara Bazaars), thereby avoiding Pakistani import duties. After the ban, trucks carrying those contraband goods found new transport

¹⁹⁹ Rubin 2003.

routes through Iran and Turkmenistan, into Afghanistan through Islam Qal'a and Turghundi in Herat. This shift in transport routes has decreased the customs revenues of Qandahar and Nangarhar, while it has placed Herat in a markedly advantageous position. According to a high official of the customs service interviewed in Jalalabad, 70 percent of Afghanistan's foreign trade was transiting through Iran in mid-2002.²⁰⁰

This will only increase with the new transit agreements negotiated with Iran by Afghan Minister of Commerce Sayyid Mustafa Kazemi in 2003. As it was thoroughly explained by governors, deputy governors, mustufis and customs chiefs of Herat and Qandahar, under so-called "normal" circumstances (which have not existed for decades), customs taxes collected by the provincial customs office are deposited in the finance ministry's bank account at the provincial branch of Da Afghanistan Bank. Then, according to the expenditure allocation for the province determined by the various ministries in their budgets, the ministry of finance in Kabul authorizes the provincial mustufiat (finance office) to withdraw money from that account and disburse it to the provincial governmental offices. If there is a surplus, the excess is transferred to Kabul. In case of shortage, additional funds are transferred from Kabul to meet the province's budgetary requirements. According to Minister of Finance Ashraf Ghani Ahmadzai, Herat is the sole province that consistently enjoys a revenue surplus; all others rely on the central government's revenues to cover their shortfalls.²⁰¹

²⁰⁰ Ottaway, M. 2002. "Rebuilding State Institutions in Collapsed States." *Development and Change* 33 (5): pp.1001-1023.

²⁰¹ Ghani, A., 'Afghanistan: Islam and Counter-Revolutionary Movements.' In: J. L. Esposito, (ed.) *Islam in Asia: Religion, Politics and Society*. Oxford 1987.

In the past, too, customs revenue was rarely enough to cover all the expenses of a province. As the mustufis (finance officers) of Herat and Qandahar emphatically put it, "Taxes collected at customs were never physically sent to Kabul." Therefore, officials of these two provinces believe, they are not violating existing laws and procedures by not sending the customs revenue to Kabul. In reality, the governors of these provinces commit a gross procedural violation when they assume the role of the finance ministry in deciding on the distribution and disbursement of these funds.²⁰²

The justification given by Mr. Afzali, Head of Foreign Relations Department in Herat, typifies the mentality of today's provincial administration:

Customs revenue is providing sufficient income for the province.

All foreign assistance goes to Kabul. This [customs revenue] is our only means of income. The media's reports that we collect import taxes illegally are completely false. Every cent is counted and registered. It all goes through proper administrative procedures.

Ordinarily, the expenses of all civil and military organs are fixed and paid by the ministry of finance, through the mustufiat. Since Kabul is not doing this, we have simply skipped a step in this process and are keeping the customs revenue only to meet the budgets of various state organs. From the central government's point of view, however, Herat is creating particular distress and embarrassment. There are similar difficulties in northern Afghanistan, where the major commanders split the revenues from the Hairatan customs house. Though the shares have been a repeated subject of fighting and renegotiation, by

²⁰² Ebel, Robert D., and Serdar Yilmaz. 2002. "On the Measurement and Impact of Fiscal Decentralization." Working Paper 2909. World Bank, Washington, D.C.

early 2003 the division of spoils, according to UN officials, seems to have stabilized at 50 percent for General Atta Muhammad of Jamiat, 37 percent for Dostum, 12 percent for Muhaqqiq and Hizb-i Wahdat, and the remaining one percent perhaps used for the cost of transactions.

The implications for Kabul go beyond mere procedural wrongdoing. The current practices challenge the role of the Ministry of Finance and manager of the government's income and expenditures and, in effect, challenge the legitimacy of the central government.²⁰³

Dr. Muhammad Amin Farhang, Minister of Reconstruction and an economist, is convinced that centralizing revenues would not only strengthen the state, but would also establish the country's long-term economic system.²⁰⁴

Mr. Afzali, as well as Herat's customs chief proudly boasted that 80 percent of Afghanistan's imports enter the country from Iran through Islam Qal'a, an even higher estimate than that given by the customs official in Jalalabad. The mustafi of Herat further elaborated that import taxes constitute the largest portion of the province's income. According to the Customs Chief of Qandahar the authorities in Herat under-reported the customs revenue to the degree that it looked as if Qandahar has raised about three billion more revenue than Herat in the year 2001-2002. A mid-level employee of the Herat customs office confidentially explained how his office can under-report its revenues. First, he claimed that from the total import taxes collected at Islam Qal'a and Turghundi, approximately one-fourth is not recorded in the regular books. He insisted, however, that

²⁰³ Ottaway, M. 2002. "Rebuilding State Institutions in Collapsed States." *Development and Change* 33 (5): 1001-1023.).....

²⁰⁴ <http://67.114.30.217/AfghanReality/reconstruction/>

that portion is also treated with the same rigorous bookkeeping methods, albeit kept separate from the official state accounts. Second, he pointed to the porous nature of the Iranian-Afghan border, claiming that there is a fair amount of cross-border traffic at points of entry other than Islam Qal'a. He called that, private business between Ismail Khan and his Herati partners on this side, and their Iranian counterparts on the other side of the border. Ismail Khan is reported to be very close to the head of the foundation of the shrine of Imam Ja'far in Mashhad, the largest bunyad (foundation) in Iran, with much investment in trade with Afghanistan.

Ismail Khan's tax collecting methods are deeply annoying to the Qandahari officials, and the central government has not yet been able to resolve the differences between the leaders of these two regions, despite the personal intervention of President Karzai. "Ismail Khan is collecting taxes that are our rights," said the deputy governor of Qandahar. While the Taliban taxed import goods on the spot, without going through bureaucratic procedures, the pre-1978 law says that a customs office can levy tax only on companies that are registered in that province. "Herat illegally taxes the companies that are registered elsewhere," complained the Qandahar mustufi. Consequently, when a company registered in Qandahar brings its goods in through Herat, it pays duties in Herat. When its trucks reach Qandahar, that province's customs office levies an additional tax on it because this is the province where the company is registered. If the final destination is Kabul, the company may pay import tax for the third time. "In Qandahar we do not levy tax on trucks that are registered elsewhere," said the Qandahar customs chief. The mustufi, on the other hand, admitted that there is a problem with the same³⁵ goods being

taxed several times.²⁰⁵ The traders have staged protests to call attention to this problem on a number of occasions.

The customs levies are also assessed on prices calculated according to fictional exchange rates, which make the effective rate much lower than the nominal rate. Since the nominal exchange rate used differs among provinces, this also creates irrational disparities. In the summer of 2002, at a time when the market rate for the old afghani was approximately afs 45,000 to the US dollar, the mustufi of Qandahar described the procedure as follows:

The finance ministry sets the exchange rate base on which taxes are levied on imports. In Kabul it is currently set at 4,000 [old afghanis] to a dollar. In Herat it is 2,500 to a dollar. We have set it at 2,000 to a dollar. We informed the ministry of finance, but they refused and called it unlawful. We restrained ourselves and accepted the 4,000.²⁰⁶

In Herat the trader pays taxes based on the exchange rate of 2,500. We only collect the difference here. The Ministry has given us oral permission to do this. The fierce contention on the part of Qandahar that Herat's taxation is unlawful is understandable in light of the fact that almost half of Qandahar's income depends on customs revenue. "In the last three months our income was [old] afs 160 billion, over 45 percent of which came from import taxes," said Qandahar's mustufi in July 2002. In the absence of funds coming from Kabul, other official sources of income for the mustufiat are transit fees (haq al-'ubur), shops tax (maliyyah-i sinfi), and income tax on businesses.

When he appointed, the Mustafa of Qandahar said, "Those of us with prior experience in finance were asked to devise a framework. We did not structure it based on expected

²⁰⁵ <http://67.114.30.217/AfghanReality/reconstruction/>

²⁰⁶ For further details see Rubin 2003.

revenue.” Using the laws, regulations, and by-laws of Zahir Shah and Daud Khan’s periods, they came up with more innovative ways to raise money for the expenses of the province. For example, instead of levying high taxes on property, agricultural land, and businesses, “people themselves came to us and said this is how much tax we can pay, and in return, these are the services that we want from the government,” explained the mustufi. To generate more income, The Mustufiat has activated 352 companies. Six hundred individual traders have started their work. We have prevented loss of foreign currency. Businessmen have agreed to keep their foreign currency in the country, and, in return, we have reduced their taxes. We have abolished taxation on export of fresh fruits, while reducing that of dry fruit down from 4 percent to 0.5 percent to encourage exports.

To encourage rehabilitation of industry, we have forgiven back taxes.²⁰⁷

Ghulam Haidar Khan, the current mustufi of Qandahar, holds a degree in economics and has many years of experience at the ministry of finance in Kabul. Since his recent appointment the mustufi said he travels to Kabul frequently. “I work well with the old colleagues from the ministry.” At a seminar for governors and mustufis held in Kabul in May 2002, the Qandahar mustufi had to give talks to his less experienced counterparts from other provinces on current problems and their solutions, procedures, rules, and ways of cooperation and understanding among colleagues. While both Qandahar and Herat do not depend on or receive much financial assistance from Kabul, the mustufiat of Qandahar has expanded its traditional role and has effectively become a provincial ministry of finance. In Herat, the newly appointed mustufi, Mr. Sakha, comes from a solid academic background. He is well respected as an economics professor at Herat

²⁰⁷ http://www.cic.nyu.edu/conflict/conflict_translations.html

University. Some members of his staff, though, seemed inexperienced in financial matters. In comparison with its pre-1978 existence, the mustufiat of Herat has obviously shrunk into one of the departments of the wilayat. In comparison with Qandahar mustufiat, it is difficult to determine whether the contrast is a consequence of difference of personality and lack of experience, or is simply due to Ismail Khan's tight control of every aspect of the government in Herat.

In the nut-shell it can be concluded that operation enduring freedom has revived the pre-Taliban administrative practices wherein for practical purposes the central control stands eroded. In the upcoming chapter it will be seen as to how the Afghans, assisted by the International community, rebuilt their nation-state by employing traditional as well non conventional mechanisms. The process, partly fulfilled with the adoption of the constitution, is yet to pass the crucial test of holding of general elections.

Chapter V

Federal Debate in the New Constitution Making Process in Afghanistan

The present chapter seeks to examine, in historical perspective, the constitution making process in Afghanistan starting since 1923 and culminating into the present constitution, formally adopted in the year 2003.

5.1 Afghanistan's Constitutions

Twentieth-century Afghanistan witnessed a rapid parade of constitutions. One compilation contains nine documents promulgated between 1923 and 1992, including the foundational laws issued by President Noor Mohammad Taraki of the People's Democratic Party of Afghanistan (PDPA) in lieu of a formal constitution.²⁰⁸ More significant are the constitutions promulgated in 1923 by King Amanullah; in 1931 by King Nader Shah; in 1964 by King Mohammad Zahir Shah; and in 1977 by President Mohammad Daoud. The first three embodied constitutional monarchies, in which the king wielded near total authority, while the final one simply shifted this authority to the president.²⁰⁹ The subsequent documents were products of governments which never exercised significant control over the Afghan hinterland were bogged down in fierce and unsuccessful counter-insurgency efforts, between 1977 and 1992.²¹⁰

Afghanistan's previous founding documents have consistently suffered from two flaws. First they reflected basic flaws in the underlying political architecture, flaws that often

²⁰⁸ <http://www.crisisgroup.org/home/index.cfm?id=1639&l=1>

²⁰⁹ See foot note number 14 above.

²¹⁰ Although the Russians located their forces across a limited "strategic" area composed of "the northern plains from Shibergan to Kunduz, the strategic road from Termez to Kunduz and from Kabul the Jellalabad, the capital and its immediate environs as far as Logar," Kabul was "the only area where the Russians exercised satisfactory control". For further details see Roy 1986, pp. 189, 192

precipitated the fall of regimes. Secondly, they invariably failed to translate into practice. “The first people to disobey the constitution are the government” according to Afghanistan scholar Sayed Asker Mousavi.²¹¹ Without public pressure to conform to constitutional norms and enforce constitutional rights, successive Afghan governments failed to respect the very documents they had drafted.²¹² For the first constitution of the twenty-first century to succeed Afghans and the UN must learn from past mistakes, without falling into the trap of facile, but inaccurate, historical analogy. Perhaps the most fertile grounds for historical insights are the 1923 and the 1964 constitutions, two attempts to accelerate sclerotic social change.

5.2 The Push for Modernity: The 1923 Constitution

In 1923, King Amanullah convened a Loya Jirga, a national ‘tradition’ invented by his grandfather Amir Abdur Rahman,²¹³ to adopt Afghanistan’s first constitution.²¹⁴ This constitution, while creating “an absolute and hereditary monarchy”,²¹⁵ granted citizenship “without respect to religious or sectarian differences”, and vested in all Afghans rights to “personal liberty” and “an education at no cost”,²¹⁶ Amanullah also marginalised the role of religiously trained scholar elites, or Ulema, in legitimising the state, and accorded Islam only a limited role in the constitution.²¹⁷ He, moreover, initialed a series of

²¹¹ Interview by ICG, 21 December 2002. For details see ICG Asia Report No. 56 Kabul/Brussels.

²¹² *Ibid.*

²¹³ “Jirga” is a Pashtun word for “assembly.” “The Pashtun word “loya”, ‘big,’ ‘grand, was apparently attached to the jirga concept in the early twentieth century, as part of a larger state effort to create a national Afghan identity under the umbrella of Pashtun culture and language”. Abdur Rahman “co-opted a tribal tradition into a state institution.” For details see Rubin, B. R., *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, 2nd edition. New Haven, 2002, p. 51. See also Christine Noelle-Karimi, Conrad Schetter, and Reinhard Schlagintweit (ed.), “*The Loya Jirga – An Effective Political Instrument?*”, see also *Afghanistan – A Country without a State?* (Frankfurt am Main, 2002), pp. 37-38.

²¹⁴ Chishti 1998, p. 21.

²¹⁵ Gregorian, V., *The Emergence of Modern Afghanistan: Politics of Reform and Modernisation, 1880-1946*. Stanford 1969, p. 251.

²¹⁶ The Constitution of Afghanistan 1923, see especially Article 8, 9 and 14.

²¹⁷ Kamali 1985, p. 28.

educational and social reforms including new statutes called Nizamnama.²¹⁸ The 1921 Family Code, for example, outlawed child marriage as anathema to Islamic principles.²¹⁹ The Family Code and the constitutional provisions on Islam provoked dissent, which Amanullah addressed in a July 1924 Loya Jirga at Paghman that made minor amendments to both.²²⁰ 'Significantly, Article 2 of the Constitution was altered to endorse the Hanafi fiqh, one of the four schools of Sunni jurisprudence.²²¹ Amanullah's reforms nevertheless had only limited impact because the state lacked a sufficient financial base to implement them: He had lost previous rulers' British subsidy and never effectively reformed tax collection.'²²²

During his ten-year reign, Amanullah confronted two armed, tribal-based Pashtun uprisings, the January 1925 Khost rebellion of the Mangal tribe, and the November 1928 Shinwari uprising, the second led to his downfall.²²³ In both, cases, religion, and therefore the Ulema, played central role. The modernization, as registered in petitions listing insurrectionary complaints, focused on the compatibility of Amanullah's reforms with Islam.²²⁴ The Khost rebellion was initiated by two mullahs, Mullah Abdullah Akundzada Kharoti (the Lame Mullah), and Mullah Abdul Rashidos Shak, who entered into alliances with the Mangal and Zadran tribes. The tribes resented educational reforms and a new conscription system based on a lottery method that undermined tribal elites' traditional state-society arbitrator role.²²⁵

The Shinwari revolt followed tax reforms that alienated influential tribal leaders and creating new discontent about conscription and corruption; following Amanullah's 1928

²¹⁸ Gregorian 1969, pp. 239-244.

²¹⁹ *Ibid.*, p.243.

²²⁰ Olesen, A. *Islam and Politics in Afghanistan*, Richmond 1995, pp. 138-140.

²²¹ Chishti 1998, p.44.

²²² Shahrani 1986, p. 47.

²²³ Gregorian 1969, pp. 254-256, 263-266.

²²⁴ Olesen 1995, pp. 135, 150-53.

²²⁵ *Ibid.*, p.135.

“grand tour of Europe”, which led to an acceleration of reform effort.²²⁶ Yet again, religious leaders sparked the uprising. This time, the influential Mujaddidi family of Naqshbandiyya Order, Sufi Pirs (saints) kindled the revolt by publishing a petition claiming the king was trying to ‘westernise’ Afghans.²²⁷ The Slinwaris, joined by the Khugiani, Zadran, and Jaji,²²⁸ defeated Amanullah, largely because the king had failed to reform his army; indeed he was the only twentieth-century Afghan leader to reduce his military budget.²²⁹

None of the tribal revolts can be traced to have origin in religious differences. However, an impetus from religious leaders evoking Islamic arguments started both the insurrections. In both cases Amanullah also mobilized Ulema and Islamic rhetoric to shore up support.²³⁰ For example, in 1929, Amanullah sought to consolidate his legitimacy by delivering a speech before the Kandahar Shrine of the Holy Cloak, taking the cloak from its resting place and hoisting it to show that divine provenance lay on his side.²³¹

His ministers also wooed Ulema and sought fatwas condemning the rebels.²³² Use of religious rhetoric by both sides and simultaneous attempts to win support of the ulema thus increased the latter’s influence. Nadir Khan, who eventually succeeded Amanullah, granted Islam, and hence the ulema, a more extensive role in the state, making members of the Mujaddidi family minister and deputy minister of justice, and giving the ministry responsibility for enforcing Islamic law.²³³

It seems that opposition to Amanullah’s reforms and his desires to promote social

²²⁶ Shahrani, M.N., ‘Afghanistan: state and society in retrospect’. In: Anderson, E. and Nancy Dupree, (eds.) *The Cultural Basis of Afghan Nationalism*, London 1990, p. 45.

²²⁷ Olesen 1995, p. 147.

²²⁸ *Ibid.*, p. 149.

²²⁹ Rubin 2003, pp. 56-57

²³⁰ Olesen 1995, pp. 142, 156-160.

²³¹ *Ibid.*, p. 159.

²³² *Ibid.*

²³³ Gregorian 1969, p. 295. See also Olesen 1995, p. 163.

reforms through the 1923 Constitution is rather misconstrued. The 1923 constitution played only a small role in the opposition to Amanullah, which centered rather on the Nizamnama and education, tax and conscription reforms that undercut the power of traditional tribal leaders. The compatibility of modernization with Islam became a justification for attacks on Amanullah but it only facilitated an insurrection otherwise driven by economic and political concerns.²³⁴

Amanullah's fate thus does not counsel against reform as such. But his experience suggests that entrenched power holders can make coalitions based on religious opposition to social reform. These elites, although concerned primarily with parochial and pecuniary interests, can use religion as a way of creating a broader social base for their revolt. Amanullah's experience, therefore, highlights a danger in trying simultaneously to transfer power from one, elite to another and to effect progressive social change.

In contrast, in the 1950s, Prime Minister Muhammad Daoud, who exercised almost complete control over the state notwithstanding the existence of a helpless legislative assembly, including an emancipation of women and an expansion of girls' education, but was able to suppress resistance with a more effective army and state apparatus that received considerable economic support from the Soviet Union.²³⁵

5.3 The Partial Revolution: The 1964 Constitution

After more than 30 years of a regressive "hodgepodge" constitution ratified in 1931 to placate religious leaders,²³⁶ King Zahir Shah on 28 March 1963 appointed a seven-

²³⁴ Ewans, M., *Afghanistan: A New History*, Richmond 2001, p. 94.

²³⁵ Dupree, L., *Afghanistan* Princeton 1980, pp. 350-358.

