AFGHANISTAN
HOW MUCH OF THE PAST
IN THE NEW FUTURE

edited by
GIANDOMENICO PICCO
ANTONIO LUIGI PALMISANO

ISIG - IUIES
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Afghanistan has always been a crossroads for armies, dynasties and kingdoms coming from central Asia and Persia and points west on their way to the Indian sub-continent. Nonetheless Afghanistan has always remained the same, even and above all while peoples near and far were changing. One change not to affect Afghanistan is the fact that it is one of the few Asian states to have remained independent when the others were becoming colonies or protectorates of Russia, Britain and France. Another factor is that modernisation, meaning the secularisation, opening and standardisation of ways of managing the public and private spheres with those in other countries, was much more limited in Afghanistan than elsewhere, and outside attempts to bring about modernisation have almost always proved disastrous. Lessons are to be drawn in this regard from the attempts made by the British, the Americans and above all the Russians.

The kingdom of Afghanistan, even when it became a state and acquired a constitution, remained a country of tribal peoples, with their own laws and lifestyles, of religion dominating political life, and of the Sunni tradition (with the Shia tradition in second place). Recent history has turned Afghanistan, for reasons including the above factors, into a sort of failed state. It has become a territory of limited sovereignty, it is at the service of fundamentalism which, through the domestic terror of the Taliban and the external terror of Al Qaeda, provides a model and a driving force for the new Islamic world opposed to the West and moderate Islam, and it offers up its state sovereignty to the assertion of an alternative “superpower”.

Although the distant and recent history of Afghanistan may be summed up in the above terms, the fact remains that for some years now this proud country has been working to build a state, bound up with the Afghan soul but at the same time open to dialogue and external relations.
Afghanistan. How much of the past in the new future aims to deal not only with the theme of peacemaking but the construction of a state able to create the conditions for achieving the values and the welfare of the Afghan people and the preservation of peace.

ISIG and IUIES are publishing this book because it falls within their cultural tradition. ISIG has often studied and planned the changes that can overtake a country moving out of a Communist regime towards a liberal democratic state. The study of the active operational processes through which such a transition takes place has involved many research projects and generated many scenarios built for the Balkan-Danube area and central and eastern Europe. IUIES, especially through its Masters for International Peace Operators stands as a forum for discussion, for the assessment of NGOs, for in-depth study and for training schemes for the students and experts working in its two-year courses.

With this volume on Afghanistan we would like to offer the international community, and hopefully those working in that country, ideas and assessment opportunities to help in the planning and construction of (at least part of) a peaceful future for Afghanistan.

Such is our intention, though we do not count ourselves among those offering a magic formula for the future of a self-sufficient Afghanistan. Many questions have yet to be resolved, not least the role of the international forces in the country and the role still being played by the Taliban and tribal forces.

The authors are scholars and experts with first-hand knowledge of Afghanistan because they have worked there, and it was from this point that their contribution to the book started.

Our thanks and recognition also go to the two editors for the knowledge and intelligence they have brought to bear in their work. Both have an inside knowledge of Afghanistan. Ambassador Giandomenico Picco, currently president of ISIG, has negotiated for peace in and for Afghanistan as UN Vice-Secretary-General and Professor Antonio Luigi Palmisano has worked there as a social and political anthropologist.

Alberto Gasparini
Director of ISIG
President of IUIES
I first landed in Kabul, in early 1981. It was the first time a UN plane had flown into the city, indeed the country, since the Soviet Invasion some 14 months earlier. The Soviet advisor had an office adjacent to that of the Foreign Minister. The intelligence personnel used Nissan SUVs to move around, so everybody knew who they were. The Afghan merchants in the city had always a brother in Peshawar, the Pakistani border town where the opposition had made its base. The fact that one brother was on one side and the other on the opposite political side was not hidden. Afghan carpets still made their way to Hamburg, the key center for world distribution to the West. Afghans with blue eyes were said to be the descendant of Alexander the Great who had chosen the valleys of Nouristan to leave his genetic mark. Whether those eyes had to do with a Greek hero or with the more recent encounter with the soldiers of the British Empire in the 1800, may be hard to tell.

Persian and Moguls, in earlier centuries, had also pushed Afghanistan into the heart of international politics though my feeling was that, the Afghans, like mountain people, would have rather be left at the periphery.

The greatest foreign expert of the country in the eighties was not a super-secret British agent or a perfect speaker of Dari and Pashtu trained in the bosom of the Soviet bureaucracy, but rather an Italian, Father Panigatti, a modest Catholic priest who had been made honorary Muslim and had been in the country for two decades. He knew so much that few years later he was moved to Poland! It was a further sign that the outside world still considered the country as un-important and a backwater of sorts.
The international reality during the eighties was still based on a balance of powers and a small country like Afghanistan was nothing else than a small and poor country affected by world events but unable to affect the world. The country seemed to be an accidental element in a political discourse between two sides which were residing far away. Some ten years later in 1994, as the civil war was waging in a country without a place, a young Afghan who had lost his job with the demise of Najibullah, the last communist President, wrote a letter to several leading political figures around the world. Afghanistan, he said, was been infiltrated by foreign fighters who are terrorizing a part of the Afghan population; if nothing is done they will soon export their terror well outside the country. To the best of my knowledge he received no answer to his “cri-de-coeur”.

* * *

In the 18th and 19th centuries, Afghanistan was at the center of the “great game” between the British and the Russian Empires. Today it has regained its status as a focal point of interests for world politics and indeed for world security.

Placed at the very front line of the cold war as of the late seventies, Afghanistan became a battle field where the two superpowers may well have fought “to the last Afghan” had not Gorbachev taken over the destiny of the declining Soviet Empire and accepted a negotiated end to the military presence in Kabul. But the effects of the confrontation of the eighties lasted much longer than the Soviet presence in the valleys of the Hindukush.

To fight a classic cold war conflict the West, for the first time, embraced a new kind of ally of convenience, one which wanted to make of that battle a “holy war”. (Some may have looked at it as a proxy conflict between the Soviets and the West, but for some fighters who came from Arab countries, it became a jihad.

Pakistan was of course the great supporters of the moujahdeens but the West provided consistent and continuous help to the Jihadists of the time. It was this marriage of convenience that gave training, weapons, encouragement and eventually hopes for even greater battles and victories to the Islamic fighters of those years. Why did the West get entangled in an alliance of sort with a religious ideology
which one day would turn against it? The Afghan war of the eighties, as it was told to me by a senior US official in 1985, “would never end” and would remain a cancer of the southern belly of the USSR.

It did not. By 1992 Usama Bin Laden reportedly said to a senior Saudi official that having defeated one super power in Kabul, he would now proceed to defeat the other superpower. In Afghanistan the West fed a monster; and as any monster it would turn against those who fed it.

To be sure in the early nineties Afghanistan appeared to have been forgotten by many as an irrelevant failing state. We did not know then that a failing state no matter how economically poor could still affect a much larger part of the world especially in the era of globalization. In the early nineties Afghanistan became again a country at war. It appeared to be a civil war at first but it was more than that... Directly or indirectly Afghanistan became also the battleground for another proxy conflict, this time between Saudi Arabia and Iran. The two major countries of the Gulf have been engaged in a “great game” of sorts ever since the Iranian Revolution of 1978 took away the mantle of the Prophet from Sunni shoulders and placed it on Shiite shoulders. The Talibans experiment - which I submit - would not have been possible without a Saudi - Pakistani “benevolence” to say the least, and its backbone, namely Al Qaeda, did play an important part in that “great game” between Riyadh and Tehran. The tribal and religious alignments within Afghanistan during those years are quite telling: Tajiks and Hazaras of Shiite faith were the opposition to the Talibans, of Pashtu tribal roots and of Sunni faith. The Taliban Emirate was recognized only by three countries, Pakistan, the UAE and Saudi Arabia whose economic support was indispensable. By contrast the Northern Alliance, whose back bone were the Tajiks, was strongly supported by Iran. The Tribal, religious and political divides which criss-crossed Afghanistan in the nineties reflected to a large extent the Saudi- Iranian antagonism. Forgotten by the West during the nineties, Afghanistan may have proven to be a failed state in the eyes of many in Washington and Brussels but one which would soon make the world take notice.

The decade of the nineties ended politically for Afghanistan on September 11th 2001 or more precisely with the Bonn Conference of December 2001 when the post-Taliban-Al Qaeda Afghanistan came
into being. And the success of that conference was made possible by yet another strange marriage, though limited in scope, between the US and Iran.

NATO and US military presence as well as a significant Iranian influence have placed Afghanistan again at the cross road of global geopolitics.