²³⁶ Dupree 1965, p.3.

member commission to draft a new constitution.²³⁷ Following more than a year of deliberation, consultation and extensive publicity through print media and radio, a 455-person Loya Jirga was convened to ratify the new document on September 9, 1964.²³⁸ The Loya Jirga comprised 176 members chosen through indirect elections, members of the two legislative houses, the entire Supreme Court and 34 of the King's appointees.²³⁹ Despite meeting for only nine days, the Loya Jirga was not an entirely pro forma affair, unlike previous ones, but saw debate and sonic textual changes.²⁴⁰ Crucial to the passage of a relatively liberal constitution was the presence in the Loya Jirga of progressive ulema, who rebutted complaints raised by their conservative brethren.²⁴¹

The resultant constitution established the priority of parliamentary legislation over un-enacted Sharia (Islamic) law and a right of equality for all citizens.²⁴² Sharia, albeit in its Hanafi form, was made residual, applicable only when no statute obtained.²⁴³ And legislation had only to conform to "basic principles of Islam", not the narrower Hanafi fiqh.²⁴⁴ The equality provision, however, was not reconciled with the remainder of the text. Article 2, to give one example, raised the Sunni Hanafi School of law to the status of national religion and permitted non-Muslims to exercise their faith only "within the limits determined by the laws for public decency and public peace"²⁴⁵

The progressive impulse behind the 1964 Constitution could never entirely materialize. In

²³⁷ Dupree 1980, pp. 565-566.

²³⁸ *Ibid.*, pp. 566-569.

²³⁹ Chishti 1998, p. 90.

²⁴⁰ Dupree 1980, pp. 573-85.

²⁴¹ Olesen 1995, p. 208.

²⁴² Afghanistan Constitution of 1964, Arts. 25, 69.

²⁴³ *Ibid.*, Art. 69.

²⁴⁴ *Ibid.*, Art. 64.

²⁴⁵ *Ibid.*, Art. 2.

debates over a 1971 marriage law, Article 25's promise of equality was lost in furious debate over the Islamic norms appropriate to family law. And despite contemporaneous optimism about the "basic principles" language,²⁴⁶ its ambiguity rapidly became clear.²⁴⁷ In addition, other statutes, including the penal code, passed under the 1964 Constitution essentially codified Hanafi fiqh.²⁴⁸ The incorporation of Islamic norms into criminal and civil law formalized other gender-related inequalities.²⁴⁹

Notwithstanding its narrow applicability, the 1964 Constitution also sowed the seeds of its own demise.²⁵⁰ Article 24 barred members of the Mohammadzai royal family from public life, since monarchy had previously blocked non-Mohammadzais from emerging as national leaders, "no nationally recognised leaders outside the royal family were in sight."²⁵¹ The Constitution's bicameral parliament also foundered. Despite Article 32's guarantee of the right to form political parties, Zahir Shah never ratified a law to authorize parties.²⁵² The 1965 and 1969 elections were marred by turnouts as low as 15 to 20 percent and produced a legislative body "composed of 216 representatives and 216 parties."²⁵³ Compounding pressure within the political system, educational reform created a new class of educated youth without job opportunities or political prospects.²⁵⁴ As the

²⁴⁶ Sirat, A.S., 'The Modern Legal System of Afghanistan'. In: *The American Journal of Comparative Law* Vol. 16, 1968, pp. 566-67.

²⁴⁷ Kamali 1985, p. 48.

²⁴⁸ ICG interview with professors at Kabul University Law Faculty, December 2002.

²⁴⁹ These inequalities have been better charted in the Pakistani system. See Jahnagir, A. and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* Lahore 2003, pp. 85-130; Mehdi, R., *The Islamization of the Law in Pakistan*, Richmond 1994, pp. 36-37.

²⁵⁰ ICG interview with Yama Sharaf, dean of Law Faculty, Balkh University, Mazar-i-Sharif, 16 April 2003.

²⁵¹ Kamali 1985, p. 52.

²⁵² Rubin 2003, p. 73.

²⁵³ Edwards, D.B., *Before Taliban: Genealogies of the Afghan Jihad*, London 2002, p. 120.

²⁵⁴ *Ibid.*, pp. 15-16.

economy stagnated, famine developed, and the political realm remained closed, clandestine parties with a leftist or Islamic orientation began to flourish.²⁵⁵ These pressures, partly the consequence of the constitutional framework, precipitated into the 17 July 1973 coup d'état of Zahir Shah's cousin, former Prime Minister Daoud, abetted by leftist groups.²⁵⁶

If Amanullah's experience is a caution against excessive haste, the fate of the 1964 Constitution warns of the hazards of insufficient reformist vigour. The 1964 Constitution failed to satisfy new, heightened expectations that the monarchy had created but was unwilling to fulfill. Further, it reflected an unstable allocation of elite power, ultimately rejected by Daoud. It will never be possible to know if further liberalization of political and administrative institutions could have accommodated such pressures. Yet the expend experience of the 1964 Constitution, like that of the 1923 document, illuminates the insurrectionary risks of failing to translate constitutional theory into practical realities and to achieve popular consensus.

5.4 Substantive Triggers for Conflict in the Recent Constitutional Debate

A full public debate before ratification of the constitution was needed because the constitution must confront in some fashion at least two divisive issues: the role of Islam and the specification of relations between the centre and the periphery. Regarding the latter, there are sharp divisions between the Mujahidin parties and their allies that could

²⁵⁵ Ewans 2001, pp. 122-26

²⁵⁶ *Ibid.*, pp. 126-27.

deepen factional conflict if improperly handled. Islam, in contrast, could become an umbrella issue that would facilitate a coalition between disparate regional commanders who are discontented with the Karzai administration or searching for ways of expanding their territorial influence. Further, there is a long-term risk that the incorporation of Islam into the constitution will empower extremist groups, like Ittehad and factions within Jamiat, at the cost of weakening new democratic groups and undermining the foundations of civil liberties, particularly for women and the Shia minority.

In both cases, no single textual solution offers a panacea. The challenge for the UN and the Transitional Administration, to avoid armed conflict and long-term erosion of civil liberties, is whether the process of drafting and ratification will channel inevitable discussions into a legal form with broad legitimacy and not alienate any group to the point of exclusion.

5.4.1 Relations between Centre and Provinces

The debate over centre-periphery relations transpires in a fragile and hazardous environment that current analysis often obscures.²⁵⁷ The central government does not exercise effective control over most of the country's territory, which is in the hands of a patchwork of regional commanders, the majority of whom are loosely affiliated with one or other Mujahidin party.²⁵⁸ Even where the party connected to a given local commander

²⁵⁷ For example, see Tremblay, R.C., 'A federal arrangement for Afghanistan', In: *Federations*, October 2001, p. 9.

²⁵⁸ Rubin, B.R. and Helena Malikyar, 'The Politics of Ceter-Periphery Relations in Afghanistan', In: *Center*

is comfortably ensconced in the Kabul administration, like those affiliated with the *Shura-yi Nazar* cannot necessarily rein in its commander. For example, in April 2003, fighting erupted between *Jamiat* and *Jumbish* commanders around Maimana, in the northern province of Faryab.²⁵⁹ Staff of international organizations there reported that the conflict began as a local dispute and escalated, rather than being symptomatic of broader *Jumbish-Jamiat* hostilities.²⁶⁰

UN staff affirm that notwithstanding the webs of loyalty traced through *Mujahidin* party connections, local commanders preserve a great deal of autonomy.²⁶¹ In fact, they can drag the faction with whom they are allied into a reluctant conflict. Local commanders have a great stake in preserving this local autonomy; some are able to gather tax revenues from inhabitants²⁶² or permit their troops to engage in criminal activities from simple robbery to kidnappings.²⁶³ Commanders like Ismail Khan in Herat, who retain access to lucrative revenues sources like customs from cross-border trade, have even less incentive to cede control to the Kabul government.

Yet the structure of surviving government administration in Afghanistan is highly centralized, with all important policy decisions putatively made in Kabul. Each provincial periphery has a set of departments that mirrors the ministries in Kabul, although not all ministries have a department in every province.²⁶⁴ Kabul ministries fix budgetary

for *International Cooperation*, New York University, Marck 2003, pp. 11-15.

²⁵⁹ ICG interviews, April 2003.

²⁶⁰ http://www.cic.nyu.edu/conflict/conflict_translations.html

²⁶¹ ICG interview with UN staff, Maza-i-Sharif, April 2003.

²⁶² ICG interview with trader, Mazar-i-Sharif, April 2003.

²⁶³ ICG interviews with tribal elders and traders, Jalalabad, April 2003.

²⁶⁴ World Bank, Afghanistan Research and Evaluation Unit and the Adam Smith Institute, "A guide to government functioning outside of Kabul: early findings based on missions to Herat and Faryab: working Draft", 28 February 2003, p. 7.

allocations, and “there is little concept of a provincial or district budget”²⁶⁵ indeed, in spite of the disruptions caused by 23 years of war, and attempts by provincial or local commanders at co-option, a recent study of the western provinces of Herat and Faryab found that “administrative and fiscal mechanisms, which had been standardized before the war, have continued in use throughout the country, despite the lack of an ongoing relationship with Kabul”.²⁶⁶

ICG also found that there remain strong links between provincial courts, which are tribunals that for the most part hear appeals from district-level courts of first instance, and the Supreme Court in Kabul.²⁶⁷ Judges are nominated by the Kabul-based Supreme Court and approved by President Karzai, although they lack effective tools to deal with local commanders. This relation holds true even in Kandahar, where Governor Gul Agha Sherzoi maintains an occasionally hostile relations with Kabul.²⁶⁸ Further, there is some evidence of a persistent sub-provincial network of local councils, called Shuras or Jirgas, which settle many disputes and address local administrative problems.²⁶⁹ Besides being a channel for those disenfranchised by the formal state structures, these councils could be revived, given a suitable security framework, as a traditional and trusted vehicle for effective governance.

²⁶⁵ *Ibid.*, p. 8.

²⁶⁶ World Bank, Afghanistan Research and Evaluation Unit and the Adam Smith Institute, “Assessing sub-national administration in Afghanistan: Early findings and recommendations for action”, 28 February 2003, p. 2; see also Robert Kluijver, “Study of Sub-National Administrative Structures in Afghanistan: Wardak”, April 2003 (unpublished paper made available to ICG), p.3.

²⁶⁷ ICG interview with Chief Judge (Nangarhar Provincial Court) Jalalabad and (Balkh Provincial Court) Mazar-i-Sharif, April 2003.

²⁶⁸ ICG interview with legal researcher, January 2003.

²⁶⁹ ICG interviews with Shinwari, Mohmand and Kuchi Ahmadzai elders, Kabul and Jalalbad, March and April 2003.

The important group within Afghanistan, pressing the Constitutional Commission openly now for extensive devolution of governmental power, to a sub-national level is the *Junbish* party of General Abdul Rashid Dostum. Who developed power bases in the northwest of Afghanistan because of President Najibullah's patronage and expanded his authority after the Communist collapse.²⁷⁰

The *Junbish* recommendation to the Constitutional Commission is for a new national state, the "United Republic of Afghanistan", divided into multi-province states.²⁷¹ Each state would have an elected governor, and could determine its own budget. Despite strenuous denials by *Junbish* party members that federalism would have no ethnic component, they envisage state lines cutting between predominantly Uzbek and Tajik areas in the north, and separating out Hazarajat and the largely Pashtun south.²⁷² It seems likely that *Junbish's* primary concern is to consolidate power within areas it presently controls. Particular attention was paid by *Junbish* officials to the delineation of an area they call "Trukestan", which is now largely under General Dostum's control. Civil society sources in Mazar-i-Sharif contend that the *Junbish* position has little appeal in the north, even among Uzbeks who make up General Dostum's traditional base of support.²⁷³

In addition to *Junbish*, Ismail Khan and the leaders of the Hazara party, Hizb-i-Wahdat, have evinced support for a less-defined federalism.²⁷⁴ Yet, officials from both wings of Hizb-i-Wahdat who were interviewed by ICG in Kabul and Mazar-i-Sharif were only lukewarm advocates for a federal structure. A deputy of Hizb-i-Wahdat affiliated with the faction of Vice President Abdul Karim Khalili explained "the main thing is for all the

²⁷⁰ Rashid 2000, pp. 56-57.

²⁷¹ ICG interviews with *Junbish* party intellectuals, 8 April 2003.

²⁷² *Ibid.*

²⁷³ ICG interview with district shura leaders and traders, Balkh province, April 2003.

²⁷⁴ Rubin and Malikyar 2003, p. 15.

different ethnic groups to be satisfied, whether the government is local or in the centre".²⁷⁵ According to a deputy of Hizb-i-Wahdat Akbari, in contrast, "federalism is a good idea, but we still need a strong central government because there is a danger of disintegration".²⁷⁶

Outside these parties, few Afghans muster any enthusiasm for federalism. The vast majority queried by ICG rejected it, citing fear of the country's disintegration under the influence of Iran and Pakistan.²⁷⁷ The problem of "warlordism", and the danger it would be exacerbated by a federal constitution. Despite near universal trepidation, however, two distinct variants on this attitude emerged.

Among Tajiks, Uzbeks, and Hazaras, the fear of centrifugal disintegration is tempered by recognition of the need for local autonomy. *Jamiat* officials in the north, despite being affiliated with the *Shura-yi Nazar* faction that dominates Kabul, expressed equivocal feelings about fully centralized control. "We can't have a federal government now in Afghanistan, because it would extend the control of the warlords" noted the political advisor to a senior northern *Jamiat* leader, "But in the future it would be a good idea to have more power and more money for local leaders"²⁷⁸ Similarly, Hazara civil society figures emphasized both the need for equity in central administrative arrangements and reinvestment in local administrative bodies like *Shuras*.²⁷⁹

But Pashtuns in Kabul and Jalalabad would not brook any mention of federalism in the

²⁷⁵ ICG interview, April 2003.

²⁷⁶ ICG interview with Hizb-I Wahdat Akbari deputy, Mazar-i-SSharif, April 2003.

²⁷⁷ This finding is borne out by other recent studies. See Johnson 2003, p. 20.

²⁷⁸ ICG interview, April 2003. In contrast, *Jamiat* leaders in Kabul were firmly against any kind of federalism at any point in time. ICG interview with *Jamiat* official, Kabul, March 2003.

²⁷⁹ ICG interview with member of Hizb-I Wahdat Kabul council and with Hazarajat based NGOs, February and March 2003.

constitution. "I am as much against federalism as I was against communism", declared one former Mujahid, now an important figure in the Nangahar provincial government.²⁸⁰ Similarly, elders in a Mohmand village in Nangahar province close to the Pakistani border declared, without any prompting about federalism, that "there should be a strong central government, and even a mention of federalism [in the constitution] will cause problems".²⁸¹ At the same time, elders from this and other villages expressed strong disapproval of stale attempts to interfere with traditional Shuras at the village and district levels. Thus, even these groups as a practical matter endorse local control over local affairs, although they would not call it federalism.²⁸²

In conclusion, Afghans share a broad consensus about the minimal role of federalism the only exceptions being political factions that stand to gain from more decentralization. Furthermore, Afghans share a desire for a strong central administration that will shake loose the power of the so-called warlords, but would resist overly insistent central regulation of local affairs.

5.4.2 The Role of Religion in the Constitutional Debate

Islam has been deployed in Afghan political discourse since Amanullah's time to establish or attack a regime's legitimacy. Consequently, even debates about modernization have used an Islamic frame of reference. Discussions in the 1924 Loya Jirga about Amanullah's statutory reforms to family law, for example, were pitched in

²⁸⁰ ICG interview, April 2003.

²⁸¹ ICG interview with Mohmand elders, Eastern Nangarhar, 2003 April

²⁸² http://www.cic.nyu.edu/conflict/conflict_translations.html

Islamic terms.²⁸³ One of the few changes it made to the 1923 Constitution was inclusion of a reference to the Hanafi Fiqh as the "official religious rite" of Afghanistan.²⁸⁴ In 1971, a similar dispute raged over a new family code.²⁸⁵ One commentator, now a member of the Constitutional Commission, has praised "the vital role that Islam and Sharia play as a stabilizing influence amidst conflicting changes imposed by different regimes".²⁸⁶ But during the reigns of Amanullah and Zahir Shah, Islam was a tool, principally but not exclusively in the hands of tribal and religious elites like Khans, Mullahs and Ulema, to preserve political influence.²⁸⁷

In particular, Islam has always been part of the constitutional debate, and all four constitutions between 1923 and 1977 incorporated it in manifold ways. Each stipulated Islam as the "national religion".²⁸⁸ Even the 1987 Constitution of PDPA President Najibullah, an avowed Communist, declared Islam the "sacred religion" of Afghanistan.²⁸⁹ The amended 1923 constitution, the 1931 constitution, and the 1964 constitution all incorporated in the national religion provision a reference to the Sunni school of jurisprudence, Hanafi.²⁹⁰ The 1964 Constitution further wove Islamic norms into the legislation process, limiting the ambit of statutory law by the "basic principles of Islam", permitting the Hanafi Fiqh to operate whenever no statute could be found on point.²⁹¹

²⁸³ Olesen 1995, pp. 138-39.

²⁸⁴ Constitution of Afghanistan 1923, Art.2 (amended).

²⁸⁵ Olesen 1995, p. 215. See also Kamali 1985, p. 48.

²⁸⁶ Kamali 1985, p. 53.

²⁸⁷ Hence, mullahs played a critical role in Amanullah's downfall. For details see for example Roy 1986, p.

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²⁸⁸ Constitution of Afghanistan 1923, Art. 2. Constitution of Afghanistan 1931, Art. 1. Constitution of Afghanistan 1964, Art. 2 and Constitution of Afghanistan 1977, Art. 22.

²⁸⁹ Constitution of Afghanistan 1987, Art. 2.

²⁹⁰ Constitution of Afghanistan 1923, art. 2 (amended); Constitution of Afghanistan 1931, Art. 1.

²⁹¹ Constitution of Afghanistan 1964, Arts. 64 and 69.

Further, Islam, as a shared frame of reference, has de facto linked insurgency groups otherwise actively hostile. For example, although the 1929 Shinwari uprising was a catalyst for Amanullah's uprising, it was not the Shinwari that ultimately toppled the king. Rather, a Tajik bandit, Bacha-i-Saqao, took Kabul in January 1929, to be crowned Amir with the promise that he would re-establish Islamic law "in all its purity".²⁹² Yet the Shinwari tribe rejected the Bacha's authority, and the new Amir failed to gain the support of other significant tribal forces.²⁹³ Amanullah, in other words, fell before disparate, local revolts united only in their common commitment to the faith. Islam may today again serve as a bridge between groups with grievances with the central government that otherwise might not form alliances. Faith can serve this end because "where the concept of the nation has developed but recently, where the state is seen as external to society and where people's allegiance is directed primarily towards their local community, the only thing which all Afghans have in common is Islam".²⁹⁴

Islam thus still maintains a powerful rhetorical or emotional hold on an overwhelming majority of Afghans. Every Afghan interviewed by ICG, whether from civil society, government, or a *Jihadi* party, stated that Afghanistan was a Muslim country, and that the constitution would have to be Islamic. Certain respondents indicated that in a more secure environment, secularism might have been an option.²⁹⁵ It was clear, however, that in the present situation, few would be willing to endorse a secular position. Thus, as in 1929 and 1964, it is likely that debates within Afghan society about modernization and cultural

²⁹² Gregorian 1969, pp. 264-265.

²⁹³ *Ibid.*, p. 280.

²⁹⁴ Roy 1986, p. See also Goodson, L., 'Afghanistan's Long Road to Reconstruction'. In: *Journal of Democracy*, Vol. 14, No. 1, January 2003, p. 91.

²⁹⁵ ICG interview with NGO chairman, Kabul, November 2002.

change will be conducted using an Islamic frame of reference.²⁹⁶

There are several fault lines along which discontent could develop into, for example, a confrontation and walk-out from the Constitutional Loya Jirga, or a repudiation of a draft. First, some respondents mentioned that the name of the country should include the phrase "Islamic state".²⁹⁷ Secondly, some members of *Jamiat* and *Ittehad* stressed the practical application of the Sharia "as much as possible". An *Ittehad* deputy noted that while democracy was acceptable, it must be limited because it could not justify a government that contravened divinely established rules.²⁹⁸ These groups also expressed a clear desire for a more significant constitutional role for Islam than in the 1964 constitution.²⁹⁹

A group of Islamic scholars led by Deputy Supreme Court Justice Fazel Ahmad Manawi have advocated that Sharia be the sole source of law, a very restrictive position that would compromise most efforts at modernisation and moderation.³⁰⁰ In contrast, Junbish officials rejected any need to include a reference to Sharia.³⁰¹ Even if Sharia is not embedded deeply into Afghan law, the role of *Ijtihad*, or independent "reasoning based on authoritative text"³⁰² will be important in battles to contextualize Islamic norms.³⁰³ Among these groups, however, there is no detailed understanding of Sharia law other countries have incorporated into their constitutions or of the effect of its application in

²⁹⁶ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

²⁹⁷ ICG interviews with former mujahidin leaders, March 2003.

²⁹⁸ ICG interview, March 2003.

²⁹⁹ ICG interviews, March and April, 2003.

³⁰⁰ "Islam only source of law in Afghanistan", *The Independent Bangladesh*, 4 May 2003. This is similar to Article 2 of the Egyptian Constitution of 1980.

³⁰¹ ICG interview with Junbish provincial government official, April 2003.

³⁰² Hallaq, *op. cit.*, p. 19.

³⁰³ This is particularly true in relation to the rights of women. See ICG Asia Report, Afghanistan: Women and Dupree, "Constitutional Requirements for Afghan Women", March 1990, (unpublished paper made available to ICG), pp. 8-9.

other countries. In particular, noise evinced an awareness of the instability caused by Islamic provisions in Pakistan's constitutions that "could be replaced or reinterpreted, depending on which faction of Muslims was ruling".³⁰⁴

Thirdly, members of *Jihadi* parties, including *Ittehad* and the former *Hizb-i Islam Khalis*, expressed a desire to see some reference to *Hijab*, the garb stipulated as appropriate according to Islamic principles,³⁰⁵ in the constitution.³⁰⁶ Surprisingly, some women's rights activists were reluctant to take a position on *Hijab*, saying that economic and educational issues were more important.³⁰⁷ All these issues may be used by extremist factions within the *Jihadi* parties as a way of mobilizing support.³⁰⁸

Finally, both civil society and *Jihadi* party members expressed a desire to retain the 1964 constitution's reference to Hanafi fiqh, one of the four schools of Sunni jurisprudence.³⁰⁹ This would implicitly reject religious equality for the country's Shia communities, which include the Hazara inhabitants of the Central Highlands and the Qizilbash.³¹⁰ The Hazara have suffered particularly heavy persecution,³¹¹ notwithstanding previous constitutions' guarantees.³¹² Sunnis who expressed a preference for Hanafi fiqh in the constitution contended that one school had to be chosen because otherwise multiple courts would be

³⁰⁴ Mehdi 1994, pp. 107-08.

³⁰⁵ The term 'hijab' incorporates "a wide range of styles of veil," Watson, H., 'Women and the veil: personal responses to global process', In: Akbar S. Ahmed and Hastings Donnan, (eds.) *Islam, globalization and postmodernity*, London 1994, p. 141.

³⁰⁶ ICG interview with *Ittehad* deputy, March 2003.

³⁰⁷ ICG interview with lawyers and NGO leaders, Kabul, March 2003.

³⁰⁸ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

³⁰⁹ ICG interviews, Kabul and Jalalabad, March and April 2003.

³¹⁰ Rubin 2003, pp. 30-31.

³¹¹ Mousavi, S.A., *The Hazaras of Afghanistan*. London 1998.

³¹² Dupree 1978, p. 465.

necessary.³¹³ But this argument has little substance. Codified Afghan law is a mixture of different jurisprudential schools, drawing mainly from Hanafi fiqh but also including, for example, family law provisions based on Maliki fiqh, another Sunni school.³¹⁴

In sum, a variety of issues related to the position of Islam, or a sectarian aspect of Islam, must be considered. Yet, there is no feasible way in the official constitutional process to modulate these debates and prevent extremist groups from using them to build coalitions and increase their influence. UNAMA is unlikely to facilitate a reasoned or stable outcome. At a December 2002 conference on civil society and the constitution in Germany, its representative stated that the preferred solution for the new constitution would be the oxymoronic outcome of “mild Sharia”.³¹⁵ It seems, real public debate that facilitates coalition building by moderate groups alone will facilitate the negotiation of an incorporation of Islam into the constitutional fabric that is not destabilizing.

5.5 The Legal Framework for the Constitutional Process

A. The Bonn Process

The current political transition followed a course set forth in the 5 December 2001 Bonn Agreement, envisaging a three-year phased process of political transformation i.e an Interim Administration, succeeded by a Transitional Administration selected in June 2002 by an Emergency Loya Jirga, with “free and fair” elections to occur no later than June 2004.³¹⁶ The Agreement also mentions a new constitution, whose distribution of

³¹³ ICG interviews with provincial officials and judges, Jalalabad, April 2003.

³¹⁴ ICG interview with faculty at Kabul University Department of Law, December 2002.

³¹⁵ ICG e-mail correspondence with NGO observer at Bad Honnef Civil Society and the Constitution conference, January 2003.

³¹⁶ Section 1 of the Agreement on Provisional Arrangements in Afghanistan, Pending the Re-establishment

powers is necessarily a critical component of the Bonn conference's unfinished business of political settlement.

The Bonn Agreement stipulates only skeletal guidance about what such a process might involve, thus leaving sufficient flexibility to accommodate changes in the political landscape after December 2001 and maximize achievement of its goals. In particular, the Agreement clearly articulates the goal of the transition as a "political future in accordance with the principles of Islam, democracy, pluralism and social justice," but sets down few practical rules on how to realize these goals.³¹⁷

The Agreement's General Provisions provide that a "Constitutional Loya Jirga shall be convened within eighteen months of the formation of the Transitional Authority, in order to adopt a new constitution for Afghanistan".³¹⁸ The size, composition, or procedures for this Constitutional Loya Jirga are not specified. An elected national assembly could satisfy this requirement, as indeed it did in somewhat similar circumstances between 1964 and 1973 when there was a Loya Jirga composed of members of the national legislatures.³¹⁹ Nor does the Agreement mandate a particular result, like adoption of a new constitution by a particular date. Only the date of the convening of the Constitutional Loya Jirga – January 2004 at the latest – not its closure, is determined by the Bonn Agreement. Beginning a process of electing a national assembly to act as a Constitutional Loya Jirga would have met this requirement. Under its plain language, that step might be

of Permanent Government Institutions. Available at:
<http://www.uno.de/frieden/afghanistan/talks/agreement.htm>

³¹⁷ *Ibid.* Preamble.

³¹⁸ *Ibid.* Section 1, Art. 6.

³¹⁹ Constitution of Afghanistan 1964, Art. 78.

only the first in a longer adoption and ratification process that could make use of various auxiliary institutions. Critically, there is no textual compulsion to adopt the constitution before January 2004.

At least some elements of the process for working up a draft or drafts for presentation to the Loya Jirga are articulated. The Bonn Agreement states that the Transitional Administration "shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission"³²⁰ to aid in the preparation of a new constitution. Again, the mode of appointment, mandate, and composition of this commission remain undefined.

Thus, the Bonn Agreement requires initiation, but not completion, of the constitution-making process by January 2004, and places almost no restriction how that Loya Jirga is constituted or how it operates.³²¹ Leaving procedural decisions open in this fashion preserves much-needed flexibility in a volatile security and political climate.³²²

B. Background Law of Constitutional Change

One way to address the absence of predictable constitution-making procedures is by reference to existing laws that maps amendment or renewal procedures.³²³ Currently

³²⁰ For details see annexure E.

³²¹ For example, the national assembly might break out into subcommittees to look at defined constitutional issues, and then reconvene to hold plenary discussions on these issues, the results of which might in turn be referred to or otherwise considered by the full assembly itself.

³²² Rather than use this flexibility productively, the transitional Administration failed to lay out a clear legal framework for its plans. This created uncertainty that undermined public confidence in the process. Unsurprisingly, ICG interviews revealed a startling decree of confusion in March and April about the constitutional process. ICG interviews with Kabul, Mazar, and Herat civil society and governmental actors, March and April 2003. For example, some of those interviewed thought that there would be a referendum on the constitution. Others thought that there would be an election for the Constitutional Loya Jirga. Both conceptions are unfounded. The Transitional Administration could have redressed any confusion by issuing a clear decree upon the creation of the Constitutional Commission, outlining the drafting process.

³²³ For example, Chapter IX of the Tunisian Constitution of 1959 and Article V of the United States

applicable Afghan laws indeed provide some guidance on constitution making that could produce important public legitimacy by adding clarity and predictability to the drafting process. Also, cementing amendment procedures in advance would reduce an infant constitution's vulnerability to politically motivated change after adoption.³²⁴

The Bonn Agreement explains that the transitional legal system includes the 1964 Constitution "to the extent that its provisions are not inconsistent with [the Bonn Agreement and] with the exception of those provisions relating to the monarchy and to the executive and legislative bodies."³²⁵ The 1964 Constitution devotes three articles to the process of constitutional amendment, which are only partially abrogated by the Bonn Agreement.

Articles 121 and 122 of the 1964 Constitution provide that constitutional amendments are drafted by a committee of a Loya Jirga, in consultation with the Council of Ministers and the Supreme Court, or by that Loya Jirga as a whole. Proposed amendments are then submitted to the same Loya Jirga for ratification by a two-thirds majority.³²⁶ While these articles relate to executive and legislative structures, and are thus void pursuant to the Bonn Agreement, they set forth procedures similar to those in use now, in which drafting by a committee is followed by a ratifying Loya Jirga.³²⁷ Absence of a clear mandate for the constitutional commission, and in the light of uncertainty about how the

Constitution prescribe procedures for the amendment of those basic documents.

³²⁴ The successful amendments to Pakistan's 1973 constitution by General Muhammad Ziaul Haq during his imposition of martial law illustrate the dangers of permitting easy constitutional amendment. See Maluka, Z.K., *The Myth of constitutionalism in Pakistan*. Karachi 1995, pp. 259-274.

³²⁵ For details see annexure E.

³²⁶ Constitution of Afghanistan 1964, Art. 122.

³²⁷ The constitutional process pursuant to the Bonn Agreement, in contrast, does not require that the commission be part of a Loya Jirga.

Constitutional Loya Jirga will function, these rules can provide a structure lacking in the Bonn Agreement. The Transitional Administration could invoke them publicly as a precious source of legitimacy for the process, including rules like the two-thirds voting requirement. The knowledge that preparation of the constitution was following a path preordained in law prior to the formation of the Transitional Administration would bolster the process's credibility.

Furthermore, Article 120 states that "adherence to the basic principles of Islam, [and] Constitutional Monarch[y] shall not be subject to amendment".³²⁸ Again, only The first part of this article, which does not concern governmental structure remains in force. This provision may be useful because it could provide textual anchor for a constrained role for religion in the new constitution, as a guiding principle of government, rather than a source of law (as Sharia) or a commitment to a particular jurisprudentially school. For example, this provision could be part of an argument, to be rehearsed at the Constitutional Loya Jirga, to the effect that Afghanistan already has an Islamic foundation for the state, and additional accretions of religious referents are unnecessary.

In summary, the legal framework within which present Afghan constitutional development occurs has many gaps and ambiguities. The only mandated feature of the Bonn process is an extremely tight timeframe, which provides eighteen months for the writing of and public debate on a constitution- The uncertainty and confusion about the drafting process needlessly undermines the legitimacy of that process by creating the impression that factions in power can manipulate the process to their own ends. Given the

³²⁸ Constitution of Afghanistan 1964, Art. 120 This provision also refers to Art. 8, which is a broad

magnitude of the decisions to be made a clear legal procedure would contribute to the legitimacy of the process and the acceptability of the final draft. Recourse to norms that have been enshrined in Afghan law since 1964, well before the advent of the Transitional Administration, would go some way toward dispelling impressions of factional manipulation.

5.6 The Constitution-Making Process

Confusion due to the absence of a legal framework has been exacerbated by the Transitional Administration's delay in issuing a governing legal decree. The first decree related to the process was issued only in April 2003, six months after the process began - and even then appeared initially only in Pashto. Nonetheless, a three-phase constitution making process that has been roughly honored was first articulated in a working paper of the UNAMA Constitutional Commission Support Unit in 2002.³²⁹

First, a small group of "prominent and well-known Afghan legal scholars, jurists, and other qualified individuals"³³⁰ would be selected by the Karzai administration as a Drafting (*Tasweed*) Committee. Secondly, the drafting committee would be expanded in January 2003 in a thirty-five-member commission of "prominent national personalities and representatives of political parties, in addition to scholars from various fields" tasked with preparing, reviewing, and finalizing the draft, a process known as *Tadqiq*. After that commission has to meet for ten months, a Constitutional Loya Jirga could adopt (*Tasweed*) the draft constitution.³³¹ This initial structure did not reference plans for public

³²⁹ Working Paper for the Constitutional Commission (Kabul, undated), p. 1. This is not a document with legal effect.

³³⁰ <http://www.crisisgroup.org/home/index.cfm?id=1639&CFID=5475417&CFTOKEN=95196221>

³³¹ *Ibid.* pp. 1-2.

consultation or debate.

UNAMA has consistently stated that it has the lead in coordination and on technical support with respect to preparation of the constitution.³³² But the process has been plagued by delays and repeatedly compromised by institutional in-fighting and conflict between the UN, factions within the Transitional Administration, and the international community.

None-the-less a constitution was formally passed by the constitutional Loya Jirga in 2003. In the following section some of the most basic attributes of the constitution are highlighted.

5.7 Salient Features of the Constitution of Afghanistan 2003

The newly adopted Constitution of Afghanistan 2003 establishes a strong central government with a directly elected president and a vice-president.³³³ Presidential candidate must be Muslim with Afghan born parents. The sovereignty belongs to the people of Afghanistan who will exercise it either directly or through their chosen representatives.

Afghanistan is declared to be an Islamic Republic and its laws will be in accordance with Islam.³³⁴

The parliament is bicameral. It consists of two houses; the 'Wolesi Jirga' or the house of

³³² ICG interview with UNAMA official, 1 March 2003. see also Islamic Transitional Administration of Afghanistan, UNAMA, UNDP, "Support to the development of a new Constitution for Afghanistan", (undated document), p. 6.

³³³ Art. 60&61 Constitution of Afghanistan 2003

³³⁴ Art. 1 Constitution of Afghanistan 2003

people and the 'Mesharano Jirga' or the house of elders.³³⁵ There will be a grand assembly to be called 'Loya Jirga' mandated to take vital and fundamental decisions of national importance. Among other important functions, it will have the power to amend the constitution.³³⁶ The constitution has established an independent judiciary consisting of a Supreme Court (Stera Mahkama), High Courts and other lower courts.³³⁷

There is a central government but the constitution also envisages the continuation of administrative units to be called 'provinces'.³³⁸ Pashto and Dari are the official languages of the state. The National Anthem of Afghanistan is in Pashto.³³⁹

The constitution also provides an independent 'Election Commission',³⁴⁰ and an independent Human Rights Commission. It envisions a multi-party system with certain restrictions.³⁴¹

There are clauses to support human rights, democracy, pluralism and an open-market economy.

Former King Mohammad Zahir Shah will still be called the 'father of the nation,' but the monarchy as such has not been reinstituted.³⁴²

The Constitution, divided into 12 chapters, is viewed in some corners as the basis of compromise between traditional and modern values and in others as a disappointment, especially for those who had hoped to see a modern, progressive and liberal constitution.

³³⁵ Art. 80&81 Constitution of Afghanistan 2003

³³⁶ Chapter 6 Constitution of Afghanistan 2003

³³⁷ Chapter 7 Constitution of Afghanistan 2003

³³⁸ Chapter 8 Constitution of Afghanistan 2003

³³⁹ Art. 16 & 21 Constitution of Afghanistan 2003

³⁴⁰ Art. 157 & 58 Constitution of Afghanistan 2003

³⁴¹ Art. 35 Constitution of Afghanistan 2003

³⁴² Art. 156 Constitution of Afghanistan 2003

It envisions an Islamic Republic with a powerful presidency and bicameral legislature. The president would be commander-in-chief of the military, appoint one third of the legislature's upper house and name judges, military officers, police and national security officials. He shall be elected directly by the people for a period of five years and can hold office for a maximum of two terms. He can be impeached by a two-third majority of the Loya Jirga. The constitution expressly empowers a president to hold 'referendums' but prohibits amending the constitution through a referendum.

The constitution names Afghanistan as an Islamic Republic and has many Islamic provisions. The most significant aspect of the constitution is the principle of law making: the parliament is forbidden to pass any law 'contrary to the sacred religion of Islam.'³⁴³ The oath to the office of president and the ministers starts with the words "I swear to obey and safeguard the provisions of the sacred religion of Islam'. The state will follow Islamic calendar and Friday has been proposed as the weekly holiday.

The principle of 'strict centralism' is followed despite Afghanistan's cultural and ethnic diversity. The central government will have the ultimate control of the entire country though powers and authority will be delegated to 'administrative units' to be called the provinces. The members of the constitution commission rejected outright the idea of a 'federal state' despite the fact that many favoured and supported a 'federal system' which was more suited to the needs of Afghanistan being a pluralistic society.³⁴⁴

The constitution also deals with fundamental rights and duties. The state of Afghanistan

³⁴³ Art. 2 & 3 Constitution of Afghanistan 2003

³⁴⁴ Khan, A.A., An Overview of the Draft Constitution of Afghanistan. 2003 Daily Statesman, Peshawar.

is obligated to follow the pledges it has made in the 'Preamble' of the constitution to fully observe the UN Charter and the Universal Declaration of Human Rights and its obligation to abide by the UN charter, UDHR and other international instruments it has signed. It also repeats many phrases of international treaties and conventions such as crime against the humanity, abolition of child labour and prohibition against torture, prevention of terrorist activities, production and smuggling of narcotics etc. No specific provisions are made for the rights of women.

According to the proposals, some women will be nominated to the parliament and an effort has been made to give them some kind of representation in various bodies.

The constitution proposes to confer some fundamental rights on its citizens. The equality and non-discrimination clauses, various kinds of freedoms, right to information, association, expression and movements are guaranteed in the constitution. These rights are justiciable and can be enforced through courts. The monitoring and protection of human rights is also entrusted to an independent Human Rights Commission. The violations of human rights can be redressed through the commission.

The National Assembly or the parliament in the constitution is bicameral. The lower house will be called 'Wolesi Jirga' or the house of the people while the upper house will be called 'Mesharano Jirga' or the house of elders. The lower house of about 220-250 members will be elected on adult-franchise basis for a period of five years. At least one woman will be elected from each region. The upper house will be combination of the elected and nominated members. Two-thirds of the members will be elected from the Provincial and District Councils while one third of the members mostly technocrats, will be nominated by the president. The members of the upper house will be elected for

different terms' those, elected by the Provincial Councils will hold office for four years, those elected form District Councils will remain members for three years while the ones nominated by the president will continue for a period of five years. Out of these presidential nominated persons, 50 per cent will be women. The parliament is competent to legislate, ratify international treaties, impeachment of the ministers and also to initiate the process of the impeachment of a president.