Yet the last few years have clearly been better than the previous twenty. A government is in place, elections have been held and most importantly, beyond all the “imperfections” which surely any analyst can find in the new Afghanistan, some 2 millions Afghans have already come back to their country (something which cannot be said for Iraq).

The international involvement in the country since 2001 was legitimized by the UN. The foreign troops in the country thus have a wide support of the international community and of the Kabul Government. The danger of fragmentation does not seem to loom in the horizon for the moment despite the many divides.

The last few years have also given the impression that despite many years of civil war a reconciliation of sorts is possible at least for a large majority of Afghans. The co-management of the country by the major tribes is the first indication that this is a new Afghanistan: gone are the days of Pashtu monopoly of power in Kabul (though it never was a monopoly in the farther provinces). But it is also true that both in the eighties and in the nineties much of the tribal set up was severely tested and undermined.

Graduality seems to be the key word to describe the process of reconstruction of the country: graduality in dealing with the warlords, graduality in dealing with the cultivation of poppies and the drug production, graduality in extending the power of the central government (an historic novelty), graduality in introducing and re-introducing women in all aspects of society (it was somewhat developed during the communist regime) and indeed graduality in building a more modern country.

To what extent the remnants of the old regime (the Talibans) and its supporters will do their best to hamper such a project, remains to be seen.

Afghanistan is but another theater where the battle for the hearts and minds of Islam is being fought; more specifically a competition
of sorts between a Weltanschauung based on a nation state system and one based on the concept of a borderless “umma”.

The confrontation that came about as a consequence of the Taliban-Al Qaeda experiment was much more significant than a military clash between a group of extremists and the West. What the military events of 2001 belie is another more significant process that had been affecting the Islamic world for some time in a more subtle way: the creation of a new Islamic identity, more powerful and true than any identity based on a nation or a tribe or a language: thus an ideology based on allegiance to the “umma”.

The Soviet occupation of Afghanistan offered a first opportunity for many Islamists from different countries but united by their belonging to the “umma” to rush to the “rescue” of country taken over by an “infidel” superpower. Indeed the Taliban-Al Qaeda experiment offered even more opportunities for gathering “believers” from different nations under a common banner and for a common cause. In other words Afghanistan became the theater par excellence where the ideology of “Hizb at Tahrir” (“the party of liberation” established some fifty years ago) received a major push as a transnational ideology of Islam in the era of globalization. It had languished for some thirty years before then but it got new winds in its sail thanks to Al Qaeda. Clearly during the fifties and the sixties any Islamic transnational ideology had to confront itself with the raising nationalism in the Arab world. But in the nineties, one could argue that the raising globalization, did offer a new opportunity to it.

I would submit that Al Qaeda is only one face of the transnational Islamic movement that pursues the creation of a new Caliphate and in the process, a real clash of civilizations.

It seems to me that it is rather misleading to look at Afghanistan today in itself without placing it in the context of the larger issues which are affecting the Islamic world. It may be useful to place it within a regional context where different versions of Islam are present and active both at the religious and political levels.

The country is but one piece of a mosaic where the future of the Islamic societies is being decided. The question is how important that piece of mosaic will be.
First Afghanistan does have both a Sunni and a Shiite population and at the moment they found a way to share political power after a civil war that was fought also along that religious divide.

Second the country had already met modernity both during the seventies and during the eighties under the communist regime. Thirdly tribal identity has had a significant role in Afghan society and still matters (though perhaps less than 30 years ago as it was undermined both by the politics of the anti-Soviet struggle and the Taliban regime).

Fourthly a significant number of expatriate Afghans have already come back, bringing with them their multiple experiences of life in different countries.

Most of all, Afghanistan has already had a taste of the ideology of Hizb-at-Tahrir through the Taliban and Al Qaeda years. Accordingly their choice will be based on facts rather than on theory.

My guess is that even if the military confrontation still under way in around Afghanistan between the remnants of the Taliban-Al Qaeda regime and the US and other forces, will come to an end, those who believe that Islam and modernity cannot coexist, will pursue infiltration attempts of Afghan society and indeed government.

It is interesting to note perhaps that these days the expression “interference in internal affairs” so much part of the international political lingo during the cold war, has almost completely disappeared from the vocabulary. Perhaps globalization has made the concept obsolete, perhaps the coming into the scene of non-state actors has made more difficult to point a finger at those who are interfering, the fact is that few countries have been interfered with, as much as Afghanistan in the last thirty years. But the term may really be outdated.

Is the creation of regional institutions an option? Is a (formal or informal) code of conduct among the regional powers and outside powers a possibility? Is the new ideological struggle between the system of nation states and the system of a borderless “umma” just beginning?

In the era of globalization there are no more small countries and large countries. A globalized world means an a-symmetric world, that is, not only the large will affect the small but also vice-versa. Afghanistan has proven this beyond any doubt.

* * *

ACKU
Quo vadis Afghanistan?

At the beginning of November 2005, the first five star hotel opened its doors in Kabul. A new Parliament got elected for the first time in decades. The elected members include women, former fighters from the eighties (of Soviet time war), technocrats but also former members of the Taliban regime.

A woman in Heart got more votes than any of the candidates fielded by the former war lord Ismail Khan. Non-Afghans have opened up consulting companies to assist new business coming in from abroad. But Taliban fighters continue to kill police officers and even to behead civilians.

Is Afghan society changing faster than any would have predicted? And if so is it changing ushering in some element of modernity that will necessarily engender more resistance from those who believe in the ideology of the borderless umma? Are those members of the Taliban either elected or integrated in the new set up ready to co-exist with a different Afghanistan than the one they tried to build in the nineties? Or are they simply infiltrating the system ready to carry out the call of Hizb-at-Tahrir at an appropriate time?

The mountains of the Hindukush may not hide oil or uranium though they still have lapislazuli if I am not mistaken, but surely the list of those who aspire to rule over it, is I submit, longer than we may know. Kipling’s pages are a memory of times gone by; but Afghanistan seems still to attract “men who would be king”.
This collection of essays offers a glimpse into some of the main questions still open in present-day Afghanistan. Many of them owe little or nothing of their origin to the social and political context determined by the last regime or the post-war situation. They are questions which stood earlier, and I would define them as structural in nature. As such they should be approached with great care, and the solutions to them, if they exist, will require a great deal of time - more than may be encompassed by a single generation or a single operation, no matter how complex.

The authors have extensive experience on the ground in central Asia, and some of them have spent years in Afghanistan working for the programmes of their respective institutions. I have worked with some of them on a daily basis during my time in the country as Senior Advisor to the Rebuilding the Justice System Programme, which was placed under the supervision of the Italian government by the Bonn Agreement of 5.12.2001.

As highlighted in a number of the essays in this collection, the reconstruction of the Afghan justice system is a particularly complex process. Not only do several justice systems co-exist, they are not always mutually intelligible, their structures are ramshackle and insufficient, but above all every player involved in the process has manifested a different approach. The various international and local actors have divergent visions of law and adopt different attitudes towards the prospect of constituting a justice system that is modern, efficient and above all fair.

Many difficulties have been faced, but the will to overcome them shown by the vast majority of the actors involved was clearly a strong one. My own contribution to this volume describes some of the issues I tackled on the ground. It deals with the relationship be-
tween formal justice, which is still weak in local perceptions, and informal justice, which is widespread, deep-rooted and vigorously applied in Afghanistan. This means that the relationship between the state and ethnic groups, that is to say clans and lineages, is the fulcrum for the development of the political and social dynamics of contemporary Afghanistan. That is an objective fact and must be recognised as such if the country is to engage in a constructive dialogue on this and other themes.

I am also quite pleased to have been able to get an ultra-statist jurist of the likes of Giuseppe di Gennaro, Special Coordinator for Judicial Reform in Afghanistan, to agree that ethnic groups exist and that they are political actors of primary and indisputable importance. I suspect that the jurists who give due consideration to this point are few in number. And I now suspect that even fewer in number are those with sufficient trust in those who are not magistrates to admit that one non-magistrate, in this case an anthropologist, may act as though these political and juridical actors, lineages and clans, actually existed, and may engage in dialogue with them. Convincing magistrates that the new Code of Criminal Procedure may and must be accompanied by a special law enabling the jirga, shura and maraca chian to play an active role in criminal justice is, as we all know, a considerable achievement. What will then become of these goals, considering the politically ephemeral nature of the guidelines for intervention in fields of this kind? In any event, if the work of the Rebuilding the Justice System Programme does go in this direction, it will have laid the foundation for an effective process of mediation between the state and the tribal societies and in so doing will have performed an enormous service for modern Afghanistan. There are some who perhaps understand but unfortunately do not accept what this dialogue may entail … .