The constitution envisages setting up a modern judicial system. At the apex there is a Supreme Court to be called 'Stera Mahkama', or a principal department. The Supreme Court will comprise of nine judges to be appointed by the president for a term of ten years subject to the approval of the Wolesi Jirga', the lower house of the parliament. One out of the nine judges will be appointed as the chief justice. Ordinarily the judges will not be removed from their offices however, on the accusation of 1/3rd members of the lower house and approved by the 2/3rd majority of the said house, a judge will be dismissed and his or her case will be tried by a special court. The judges will not be given another term. The Supreme Court will be competent to interpret the constitution and laws but will not exercise judicial review, a power which it can use only if requested by the government. The constitution does not provide for the appointment of the judges of the high Courts and the subordinate courts but leave their appointment, promotion and dismissal to the Supreme Court. In resolving an issue, the courts will be guided by the provisions of the constitution, other laws and their judgments shall be in accordance with the Hanafi jurisprudence. Afghanistan is not a 'common law' country and the courts, including the Supreme Court, have no power of 'judicial review' to strike down a law. Courts with judicial review authority can nullify the preferences of democratically elected

legislatures. There is a risk in concentrating power in courts' hands, especially when it is not clear that Afghan judges are sufficiently professional, and when some judges have been willing to impose their ideology regardless of provisions of the constitution, statutory law, or popular beliefs.

Courts' authority rests largely on public support. In its early days, however, an Afghan constitutional court is unlikely to have much public support, so other government institutions may reject or ignore its rulings, undermining its long-term credibility. Thus, judicial review might either be irrelevant or undermine democracy. Against these risks others argue that one must balance the protection of human rights and impartial resolution of jurisdictional and other intra-governmental questions that judicial review can provide. One can find a compromise between these two positions by carefully limiting the institutions that can undertake judicial review and limiting the scope of judicial review.

The power of judicial review can be given to all courts or to a single tribunal known as a constitutional court. The first option requires that the entire judiciary be well educated, professional, and well versed in constitutional issues. It is therefore not suitable for contemporary Afghanistan. A special court can be a chamber of the Supreme Court or a separate constitutional court. One point of view argues that, given the shortage of trained judges in Afghanistan, one should not seclude the best judges in a specialized body. Instead, a special chamber within the Supreme Court including five to fifteen judges should carry out judicial review. Others argue that specialized constitutional courts, composed of individuals known for their probity and their support for the rule of law and democratic principles, have helped stabilize many new democracies. In making this

decision one might want to take into consideration the character of the current Supreme Court of Afghanistan. Whatever court has judicial review power should be independent of other governmental actors. Its members should have fixed salaries, immunity from prosecution, and authority to control court budgets and staffing. Judges should not be members of political parties. Appointments to the court could be made by the executive alone; by the executive based on recommendations by the legislature or the judiciary; or by the agreement of the executive and the legislature, preferably requiring a significant super-majority for approval (two thirds or three quarters). Judges should serve lengthy non-renewable terms (perhaps between nine and twelve years). The possibility of a second term can undermine a judge's independence in the first term. Life terms create problems of superannuation and stagnation. Appointees should be lawyers of repute, including legal scholars.

A court can exercise judicial review either immediately after a law is passed, at the request of a group of legislators, or once the law has gone into effect, also at the request of someone affected by the law. The first system is flawed because some laws show their unconstitutional aspect only when they are implemented.

Some nations require that another actor, like a lower court, refer cases to the court. Without this "filter," a constitutional court may be overwhelmed by thousands of complaints. But a filter may screen out valid cases in a society where people have long suffered for lack of means to seek redress of grievances. The court could retain for itself the power to select which cases to hear and employ clerks to help identify such cases. Certain independent statutory bodies such as the ombudsman, human rights commission, or electoral commission, if they exist, should have the power to bring cases to the court.

In judicial review, a court should be able to decide disputes within the government, including disputes within or between different branches (legislative and executive) or levels (central and provincial) of government, and also whether individual rights protected by the constitution have been violated. This court could also deal with electoral disputes, impeachment, and declarations of states of emergency. But since its legitimacy is likely to be fragile, other specialized bodies might better handle these disputes. The constitutions of states where Islam is the official religion usually cite Islam as a source of legislation or of principles that law must not contradict. Should conformity to Islam be justiciable? Islamic nations like Pakistan and Egypt have encountered great difficulties with courts that can strike down statutes as incompatible with shari'a.

In 1992 in Pakistan, courts thereby invalidated a large part of the statutory law. Such power denies the community the right to express 'ijma' (consensus) and risks empowering one particular group of Muslims to define Islam. Furthermore, since shari'a is not codified, judicial review for conformity with shari'a can mean many different things. A law could be found invalid if: (a) it deals with matters on which detailed *furū'* already exists; (b) it deals with matters on which it would be possible to develop a rule through jihad; or (c) it contradicts *maqasid al-shari'a* or *qawa'id al-fiqh*. Because of this uncertainty, allowing courts to decide whether laws are compatible with shari'a gives those courts vast discretionary power and creates excessive uncertainty. This undermines the legislature and allows the courts to favor political factions and ideologies.

Under previous Afghan constitution, courts did not possess the power to determine the compatibility of laws with shari'a. Under Article 7 of the 1964 Constitution, the King was "the protector of the basic principles of the sacred religion of Islam," in part through

his power to sign or reject bills passed by parliament. Nor is there a need for such a judicial power. More of Afghanistan's statutory law follows fiqh than any other country, except perhaps Yemen. If Afghans judge it desirable to create judicial review for certain purposes, the constitution can limit its application to certain articles in the constitution. In Malaysia, where shari'a is also part of the legal system, judicial review is limited to those articles dealing with individual rights and the delimitation of the powers of the branches and levels of government. The power to determine whether a law is in conformity with Islam could be explicitly granted to the legislature alone, which will be made up almost completely of Muslims, or to the lawmaking process, including both legislature and executive. Some argue that the court should issue only one opinion, without dissents, because this forces the court to deliberate more and reach consensus. This view holds that unanimity will be important to establishing the legitimacy of this new institution. Others hold that tolerating dissent will contribute to the effectiveness of the court and promote transparency and democratization.

The constitution has also constitutionalised the traditional grand assembly of Afghans. It provides for the establishment of a supra parliamentary body to be called 'Loya Jirga'. In the scheme of the constitution, this supreme body is a kind of a security council and will comprise of all the members of the parliament, the head of the provincial and district councils. The ministers, chief justice and other judges of the Supreme Court can attend but cannot vote. The new Loya Jirga will have five hundred members out of members, 344 would be elected by the 15000 district members, 64 women will be elected by Afghan women and 42 members will represent refugees, displaced persons, nomads and

the minorities.

The 'Loya Jirga' is required to focus only on matters of great national concerns.

However, this body is also given the power to amend the constitution and to impeach a president.

A constitution can be aptly described as a document which expresses the aspiration of a people. It is a confused document where an effort has been made to strike a balance between secular and Islamic values. As a legal manuscript it appears to be a flawed document full of contradictions and unnecessary details. It is mostly based on the older version of the 1964 constitution. It has some similarities with the Pakistani constitution but is different in many ways.

Conclusion

To conclude, federalism just might be the most suitable arrangement for Afghanistan. But federalism needs to take a particular shape in this country. It will not do simply to emulate the traditions and conventions of Western federal systems. The Western discourse on federalism has been traditionally formulated within the framework of center-state relations, focusing on centralization and decentralization. In the case of Afghanistan, we need to make a departure and view federalism as both a *territorial* and *non-territorial* project. As a territorial project, federalism addresses the fragile equilibrium to be maintained between indestructible union and indestructible units. As a non-territorial project, federalism is directed to the issues of cultural representation and identity in a multicultural society.

Federalism with a new twist: a viable option

As a beginning of a solution to the current crisis in Afghanistan, this time, more serious attention must be given to the structures of representation and governance. **Multicultural federalism**, as a territorial and non-territorial project, stands out as the most suitable potential structure for Afghanistan. One of the tasks of multicultural federalism is to provide cultural recognition of various groups and to ensure that minority groups who differ from the dominant regional norms are not left powerless and marginalized. The major challenge which federalism in Afghanistan will have to face will be to balance the territorial with the non-territorial requirements of the Afghan multicultural, multi-tribal nation. Given Afghanistan's cultural diversity and social pluralism, the federal system will have to struggle constantly if it is to reconcile the claims of *equal citizenship* with *group* identities and interests. Even in the West, it is only recently that people have begun

to explore the issues of citizenship, cultural pluralism and a multicultural “political community.”³⁴⁵ It might be a good idea to look at examples set by federations that have tried to address the issues *both of territorial and non-territorial* representation. In India, for instance, it was a major preoccupation of the Constituent Assembly to tackle this question.³⁴⁶ And, lately, multicultural Western societies have begun to grapple with it. Historically, the Indian constitution-makers were not only sensitive to group identities but were also innovative in generating a difficult and challenging non-traditional discussion of “political community.” Relying on indigenous Hindu traditions, emphasizing collective identities such as family, caste and tribe, and borrowing from ‘imported’ liberal theory revolving around the concept of individualism, the founding fathers of the Indian state attempted to balance constitutionally the contradictory principles of *equal* citizenship with *collective* rights. India also sought to balance secularism with religious community rights, fundamental equality for all citizens with preferential privileges for backward classes/castes, and an official language with the protection of minority linguistic rights.³⁴⁷

A reconciliation of the territorial with the non-territorial approach is undoubtedly more challenging than the simple Western federal model (based on territorially distinct provinces or states). But this is the best hope for a nation such as Afghanistan, sharply divided by religious, linguistic and tribal loyalties. The traditional concept of federalism defines two levels of government: one central/federal and the other a set of regional governments. It does not give constitutional recognition to local government. However,

³⁴⁵ <http://www.forumfed.org/default.asp?lang=en>

³⁴⁶ <http://www.forumfed.org/publications/federations.asp?lang=en>

³⁴⁷

<http://www.mywebsearch.com/jsp/AJmain.jsp?PG=SEASUSH&SEC=ABMANY&ptnrS=zuzeb004YYPK&st=kwd&searchfor=constitution+of+india>

recently there has been an increased recognition of the notion that local governments can also provide democratic representation, particularly to minorities and women.³⁴⁸ In Afghanistan, where there are strong traditions of local autonomy, a federal structure will have to involve three layers of government—**central, regional and local**—each with its areas of autonomous jurisdiction. It is precisely at the local level that one can take advantage of traditional Afghan structures. These structures can be emptied of much of their original meaning (they were often based on hereditary chieftainships, for instance) and be “filled” with the new “content” of equal representation, democratic rights, and freedom of contestation and participation. Once again, India is a very good example. In 1992, the Indian Parliament provided a constitutional base to local government by constitutionally recognizing the Panchayats: the traditional local organizations. The Panchayats became the third tier of government, with 29 local powers and the compulsory representation of women and tribal populations by at least one third of the Panchayat.³⁴⁹

Such an emphasis on local self-government and decentralization of power is directly linked to the realization of two fundamental goals: 1) ensuring effective governance and equitable political representation through the institution of federalism; and 2) resolving the dilemma of simultaneously pursuing the goals of economic growth and social justice. Mobilizing a society without developing appropriate institutions can lead to political decay. One must see to it that not only is democracy introduced into Afghanistan, but also that institutions are brought in to inculcate and foster a culture of tolerance, trust and

³⁴⁸ <http://www.forumfed.org/publications/federations.asp?lang=en>

³⁴⁹ <http://www.mywebsearch.com/jsp/AJmain.jsp?PG=SEASUSH&SEC=ABMANY&ptnrS=zuzeb004YYPK&st=kwd&searchfor=constitution+of+india>

cooperation. And these institutions must be based on indigenous traditions and respect for the diverse ethnic communities.

While taking stock of the political front, among the strongmen of Afghanistan, only Ismail Khan, General Dostum, and, previously, Hajji Ayatullah Muhammad Muhaqqiq have openly stated their desire for a federal system of government.³⁵⁰ Dostum's party, the Junbish-i Milli-yi Islami-yi Afghanistan (National Islamic Movement of Afghanistan, NIMA) and Muhaqqiq's party, Hizb-i Wahdat (the Unity Party, bringing together a number of smaller Shi'a groups) advocate federalism in their party programs.³⁵¹ Partly because of the unprecedented degree of participation in the central government by Shi'a in both the interim and transitional administrations, and partly because of their recognition of continued resistance to federalism by Pashtuns, Hizb-i Wahdat has moderated its program to calling for measures of devolution and non-discrimination against Shi'a jurisprudence. Over dinner at his residence, Muhaqqiq joked about Hizb-i Wahdat's advocacy of federalism: "Dostum is with us with his four families [chahar khana], the Tajiks are reluctant, and the Pashtuns consider that federalism is kufr [unbelief] and that it is beyond the pale of the Islamic religion."³⁵²

Among the specific issues at stake in the debate over "federalism" are the zonal system (whether provinces should be formally grouped into zones or regions for administrative, fiscal, and political purposes); whether the leadership of the administration of provinces

³⁵⁰ http://www.cic.nyu.edu/conflict/conflict_translations.html

³⁵¹ For NIMA's program and further discussion of federalism, see www.junbesh.com.

³⁵² http://www.cic.nyu.edu/conflict/conflict_translations.html

or zones should be elected, appointed, or some combination of the two; and what powers these sub-national units should have, especially in the fiscal area, raising taxes and determining their own expenditures.

It is not surprising that, in general, among political elites, those exercising power in the provinces and representing regions and ethnic groups that have long felt themselves to be subjects of a Pashtun-dominated state in Kabul rather than equal citizens of Afghanistan, advocate federalism or decentralization. Those exercising power in Kabul and Pashtun elites who see Afghanistan primarily as a Pashtun-led state see a strong, centralized government as in their interest.

Popular perceptions need more study but seem to have evolved with changing experience. At the beginning of jihad, in 1979-80, before most fighters were organized into parties or organizations, they often spontaneously attacked the physical presence of the central government. Sayyid Mustafa Kazemi, Minister of Commerce and a former commander of Hizb-i Wahdat, told how he was surprised when he arrived in Bamiyan at the beginning of jihad and found the people burning government buildings. "I asked them, 'Why are you burning these buildings? They are your property'. They told me, 'Those buildings have oppressed us.'" The general hostility or suspicion toward symbols of central power was not confined to the Hazara areas either.³⁵³

Now, however, after years of "gunlordism" (*tufangsalaria*) by local commanders, popular sentiment has largely shifted in favor of a "strong central government."³⁵⁴ Loya Jirga electors from the eastern provinces interviewed in Jalalabad during the second-stage elections in May 2002 stated that they wanted a strong central government. Though these

³⁵³ For a detailed discussion see Jalalzai 2002

³⁵⁴ http://www.cic.nyu.edu/conflict/conflict_translations.html

delegates were Pashtun, they did not mention reassertion of Pashtun power over Northern Alliance-dominated regions as their main concern. They were quite clear that their main expectation of such a government was that it would be able to dismiss oppressive and corrupt local officials.³⁵⁵

The same hope seems to characterize people all over Afghanistan. One should not necessarily conclude therefore that government should be as centralized as in the past: confronted with an ineffective, corrupt, or oppressive central government, a possibility that one can hardly exclude, popular sentiment could shift once again.

Ismail Khan believes that the current zonal division of the country is "an excellent system," and, given the present ground realities, should be sanctioned by law.

"The state of Afghanistan must be federal. A central government will never be able to establish its rule over the entire country," asserted Ismail Khan. "The central government should only be there to support us," he elaborated, "but we should be autonomous (khudmukhtar) in running our affairs."³⁵⁶ His views are also shared by General Dostum who has repeatedly and consistently called for federalism, without further elaborating on the exact kind of federalism that he envisions or a clear division of authorities and responsibilities of the central and provincial governments. While Hajji Muhaqqiq has retreated from demanding federalism at present, he advocates the redrawing of provincial boundaries along ethnic lines, separating several predominantly Hazara districts from Ghazni, Uruzgan, and Ghor provinces. Such changes could be preparatory to creation of a

³⁵⁵ <http://www.crisisgroup.org/home/index.cfm?id=1639&l=1>

³⁵⁶ <http://67.114.30.217/AfghanReality/reconstruction/>

central zone that would correspond to an ethnically defined Hazarajat.³⁵⁷

We have already noted President Karzai's strong opposition to the zonal system. While he has compromised with the de facto decentralized power structure by confirming appointments of local officials from their own areas, in private discussions as early as Nawruz 1381/2002, he confided his intention to return to the tradition of appointing governors and uluswals from outside the areas they administer and said that this corresponded to popular demands.³⁵⁸

Since his appointment as minister of finance at the Loya Jirga, Ashraf Ghani Ahmadzai, former senior social scientist of the World Bank, has emerged as one of the most forceful advocates of centralization. Since assuming office he has dedicated himself to trying to centralize finances and reform the customs service and treasury department of the ministry of finance. He has persuaded Ismail Khan to turn over new afs 100 million on several occasions and has held up payments to northern Afghanistan in order to pressure Dostum and the other northern commanders to turn the customs revenue over to central control. He has also held up payments to the defense ministry, insisting on a plan for reducing the size of the forces and clear identification of those whose salaries are being paid.³⁵⁹

These demands have placed him in sharp conflict with Marshall Qasim Fahim, Vice President and Minister of Defense. Nonetheless, Fahim does not challenge Ghani's agenda of centralization. In an interview he stated, "A strong central government is imperative. The central government must have total control over the entire country;

³⁵⁷ <http://67.114.30.217/AfghanReality/reconstruction/>

³⁵⁸ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

³⁵⁹ http://en.wikipedia.org/wiki/Politics_of_Afghanistan

otherwise, it can't be called a state. The military and the intelligence arms of the government are instrumental to achieve this." What Fahim challenges is whether the centralization process should be used gradually to incorporate the armed forces of the Northern Alliance or to marginalize them in favor of a state structure dominated by a Westernized, technocratic, and largely Pashtun elite.

The governors and governors-general in the Pashtun areas also state they favor centralization, even if not under the current power structure. Gul Agha Shirzai of Qandahar states that he supports the establishment of a strong central government as the only means to a return to the rule of law, stability and equitable economic development.³⁶⁰

Similarly, Hajji Din Muhammad, Governor of Nangarhar, said, "Federalism is not the right formula for Afghanistan. The federal systems that are in place in Pakistan or in Germany will not be successful in Afghanistan. They would only push the country towards disintegration."³⁶¹

The argument that federalism will lead to disintegration derives from the experience of the past decades, in which regionally based commanders developed independent patronage and supply relations with governments and other support networks in neighboring countries. These political and economic linkages provided the infrastructure for the proxy war that took place on Afghan territory, pulling the country apart. Of course, in genuine federalism, armed force and security would still be centralized. Sometimes Afghan commanders and governors-general speak as if federalism were a system where each zone would have its own army. While this is not federalism, the

³⁶⁰ http://www.cic.nyu.edu/conflict/conflict_translations.html

³⁶¹ http://www.cic.nyu.edu/conflict/conflict_translations.html

association of the term with these facts on the ground colors how Afghans perceive it. Two cabinet ministers in Kabul who participated in the Bonn Talks as members (in one case as leader) of different delegations offered intermediate solutions that accepted the need for a process of state building that would transform current realities gradually and keep evolving. M. Amin Farhang, Minister of Reconstruction, who was a member of the Rome delegation, argued that, a federal system cannot be established in the short-term. Currently escape from the center is a reality, but this will take Afghanistan towards gradual disintegration. The muqam-i sarkari [state authority] must be reinstated. Only after a strong central government is established that we can slowly begin to move towards decentralization.³⁶²

Muhammad Yunus Qanuni, Minister of Education, who led the United Front delegation in Rome, said, "the debate should not be on either an all-powerful central state or a federal system, neither is realistic at the moment". He also believes in a gradual process, but he proposes it in an order opposite to that of Dr. Farhang's. Qanuni suggested that a series of authorities should go to the center, while the remaining one should be given to governors. "For example, all level I and level II [rutba-yi awal wa rutba-yi du – the highest ranking civil servants] officials should be appointed by the center—including governors and wuluswals, and the rest by the governors. Fifty percent of customs revenue should be sent to the center. Teachers should be appointed locally. All this until a strong central state is established".³⁶³

Thus the differences over state structure are not only about the goals, but about the

³⁶² <http://67.114.30.217/AfghanReality/reconstruction/>

³⁶³ http://www.cic.nyu.edu/conflict/conflict_translations.html

process. The conflict over the nature of the process is most intense between Ashraf Ghani and Marshall Fahim, but it expresses the difference in viewpoint between the returning technocrats and those associated with previous regimes, on the one hand, and those whose road to power was through the jihad and the struggle against the Taliban.