Nor was it very easy to work on the transformation of the Code of Criminal Procedure voluntarily confined to the “monocratic courts” in a Code of Criminal Procedure valid for all courts. Indeed, with regard to questions of order in Afghanistan, it makes sense to think in terms of the dyad law/code rather than in terms of the dyad law/non-law (1).

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1. Several decades ago Llewellyn K., A. Hoebel (1941), The Cheyenne way, tautologically observed that “the law has teeth”. Even without written codes.
There is law in Afghanistan, it is just that law is perceived as law and not as a code, no matter how many codes there are (and there are too many). And what is interesting to recognise here is that while a code is a state product, law is not necessarily the product of a state. To an anthropologist of law, then, above all to one of my own school, order is not the exclusive right of the state. Indeed, in other parts of the world, social order sometimes coincides with the order of the markets.

I acknowledge, then, that there is no justice without law, but I observe that there is justice without a code. This form of justice depends on the relationship between law and power - the code is a clothing of the law, the state is a form of power. Law and code do not always coincide, and the “legitimacy” of the code is of limited interest as a source for the promotion of order: between “proclaimed legitimacy” and “established order” I can see no identity which may be accepted *ipso facto* by social actors. If social actors and their perception of justice system rebuilding programmes are ignored, state law will have little chance of seeing its provisions absorbed and accepted.

The first part of this volume therefore deals with the relationship between institutions and social actors in the political, social and juridical context.

The Afghan Constitution of 2004 is analysed by Domenico Coccopalmerio as an example of juridical globalisation, that is to say the international exportation of a standardised model of government with its historical roots in the late 18th-century revolutions in Europe and the United States of America. It appears to be a *stratified* constitution, made up of three parts: a theological head, an institutional skeleton of Enlightenment origin and a clause of deferment, ambiguous and ambivalent, to the first and second parts. Article 3 provides: «In Afghanistan no law may be contrary to the principles and precepts of the sacred religion of Islam». It stands as the fulcrum of the whole Constitution, laying down a transcendent principle to guide the action of future lawmakers. This action is subject to absolute limits and imbued with values represented by the principles of Islam. The path of legislative action is definitively mapped out in the same article. In the same way, political parties, education and the family, three basic pillars in the life of a state, are unequivocally brought under the protective and controlling umbrella of Islam.

The question posed by Coccopalmerio is therefore the following
one: to what extent may the two models, theological and Enlighten-
ment, be reconciled? They live side-by-side in the text of the Constitu-
tion, they belong to its language, they enter into its provisions - but
this co-existence is linguistic and textual, it is a normative mixture
which constitutional evolution will have to resolve through the work of
legislators and the political and social practice that will be established.

Coccopalmerio observes that either the theological model - which
is only partly indigenous - will prevail over the Enlightenment one,
depriving it of any innovative potential, or the latter will (less prob-
ably) get the better of the former, bringing about a Western-style
democracy in Afghanistan. In actual fact the development of the
relationship between the theological model - the sacred principles of
Islam - and the Enlightenment model - human rights and fundamen-
tal freedoms - is fictitious: a decision has already been made in favour
of the former. Constitutional theory teaches us that there are two ty-
pes of constitution: rigid and flexible. The former can be amended and
modified only through procedures requiring qualified majorities in
parliamentary and popular votes, while the latter may be amended and
modified simply by passing a law. The Afghan Constitution presents
the following paradox: it is a flexible constitution in everything but
one point, and on this point is it not simply rigid, that is to say open to
modification only by procedures involving qualified majorities, it is
not modifiable at all. Article 149, Paragraph 1, is unequivocal: «The
provisions regarding adherence to the principles of the sacred religion
of Islam and the Islamic republican regime shall not be subject to
amendment». Article 149, combined with Article 3, which precludes
absolutely that any law may run counter to the principles of Islam,
completes the circle, concludes Coccopalmerio, and determines, at
least within the terms of the constitutional text, the failure of the
Enlightenment operation of juridical globalisation in Afghanistan.

In his paper, Wadir Safi resumes the analysis of the ethnic que-
stion, seeing in the new Constitution the potential
to solve ethnic

crises. In the period from 1978 to 1992, marked by the Russification
of the judicial system, formal observance of the shari’ia was accom-
panied by the exploitation of ethnic groups in the service of ideologi-
cal interests and national and international policy. This amounted to
a continuation of the British policies of divide and rule, pitting ethnic
groups against each other, for or against the regime in Kabul. This
resulted in incessant fighting which continued even after the fall of the regime in 1992, until 1996.

After the fall of the Taliban, observes Wadir Safi in his capacity as former Minister, the new Constitution now represents a new order which is able to recognise the rights of ethnic groups and legally and democratically strengthen national unity in Afghanistan.

Afghanistan is part of an international context, however, and its internal dynamics are not and never will be independent of events in central Asia, as Matteo Piacentini clearly shows in his essay. In the 19th century, he recalls, Russia and Britain used the central Asian states as pawns. Now the superpowers find themselves at the mercy of forces which they themselves have helped to unleash but can no longer control. The threats coming from Afghanistan - the Taliban, Osama bin Laden and the MIU - have highlighted the weakness of the three great powers, bringing them closer together and forcing them into unprecedented bilateral agreements. The great powers now have a common interest in weakening the Taliban and the MIU and strengthening the military capacity of the central Asian states, even though they remain adversaries with regard to oil and gas pipelines and the exploitation of central Asian energy resources.

The Great Game has changed, as Piacentini observes, but China, Russia and the United States remain rivals in central Asia. Domestic politics in Afghanistan will be profoundly affected by this structure of relations between superpowers and regional powers, and by how that structure is perceived and represented by social and political actors.

The second part of the volume looks at the interaction between social actors and the economic and political context. Among the main vehicles of communication processes stands man, the social actor. Nicolò Gasparini’s paper focuses on the situation in the refugee camps in Pakistan and on the Federally Administered Tribal Areas (FATAs) located on the country’s north-west frontier, forming a belt of territories bordering on Afghanistan.

Following September 11th, recalls Gasparini, most of the Pashtun clans settled in the FATAs felt involved in the attack, and the Islamic jihad reappeared. The Mujaheddin veterans of the war against the Soviet army turned themselves into fighters in the “defensive jihad” against the new empire of evil, represented now by the United States. Musharraf’s alignment with the United States still arouses a good
deal of opposition in Pakistani society, bringing “cries of betrayal from Islamic fundamentalists”. Such cries, heard all over Pakistan and in Afghanistan, are amplified by the miserable conditions endured by refugees in the camps.

Gasparini observes that at least 548,105 Afghan families, some 3,049,268 individuals, are living in Pakistan, the majority born in exile. And many of them continue to inhabit the sounding-board of hardship and extreme expression of suffering that is the refugee camps. The camps are dominated by problems centred on the gender issue, protection for vulnerable groups and healthcare facilities. Of even greater political weight are the lack of job opportunities and poor skills differentiation which, along with a lack of accurate information on the situation in Afghanistan, keep refugees from returning home and leave them with little option but to continue to give voice to their growing dissatisfaction and political marginalisation inside and outside their country of exile.

The existential suffering felt because of the present situation is intertwined with the perception of an absence of justice, regarding current economic and social conditions and past policies, on the part of those living in Afghanistan, in addition to the refugees. This is the context in which Isabella Castrogiovanni analyses the question of transitional justice, that is the measures by which Afghan society accounts for past crimes in moving from the previous regimes to democracy, emerging from the ravages of protracted internal armed conflict. Justice is not a luxury in present-day Afghanistan, states Castrogiovanni: pursuing accountability and fighting impunity for past and present human rights violations are absolute prerequisites for the achievement of a durable peace. But seeking justice in the aftermath of a conflict requires a combination of different approaches which ought to be framed in the historical, religious and cultural context of the country.

The continuing search for an ultimate and universal “grasp of justice” has been long debated among scientists. But seeking the universal attributes of justice without establishing compromises, adds Castrogiovanni, is perhaps an impossible task. Indeed, to point out the need for compromises and variations on the path towards justice is neither to engage in an exercise of cynicism nor to support cultural relativism. On the contrary, it seems both politically and morally acceptable to pursue progressive targets in the field of justice without
For the future of Afghanistan

giving up on fundamental universal values of human dignity. Castro-giovanni’s essay is a careful and documented attempt in this direction, conducted on the basis of a two-year residence in the country as a UNICEF officer.

But the present and past hardships of a whole nation are reflected particularly acutely in the life of its women, as highlighted by the essay contributed by Giampaolo Mezzabotta, a WHO physician with highly intensive experience in TB programmes in Afghanistan.

The reconstruction of the health service stands out as an indispensable priority in any attempt to improve the health standards of the Afghan population, at present one of the worst-off in the world. But such efforts cannot be separated from the rebuilding of other social institutions, especially the education system. As Mezzabotta observes, the lack of education for women in Afghanistan is one of the main factors contributing to the increase in maternal and infant mortality in the country.

He goes on to say, however, that it would be extremely simplistic and misleading to tackle Afghanistan’s serious structural problems by identifying their origin with the previous regime. The worst health indices in the country, including the most horrifying rate of maternal mortality in the world, are to be found in the north-eastern province of Badakshan, where the Taliban never held power. Mezzabotta’s analysis, surprising in many ways, runs counter to a number of stereotypes about Afghanistan. His three years of work in the country enabled him to advance some careful considerations on the debate on relations between the public and private sectors in the Afghan health service.

Hector Maletta presents an essay describing how agricultural and livestock production are significantly improving in Afghanistan even though production decreased in 2004, due to excessive rains at some critical times in certain parts of the country, and near-drought conditions in others. In 2002 and 2003, Maletta notes, agricultural production strongly recovered, and the 2003 cereal harvest was estimated to be an all-time record. But agricultural infrastructure remains weak, especially in irrigated areas damaged by years of neglect and still afflicted by the protracted effects of the long recent drought.

Irrigation systems are a major concern. There are in all Afghanistan about 3 million Ha of irrigated land, of which only 1.9 million were cultivated in 2002-3. Some land under irrigation is not planted
every year due to the intermittent nature of water supplies. The rest has remained idle because of damaged canals, low water levels in reservoirs and aquifers, and illegal water management depriving some farmers of access to water.

Animals were decimated by the drought, but stocks are now slowly recovering. Assuming they recover their previous numbers, an increase in years to come is also to be expected. Growth in incomes and shifting consumption patterns would probably entail increased consumption of food of animal origin, and growth in chicken consumption will probably be the fastest.

The country will improve its agricultural self-sufficiency. By 2020, Maletta predicts, the country may be a clear net exporter of agricultural products. However, it may devote less land to cereals if other crops are more profitable and competitive cereal imports are available.

The outlook for 2020 formulated in Maletta’s paper is a rather conservative account of possible growth in agricultural production. More can be achieved with additional investment in irrigation rehabilitation, improved roads, storage and processing facilities. The country may achieve better food availability and much better food access and nutrition for most of its citizens.

But there is more than self-sufficiency to food security, and indeed self-sufficiency itself is no longer regarded as a mark of food security. What is more important, concludes Maletta, is “sustainable access to food at the household level”.

The third part of these collected essays deal with Afghanistan’s cultural and historical roots.

The iconographical representation of Afghanistan in the mass media is closely bound to the Taliban turban and veiled women. The best-known icon of the country is a woman clad in the so-called *burqa*. Ariane Baghâi looks at the self-representation of Afghan women’s identity, re-examining the concept of the veil. Women wear black or white veils wrapped around their faces; they wear just a “symbolic” light veil that doesn’t even cover all their hair; or they look like blue turrets, walking around protected from stares as though they were in a tent with a little window in the front. But men too wear veils, in different forms. Each style, states Baghâi, sends out a precise message: they are uniforms signalling ethnic membership, status, military rank, lifestyle, etc.
The veil, argues Baghāi, whether a man’s turban (a long strip of cloth wound around the head), or a woman’s chador or chadri, sends out a message which transcends simple membership of Islam. It is a feature of cultural and ethnic identities which pre-date Islam and which with the advent of Islam took on contextually specific connotations. The veil, therefore, with its immediate visual impact, has been the object of political exploitation at the hands of Islam as much as by the West.

It seems indeed that a number of extreme positions in Islam, that is to say the silence-and-consent of mullahs and muftis, do not merely concern the veil but entail the segregation and immobility of women in the absence of the express authorisation of a close male relative. In Saudi Arabia the written permission of a father, husband or brother is required for a woman to be able to travel or simply spend a night away from home, in a hotel. In this context of extreme positions, the veil is not the emblem of rights denied but the sign of required respect.

In the Afghanistan of the Taliban regime the problem was not the chadri, or the burqa of globalised terminology, but the simple fact that women could not go out of the house. And that is still the case.

The chadri, concludes Baghāi, is really the least of the problems facing Afghan women, it is not even representative of the problems they have. And this should be finally acknowledged.

The extent to which Afghanistan may derive a shared cultural identity from an awareness of the vast artistic heritage brought to light by archaeological digs is a question as important as it is unexplored. Giovanni Verardi’s essay highlights the importance of Afghanistan’s cultural heritage, whose profile was dramatically raised in February 2001 when the Taliban blew up the colossal Buddha statues of Bamiyan, which they perceived as a symbol of the western value system. But the wars did not spare Islamic sites either.

Afghanistan is at the crossroads of Asia, and the heritage of the ancient civilizations that have left their mark on its territory since the third millennium BC is unparalleled. Verardi, who has been conducting major digs in Afghanistan for many years, observes that this immeasurable heritage runs the risk of being wiped out not only by conflicts, but above all by black market in works of art. The ancient mounds dotting the Afghan landscape used to be left untouched by
the local population, and the drain of artefacts outside the country was very limited in the past. The situation has now changed to the extent that the robbing of archaeological sites and the smuggling abroad of sculptures, ceramics, metalwork, manuscripts, etc. has become a crucial feature of the country’s economy. The work of Afghan and foreign archaeologists has thus become indispensable for safeguarding the Afghan cultural heritage.

Verardi gives an account of the Italian Mission, which started its activity in the 1950s. Other foreign teams followed, first coordinated by Kabul Museum and later by the Institute of Archaeology. The Italians concentrated their work in Ghazni, where the palace of Masud III was excavated and restored. They were the first to introduce the idea that sites should not only be excavated for scientific purposes, but should also be restored to become part of a shared vision of history - a perspective that is only possible within the framework of a modernising reform movement.

The task which lies ahead of the Afghan authorities, international organizations such as UNESCO, and foreign countries like Italy, Japan and France is extremely complex. Fieldwork has started again, states Verardi, and there are good grounds for thinking that the reorganisation of the institutions in charge of the protection of the cultural heritage and the promotion of scientific work will open a new chapter in the complex history of archaeological research in Afghanistan.

This collection of essays on Afghanistan expresses a sentiment of heartfelt sympathy for this remarkable country and its people.

I am sure I speak for all the authors represented in this volume when I wish Afghanistan the brightest possible future. I hope that the Afghan people will be able to find their way to the solution, or at least the reformulation, of the many problems that face them. And I am convinced that the splendour of this land, as rich as it is now impoverished and martyred, and the wonderful people who live in it will ensure that this path can be found. Despite the many contrasting forces, coming from all the cardinal points, that meet or clash there, but on the strength of the Afghan desire to open up to the world, in a position of equal dignity and with its own identity alongside the other nations, we know that Afghanistan will continue to be one of the fundamental crossroads in human history.
Part I

LAW, STATE AND SOCIETY
Afghanistan’s first constitution dates back to 1923 and was promulgated by King Amanullah. Though it is a modern document, containing some radical reforms of Afghan society, it was firmly rooted in tradition.

The British presence in Afghanistan had brought the country into direct contact with western culture, and the modernising ideals at large at the time were mostly of western origin. However, while in India reforms had been mainly introduced by the British, who set up legal bodies and systems of a wholly western character, in Afghanistan the permanent state of war made it impossible for them to take part in the country’s reconstruction and development.

Amanullah was aware that Afghanistan was the first Muslim state in Asia to have regained its independence from Britain, and he hoped to be able to encourage the other Muslim countries to rid themselves of the yoke of foreign domination. Known as a radical reformist, Amanullah attempted to introduce a wide range of innovations in a short time. The main features of these reforms are exemplified in the Constitution and the new laws which followed it.

The 1923 Constitution stands as Afghanistan’s first step on the path towards more advanced constitutional systems. Rather than copying western models, Emir Amanullah and his advisers, who included the Turk Qadir Bey (generally considered to have played an important role in drafting the document), sought an original solution suited to Afghan society and its limited political development.

Article 1, with the declaration that Afghanistan is «a completely free and independent state in the management of its own internal and foreign affairs and that the entire country, overall and in its individ-
ual parts, is under the command and authority of His Majesty the King», clearly establishes that the state envisaged by the Constitution is a monarchy.