The former position advocates a kind of "shock therapy" centralization. Its proponents, especially Ghani, take as their point of departure the same observation made by the deputy governor of Qandahar:

Financial dependency attaches offices in the periphery to the center.

Because financial needs of provincial offices are not met by the center, orders are naturally taken from the source that provides resources, i.e., the governor.

Hence the centralizers seek to use international financial assistance to the central government as leverage to subordinate the regional or zonal authorities, construct a centralized administration, and win the loyalty of the people and former fighters to the government. A Kabul-based elite, with a heavy admixture of Western-trained and Western-returned technocrats would exercise most political power.

The gradualist group largely associated with the former Northern Alliance, however, seeks to incorporate the de facto decentralized military and administrative structures, headed by members of their own and allied organizations into a more centralized structure. An elite composed of former commanders and regional leaders (warlords) would share rulership with Western-trained and returned technocrats while retaining a predominant, though not exclusive, role in the security forces. The Western-oriented elite is also more Pashtun and could claim some support for its program of rapid re-centralization in the Pashtun areas.

Summing-up

For now, centralization is also popular as slogan or symbol among the common people throughout the country, but it is far from certain that the popularity of this idea would survive its implementation. Thus far only fragmentary data are available on non-elite perceptions of these questions. The proceedings of the Loya Jirga in June 2002, which appeared to reflect popular sentiment quite closely, were notable for the absence of calls for decentralization or regional autonomy. The most popular theme, at least during the first two days, before some delegates felt intimidated, was the need for the central government to subordinate or eliminate the "warlords" and provide security.³⁶⁴ It appears that the overwhelming majority of the Afghans are convinced that only a strong central government can appropriately respond to the daunting task of establishing security and stability and overseeing reconstruction and development. The agreement of the majority of the population on this matter reflects their strong distrust of local and regional rulers. "Our survey also showed that after a quarter of decade of war and disintegration of the central government, state structures and procedures that were deeply engraved in the minds of the people and of the cadre of remaining bureaucrats were quickly revived in both the center and the provinces and districts. New leaders have changed the rules of politics, but administrative structures and bureaucratic procedures have stubbornly remained the same."³⁶⁵

The popular views of government, however, may not be as simple as a few questions might make it appear. Decades of conflict, exile, and politicization have created an Afghan public quite different from that of several decades ago. One author (Rubin) asked

³⁶⁴ <http://www.crisisgroup.org/home/index.cfm?id=1639&l=1>

³⁶⁵ http://www.cic.nyu.edu/conflict/conflict_translations.html

an adhoc assembly in a mosque in a village near Bamiyan how the relations of the center to the provinces and districts should be structured. One local man who was clearly a leader in the community responded that the people should elect the *uluswals*, and that the central government should appoint the governor from a list of three candidates submitted by the local people, presumably by a provincial assembly. We are confident that others have such ideas as well, which would help the Afghan political debate move beyond the sterile polarization of "federalism" versus a "strong, central government."³⁶⁶ The drafting of the new Afghan constitution should have provided an occasion to debate these issues more fully, though merely adopting a plan for the structure of the government will not guarantee its implementation.

Popular sentiment clearly wants a more consolidated state right now, and particularly the demobilization of militias. To the extent that Afghanistan has an army, it must, of course be centralized. Policing is an area ripe for new models, at least once a minimally professional national gendarmerie is re-established. Tax collection will have to be nationalized, but provincial and district expenditures need not be. The government should consider establishing an institutional structure that will make it possible to give block grants to provinces, districts, and communities to budget as they see fit for certain purposes. Elected councils could be given jurisdiction over such allocations. The idea of appointing governors and *uluswals* from the center is deeply ingrained, but can at some point be reconsidered. Some form of zonal system may be necessary for economic and social planning, if not for political participation. It would be remarkably inefficient if every national program had to be administered through one office in Kabul and thirty-two

³⁶⁶ The politics of Centre-Periphery relations, centre for international co-operation New York University, 2003, Barnett Rubin & Helena Malikyar.

provincial offices, rather than through seven or so regional offices.

All these topics can be the subject of rational debate, but the political issues are those that might plunge the country back into conflict. A weak and largely unaccountable state dependent on foreign aid and foreign advisors before 1978 nurtured a political elite that was concentrated in a few neighborhoods in Kabul and increasingly culturally and politically distant from the rest of the country, which it barely controlled through a highly centralized but ineffective administration. Today's rapid re-centralizers and their foreign backers risk creating a similar situation. Already one hears that little aid leaves Kabul and is mainly used for international organizations, foreigners, and a small clique of Westernized Afghans who speak their language. Such a system will be even more unsustainable in the Afghanistan of the twenty-first century than in the previous one. While Afghans do not support the regional "gunlords," they will not accept rule by aid-lords either. The political task of reconstruction will be to help Afghans use the assistance they need to construct a state structure that is unitary enough to unite the country and decentralized enough to permit real participation to a population that is politicized as never before. This is exactly what federalism implies, a political contrivance intended to reconcile national interest with states/regions rights.

Annexure-A

Parties, Groups, Organizations, and Movements etc. of Afghanistan Minority Nationalities

The Sitam-i-Milli
The Oppressed Nation
Giroh-i-Kar
The Workers Group

Formed by Engr. Abdul Hamid Mohtat (a Tajik) in Balkh its activities were organized by one Amanullah Ustowar Qurshaqi.

Sazman-i-Azad-e-Ebakhshe-Zehmat Kashan-i-Afghanistan

Also known as Enqilab-i-Zahmat Kashan-i-Afghanistan .(SAZA); (The Toilers Revolution Organization of Afghanistan), The SAZA was organized by Tahir Badakhshi (one of the Basic Members of the PDPA) in 1966, after having dis associated himself from the PDPA. Originally it was named "Mellfai-i-Entezar" (gathering in waiting). In 1968, it bore the name of Sitam-i-Milli. But according to the July 1989 issue of the publicity organ of SAZA, named "MAIHAM", the party was renamed SAZA, during its first meeting held on 15 Asad 1347 (July 6, 1968) at the resident of Tahir Badakhshi (a rented house in Karte-Char; Kabul). The meeting was attended by about 21 like minded persons, amongst them some being the following:-

Mohammad Tahir Badakhshi

Zahoorullah Zahoori

Mohammad Bakhsh 'Falak'

Engineer Abdul Rashid

Abdul Ahmed

MohaminadRafi

Ustad Jamshaid Kbawari

Khalilullah Rustaqi

Fakhrud din

Badiuzaman

Baba Saheb Toofan

Syed Mohram Ghiasi 14; Syed Seraj

Mohammad Masood

Abdul WahabAsefi

Abdul Qadeer Hussaini

Abdul Ghani 'Fikrat'

Mohammad Tahir Badakhshi (brother-in-law of Prime Minister Sultan Ali Keshtmand sister of Keshtmand married to Badakhshi), having been killed by the Afghan Government the control of the party was taken over by Mahboobullah Koshani, becoming the First Secretary of SAZA. Dr. Zaki, Khalilullah Rustaqi and Zahooreullah Zahoore were members of the Politburo of the Central Committee of SAZA. In 1989, SAZA has Provincial Committees at Faizabad, Mazar-e-Sharif, Shibershan, Maimana, Herat and Pul-e-Khumri.

The name SAZA was once again changed to Nuzhat-e-Democracy-e-Afghanistan. During October 1987, on the occasion of the convocation of the Second National Conference of the PDPA, the SAZA declared its alliance only with the PDPA.

Mahboobullah Kosfiani (a Tajik) was appointed Deputy Prime Minister on October 30,

1987, Mohammad Ishaq Kawa of SAZA (a Tajik) was taken in as Minister of Mines and Industries and Mohammad Bashir Baghlani, also a Tajik and a member of SAZA was appointed as Minister of Justice.

Some of the members of the organization were the following:

a.	Chairman	Mehboodullah Koshani
b.	Members Political Office	
c.	Incharge	M. Hakim
d.	Head North East Zone	Abdul Samad Alias Samad Bacha
e.	Chairman Badakhshan Province	Qiamuddin Qiam

Sazman-E-Takshan-I-Afghanistan (SZA) The Toilers Organization of Afghanistan (TOA)

The organization (founded in 1972, its first congress held in 1987), as led by Engineer Hameedullah Gran, a lecturer in Kabul University, and First Secretary of the Central Committee of SZA, declared its cooperation only with the PDPA in October 1987, on the occasion of the Second Conference of the PDPA. It was believed at the time that this organization was, in fact, headed by Abdul Hamid Mohtat, the Deputy Prime Minister. The organization had formed committees in Kabul city, Baikh, Nengrahar, Baghlan and Shindand.

Sazman-e-Azadi Bakhsh-i-Milli (or Mardum)-i-Afghanistan - SAMA

The SAMA was organized by Abdul majid Kalakani (nephew of Bacha-i-Saqao) in early 1979, from the segments of Shula-i-Javaid, which had resumed underground activities after 1979, the time when the Peshawar based Afghan Parties were re-organizing their own cells of Mujahideen. The SAMA was an Alliance of 'less left committed nationalists'. It claimed to have organized with the help of its 8000 militants, the bloody uprising of February 22, 1979.

The SAMA changed into Jabha-i-Mutahida-i-Milli (JMM-United National Front) in January, 1980 when some left over leftist of Afghan Millat and Sitam-i-Milli also joined it. Their Motto was "Freedom or Death".

The SAMA and the Afghan Millat, both claimed to have organized the Bala Hissar mutiny on August 5, 1979. After the arrest and killing of Majid Kalakani by the Afghan government, the organizer of SAMA inside Afghanistan was one Syed Mohammad Mohammad and outside the country Dr. Abdul Qayyum 'Rahbar' (brother of Majid Kalkani), looked after its interests. Dr Rahbar, a highly qualified person and unassuming having Doctrate from West Germany and also Master's Degree from Al-Azhar University, Egypt, was killed in Peshawar, Pakistan, by some unknown assailants.

Sazman-e-Pesh Ahang-i-Kargaran-i-Jawanan-i-Afghanistan

(Vanguard Young Workers Organization of Afghanistan)

Enqilab-i-Mardum-i-Afghanistan

(Organization of the Supporters of the Movement of the Revolutionary People of Afghanistan)

This was as splinter group of Sitam-I-Milli based in Europe with publicity organ REHAYE. It eventually joined Jabha-I-Muthadi-I-Milli Afghanistan.

Sazman-i-Demokarateek-Ikhyrsan

(Democratic Organization of Khurasan)

Sazman-i-Demokareteek-i-Turkistan

(Democratic Organization of Turkistan)

Sazman-i-Cheraka-i-Mardum-i-Afghanistan-i-Shamal

(Organization of the People Force of Northern Afghanistan)

Shura-i-Nazar

(Of Engr: Ahmad Shah Masood).

Jumbash-i-Islami Milli Afghanistan

(The Islamic National Movement of Afghanistan)

The Movement, restricted to the Northern Afghanistan only, was organized by General Abdul Rashid Dostam. He was, however, removed and ousted from the North, during May 1997, by the combined forces of General Abdul Malik and Taliban.

Giroh-i-Akhgar

(Toilers organization of Afghanistan)

Revolutionary brigades of the people of Afghanistan
Sazman-e-Pesh Ahang-i-Kargaran-i-Jawanan-i-Afghanistan

(Vanguard Young Workers Organization of Afghanistan)

The organization, led by Soofi Shian, was a splinter group of "Shola-I-Javaid". It got merged with the PDPA on September 17, 1986. One Abdul Shakoor Khushachin, along with some of the other dissolved group, received PDPA membership cards on September 25, 1986. Shakoor was later on included as a full member of the PDPA CC.

Sitam-i-Ha

Followers of Prof. Usman Landai (short stature) separated from 'Shola-I-Javaid' in 1971.

Sazman-i-Fidayan-i-Zehmat Kashan-i-Afghanistan (SFZA)

(Organization of the Toilers Devotees of Afghanistan)

It was in July 1984, during the days of President Babrak Karmal that this organization had, for the first time came into notice. The organization declared its dissolution and merger with the PDPA in October, 1987. It accepted the PDPA as a leading force of the society.

The text of the declaration, as signed by the organization of the society namely Zahir Hatam, Abdul Mottalib Haris and Mohammad Ismail Akbar is at Appx 3 to Annex A. Zahir Hatam, was thereafter, made member PDPA Central Committee.

Fidayeen

(Solidarity Movement of the People of Afghanistan)

The movement was organized by Brigadier Mohammad Sarwar "Lemach" Noorsitani, during the presidentship day of Dr. Najeebullah, Being pro-government in character, Sarwar was made member of PDPA Central Council of the National Fatherland Front of the Republic of Afghanistan. Mohammad Kamal Noori was member leading Body and Vice President of the Movement and Mohammad Isa, member leading body. During early August 1997, Brigadier Sarwar was caught in Asadabad (Kunar Province) by the Taliban when he was engaged in organizing anti-Taliban forces in Nooristan to support Prof. Rabbani and Engr. Masood. An extremely cunning and unreliable person Sarwar was once arrested in Pakistan also but had succeeded in deceiving the ISI (Inter Services Intelligence of Pakistan) and escaped to Nuristan. He supported from there the then Karmal and Najeeb's regimes, when he had promised the ISI otherwise.

Sazman-Jamiat-e-Inqilab-i-Mardum-i-Afghanistan

(Peoples Revolutionary Organization of Afghanistan or Revolutionary Society of the People of Afghanistan)

The group, which remained active till about 1981, claimed to be associated with movement of Abdul Majid Kalakani, nephew of Bacha-e-Saqao.

Annexure A-1

Afghanistan's Major Shiite Organizations, 1979-96

1. **Shura-e-Itifaq (Council of the Union)**

Place & Date of Formation: Bamiyan. Afghanistan, 1979

Head: Sayed Ali Behishti

Composition: 1,000 staff; 2,000 partisans

Main Front Commander: Muhammad Hassan, known as Sayed Jaglan.

Bases of operation: Bamiyan, Ghazni, and Baikh

2. **Harakat-e-Isiami (Islamic Movement)**

Place & Date of Formation: Qum, Iran. 1979 Head: Mohammad Asif

Mohsini Ideology: Traditional Islam Composition: 200 staff; 3,00 partisans.

Bases of operation: Wardak, Qandahar, Bamiyan, Parwan, Kabul and

Samansan provinces

3. **Sazman-e-Mujahidin-e-Mustazafin (Organization of Warriors of the Dispossessed)**

Place & Date of Formation: Bamiyan. Afghanistan. 1979 Head: Joint Council

Ideology: Militant & political

Bases of operation: Bamiyan

Place & Date of Formation: Bamiyan. Afghanistan. 1979 Head: Joint Council

Ideology: Militant & political

Bases of operation: Bamiyan

Sazman-e-Nasr (Victory Organization)

Place & Date of Form.-.lion: Qum, Iran. 1979

Head: (Council of 'four' persons)

Ideology: Islamic Fundamentalism

Composition: 1,500 staff; 4,000 partisans

Bases of operation: Ghor, Bamiyan, Wardak, Parwan, Ghazni. Baikh, and Kabul provinces.

Sepah-e-Pasdaran (Revolutionary Guard Corps)

Place & Date of Formation: Qum, Iran, 1981

Head: Muhammad Akbari

Ideology: Islamic Fundamentalism

Composition: 1,500 staff; 2,000 partisans

Bases of operation: Ghor, Helmand, Bamiyan, Ghazni, and Parwan provinces

Hizbullah (Party of God)

Place & date of Formation: Qum, Iran 1981

Head: Shaikh Wusoqi

Main Commander: Qari Ali Ahma'i Darwazi Known as Qiri Yakdasta

Ideology: Islamic Fundamentalism

Composition: 1,000 staff: 2,000 partisans

Bases of operation; Ghor, Heart and Heimand provinces.

7. Hizb-e-Wahdat (Unity Party), Founded in 1988-Present

Head: Karim Khaili succeeded Abdul Ali Mazari.

Ideology: Moderate Islam and Hazara nationalism.

Composition: Sazman-e-Nasr, Sepah-e-Pasdar, Hizbullah, Nahzat, (Progress), Naryro-e-Islam (Islamic Strength), jabha-e-Mutahid (United Front), Shura-e-Itifaq, Sazman-e-Mustazafin and karkat-e-Islami.

Sources

Compiled from literature published by Hazaras political parties and interview with Hazara intellectual in exile.

Publications by Shiite-Hazara Political Parties

Publication	Year	Organization
Payam-e-Mustazafin	1358/1980	Sazman-e-Nasr
Payam-e-Muqawimat	-	Nast/Ghazni Group
Payam-e-Nasr	1364/1986	Nast/Northern Group
Payam-e-Nasr	-	Jabha-e-Mutahid-e-Enqalib
Sangar	-	Islamic Invitation
Payam-e-Dawat	-	Islamic Renaissance
Nahzat	-	Nast/Northern Group
Bulletin-e-Khabari	1364/1986	Nasr

Besharat (Weekly)	1370/1992	Hizb-e-Wahdat
Payam-e-Wahdat (Monthly)	1370/1992	Hizb-e-Wahdat
Tulu-e-Wahdat (Biweekly)	1370/1992	Hizb-e-Wahdat
Haftnama-e-Wahdat	1369/1991	Hizb-e-Wahdat
Misaq-e-Wahdat (Monthly)	1369/1991	Hizb-e-Wahdat
Khabarnama-e-Paik (Daily)	1369/1991	Hizb-e-Wahdat
Payam-e-Mustazafin	-	Dispossessed Warriors
Tawhid	-	Shura-e-Itifaq
Neday-e-Haq	-	Islam Maktabi Tawhid
Hijrat	-	Ruhaniyat-e-Jawan
Hablullah	1980	Nasr

Source:

Bashir Ahamd Dawlatabadi, *Shinasnam-e-Afghanistan* (Tehran, Author, 1371.1993).

Annex-B

Charter of equality and fraternity of the nationalities (literal translation)

United Defense Conical for the Right of Destiny making of the Nationalities

Introduction

In the name of Allah, the Merciful, the Compassionate. The resurgence tempest of human freedom, engrossing through the meanders, overfilled with bravery and honor has reached to one of its most sensitive and, at the same times, to most glorious heights and is still going ahead to determine the destiny of that battle, taking place since the era between the oppressor and the oppressed, the killer and the killed (person), the Hungary and satisfied. What added especially to the splendour and greatness of this height of the era was the ever broadest participation of the people's mass and the oppressed nationals in struggle for obtaining their right to self determination and destiny making so that one can daring call the last decade of the twentieth century as the nations resurgence decade. The overthrow and disintegration of the soviet empire, is a great event of the second half of the 20th century, which has also been the collapse of a great prison of the national independent republics.

What in the immense space of this historical camp, source of Honour and exaltation to our people, is a special place which has been retained by our people, a place glittering as a luminous star on the dark part of this camp. In reality, the great just and righteous

resistance of our people against, the Soviet Imperialism and criminal hand of "Khalq" and "Parcham" this roguish dish-eaters of imperialism was a detonator of that grand explosion, the tingling clamour of which still trembles half of the world, an explosion that is considered to be the outset of the demolition of one of the most dreadful and powerful martial powers of the history, the power that ruled over a large part of the world for 70 years in most deceitful shapes and was presenting itself as a guardian and exclusive (monopolistic) representative of the oppressed nations and the deprived masses.

Despite the withdrawal of the Soviet forces and its subsequent overthrow and disintegration as well the indispensable collapse of the Kabul regime, this filthy heritage of aggression can not receive a stopping point to the freedom combat of our people. Our people have achieved none of their goals and desires, signified in their 13 years long crusade, which has formed the body philosophy of their great jihad, and they have yet a long way ahead to achieve their goals.