It may be seen from the second Article that the state being designed in 1923 was non-secular. Afghanistan is declared to be of Muslim religion, though the Indian and Jewish faiths are given protection on the condition that they do not offend public order and custom. As pointed out by Amedeo Giannini, the 1923 Constitution cannot be judged by western standards. It should be acknowledged, however, to contain remarkably innovative features, considering the time of its drafting and the disastrous conditions afflicting the country. Its clear tendency towards progression and innovation is also shown by the fact that it contains the first recognition that state law may operate alongside the shari’a. Indeed, that its modernisation was considered excessive is witnessed by the fact that only a year after its promulgation the Constitution was subjected to conservative modifications by the Loya Jirga.

Afghanistan’s second Constitution was promulgated in 1931 by Mohammad Khan. It was called the Usulnama-e asasi. From the term usulnama, meaning “code of principles”, emerges a clear intent to curtail the role of state law in favour of the shari’a in conformity with the Hanafite tradition.

A more moderate Constitution than its predecessor, it presents a number of structural differences and some substantive divergences from it. It has no preamble, but begins with an invocation: “In the name of the most merciful Allah...”. The first Article makes it immediately clear that this is the Constitution of a religious state. It lays down that Afghanistan’s faith is the sacred religion of Islam, under the Hanafite doctrine, and that the King must profess that creed. Protection is provided for Afghans of the Hindu and Jewish religions, on the condition that they obey the rules of good conduct and propriety.

Without major modifications, the 1931 Constitution inherited the content of its predecessor, which was based on the 1921 law of Fundamental Organisations, which in turn drew heavily on the Persian Constitution of 1906-07. As witnessed by the many references to Islam, there is a clear predominance of the shari’a in every sphere of individual life and state activity, with a heavy emphasis on national-religious rigour (Articles 6, 37 and 108). Every time reference is
made to the *shari’a* and state law in the same context, the former always prevails. The 1931 Constitution may therefore be said to have been drafted on the basis of the classic doctrine whereby sovereignty belongs to Allah.

Afghanistan’s third Constitution was promulgated by Mohammad Zahir Shah on October 1st 1964. It was called *Qanun-e asasi*. The term *qanun*, meaning “state law”, has much greater force than the names given to the previous Constitutions (*Nizamnama* and *Usulnama*). This may be taken as an immediate signal of the novelty of this document, that is to say the establishment of an order of priority between state law and the *shari’a*. This Constitution is much more modern and western in character than its two predecessors.

In January 1977, after the 1973 revolution, Mohammad Daoud convened the Loya Jirga to discuss plans for a new Republican Constitution, without letting it be known that a commission had already been appointed to proceed to the drafting of the definitive document. The most remarkable feature of this new Constitution is the absolutely central role it assigns to the President, transforming the Republic into a virtual dictatorship. This is exemplified by the preamble to the document, in which Daoud declares, “I, Mohammad Daoud, first President of the Republic of Afghanistan, hereby undertake to carry out the mandate conferred upon me by the first Loya Jirga of the republican state (…), signing this Constitution and proclaiming its entry into force”.

The Constitution proper opens with an indication of fundamental objectives and economic principles. As such, it presents not only formal but substantive differences from the previous Constitutions, whose initial structures were virtually identical:

- King - rights of subjects (1923)
- King - rights of subjects (1931)

The 1997 document departs radically from this pattern since, at least at the beginning, the matters dealt with are nowhere to be found in the previous Constitutions. They are: Fundamental objectives - economic principles - state. The first chapter, fundamental principles, contains some highly demagogic passages asserting that the exercise of power is in the hands of the people, composed mainly of farmers, workers, intellectuals and young people (Article 2); that the right to
work (Article 9) and to primary education (Article 10) must be guaranteed so as to strengthen democracy progressively on the basis of social justice and the interests of the people (Article 4).

The second chapter is devoted to economic principles. The fact that this subject is dealt with before classic themes such as the structure of the state, Parliament and citizens’ rights and duties bears witness to Daoud’s determination to establish a socialist economic system or at the very least a mixed economy.

In the third chapter, Articles 20 and 21 are a repetition of Article 1 of the 1964 Constitution, with one difference: in the latter the Afghan state was defined as a “constitutional monarchy”, while the state is now defined as “republican”. Another important divergence, underlining the tendency towards secularisation, is to be found in Article 22, which deals with the Islamic religion. Like Article 2 of the 1923 Constitution, Article 1 of the 1931 Constitution and Article 2 of the 1964 Constitution, Article 22 recognises the sacred religion of Islam as the national religion, but absent here is the provision that “the State performs religious ceremonies according to Hanafite doctrine”.

The Afghan Constitution of 2004 is an eminent example of juridical globalisation. By this term I mean the worldwide export of a standardised model of government which can be traced to western European political history starting from the late 18th-century revolutions in continental Europe and the United States of America. Over time, this became the dominant political model. Since 1989, that is to say since the end of the bi-polar world and its ideological competition, since the end of the Cold War and its Manichean division of the world, since the assertion of the US as the world’s only world power, the model has acquired still greater dynamic and invasive force.

But the theoretical roots of this European-western model are to be found in the Enlightenment conception of human nature and 18th-century history. As a vision of mankind and his historical evolution, the Enlightenment comprised two essential characteristics: abstraction and optimism. Enlightenment Man (then) and the man of Enlightenment vision (now) is a man born of the French Revolution, he is the man of the French Revolution (Marx would call him the man of the emergent emancipating 19th-century bourgeoisie), he is Gallivan Man. Gallican Man presents himself as the universal bearer of a universal political emancipation which has its exemplary formulation
in the Declaration of the Rights of Man and the Citizen. Gallican Man propounds and imposes on other peoples (starting with Napoleon’s imperial policy) his existential (and therefore institutional, juridical and cultural) model as the only one to be followed.

Alongside the abstract nature of the Gallican model is its optimism. Whether the advocates of the model are thinkers or practical people - politicians, legislators, bureaucrats, soldiers - they hold the conviction that it is unbeatable, invincible, incomparable, not so much in terms of the ability of other models to compete with it, but in the deeper sense that history itself is its unfailing ally in its destiny to succeed in conquering the entire world in a continuous development over time ensured by its very excellence.

It goes without saying that the abstract, self-sufficient and self-referential Gallican model entails first and foremost the dis-identity and negation of the peculiar, specific indigenous traditions and cultures expressed by every social group, every ethnic group, every people and every nation. The Gallican model is the enemy of every difference, every specificity, every otherness. It is anti-other, because the other is the negation of its uniqueness and therefore of its pretence to be the dominant force in the universe.

The setting for the Gallican model is a planetary setting in which different actors, others, their cultures (and their processes of dialogue and intercultural collaboration) are the first obstacles to be attacked and removed. The opposite of the Gallican, or Enlightenment, model is that of multi-culturalism and inter-culturalism, which is the model of pluralism and tolerance. In contrast with a globalised, exclusive, excluding, mono-centric identity is a multiple dialogue-pursuing identity. It should be pointed out, however, that the anti-Gallican multi-cultural model contains the danger and the germ of relativism and dogmatism (as does Gallicanism) if the various cultures close themselves to the outside and consider themselves self-centred and self-referential.

What has just been outlined can be found in the 2004 Afghan Constitution as a current example of juridical globalisation. A rapid but careful reading of the text gives grounds for the conclusion that it is a stratified constitution, and as such is composed of three levels. There is a theological frontispiece (or head), an institutional skeleton, and a clause of deferment which stands in an ambiguous and ambivalent relationship with the other two levels.
The frontispiece, or head, is the premise, the basic foundation of the Afghan Constitution - represented by the principles of Islam. These principles are clearly and explicitly mentioned in Decree No. 103 of January 27th 2004, in which the president of the provisional Islamic state of Afghanistan approves the text of the new Constitution. «I pray almighty God», states President Karzai, «that this Constitution, based on the principles of Islam, will strengthen national unity in the affirmation of democracy, contribute to building a prosperous civil society at every economic, social, political and cultural level and light the way of the Afghan people and state towards peace, equality and national fraternity». These are words of introduction, of propitiation, of national rhetoric in which the principles of Islam, clear and firm, are mixed with language of an Enlightenment flavour (generic, optimistic, egalitarian and fraternal).

A more detailed perusal of the fabric of the constitutional text reveals that the stratified structure, or three-part composition, mentioned earlier is repeated and confirmed. In the Preamble, which as a rule in constitutional texts contains an outline of the whole constitutional order, we read, «with firm and pure faith in God - may his greatness be exalted with submission to the will of God the most high - and in the creed of the sacred religion of Islam». This is the repetition and the reassertion of the theological head, of the meta-juridical level that has its roots in the principles of Islam as the ultimate and true theoretical, cultural and pedagogical matrix of the whole of the new Constitution.

In the first Article of the Constitution the meta-juridical, theological and religious assumption, understood as the guiding principle, the helm, the Pole star, is reiterated with absolute and unquestionable conviction. The Article states, «Afghanistan is an Islamic republic and is an independent, united and indivisible state». Article 2 lays down that «the state religion of the Islamic republic of Afghanistan is the sacred religion of Islam». And Article 3 asserts that «in Afghanistan no law may be contrary to the principles and precepts of the sacred religion of Islam».

In my judgement Article 3 is the key article, the heart, the centre of gravity of the entire Afghan Constitution because it fixes a transcendent principle to guide the action of future legislators. This action is subjected to unquestionable limits and is invested with values,
which are those of the sacred religion of Islam. The detailed path of legislation is definitively laid down in Article 3.

The fixed, determined path of future action is also to be found in Articles 35, 45 and 54 of the Constitution. Article 35 deals with the right to form social, material or spiritual organisations under law. But the programmes and articles of foundation of social and party organisations (the apparent pluralism of civil society) must not run counter to the principles of the sacred religion of Islam or, it is added, to the provisions and values of the Constitution itself, values which are identified with those of the Koran. Article 45 deals with education policy in the new state. But here too, the enormous task of educating the Afghan people is to be based on the processes of the sacred religion of Islam. Lastly, exemplifying the coercive power of Article 3 on themes of strategic importance for the new Afghanistan, Article 54 deals with the family. It lays down that “the family is the fundamental element of society and is protected by the state. The state shall adopt the measures required to guarantee the psychological and physical well-being of every family, especially of mothers and children, and children’s upbringing, eliminating the traditions which are contrary to the sacred religion of Islam”. It is therefore clear that political parties, education and the family, the three crucial components in the life of a state, are brought unequivocally under the protecting and guiding umbrella of Islam.

Further evidence of the supremacy of Islam is the formula with which the President-elect and government ministers are sworn into office: «I swear in the name of almighty God - may his greatness be exalted - to obey the precepts of the sacred religion of Islam».

The second part, or second level, of the Afghan Constitution is its institutional skeleton. The Constitution is divided into twelve Titles which lay down the organisation of the public powers of the state, including the President, the government, Parliament, the Loya Jirga and the judiciary. However, while the inspiration and guiding light of the Constitution as a whole are the sacred principles of Islam, the institutional structure is based on human rights as ideologically and historically derived from the Euro-centric Enlightenment.

The Preamble states that Afghanistan adheres to the United Nations Charter and undertakes to observe the Universal Declaration of Human Rights of 1948. It also states that the creation of a free civil
society is based on the guarantee of the fundamental rights and freedoms of the people. Article 6 echoes the same concept, establishing that the foundations of the state are social justice and the protection of human dignity and human rights. Article 7 proclaims that «the state adheres to the United Nations Charter, to the international treaties and conventions signed by Afghanistan and to the Universal Declaration of Human Rights». Article 58 establishes an Independent Commission for Human Rights with the function of ascertaining and guaranteeing respect for human rights in Afghanistan and promoting their extension and protection.

The first question to present itself to the scholar is the compatibility of the theological model with the Enlightenment model. They co-exist in the text of the Constitution, they both belong to its language, they both play a part in the arrangements it lays down. But the co-existence is linguistic and textual only. The normative mixture is one that constitutional evolution (through the work of legislators and the ensuing political and social practice) will have to clarify and resolve.

With regard to co-existence, some observers may indicate two possible lines of development. Either the theological model (which is partly indigenous and internal) will prevail over the Enlightenment model (external and imported), emptying it of any innovative potential and reducing it to a mere verbal simulacrum of juridical globalisation, or (less probably) the Enlightenment model will gain the upper hand and make Afghanistan a democracy in the western image. Complicating matters on the ground is the fact that the country has a deep-rooted and complex tribal structure still marked to a certain extent by a nomadic tradition. This is highlighted in Article 4, which lists no fewer than 14 ethnic groups; in Article 14, which provides for programmes to improve the life of nomads; and in Article 16, which lists eight spoken languages, among which Pashto and Dari are accorded official status.

In the face of such a complex reality the Constitution seems devoid of any acknowledgement of the need for processes of cultural mediation between the aims of the Enlightenment model and the historical-social situation on the ground. It is as if the model and its aims had fallen from the sky and been proposed in the conviction that they would succeed in a miraculous feat of self-production. This is the sort of pure illusion that presages the disasters brought about
by those who presume too much in themselves and in the lessons they give to others and to history as a whole.

The same observers might add that much will depend (that is to say whether the first or the second line will prevail) on the use to which is put the third part, or third level, of the Afghan Constitution, that is the clause regarding legislation. Another factor which strikes the reader of the document is that especially in Title I (on the state) and Title II (on citizens’ fundamental rights and duties) many constitutional provisions conclude with a repetition of the formula “in conformity with the law”.

In other words, the practical determination of the contents of the constitutional provisions is deferred to the future decisions of parliamentary legislators. Article 2, for example, having proclaimed Islam as the state religion, allows that «followers of other religions shall be free to practise their religions and faiths within the limits laid down by law». The same applies to Article 9 on the conservation, use and management of natural resources and other state assets, Article 10 on capital investment and private businesses based on a market economy, Article 23 on the right to life, Article 24 on human freedom and dignity, Article 34 on freedom of expression and press freedom, Article 35 on political parties, Article 40 on private property and Article 47 on the freedom of science, culture, literature and art.

In actual fact the alternative development (which may be postulated by some scholars and observers) between the theological model (the sacred principles of Islam) and the Enlightenment model (human rights and fundamental freedoms) is bogus, it is already decided in favour of the first option - the victory of the theological model - for the following reasons. Constitutions are known to fall into one of two categories: rigid and flexible. Rigid constitutions (such as the Italian Constitution) lay down that they may themselves be amended and modified through procedures requiring parliamentary majorities and qualified popular votes. Flexible constitutions, by contrast, may be amended and modified through normal legislation. Italian history has one instance of a flexible constitution, and that was the 1848 Constitution of the Kingdom of Sardinia.

In this respect the 2004 Afghan Constitution has the paradoxical characteristic of being completely flexible except in one point. And in this point, in this hard nucleus, it is not only rigid, that is to say
modifiable only by means of special procedures and majorities, it is not modifiable at all. And what is this immutable nucleus? Once again, it is the sacred religion of Islam. Article 149, paragraph 1 is unambiguous: «the provisions on adherence to the principles of the sacred religion of Islam and to the Islamic republican regime shall not be subject to any amendments». Article 149, combined with Article 3, which requires the absolute compatibility of all laws with the sacred religion of Islam (the two articles are in fact the two sides of the same coin) complete the circle and determine, at least within the terms of the constitutional text, the failure of the Enlightenment enterprise of juridical globalisation in Afghanistan.

We shall see what type of constitutional experience develops in Iraq, which is the stage for another experiment in juridical globalisation (or rather, in the westernisation of democratic processes) under the Enlightenment policy of exporting democratic values.
1. Post-Taliban judiciary Afghanistan

“Sir, we solve ninety percent of the cases outside of the courts, in our country!” That was one of the first things I heard said to me in Afghanistan, which is perhaps why I remember it so well. It was uttered by a highly-qualified and respected judge, as an amused prosecutor looked on. We were in their courtroom. Some time and a good deal of research later, today I agree (1). And I would add that the cases are solved as the cases in any court in the world are solved. But I would further state that the question “cases solved/justice done” remains unvaried there as elsewhere: power on the ground interacting with the law and producing it takes on the name of justice. More simply, the rules don’t match but the legal game is the same.

Afghanistan is perhaps coming out of 23 years of unbroken warfare - a war which was also a civil war. Any activity relevant to the constitution and upkeep of legal systems, including the administration of justice, is therefore bound up with the problem of the social order. By order I mean the congruent articulation - from the perspective of the social actor - of the social, political and economic institu-

1. I carried out fieldwork in Afghanistan from November 2002 to December 2003. In my capacity as Senior Advisor for Judicial Reform in the Rebuilding the Justice System Program, placed under the Italian government by the Bonn Agreement of 5.12.2001, I worked closely with the Judicial Reform Commission, founded in November 2002. With this and other Afghan national and international institutions (Kabul University, UNICEF, the WHO, etc.) I organised and conducted extensive research on the formal and informal institutions active in dispute resolution processes.
tions in the country and their integration in the national state system and the international system regulating relations between states.