Overcoming on the distractions arising from the 13 year long ruinous war, in addition to the degradation and backwardness arising from the rule and dominance of the past fascist governments, requires a first round of brave and enamoured actions. The rebuilding the rehabilitation of a country, burned in the cruel and despotic fire of one of the fiercest war mongering powers and in its historical background, has endured the 200 year long rulership of one of the most uncivilized and blood thirsty historical fascist dynasties, can become possible only through active and all sided participation of all the people including men and women, youth and old, child and elder. Because a country rising its head from among the after war fire smoke, as its freedom and independence are indebted to the sacrifice, devotedness and endeavors of all the people can not be rebuilt,

but be the efforts of all the people.

Flourishing the county is certainly the desire of all our people, but this great wish can be realized only when there exist the following tow major conditions.

- a. All the people should have confidence that this county belongs to themselves, and as in the past, it should have not been reckoned like unconditional property of a certain nation, clan or family to sell it or destroy it according to their wish.
- b. All those factors barring the initiative and creativity of the people as well as preventing their participation in the political social and economical life should have to be demolished.

The charges of the absence of these tow conditions, since the Loya Jirgah of Kandahar and from the reign of Ahmad Shah onward in our social life are as evident and clear as no just person can have doubts about it. During this period, on the one hand large parts of the country 's depebdenies have been put up for auction in collusion with the alien powers, and on the other by consopolitical of the monopolistic power of one clan on the destinies of all the people and the privation of the right to participation in the sociopolitical affairs of overwhelming majority of them, the capacity and ability of the majority of our people have become suspended.

No need say, when for example the Ministry of foreign affairs is possessed by a particular nation (as it has been in our society) the rest of the nations can not take part in the ponolitical affairs or whenever all the education potentiality is monopolized by one nation, the other nations can not have scientific, professional and specialist cadre in various can thelds. Thus, when the military and defense affairs nation the participation in such problems is the exclusive right of a particular nation, the other nation, spontaneously can take active part in the defense affairs of the county.

The history hears clear witness that since the Loya Jirgh of Kandahar, the government

was considered to be the monopolistic right of a particular nation and every kind of objection to this right of the ruling nation was considered as a profane step, entitled to the worst type of punishment. The history testifies that how harshly, the heroic people of the north took vengeance upon the few months government of Bacha-Saqao and how his birthplace was pillaged by the tribes of the south.

Sweepingly and regretfully, the current trend and the monopolistic endeavors of leaders of the parties attached to the past ruling nation leave on place for the optimism of the majority of our deprived nations, who have never forgotten the savage memories of the frightful chimes of the past monopolistic, nationalistic and ethnic government and still remembers the mass killings of the tyrant ruler like Abdul Rahman.

The dreadful nightmare of repetition of the sovereignty of ethnic fascism and the re-establishment of governments like Abdul Rahman becomes more frightful to the oppressed nations such as Uzhek, Hazara, Turkaman, Tajil, Baluch, Char Aimaq, Nuristani and when they clearly observe the explanation and interpretation of the seemingly Islamic method in the statements, interpretation assures and declaration of this or that leader and Amir or see with their own eyes in the procedure of the Islamabad Advisory Council and its resulting state.

The historical experience obtained from the 200 year long fascist rulership clearly indicates that the result and outcome of the clan and ethnic governments will bear on fruit but degradation, backwardness, ignorance, misery and adversity. The racial fascism and its rulership, in the passage of the last 200 years imposed inoperable stand-still and stoppage by creating disorder in the process of our social growth, and by disturbing the and stoppage paved the way for atrocities, the effects of which will remain for long years.

In the course of history, the territory of Khurasan, this rising place of the sun and bravery is considered to be one of the most major centers of human culture and civilization, this culture and civilization during the centuries has been the presenter of unity, unanimity, diligence, creativity and capability struggle of all those nations living in this region from long time age and with equal participation have made every unified effort in safeguarding and blossoming their homeland.

The ruins of Ghulghula city in the heart of Gurgistan indicate the bravery, the faithfulness and the patriotic spirit exemplified by the walls of Asmayee, Shir Darwasza and the Bala Hissar of Kabul.

The name of Balkh, Bamyān and Kapisa recall the precedence of spiritual presence of those people of the history that Ghazna is another narrator of them.

The raised groans from the gipsy heart of Nasir Khisrau, the sad flute letters of Maulana-e-Balkh, the cries of Masoud Saad, the prisoner of Qala-i-Nay and the ghostic reflections of Sanai and Ali Shir Nawayee is another image of that seditious music reiterated in a different manner in the hymns of Maulana-e-Jan and Jabali Gharjestani and the inghtly benedictions of Khwaja Ansar and

The names of Abu Ali Sina, Birani and Maulana Jalauddin are all commemorative of active participation of our people in the growth of human knowledge and world civilization, likewise the dynasties of Kushanis, Ghazanavis, Ghoris and the names of Abu Moslem and Yaqub-e-Lais and so on....

After the disappearance of the latest remaining of Mughul civilization in Heart, the territory of Khurasan encountered continuos disintegration, which continued for two long centuries. During this period, the country's political unity got abolished and as a result of

the fights and skirmishers of Khans, the victory of alien hegemonist became possible.

One of the basic factors of this two century long disintegration are those contentions that existed between two prominent tribes of Durrani and Ghilzai since long ago. It was the result of these disputes that the Safavis subdued a large part of the west of the country. As the Safavis dynasty ended, Nadir Afshar, once again availed the opportunity to maintain his power over Khurasan.

The conquest of India by Ahmad Shah, which ended to the benefits of the British Empire (because as a result of these attacks, the Marhatas national and anti British elements were crushed harshly) and it was not only void of any benefit to our people, but paved the grounds for the continuation of fighting, run for over a hundred years, between the Sardars and Leaders of the ruling nation. Naturally, owing to these fights entailing a great deal of devastation and destruction there was no opportunity of growth and development. In the context of these power hungry Sardars of the ruling nation, by inviting the aggressive British troops and dominating the aliens on destinies of the people and the country, they also sacrificed the political independence of the country to their greeds by throwing the country into the clutches of British colonialism guaranteeing their stability and survival in the semi-continent.

Although our people never reposed and could set the aggressive powerful troops to defeat and retreat, but these Sardars, reaching in the last moments of the people's victory, to become King or Amir, in collusion with the British, paved the ground for the continuation of colonialist rulership by creating discord between the Mujahids, espionage activities to the benefit of the aggressor, ruthless subduing of the resistance centers, such as Estalif and Shamali (north), the perfidious killing of the resistance leaders and the

destruction of those areas considered to be defensive wall and military fortress like Hazarajat etc.

After that Nadirshah was able to crush, in agreement with the British, the brave uprising of Habibullah Saqao and by brutally suppressing the liberal and anti colonialist movement, he laid the groundwork of such a policy, which was continued by his successors even after his revolutionary assassination by Khaliq Qahraman. As a result of this policy, the political atmosphere, vacated from the presence of freedom lovers and intellectuals, progressive movements and anti-colonialist progressive trends and conceptions, was replaced by flattery, servitude, swaggering, superstition, hypocrisy and fraud.

In such an atmosphere, the knavish leaders of "Khalq" and "Parcham", like Taraki and Babrak, etc., by taking advantage of the political and intellectual vacuum became able to hoist the banner of their dependent ideology, and gather unpatriotic and rascals like himself around its pivot.

The growth and development of this anti people movement, once again continued within the framework of that agreement and compromise concluded between Sardar Mohammad Daud, this leader of the fascist ruling national, with Russians on the issue of Pushtunistan.

The Coup d'Etat of 26 Saratan as a preliminary step towards the inauspicious coup of April 27, which prepared the way for military occupation of the country has been the result of the differences taking place between the fascist Sardars on the most top point of the bar of power. This coup was the resultant of the hostility existing between Sardar Nairn and Sardar Daud on the one side and between Sardar Wali and so and so on the

other.

Incidentally, the operators of the 27th April were again those people who only through relationship with the ruling nationals had mounted to sensitive positions, like Rafi, Aslam Watanjar, Gulabzoy, Shirjan Mazdoyar, Gul Pacha Wufadar, Shahnawaz Tani, Shahpur Ghani Ahmed Zay, Iqbal Waziri.

Therefore, it can be claimed that the April coup was another ignominious stain on the lap of fascism. One should not forget that Ghulam Haider Rasooli, the defence Minister of Sardar Daud was Mohammad Zayee. Again it was this army that welcomed the Soviet red forces and surrendered to them without any resistance.

This is the bill of indictment of our deprived people and the oppressed and suffered nation against fascism and apartheid. This is a righteous claim because the history is confirmatory to it and the court of history will vote for it.

Fascism, during its 200 years rulership had no souvenir for our people except civil war, discord, ignorance, and destruction. The military occupation of the country and the mass killings of the liberals, militant intellectuals and our free born people done by Taraki and Amin, these fascist hangmen, our people, totally stood on their feet and marked out one of the most wonderful and surprising bravery in the history of anti colonial resistance, a bravery that will remain unique for ever.

But, the fact is that the filibuster, disunification and disruption of the hegemonist fascist bands and the foreign interference in the affairs of Jihad caused that the victory of our people over the aggressive forces had become possible much later than it should have been. There are not less occasions that the fascist hand in collusion with the Russians resorted to the killing of Mujahideen and by the terror of irreconcilable personalities as

well as the violent suppression of the anti-Russian war-front have caused pleasure for the Soviets and their remainders or by impelling the transfer of weapon to the anti-Russian fronts have caused success for the Soviet troops.

After the withdrawal of Soviet troops, it was hoped that the mercenary regime of Najib, this nasty heritage of aggression, will soon collapse. This expectation did not prove futile. But again, these power seeking fascists related to the past ruling nation, by commissioning a ludicrous and shameful drama resorted to revision of the past and, thus tried to divert the attention of Mujahideen to another still. Shortly after that the fascist monopolists, in order to come to power as soon as possible hatched another conspiracy in agreement with the most rabid and barbaric military wing of "Khalq" like Sarwari, Shahnawaz Tani, Ghulabzoy, and by launching their anti revolutionary coup prepared the way for the survival of the regime.

Heroic Mujahid and Moslem people.

What we get from the contemplation of this abstract is that the racial fascism of the past ruling nation is responsible for all the past catastrophic inflicted on our people in the past 200 years.

Certainly, among these, all the crimes which have taken place from the inauspicious coup of the Soviet hirelings onward are more protuberant. Nevertheless, the victory of the April 27 coup and the military occupation of the country itself is the outcome of the fascist rulership. Fascism by imposing social stand and still, during 200 years of our history, has forced to history, he forced to stop the process of nation's formation.

Therefore the responsibility of the disunification and disruption is born on fascism. Fascism by dispossessing the majority of the people and negating their rights from

participation in the construction and flourishing of the country as well as iii the rational defence affairs has paved the ground for the aggression and are therefore, responsible for the military occupation of the country and its consequences.

Fascism by legitimation and legalization of racial and tribal superiority policies, actually has disintegrated out people and by creation and extension of pessimism, incredibility and instability towards each other has annihilated the spirit of unanimity and joint cooperation between the nations and tribes, and has taken the step towards opposition with national unity. Hence, fascism has the responsibility of disunification, discord, separation, lack of national unity and at last the danger of disintegration.

Afflicted people!

Sisters and brothers!

The people, who do not take lesson from the past, the history will be repeated on them.

We, as warned by the past, with deep feeling of responsibility about the future, by feeling committed towards our country and people, for guarding the veneration of the sacred blood of the martyrs of our people, for safeguarding the righteous desire of the great Jihad of our people and for the establishment of a free, independent, flourished, prosperous, unified and void of poverty, injustice, equal and brotherly society, defending the aims stipulated in this program is considered to be our revolutionary, national and Islamic obligations and we have gathered around here for the purpose of inviting and mobilizing the freeman, militants and intellectuals, these guardians of the human freedom and independence from every where they are and from every tribe and nationality 10 unity, joint effort and for the realization of the human, Islamic and national ideals dial guarantees the future of our people.

'The Charter of Equality and Fraternity of the Nations' contains those basic aims and

principles which are to be realized. "The United Council of the Nation's Destiny Making" lays the basis for the establishment of an equal, brotherly, independent and unified society as a sacred goal and struggle for its realization is the duty of every individual.

Address to the freemen and intellectuals of Pushtun's brother nation. It is our firm conviction that "Defence of the Right of the Nation's Destiny Making" is the guarantor of prosperity and freedom of all men inhabiting nations of our country including the brother nation of Pushtuns. We consider the safeguarding of this right as an obligation of all the free intellectuals and of the Pushtun nation in particular.

The ruling class of the Pushtun nation by implementation of national oppression and communicating the spirit of superiority among the Pushtun people have, so far, been able to rescue itself from the revolutionary anger of the oppressed masses and have directed the indignation and hatred of Pushtun nation toward those people who have a shared destiny.

Brothers

The annihilation of each prison cause the release and freedom of two people-one is the prisoner and the other is the guard of the prisons. The ruling class of your nation have constantly tried to exploit your people as guards of the nation's prison.

Let's by blowing up and annihilating of this prison rescue the prisoners of this jail including the oppressed Pushtuns. Let the exploiting and despotic ruling class be buried under the debris of this prison for ever.

We want equality. We want true brotherhood and real national "unity. Are these demands guilty and crimes?

One who deprives others of freedom deprives himself too. Your ruling class had deprived

you too of freedom while depriving others with the force of your people:

For the sake of our freedom

For the sake of your freedom

Let's shake hands with each other and be united.

We are honestly offering and extending' our brotherly hands towards you, and through this unity of us inflict strong blows on the mouths of bubblers, superiors and oppressors.

Long live the genuine unity among the nations.

Down with racists and power seekers

Long live the heroic people of Khurasan

Down with colonialism down with fascism.

January 24, 1992.

Aims and Programmes

1. The right to destiny making of the nations, the establishment of a real people's democracy and sublime Islamic teachings without any precondition.
2. The annihilation of all kinds of religious, racial, regional, linguistic and class discrimination.
3. The creation of equal ground for the harmonious growth of all nationalities in all spheres of social, political, economical and cultural life.
4. As women are active members of the society, thus they should have a proportionate part in all social, political and cultural affairs.
5. The consolidation of political, economical independence based on moving towards self-sufficiency through active and full participation of all the fraternal nations in all social spheres.
6. Strengthening of the spirit of fraternity on the basis of equality through preparing the common ground of social, political and cultural activities.
7. The equal distribution of the national wealth to be profited by all the nationalities and all regions of the country, in view of prioritizing the most needy and afflicted areas.

8. The restoration and annexation of the usurped lands by the ruling nation to their original owners.
9. The creation of equal and un-discriminated grounds for the growth of culture and language of all the nationalities.
10. The realization of the principle of freedom of religion and opinion, freedom of speech, press, freedom in the performance of religious rituals, and the right of retaining equal part in the propagation and extension of religious and political beliefs.
11. Protection of the right of education in mother language, selecting and editing the education programme in mother tongue and on the basis of culture, history and religious beliefs of every nationality by their own teachers and instructors.
12. The demolition of racial and tribal monopolization of the political, military, cultural and economical pasts.
13. The removal of the distribution of civil administrative units, such as provinces, districts, subdistricts, etc. as clear examples of discrimination and inequality of the past regimes and the creation of new electorates of civil administrative structure based on the conscious and independent request and determination of the people themselves in regard to the number of population of each of the relevant region.
14. As far as the name and title of Afghanistan is not representing the culture, history and national identity of all the inhabited nationalities and merely represents the historical and racial identity of one of the nationalities, it should have not been applied for all the country. Replacing of the title and name with "Khurasan", on the one hand, pertains to all the nationalities and is the original and historical name as well. On the other hand, there is no particular odd and colour in it.
15. The formation of autonomous – local units based on the community will and request of the nationalities themselves and acceptance of the right of annexation and separation of each of the national unit.
16. The elimination of titles which belong to a special nationality.

17. The elevation of a flag representing the voluntary unification of all the inhabited nations of the country.
18. The formation of a new army with equal participation of all the nationalities. Strengthening of the national defence affairs and the training of the military men in the spirit of brotherhood and patriotism.
19. The issue of Pushtunistan and of the Pushtuns living in the territory of Pakistan depends on their own will. This issue can not, as in the past, become a pretext of business on the destiny of our Pushtun brothers.

In order to achieve the above mentioned goals and the creation of such conditions and goals which would guarantee the realization of these goals as well as ensure the continuation of them and turn these goals from force into action, to specify the verification of putting the aims into practice, we deem it necessary to struggle and strive for the realization of the following demands:

A. In the Political Sphere

1. The creation and formation of the 'Council of Founders' with equal participation of all the nationalities.
2. This council will be composed of Ulema, scholars, specialists and powerful individuals from all the nationalities that will be in charge for the following tasks:
 - a. Drafting, compiling and endorsement of constitution and the calling of a referendum for its Final approval.
 - b. The formation of an interim government and supervision over its accomplishments, the approval of the interim government procedures, fixing of time and the duration of its being in power.

- c. The approval of the law on election, its conduct and the control over its functioning and looking into the cases at elections.
 - d. The setting up of a high court comprised of Ulema, scholars, clergies, politicians, lawyers, historians and other specialists for setting the limits and boundaries of the autonomous local units as well as the creation and formation of quality of the units.
 - e. The founders assembly should take care of the cases pertaining to the usurped lands through this court.
3. The formation of the Supreme Defence Council for the restructuring of the Army. Purifying the Army from the existence of unpatriotic individuals and the assassins of the people. The structuring of a new army in place of the old one with equal participation of all the nationalities.
 4. Taking part of the national minorities in the Founders Assembly and the like determined by the assembly, based on the numerical strength of their population.
 5. The national minorities shall have a free hand in their annexation wide or separation from the autonomous local units.
- Comment: The national minorities are called, that part of the people, who due to less in population and according to common law are incapable to set up a federal unit.
6. The Founders Assembly will be dissolved after holding of the elections and its results.
 7. The interim government will have the following tasks:
 - a. Restructuring of the administrative system and the ruined economy according to the stipulations of the constitution.
 - b. Holding the elections and maintaining the security and peacefulness of the elections.
 - c. Taking care of the repatriates and meeting their requirements.

- d. Accomplishment and implementation of the hills, decrees and decisions of the Founders Assembly.
- e. Obtaining official recognition from foreign states and international organizations and the establishment of diplomatic relations with the countries.

B. In the Economic Field

1. Planning of an independent, self-sufficient economy through putting to use of creativity, capability and initiative of all the people and maximum utilization of the national resources.
2. Elimination of the unharmonious and unproportionate growth of economy preferably in the under developed and backward areas.
3. Extension and development of the national industries and its ever increasing encouragement.
4. Construction and reparation of highways and roads between the cities and villages and setting active and mutual relationship between them and the elimination of inequality between different areas and localities.
5. Struggle against prodigality and the creation of a productive spirit through providing the production facilities.
6. Struggle against harmful produces, like opium, narcotics and other un-useful products.
7. The omission of unnecessary and luxury items from imports.
8. The formation of high economic council composed of the traders and entrepreneurs of the fraternal nationalities, as well as the representatives of the Ministries of commerce and finance. This council will have the task of me previous chamber of commerce.

9. Setting up of a fair, direct and affordable taxation system in view of the urgent necessity of reconstruction of the system of agriculture, animal husbandry and national industries.

C. In the Sphere of Culture

1. The abolition of names, titles and addresses which indicate the language and culture of a particular nationality from public places. As far as Dari is the language of majority of our people and everyone can speak and write it, then those names should be changed to synonymous words in Dari.
2. Eliminating such a cultural system and the independents which have caused the cultural retardation of the nationalities.
3. Equal right in the usage of TV, radio; cinema and Other mass media for the introduction of culture, art, history and national values of each of the nationalities.
4. Defending the right of compiling the educational programs in a mother language by Ulema and scholars of each nationality according to the history, cultural values and religious beliefs.
5. The compilation of education programmes according to the needs of the people.
6. In the field of social sciences, like history, etc. all manifestations of cultural oppression, tribal priority, racial and religious superiority should have to be abolished and the spiritual and historical presence of all the nationalities together with their honours, achievements and their role should be thrown light upon.
7. Protecting the right of arranging religious programme and the education of religious studies based on the religion of each nationality, the right to set up the Madrasas of religious studies.
8. Schools, Lycees, cultural and educational institutions should be a source of national unity and should not be named after the people relating to a particular nationality.

9. Kabul, due to its historical relationship with all the nationalities, also, because it is a dwelling place of the people of various nationalities hence, this city, as a manifestation of unity and solidarity of our people, will be the capital of our country.

D. In the Military Sphere

1. Ending up of racial and tribal monopolization in the Army.
2. The right to equal participation of all the fraternal nationalities in the restructured army.
3. Training facilities should be placed at the service of all the nationalities and all should take equal part in it.
4. Each of the local autonomous units has the right to have their own Army, security and internal order with equal share of the armament possibilities. The relations between these armies and the Central army will be specified by the law.
5. Establishment of a Supreme Council of Defence composed of the authoritative representatives of the nationalities. This Supreme Council, will have the task of supervision over defence affairs.

The Council and the Government

1. The Federal Republic of Khurasan (FRK) has two assemblies.
 - i. The council of nationalities (CN)
 - ii. The High Council of Nationalities (HCN)
2. Members of both assemblies are elected through free, secret and direct elections. Members of the council of nationalities according to population and to the High Council of nationalities are elected on the basis of equal right of the federal units.

3. Each individual citizen of the F.R.K. can participate in the elections irrespective of sex, race, religion and language.
4. The legal age, necessary qualifications and the limits of authority of the candidates will be fixed by the law.
5. The number of members of each of the Assembly will be fixed by the Founders Assembly.
6. Modification, amendment and interpretation of the constitution are the tasks and powers of the council of nationalities, approved by the High council of Nationalities.
7. The ratified laws and regulations of the C.N. are enforceable after the approval of H.C.N.
8. The methods of government formation, number of the ministries, assigning of the Prime Minister, etc. will be specified by the constitution.
9. If the H.C.N. agrees with the election of government by C.N. then the oath taking ceremony of the government members would be performed.
10. The C.N. has the right to set up a supervisory council in each of the ministries and the minister will also have its membership.

E. The President

1. The President is a symbol of "national unity" and is directly elected by the people themselves.
2. The president should be a Moslem, well known learned and unbiased personality.
3. The President should not have a background of relationship with foreign powers, membership of the mercenary hands, and should have no prejudice and hostility with any of the nationalities, languages and religions.
4. The limits of tasks, powers and authorities of the president are specified by the law.

F. Foreign Policy

1. The foreign policy of the Federal Republic of Khurasan (PRK)
 - i. Patterned on the basis of the principles of Non alignment, acceptance of the UNO charter and the universal declaration of human rights and the accepted international norms by safeguarding me political independence of the country.
2. Establishment and consolidation of relations with all countries, especially the neighbouring and Moslem countries based on ignition and respect and non interference in the internal affairs of each other.
3. Opposition with the regimes supporting apartheid and racism, like Israel, etc.
4. Supporting of liberal movements support to the right of destiny making of the nationalities.

“The United Council of Defence of the right of Destiny Making of nationalities
Dalwa 1370 H.S.

Annex-C

Concerning Conditions for Mutual Relations Between the Leadership of Soviet Forces in Afghanistan and the Armed Opposition of Panjsher.

Motivated by good intent and a desire to consolidate peace in Afghanistan, the contracting parties have signed to the present protocol, in accordance with which they assume the following obligations:

1. To fully halt military actions in the Southern Salang and in other regions adjacent to the Kahul-Hairatan route, including any firing of weaponry upon positions held by brigades and Islamic Organization of Afghanistan - Jamiat-i-Islami, sentry brigades and posts of Soviet and Afghan troops, the MGB (Border Guards) and Tsarandoi.
2. The armed detachments of Panjsher take upon themselves responsibility for safeguarding communications between Tadjhikan and Chaugani with the aim of preventing shelling, robbery and other actions against Soviet and Afghan troops.
3. The Soviet side undertakes to provide according to mutual agreement the necessary quantity of provisions, articles of immediate necessity and other material within the time agreed upon by the parties for the material maintenance of Panjsher and those regions belonging to the indicated portion of the route.
4. Detachments and groups of other parties will not be permitted to enter the region under discussion with the goal of firing upon Soviet and Afghan columns, carrying out terrorist acts, or sabotage of the pipe-line. Should attempts by aimed members of such parties to carry out these acts occur, the Soviet side expresses its willingness to provide the aimed detachments of Panjsher at their request with artillery and aviation support.

5. To exchange information and exert cooperative efforts to seek out Soviet and Afghan citizens who have disappeared within the region under discussion.
6. In the case of the heightened tensions to conduct meetings with the purpose of mutual consultations concerning the avoidance of renewed military actions in the interest of maintaining peace in the specified zone.
7. The effect of the present protocol extends throughout the territory stretching for 30 kilometers in both directions from the line of communication between Tadjhikan and Chaugani. Beyond these boundaries, Soviet troops and the armed forces of Panjsher have the right to conduct operations aimed at the liquidation of armed detachments and groups belonging to any parties which have not halted military action against the contracting side.
8. The present protocol takes effect from the moment of signing.

Source of Information:

The Operations Group of the MOSSSR in Afghanistan, December 1988 (the document was visaed by Lieutenant General B.V. Gromov. RA Minister of Defence, Shah Nawaz Tanai, and Ahmed Shall Masood).

Annexure-D

Jumbash-i-Islami-Milli-i-Afghanistan

(The Islamic National Movement of Afghanistan)

This Movement, which had first sprung up as an anti Pushtoon movement, under the name of National Movement of the Northern Region, was planned in the house of General Ibrahim Hazara, during November/December 1991 by twelve like minded non-Pushtoon, including General Ahdul Rashid Dostam (Uzbek commander of Uzbek Militatia); General Momin (Tajik Commander-Hairatan Lewa), Syed Mansoor Nadiri (Ismaili Shia - grand son of Syed Kayan), General Syed Jaffar Naderi (Ismaili Shia and son of Mansoor Naderi) General Ibrahim Khan (Hazara), Ghafoor Pehlawan (Uzbek), Ghaffar Pehlawan (Uzbek) and Ghulam Hussian Khan (Uzbek), to safeguard the interests of the non-Pushtoon. They had refused to obey the orders of General Juma Assek (a Pushtoon), Commander of the Northern zone and did not listen to even President Najeebullah who had directed replacement of General Momin with General Rasool Be Khudadadi (a Pushtoon). The movement was supported by non-Pushtoon members of the Politburo as well like Najmud Din Kawyani, Farid Mazdak, Syed Ikram Paigeer Abdul Wakil, Ghorbandi and even General Nabi Azimi. All the reconciliation efforts of President Najeebullah were sabotaged by Babrak Kannal, who had based himself at Mazar-i-Sharif and Hairatan and while acting as advisor to the movement, was taking full advantage of the situation to take his revenge against the President. Babrak even played a role in persuading Eng. Ahmed Shah Masood of Shura-i-Nazar to cooperate with the

Movement. The result of this coalition was the joint armed action against the Kabul regime. And this was the time when the peace plan of Mr. Benon Sevan of the United Nations, was to be implemented but because of the above situation it could not materialize. The ill effects of the same are continuing even till this time as well.

President Najeebullah, while sitting in the UN Guest house, Kabul, as a dejected man, after having been unceremoniously turned back from the airport, on April 16, 1992, from where he was to be evacuated to India by Mr. Benon Sevan, bitterly accused Iran for its complicity in the developments in the Northern Afghanistan saying that whatever had happened to Afghanistan would have not happened had Iran not fanned ethnic feelings there. In the ethnic game of Afghanistan Turkey too had remained silent which had become evident from the favours showered on General Dostam latter on like the 700 school and college scholarships for the children. Out of this 600 were reserved for the Northern Region and only 100 given to Kabul for the rest of the country.

The ethnic nature of the National Movement of the Northern Region could be seen clearly from the following documents:

- a. Letter of the Movement, addressed to OSGAP and National and International News agencies - March 1992. Annex 'A'.
- b. Statement of the Command of Armed Forces of Northern Region - March 1992. Annex 'B'.

As an after thought for giving the Regional movement a nationalistic and then an Islamic colour, it was redesignated first as the National Islamic Movement of Afghanistan and then Islamic National Movement of Afghanistan. But in spite of the redesignations of this Regional Movement, inclusion of Pushtoon and other parties and groups in its ranks as also its political aims and manifesto, the bias continues to remain ethnic which bias

appears, from time to time, in its various publications as well, in particular, the monthly 'Jumbash' of the Supreme Council of the Islami National Movement of Afghanistan.

General Addul Rashid Dostam, leader of the Islamic National Movement of Afghanistan, gained immediate international prominence, after his recognition in September 1992 by the Government of the Islamic Republic of Pakistan. The General paid his first visit, in secret, to Pakistan direct from the North (Shibeghan) on September 22, 1992 at the invitation of Pakistan, landing at KAMRA air base in his military aircraft. On 23 September he was received by the Prime Minister and the following day by the President of Pakistan and the Army Chief of Staff. He departed for Mazar-i-Sharif on the afternoon of September 24; 1992.

The Aims of the Movement

Following have been, the since revised, aims of the Islamic National Movement of Afghanistan:

- a. The religion of Afghanistan is the holy religion of Islam. The religious practices and commandments are to be issued by the government according to the Sunni and Shia sects of the religion (of Islam). Those individuals of the nation who are not the followers of Islam, will be allowed to freely own religious customs.
- b. Organization of a federal government, based on the principles of the holy religion of Islam and the wishes of the people.
- c. To defend the Islamic sovereignty, solidarity of the country, national independence and rejection of all types of foreign interference.
- d. Ensurance of all sided peace, in cooperation with all the people and the armed Muslim forces of the country.

- e. Ensurance of equal, political, economic and cultural rights to all the nationalities and tribes for the purpose of safeguarding and strengthening the national and Islamic unity.
- f. Ensurance of the women's right in accordance with the tenets of Islam.
- g. Organization of a strong regular national Islamic defensive system.
- h. Ensurance of good relations with the neighbouring Islamic countries and all the nations of the world based on national Islamic interests.
- i. Ensurance of social justice in all the spheres of life - material and intellectual - and rejection of all acts of cruelties and injustices.
- j. Reestablishment of the National Islamic Cultural System proportionate to the scientific progress of the contemporary world.
- k. Revival of the damaged economy and its future development, regard for personal, state and joint properties in accordance with the economic laws and to procure international assistance for the benefit of the nation and Islam.
- l. To officially recognize the national boundaries as recognized internationally.
- m. To prepare ground for the return of refugees to the country availing of internal possibilities and assistance of the United Nations.
- n. To pursue an independent, peaceful, neutral, positive and active foreign policy.
- o. To prepare a peaceful and clear atmosphere for holding free, direct and secret elections.
- p. Support to and defence of the Human Rights declarations and the charter of the United Nations, as commensurate with the tenets of the holy religion of Islam.
- q. Support to the national and Islamic independence movements all over the world.
- r. Due regard to the share of nationalities in the government establishments, proportionate to their population.

The Publications of the Islamic National Movement of Afghanistan

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|----|-----------------------------------|---|
| a. | Nashreeka | A weekly, published by the Cultural Centre of the Movement. |
| b. | Neda-i-Islam | A weekly of the High Supreme Council of the Movement.
Editor Mohammad |
| c. | Jumbash | Monthly of the High Supreme Council of the Movement.
Chief Editor Khaliq. Editor Qasime Karmand. |
| d. | Islam Yuli
(The Path of Islam) | In Uzbeki Language, Editor Ustad Mohammad Alam Labib. |
| e. | Armaghan | Cultural, Political and Social Affairs, Editor Engr. Jardar Mohammad. A monthly |

Publications (Independent and Other) of the Northern Region

- | | | |
|----|-------------------------|--|
| a. | Salam | Proprietor Zhakjar Hussaini, Editor Burhan Abdul |
| b. | Yuldoz | In Uzbeki |
| c. | Shokhak | Proprietor/Editor Ahdul Aziz Mukhtar |
| d. | Andesha | Proprietor Mohamamd Nazeef Mustothefi. Editor Asadulah Walwalji |
| e. | Kausar | Monthly. Editor Faiza Faleh (Publicity organ of Anjuman-e-Islami Khwahan Wilayat Balth. Hizb-i-Wahdat Islami Afghanistan). |
| f. | Bavan | (Monthly) Editor Ali Behrazi. Publicity organ of Anjuman-e-Farhang Daneshjoyan Musalman |
| g. | Khwanir Pirader-i-Islam | |
| h. | Payam-i-Tauheed | Publicity organ of Hizb-i-Wahdai-i-Islami. Editor Taqi Wahidi. Bi-monthly |
| j. | Haram | Publicity organ (Cultural Affairs) of Hizb-i-Wahdat-i-Islami. Editor Mohid Balkhi |
| k. | Wahdat | Proprietor Editor Mohamamd Moosa (Akrami) |

Organization of the Jumbash as in October 1993

The Executive Council

- a. President General Abdul Rashid Dostum
- b. Deputies
 - i. Al Haj Ustad Haji Mohammad Mohaqqiq
 - ii. Al Haj Ustad Atta Mohammad
 - iii. Engr. Mohammad Naseem Mehdi.

The Supreme Council

- a. President General Abdul Rashid Dostam
- b. Members
 - i. Al Haj Maulvi Mohanmad Usman Salekzada
 - ii. Dr. EL Murad Arghun
 - iii. Nur Mohammand Qarqin
 - iv. Turan General (Lt. General) Ahdul Majeed Eischi.

The Supreme Council of the Defence of Northern Region

- a. President General Abdul Rashid Dostum
- b. Deputies
 - i. Dagar General (Colonel General) Abdul Majeed Rozi
 - ii. Colonel General Abdul Momin
 - iii. Colonel General Imam-ud-Din

Fate of General Dostam - The Once Northern Warlord

With the emergence of Taliban on the political and military scene of Afghanistan, the situation in Northern Afghanistan also took a significant turn. General Ahdul Malik who once served as Dostam's Foreign Minister and was one of his close aides, switched sides on May 19, 1997 and collaborated with Taliban. He seized control of his native Faryab province, after capturing and disarming about 5000 of Dostam's troops and thus paved the way for the advance of the Taliban to Mazar-i-Sharif.

General Dostam had, since some time past, been fearing threat to his own person and

authority at the hands of some strong persons in the movement. He was suspected to have shot down the helicopter of General Momin who was returning to Hairatan after a meeting with him. Momin, a Tajik, had been trying to establish his independent authority at Hairatan, with the blessings of Bahrak Karmal, based there and the important Tajik Commander Engr. Ahmed Shah Masood. Dostam was again accused of eliminating Rasool Pehlwan, a very strong headed person and brother of General Abdul Malik. As a result of such accusations Dostam had to be more cautious about his own person. Sensing the situation at the end untenable and fearing arrest at the hands of General Malik in collaboration with the Taliban, the Uzbek warlord Dostam fled to Turkey. He, however, pledged to continue fighting against his rivals.

There are dramatic ups and downs in the Afghan civil war. In one of such dramatic developments the Taliban met with some reversals in the North after falling out with General Malik and the Hizb-i-Wahdat in Mazar-i-Sharif. This development encouraged General Dostam. He returned to the North via Uzbekistan and joined hands once again with the Hizb-i-Wahdat and Engr. Masood against Taliban. Patch up between Dostam and Malik seems, as yet, a distant possibility.

Constitution of the Islamic National Movement of Afghanistan

The Islamic National Movement of Afghanistan, within it some high political, military and social members, is formed of the political parties, Jehadi organizations, political and religious groups -and independent Muslim nationals, which fight for the following self specified objectives:

- a. The official religion of Islam is the holy religion of Islam. The religious practices and commandments are to be issued by the government according to the Sunni and Shia sects of the religion (of Islam).
- b. The Islamic National Movement of Afghanistan is based on the values and rules of Islam and is desirous of rejection of all sorts of foreign interferences in the country.
- c. Propagation of democracy and freedom of speech within the framework of the rules of Islam.
- d. Strengthening of independence, safeguarding solidarity of the country, reconstruction of the country, progress and protection of the social justice.
- e. Ensurance of equality of political, social, economic and cultural rights of all the nationalities and tribes of the country.
- f. Ensurance of unity and cooperation of all national and neutral forces.
- g. Prohibition of creation of any political set up which is against the Islamic beliefs.

Conditions of membership, duties and rights of the members of the Islamic National Movement of Afghanistan:

Article 1

a. Duties

1. Members of the Movement must be in possession of the Tazkira (National Identity card) of the country, be neutral and completed 15 years of age.
2. Must know and practice the objectives of the Islamic National Movement of Afghanistan.
3. Must take sincere steps in the path of security and protection of the Islamic National movements.

4. Should prefer the interests of the movement over personal and own groups and organizations' interests.

5. Should fight against social and moral evils.

b. Rights

1. Participation in voting

2. Right of difference in opinion and objections on decisions.

3. Right of contesting election and electing others in various places.

Article 2

a. Leading or Supreme Council of the Movement

The High Leading (Supreme) Council of the movement of the highest decision making members is composed of representatives, with equal rights, of all the Jehadi organizations and the Muslim armed forces, forming three fourth of the composition of the council while one fourth of the members are to be influential, national and Islamic individuals.

i. This council will have 313 members.

ii. In the first meeting this council will elect its president, two deputies and two secretaries from amongst its members.

iii. The council will meet once in three months. An extra ordinary meeting will be held, according to the need, by the President

iv. The council will elect, from amongst themselves, a 32 member Executive Council.

v. The Executive Council will be a permanently active organization.

vi. The Executive Council will, as per requirements, form subordinate commissions.

vii. The decisions of the High Leading Supreme Council and the Executive Council will be taken on majority of votes.

b. The Provincial and Uluswalis (Districts) Council

i. These councils will be like the High Council.

- ii. The number of members of the Provincial Council will be 21 and that of Uluswali council 13.
- iii. These councils will implement the directives and orders of the High Council and report their activities to it.

c. Miscellaneous Orders

- h. The High Supreme Council will organize the financial and economic affairs of the Movement in accordance with the laid down instructions.

The High Supreme Council is responsible for harmoniously organizing the affairs of justice, judiciary and legal processes.

Annexure-E

Text of Afghan power-sharing Accord

Bonn following is the text of historic power sharing agreement to form a post- Taliban government in Afghanistan. The accord, sealed after nine days of exhausting negotiations near the German city of Bonn, paves the way for a six- month interim administration to be headed by Hamid Karzai.

Agreement on provisional agreements in Afghanistan pending the re-establishment of permanent government institutions

The participants in the UN talks on Afghanistan in the presence of the special Representative of the secretary General for Afghanistan determined to end the tragic conflict in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights in the country.

Reaffirming the independence, national sovereignty and territorial integrity of Afghanistan

Acknowledging the right of the people of Afghanistan to freely determine their Islam, democracy, pluralism and social justice,

Expressing their appreciation to the Afghan mujahidin who, over the years, have defended the independence, territorial integrity and national unity of the country and have played a major role in the struggle against terrorism and oppression, and whose sacrifice has now made them both heroes of jihad and champions of peace, suability and reconstruction of their beloved homeland, Afghanistan.

Aware that the unstable situation in Afghanistan requires the implementation of emergency interim arrangements and expressing their deep appreciation to his Excellency

professor Burhanuddin Rabbani for his readiness to transfer power to an interim authority which is to be established pursuant to this agreement.

Recognizing the need to ensure broad representation in these interim arrangements of all segments of the, Afghanistan. Population, including groups that have not been adequately represented at the UN talks on, Afghanistan.