This means that at the same time there are several orders in Afghanistan. First, the order of the state and other instances of power centralisation; namely, the order of forms of organisation which have or may have control on the ground (such as warlords); second, the order of religion (religious fraternities, for instance). Lastly, there is the order of tribal society, which has always regulated with certainty - though its effectiveness and results have at times been historically questionable - the social life of millions of people, in recent years as well as the distant past. And it would continue to do so in the future, of course, if the state were to fail again. It is this order and the interactions between state structures and tribal structures in the production of law, taking the example of Pashtun society in southwest Afghanistan, that I shall discuss in this paper (2).

Any activity bound up with the administration of justice in Afghan perspective has to come to terms with the contemporaneous presence of these two different forms of establishing and maintaining order.

The various social and political actors have one certain and fundamental shared experience - experience of the war; otherwise, their cultural, linguistic and even religious context is very different. Thus, professionals working in the law and the administration of justice have been trained in at least three different schools, are the product of three historical epochs: the monarchic state, with its specific interpretation of Islam; Soviet occupation, with its secular version of the state; the Taliban regime (3), with its recovery of an ideal - when not

2. The Pashtun are a segmentary society, whose demographic and political dimensions are well known, divided between Afghanistan and Pakistan by the Durand Line in 1899. For Pashtun ethnography, see Barth (1959; 1967; 1969), Mazur (1967), Anderson (1975), Akbar Ahmed (1976), Glatzer and Casimir (1983), Glatzer (1996).

3. «The Soviet period completely and profoundly modified the country’s social and administrative structure», said a senior UNDP official during a private conversation. My view is that the social structure has not been modified at all. In terms of the administrative structure, I can go along with “complete” change but it was certainly not profound. In trade, especially the retail trade, the old administrative structure seems destined to reassert itself with the cessation of intense hostilities. The general availability of goods -
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a complete fantasy - of the original Islam, an Islam that is traditionalist before being fundamentalist (Roy 1985). All these actors are participants in the worlds which formed them, of which they are the product, and it is in the direction of those worlds that they continue – sometimes unwittingly - to move. These different legacies of knowledge and experience may add up to so many sources of conflict, just as they may also stand as significant contributions to the constitution of modern Afghanistan. But the legal experience of all the Afghans who have returned to their country is of fundamental importance, technically essential, for the construction of the contemporary legal system. Similarly, the contribution that can be provided by the international community through the institutions specifically designed for the Rebuilding the Justice System Program is displaying a certain substance when it comes into contact, however tenuous and intermittent, with local actors.

The situation of the system of justice in Afghanistan is therefore a complex one, even in the variety of the actors involved. It is undoubtedly very different from the vacuum predicted by a number of analysts, by the International Human Rights Law Group, the International Foundation for Election Systems and the International Resources Group which early in 2002 began to work within the Consortium for Response to Afghanistan Transition - they foresaw an almost com-
plete institutional vacuum in the country. But if the national actors are on the scene it is because the institutions they represent, and of which they are an expression, are also present. And present they are, though not ostentatiously or particularly well integrated with the state.

If there is a problem with the legal system in Afghanistan, it is the excessive number of legal systems which are present, and this cannot be solved by the de jure or de facto elimination of one or more of them. For that matter, it was also a problem in the past.

In this regard it is necessary to acknowledge a possible coexistence, or better still a synergy, at least in principle, between the various legal systems, or between the systems of constituting and maintaining order. And this is what seems to me to be the aim of the present leading players in the production and exercise of law: in the Ministry of Justice, in the Judicial Reform Commission, in the Faculty of Shari’a, in the Faculty of Law and in many other public and private associations, and above all in the remarkably efficient corporations which are the Pashtun lineages (4). Equally open to dialogue between the legal systems seems to be the position of the Supreme Court, represented by two figures who have an intimate knowledge of the shari’a and are endowed with considerable charisma: Abdul Hay Shinwar and Mohammed Hashim Salehi (5).

4. I have had a number of meetings with all of them: from the Minister of Justice in Kabul to the representative (whose name was known only to the ethnographer) of the small jirga of remote border villages in impervious areas, poor in everything except law, though in fact deprived of many, too many, rights. And I found them to be particularly open to the technical discussion of specific and specialised features of Muslim and western law alike. All of them invited me to visit freely the offices of the various courts and participate in all kinds of jirga sessions to gain experience in local and national legal procedures and deepen my understanding of the Afghan legal system, still not susceptible to easy definition.

5. Abdul Hay Shinwari - now replaced by Abdul Salam Azimi -, Chief of the Supreme Court, is a man aged 84-87, gifted with extraordinary energy and rare charisma. He squatted on the armchair behind his desk, never letting his legs dangle, wrapped in an elegant green chapan. On the desk in front of him is nothing but an electric bell - which he rang every so often to summon assistants and associates to whom he would communicate, or simply nod, precise instructions, which were immediately acted on - and a Koran wrapped in a cloth to protect it from the possible impure or insuffici-
Difficult though the context was, the Afghans showed a clear willingness to make themselves understood and discuss specialised subjects. They also extended repeated invitations to develop dialogue and explore themes, and repeatedly showed interest in other forms of law, especially procedural law, produced by other historical and social experiences. The will to solve contingent problems was and still is predominant.

2. State system, local law and custom

The local organisation of order, that is to say the production of law and the administration of justice, rests - from the perspective of the state and its legal and judiciary structures - on what is known as custom. Custom is a source for the production of law in many legal systems. This does not mean that custom is itself law, it means that custom may participate in the production of law. There is thus no customary law in itself; but there is a customary law that is law in that it is recognised as such by state authority, which considers it a resource for the production of social order, local and national.

Custom is characterised by a non-written origin and in this regard finds itself in an opposite position with respect to the law, the written source par excellence.

«Custom is the consistent and uniform behaviour of members of society», recite old ethnologists and young jurists. But is behaviour which is recognised and accepted by all as a rule - at least by all those sharing the same social organisation and structure - to bind and unite, itself a founding factor of the network of social relations, thus qualifying as a legal rule. It is at this point that the state recognises it, or may recognise it, as law.

We may identify two major threads of interpretation of this particular source of law. In the first, custom performs an interpretative function, compulsory in its effects, on a par with the law (for some jurists), to the extent of allowing the tacit abrogation of law not only
through disuse, but by means of an established practice that introduces a contrary norm. In the second interpretation, custom is valid and effective up to the contrary use of the law; the law therefore constitutes the limit to the effectiveness of custom - interpretative custom may always be admitted as an extenuating or aggravating factor in the action in question.

Local law may derive from custom. This is the law which originates from the common needs and interests of the members of a given place, organised in associations and corporations. For the Pashtun, the tribe, in the sense of kheil and qaum, is the primary form of association and, organised in lineages, the primary form of corporation. And we know that the corporation is an institution, that is something socially and politically very concrete and, as an institution in itself it is de facto juridical order, before becoming source of law (6).

In many cases these customs constitute one of the most substantial nuclei of law: from usus loci, to consuetudines civitatis, towards the definition and establishment of what is known as ius proprium. This ius proprium has not been achieved de facto in Afghanistan, although it has been achieved de jure in various consecutive Constitutions - including the new Constitution, approved by the Loya Jirga on January 4th 2004 after many months of preparatory work and three weeks of intense debate.

While some specific laws draw on custom - water laws, pasture laws and land laws, but also commercial and maritime laws - and this is accepted by all systems, it is in criminal law that a sharper distinction has to be made between state law and the system of custom, and if possible a synergy has to be achieved between them.

In western countries the process of codification, carried out over time by the patient cumulative work of jurists, may lead to a loss of validity of custom. In such codes, normative usages - norms resulting from the reiterated practice of certain behaviours on the part of a local community - are distinct from interpretative usages - everything

6. Cfr. the sharp remark of Santi Romano, outstanding jurist and philosopher of law: «Ogni ordinamento giuridico è una istituzione e viceversa ogni istituzione è un ordinamento giuridico: l’equazione fra i due concetti è necessaria e assoluta». («Any legal system is an institution and vice versa any institution is a legal system: the equation between the two concepts is necessary and absolute») (1951: 96).
which is ambiguous has to be interpreted according to the general practices of the place where the contract was concluded (7). But in the most recent European codes normative usages are defined as actual sources of law after laws and regulations, and it is laid down that in matters regulated by law usages are effective only when specific reference is made to them (8).