Noting that these interim arrangements are intended as a first step toward the establishment of a broad-based, gender-sensitive, multi-ethnic, fully representative government, and are not intended to remain in place beyond the specified period of time.

Recognizing that some time may be required for a new afghan security force to be fully constituted and functional and that there fore other security provisions detailed in annex I to this agreement must meanwhile be put in place,

Considering that the United Nations, as the internationally recognized impartial institutions has a particularly important role to play, in the period prior to the establishment of permanent institutions in Afghanistan.

Have agreed as follows

The interim Authority

1. General Provisions

An interim Authority shall be established upon the official transfer of power on 22 December 2001.

The interim Authority shall consist of an interim administration presided over by a chairman, a special independent Commission for the Convening of Emergency Loya Jirga and Supreme Court of Afghanistan, as well as such other courts as be established by the interim Administration. The composition and governing procedures for the interim

administration and the Special independent Commission are set forth in this agreement.

Upon the official transfer of power, the interim authority shall be the repository of Afghan sovereignty, with immediate effect. As such it shall throughout the interim period, represent Afghanistan in its external relations and shall occupy the seat of Afghanistan at the United Nations and in its specialized agencies, as well as in other intentional institutions and conferences.

An Emergency Loya Jirga shall be convened within six months of the establishment of the interim Authority. The Emergency Loya Jirga will former be His Majesty Mohammed Zaher, the former King of Afghanistan. The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to lead Afghanistan until such time as a fully representative government can be elected through free and fair elections to be held no later then two years form the date of the convening of the Emergency Loya Jirga.

The interim Authority shall cease to exist once the Transitional Authority has been established by the Emergency Loya Jirga.

A Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, in order to new constitution for Afghanistan.

In order to assist the Constitutional Loya Jirga prepare the proposed Constitution, the Transitional Administration shall, within two ,months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.

2. Legal Framework and Judicial System

The following legal framework shall be applicable on an interim basis until the adoption of the new Constitution referred to above

- i. The Constitution of 1964, a/ to the extent that its provisions are not inconsistent with those contained in this agreement, and b/ with the exception of those provisions relating to the monarchy and to the executive and legislative bodies provided in the Constitution, and
- ii. Existing laws and regulations, to the extent that they are not inconsistent with this agreement or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the interim Authority shall have the power to repeal or amend those laws and regulations.

The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the interim Administration. The interim Administration shall establish, with the assistance of the United Nations, a judicial Commission to rebuild the domestic justice system in accordance with the Islamic principles, international standards, the rule of law and Afghan legal traditions.

3. Interim Administration

A. Composition

The interim Administration shall be composed of a Chairman, five Vice Chairmen and 24 other members. Each member, except the Chairman, may head a department of the interim Administration.

The participants in the UN talks on Afghanistan have invited His Majesty Mohamed Zaher, the former King of Afghanistan, to chair the interim Administration. His Majesty has indicated that he would prefer that a suitable candidate acceptable to the participants be selected as the chair of the interim Administration.

The Chairman, the Vice Chairmen and other members of the interim Administration have been selected by the participants in the UN talks on Afghanistan, as listed in annex IV to this agreement. This selection has been made

on the basis of professional competence and personal integrity from lists submitted by the participation and UN talks, with due regard to the ethnic, geographic and religious composition of Afghanistan and to importance of the participation of women.

No person serving as a member of the interim Administration may simultaneously hold membership of the Social independent Commission for the Convening of the Emergency Loya Jirga.

B. Procedures

The Chairman of the interim Administration, or in his/ her absence one of the Vice-Chairmen, shall call and chair meetings and propose the agenda for these meeting.

The interim Administration shall endeavor to reach its decisions by consensus. In order for any decision to be taken, at least 22 members must be in attendance. If a vote becomes necessary, decision shall be taken by a majority of the members present and voting, unless otherwise suppurated in this agreement. The Chairman shall cast the deciding vote in the event that the members are divided equally.

C. Functions

The interim Administration shall be entrusted with the day- to-day conduct of the affairs of state, and shall have the right to issue decrees for the peace, order and good government of Afghanistan.

The Chairman of the interim Administration or, his/her absence, one of the Vice-Chairmen, shall represent the interim Administration as appropriate.

Those members responsible for the administration of individual departments shall also be responsible for implementing the policies of the interim Administration within their areas of responsibility.

Upon the official transfer of power, the interim Administration shall have full jurisdiction over the printing and delivery of the national currency and special dewing rights form international financial institutions. The interim Administration shall establish, with the assistance of the United Nations, a Central Bank of Afghanistan that will regulate the money supply of the country through

transparent and accountable procedures.

The interim Administration shall establish, with the assistance of the United Nations, an independent Civil service Commission to provide the interim Authority and the future Transitional Authority with shortlist of candidates for key posts in the administration departments, as well as those of governors and uluswals, in order to ensures their competent and integrity.

The interim Administration shall, with the assistance of the United Nations, establish and independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions. The interim Administration may, with the assistance of the United Nations, also establish any other commissions to review matters not covered in this agreement.

The members of the interim Administration shall abide by a Code of Conduct elaborated in accordance with the international standards.

Failure by a member of the interim Administration to abide by the provisions of the Code of Conduct shall lead to his/her suspension form that body. The decision to supposal a member shall be taken by a two-third majority of the membership of the interim Administration of the proposal of its Chairman or any of its Vice-Chairmen.

The functions and power of members of the interim Administration will be further elaborated, as appropriate, with the assistance United Nations.

4. The special independent Commission for the convening of the emergency Loya Jirga

The special independent Commission for the Convening of the Emergency Loya Jirga shall be established within one month of the establishment of the interim Authority. The sequel independent Commission will consist of twenty-one members, umber of whom

should have expectants in constitutional of customary law. The members will be selected from lists of candidates submitted by participants in the UN talks on Afghanistan as well as afghan professional and civil society groups. The United Nations will assist with the establishment and functioning of the commission and of a substantial secretarial.

The special independent Commission will have the final authority for determining the procedures for and the number of people who will participate in the Emergency Loya Jirga. The Special Independent Commission will adopt that rules and procedures specifying:

- i. Criteria for allocation of seats to the settled and nomadic population residing in the county.
- ii. Criteria for allocation of seats to the Afghan refugees living the Iran, Pakistan and elsewhere, and Afghans form the diaspora.
- iii. Criteria for inclusion of civil society organization and prominent individuals, including Islamic scholars, intellectuals and traders, both within the country and in the diaspora. The special independent Commission will ensure that due attention is paid to the represntion in the Emergency Loya Jirga of a significant umber of women as well as all other segments of the Afghan population.

The special independent Commission will publish and disseminate the rules and procedures for the convening of the Emergency Loya Jirga at least ten weeks before the Emergency Loya Jirga at least ten weeks before the Emergency Loya Jirga convenes, together with the dare for its commencement and its suggested location and duration.

The special independent Commission will adopt and implement procedures for monitoring the process of nomination of individuals for the Emergency Loya Jirga to ensure that the process of indirect election or selection is transparent and fair. The per-empt conflict over nominations, the special independent Commission will specify

mechanisms for filing of grievances and rules for arbitration of disputes.

The Emergency Loya Jirga will elect a Head of the State for the Transition

Administrations and will approve proposals for the structure and key personnel of the Transitional Admonition.

5. Final provisions

1. Upon the official transfer of power, all mujahidin Afghan armed forces and rmed groups in the country shall come under the command and be reorganized according to the requirements of the new Afghan security and armed forces.
2. The interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.
3. The interim Authority shall cooperate with the international community in the fight against terrorism, drugs and organized crime shall commit itself to respect international law and maintain peaceful and friendly relations with neighboring countries and the rest of international community.
4. The interim Authority and the Special independent commission for the Convening of Emergency Loya Jirga will ensure the participation of women as will as the equitable representation of all ethnic and religious communities in the interim Administration and the Emergency Loya Jirga.
5. All actions taken by the interim Authority shall be consistent with Security Council resolution 1378 (14 November 2001) and other relevant Security Council resolutions reacting of Afghanistan.
6. Rules of procedure for the organs established under the interim Authority will be elaborated as appropriate with the assistance of the United Nations.
7. This agreement, of which the annexes constitute an integral part, done in Bonn on this 5th day of December 2001 in the English language, shall be the authentic, text,

in a single copy which shall remain deposited in the archived of the United Nations. Official texts shall be provided in Dari and Pashto, and such other languages as the special Representative of the secretary-general may designate. The Special Representative of the secretary-general shall send certified copies in English, Dari and Pashto, to each of the participants.

Participants in the UN talks on Afghanistan

1. Ms. Amena Afzali
2. Mr. Hussain Anwari
3. Mr. Hedayat Amin Arsala
4. Mr. Sayed Hamed Ghazi
5. Mr. Rahmatullah Mousa Ghazi
6. Eng. Abdul Hakim
7. Mr. Houmayoun Jareer
8. Mr. Abbas Kazimi
9. Mr. Mustafa Kazimi
10. Dr. Azizullah Ludin
11. Mr. Ahmad Wali Massoud
12. Mr. Hafizullah Asif Mohseni
13. Prof. Mohammad Ishaq Nadiri
14. Mr. Mohammad Natiqi*
15. Mr. Aref Noorzay
16. Mr. Yunus Qanooni
17. Dr. Zalmay Rassoul
18. Mr. H. Mirwais Sadwq

19. Dr. Mohammad Jalil Shams
 20. Prof. Abdul Sattar Sirat
 21. Mr. Humayun Tandar
 22. Mrs. Sima Wali
 23. General Abdul Rahim Wardak
 24. Mr. Azizullah Wasefi
 25. Mr. Pacha Khan Zadran
- Witness for the United Nations by.
Mr. Lakhdar Brahimi
Special Representative of the Secretary-General for Afghanistan

Annexure-F

Intentional security force

1. The participants in the UN talks on Afghanistan recognize that the responsibility for providing security and law and order throughout the country resides with the Afghan themselves. To this end, they pledge their commitment to do all within their means and influence to ensure such security, including for all United Nations and other personnel of international governmental and non-governmental organizations deployed in Afghanistan.
2. With this objective in mind, the participants request the assistance of the international community in helping the new Afghan authorities in the establishment and training of new Afghan security and armed forces.
3. Conscious that some time may be required for the new Afghan security and armed forces to be fully constituted and functioning, the participants in the UN Talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment of Afghanistan of a United Nations mandated force. This force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centers and other areas.
4. The participants in the UN Talks on Afghanistan pledge to withdraw all military units from Kabul and other urban centers of other areas in which the UN mandated force is developed. It would also be desirable if such a force were to assist the rehabilitation of Afghanistan's infrastructure.

Annex-G

To Osgap and National and International News Agencies

The effective uprising of the aimed forces in the north, as the rights demanding movement against the internationalistic instigation of a one nationality chauvinistic sovereignty (a reference to Pushtoon), which had commenced with the ouster of Major General Momin, Commander of Hairatan Lewa (Brigade .group) and by Col. General Ahdul Rashid Dostam. Commander Jauzjan forces and Alhaj Sayed Mansoor Naderi, leader of the Ismaili sect, has taken a shape of an organized National Movement, Despite the deviating propaganda, which is being carried out against it by the local and foreign mass media, the logic of this uprising could be cleared to every prudent fellow, if attention was paid to the facts of the existence of many nationalities in the country and the continuance of a one nationality sovereignty during the last decades, particularly the intensification of national oppression during the last few decades, and more so after the Sam Coup d'etat of 1357 (1978)

This movement, in this sensitive moment of the history of the country, when all sided efforts, at national and international levels, are continued towards ending of the war tragedy, is a proof that the oppressed nationalities, which have suffered various cruelties of the tribal sovereignty, do not want to live further under an unlawful sovereignty of one nationality, against all norms of the human rights, Therefore, the command, representing all the minority nationalities, has risen against the chauvinistic sovereignty, other wise there is no 'enmity with the Muslim and brothers Pushtoon nationality and want only and

only their true rights in the political, economic and cultural spheres, on the basis of equal national rights of all the residents of the country and picking up the carpet of the ruling tribe (ending with the ruling tribe-principle), for ensuring the national unity, defence of the territorial integrity and protection of the freedom and independence of country.

Keeping in view the above, the mentioned commanders present the following two main proposals to all the sides involved in the Afghanistan issues:

In any type of negotiation and understanding, particularly in the 150 members gathering, which is scheduled to be held shortly on an initiative of the UNO, the participation of representatives of all the nationalities and religions (sects) of the country has to be taken in view, in accordance with the population (of each nationality).

Any type of sovereignty can not ensure the peaceful future of a country, if the issue of national rights and presence of actual representation of every nationality and religion (sects) in that sovereignty is not taken in view.

Annex-H

Statement of the Command of Armed Forces of Northern Region

The Muslim and struggling people of Baikh province, the honest citizens of the holy city of Mazar-e-Sharif:

Our ancient and beloved country has a long history of five thousand years. Our

independent ancestors were the founders of the oldest civilization and culture of

humanity in the world. The existing relics of the old vedic and avestai civilization, in the

south and north of Hindu Kush, symbolizes the solidarity of thoughts and psyche of me

peoples of our home land, every page of our glorious year book is a mirror, showing the

national unity of our country. The unity and solidarity amongst the independent and

zealous residents of this homeland have achieved further cohesion in the face of the

attacks and aggression of the aliens and existence of this unity has been the surety of

solidarity and territorial integrity of the country.

The brave defence put up by our ancestors against the world conquerors, during the space

of history, was the product of the solidarity of our nation. From past to the present, the

success of our 'Ghazi' and 'Mujahid' ancestors against the colonialist forces of the Great

Britain, and recently during the last decade, the defeat of the Soviet aggressive force, has

also been the logical product of national unity of our country. As the residents of all the

regions of our country has taken part unitedly in the construction of the history of the

country, hence they have equal shares in the structuring of our useful culture too. Really,

in our Islamic country, the religious faiths have not given any opportunity to disunity

amongst the various nationalities.

Regrettably, from the past few years of the nationalities residing in the Northern provinces

have been oppressed by a group of power hungry chauvinists and as a consequence the people were living in oppressed conditions. History will never forget the crimes of those persons who had indulged in treacherous activities for oppressing the culture of this very homeland.

Also, recently the satanic thoughts and designs of such persons were personified in the form of killers and uncultured persons and they had wanted to keep imprisoned the Muslim and struggling nationalities of the Northern Regions by repeating the ugly actions of their ancestors so as to destroy them with their unpardonable crimes. Ignoring all the heroism and bravery of the bold forces of Division 53, Division 80- and Lewa (bridged group) 70, which had been raised by them, during the war year, for the defence of territorial integrity and national unity of the country, they have resorted to propaganda against these forces of the rightful sons of the nationalities, residing in the Northern Regions and wanted to portray them as separatists in the mind of patriotic people. They had organized plans and plots to meet this very design. They, therefore, started rumours as if the hero Division 53 would subject the Mazar-e-Sharif city to plundering and savagery. They accordingly had planned to instigate the people against the brave and noble sons and painted the future as confused. Luckily, the brave defence of the oppressed people of the Northern provinces foiled these treacherous plots of the enemies and now the armed forces of the Northern Regions, i.e. Divisions 53 and 80 and Lewa 70, under the command of the brave men of this ancient territory. Col Gen. Abdul Rashid Dostam, Lt. Gen. Sayed Jafar Naderi and Major Gen. Ahdul Momin, respectively, have complete control over the situation in this province. Henceforth, all the nationalities residing in the Northern Regions, including Tajiks, Uzbeks, Turkomens, Hazaras, Arabs

and Pushtoons could live freely and brotherly in peace and tranquility together as before. The command of the armed forces of the Northern Regions, therefore informs all the Muslim and brave people of the Baikh province and the citizens of Mazar-e-Sharif to carry on with their daily works and functions with complete satisfaction and without worry.

The brave men of Divisions 53, 80 and Lewa 70 and all the armed forces of the Northern Regions are entrenched to defend your rights, position and nobility and any deviation and plot would be dealt with legally. We sincerely want of the respected countrymen to contact the headquarters of commands Of the Divisions 53 and 80 and Lewa 70, if they noticed any thing against the people's wishes.

Your life, property and honour is fully protected, Help comes from Allah.

Col. Gen. Abdul Rashid Dostam

Annexure-I

Role of the United Nations during the interim period

1. The special Representative of the Secretary-General will be responsible for all aspects of the United Nations' work in Afghanistan.
2. The special Representative shall monitor and assist in the implementation of all aspects of this agreement.
3. The United Nations shall advise the interim Authority in establishing a politically neutral environment conducive to the holding of Emergency Loya Jirga in free and fair conditions. The United Nations shall pay administrative attention to the conduct of those bodies and administrative departments which could directly influence the convening and outcome of the Emergency Loya Jirga.
4. The Special Representative of the Secretary General or his/her delegate may be invited to attend by the meetings of the Interim Administration and the Special Independent Commission on the Convening of the Emergency Loya Jirga.
5. If for whatever reason the Interim Administration or the Special Independent Commission were actively prevented from meeting or unable to convene the Emergency Loya Jirga, the Special Representative of the Secretary General shall, taking into account the Special Independent Commission, use his/her good offices with a view of facilitating a resolution to the impasse or a decision.
6. The United Nations shall have the right to investigate human rights violations and where necessary, recommend corrective action. It will also be responsible for the development and implementation of a programme of human rights education to promote respect for an understanding of human rights.

Annexure-J

Request to the United Nations by the participants at the UN talks on Afghanistan

The participants in the UN Talks on Afghanistan hereby:

1. Request the United Nations and the international community take the necessary measures to guarantee the national sovereignty, territorial integrity and unity of Afghanistan as well as the non-interference by foreign countries in Afghanistan's internal affairs.
2. Urge the United Nations, the international community, particularly donor countries and multilateral institutions, to reaffirm, strength and implement their commitment to assist with rehabilitation, recovery and reconstruction of Afghanistan, in coordination with the Interim Authority.
3. Request the United Nations to conduct as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan.
4. Urge the United Nations and the international community, in recognition of the heroic role played by the Mujahidin in protecting the independence of Afghanistan and the dignity of its people to take the necessary measures, in coordination with the Interim Authority to assist in the reintegration of the Mujahidin into the new Afghan security and armed forces.
5. Invite the United Nations and international community to create a fund to assist the families and other dependents of martyrs and victims of the war as well as the war disabled.
6. Strongly urge that the United Nations, the international community and regional organizations cooperate with the Interim Authority to combat international terrorism, cultivation and trafficking of illicit drugs and provide Afghan farmers with financial, material and technical resources for alternative crop production.

Annex-K

Composition of interim administration

Chairman	Mr. Hamid Karzai
Membership (of whom 5 will be Vice Chairs)	
Department of Defense	
Department of Finance	
Department of Foreign Affairs	
Department of the Interior	
Department of Planning	
Department of Commerce	
Department of Mines and Industries	
Department of Small Industries	
Department of Information & Culture	
Department of Communication	
Department of Labor & Social Affairs	
Department of Hajj & Auqaf	
Department of Martyrs & Disabled	
Department of Education	
Department of Higher Education	
Department of Public Health	
Department of Rural Development	
Department of Urban Development	
Department of Reconstruction	
Department of Transport	
Department of Water and Electricity	
Department of the Return of Refugees	
Department of Agriculture	
Department of Irrigation	
Department of justice	
Department of Air Transport Tourism	
Department of Border Affairs	

Annex-L

List of Provinces

1. Badakhshan
2. Badghis
3. Baghlan
4. Balkh
5. Bamyan
6. Farah
7. Faryab
8. Ghazni
9. Ghor
10. Helmand
11. Heart
12. Jauzjan
13. Kabul
14. Kandahar
15. Kapisa
16. Khost
17. Kunars
18. Kundz
19. Laghman
20. Logar
21. Nengrahar
22. Nimroz
23. Nooristan
24. Paktya
25. Paktika
26. Parwan
27. Samangan
28. Saripul
29. Takher
30. Uruizgan
31. Wardak
32. Zabul

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