Before achieving an operation of codification that might satisfy state institutions and other social institutions - the tribes first of all - and thus before achieving an undifferentiated employment of customs as sources of law, post-modern society requires the development of a jointly participated culture of state law. This culture of the law may be gradually built up starting from a re-elaboration of usages and customs, classified and categorised in specific contexts by means of a careful and continuous process of research and assessment in the direction of the formulation of state laws of nationwide validity, or state laws of local validity, in specific economic, cultural, social and political contexts (such as pastoralism or pastoral farming and agriculture); in any event, laws which are always certain. These same laws are thus infused with a culture of tolerance and are able to reinforce the unity of the state while respecting the differences of local cultures. This applies, in principle and from the state perspective, when the state understands inter-institutional dialogue - including tribes - as a constituent process.

3. Criminal law: order in Pashtunistan (9)

In state law, which is highly formalised, criminal law is conceived as a substantive body in itself. Also the informal criminal code, which is only occasionally written, is literally understood as a system of values and a system of goods, while the informal code of criminal

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7. In the 1942 Italian Code, for example, Article 8 limits reference to usages and customs to the cases where the law itself makes appeal to their validity integratively.

8. See for example Articles 1, 8 and 9 of the Italian Civil Code and similar articles in other European codes.

9. I use the term with the meaning implied by its non-nationalist use by the eastern Pashtun. The Durand Line, though a historical and political reality, has no real existence in the dynamics of the segmentary society.
procedure - sometimes written - is germinated *sic et simpliciter* by structural and contingent social and political relations.

As is the case in western societies, in the Afghanistan of the Pashtun all the attention of social actors is directed towards the criminal code, even though, paradoxically, the criminal code is formed and organised around the social position of the woman as a unit of value and yardstick of being-in-the-world. On the other hand, unlike in western societies, the code of criminal procedure preserves a situational spontaneity for the social actor, who in this context becomes a judiciary actor, that is to say it is contracted and redefined *ad hoc*.

The interest of the state, and of the *in fieri* Afghan state in particular, is obviously different. It wishes to define roles and status with the distribution of posts and offices, with the practice of the legal system as a re-ordering of the powers in society, and with their consequent establishment as institutions. As primary attention is devoted to the (formal) code of criminal procedure (10), the reformulation of the (formal) criminal code remains suspended and it simply continues in its unchanged form to be the interest and concern of judges and prosecutors.

The two legal systems - the informal Pashtun system and the formal one of the Afghan state - are thus in collision: values versus procedure. In the Pashtun view as much as in the view of the state, “justice” and dynamic equilibrium are invested in values, but the hierarchies of values do not fully correspond. In the view of the state, “legitimacy”, that is to say the “legality” and stability of power, is invested in legal procedure; in the Pashtun view, by contrast, we find the continuation of the etiquette and good manners which mark everyday inter-personal relations, and therefore a foundation in social ethics.

Furthermore, with the accent on the adversarial system at the expense of the inquisitorial system (11), in the legal process the state

10. This is partly the handiwork of foreign advisers who are unable to think law in terms other than those expressed by Hans Kelsen in 1945, even in historical, political and cultural contexts which are absolutely different.

11. That is the trend I have observed in the present process of Rebuilding the Justice System, running counter to the practice and theory, poorly consolidated though they were, of pre-Taliban Afghan state law. It is a trend launched and supported by international consultants of the Common Law school. It is a trend I consider harmful and likely to lead to serious problems in the near future. The adversarial system *de facto* allows cases to be won
On informal justice in Afghanistan

is weakened, to the advantage of private interests (warlords and trans-national holdings) and the disadvantage of private/collective interests (tribes and civil society). And the state does not even seem to realise this, thus failing to fulfill the role attributed to it by Islamised tribal society: guarantor of the welfare of all, in its capacity as a power designed to “promote good and impede evil”.

There remains open, then, the question of “justice” - the relationship between law and power (Plato). In other words, values find themselves in opposition to procedure, that is to say Wert is in opposition to Mittel and Zweck: the tribe finds itself facing the state in the process of the foundation of order.

What are these values? The three greatest values for the Pashtun, rural and urban alike, are: zan - woman, to the extent of a sort of paradoxical gynaecentric obsession; zamin - land, ya patei da, ya kunatei da, “land is like the anus (or the vagina)” (a Pashtun legal aphorism par excellence) so it is something gold cannot buy (12); zar - gold, with the meaning of measure of “debt” besides a measure of goods or purchasing power, that is to say considering gold as a mortgage on a social bond that transcends (Aufheben) kinship and territory.

You cannot erase what is not written in sacred texts or secular texts but is inscribed in the vocabulary, what is a constituent part of the vocabulary of everyday life, the daily life of millions of social actors.

It is thus the passage from formal law to informal law that is difficult, and vice versa. It is the passage between local systems of production of order and the natural system of harmonisation of society that is difficult to achieve and arduous to communicate.

What is more, in each ethnic group in modern Afghanistan, and even more so in the Pashtun, every individual belongs from birth to a

by the party with the greater economic, political and social strength, while the state stands aside in the name of democracy, which is thus reduced to a plutocracy. This is the principle of the free market applied to the justice system in a context of institutional weakness.

12. At present it is impossible to purchase land and agricultural holdings in Pakhtia, just as it is extremely difficult to “buy women” or other sexual favours. The Pashtun themselves say that these goods are either conquered by force or are obtained as an exchange gift or through affection, certainly not for money. In confirmation of this they cite the absence of prostitution in their country.
clearly defined group. This group is continued on the male line and in Pashtun is called *qworaneh* - lineage; the extended groups formed on the basis of lineages are called *kheil*, clans, and *qaum*, tribes.

All members of a lineage cooperate with each other. When a social actor thinks he needs help he turns first to his relatives present in the *qala* and then to the others (13), whether in remote rural areas, urban peripheries or even urban centres. If a man is involved in a dispute, the members of his lineage unite in his support, ever mindful of the principle “my enemy’s enemy is my friend”, held valid the world over but not always right for that. Accuser and accused alike have the support of the lineage or clan, and “right” inevitably loses importance to the interests and obligations of loyalty towards the corporate group. Both parties to the dispute have the right to this support. Indeed, being born in a patrilineal descent group of this kind entails specific rights and duties in the system of exchange of goods and above all services. That is why the lineage, and even more so the *kheil*, is an irreplaceable principle of social, economic, political - and even juridical - organisation.

Disputes, and crimes are conceived as disputes and conflicts between local and/or descent groups, are settled by mediators and arbiters. These are not immediately judges. After hearing one version of the case that *ipso facto* affects the whole community, the mediators go to the lineage of the opposing party and listen to their words, their vision, their representation of the action in question (14). This process may be a protracted one and be repeated several times, until the

13. The *qala* is the identity of the local and descent group, taking the architectural form of a square or rectangular settlement - ranging from a few hundred square metres to several hectares in area - surrounded by high, robust clay walls with watchtowers. Its size depends on the economic conditions of the *qworaneh*. Its form, with the walls enclosing a frequently well-tended vegetable garden and the towers or turrets at the corners, provides a sound defence against outside attack, even withstanding shells from grenade launchers. The length of the perimeter walls, the number of internal rooms and the quality of the well or wells are proportional to the prosperity of the inhabitants.

14. Perhaps it is possible for the state, too, to identify people mediating between informal law and formal law, between usages and customs on one hand and the law on the other - and so give more specific training to these mediators and arbiters in the context of the process of transition in Afghanistan.
mediators and arbiters find a “reasonable” solution to propose. The process is a long one - though not as long as the equivalent in a normal court of law - because it is a matter of settling a dispute rather than punishing a guilty party in the narrow sense. When the parties finally agree and accept any sanctions proposed by the mediators and arbiters who have now become judges, the case may be considered solved - with no need for an appeal, though appeals are possible up to the third instance.

4. Jirga and centre

The local institution within which and by whose hand disputes are resolved is called in Pashtun the jirga or maraca - the assembly of “elders” (15). These are the primary institutions in the management of the difficult relationship of formal (rasmi)-informal (ghairi rasmi), centre (markaz)-periphery (durdast), national (milli)-local (mahali) (16).

This antagonistic relationship, not only clearly present but a structural factor of local society in Afghanistan, is thus manifested in administrative and legal terms: the primary courts - District Courts -, the secondary courts - Provincial Courts - and the Court of Appeal in Kabul consult the “elders” at the District level before passing any sentence. That is to say they are in principle required, and are often keen, to activate the jirga. They usually confine themselves to recognising the decisions of the jirga; at other times they have an interest in ignoring them, and find justification for so doing in “modern” or “religious” interpretations of state law.

Who are these “elders”, these moslihin risafadan - literally “white-beards”? In actual fact they speak in nobody’s name, they represent nobody in a segmented society. They are an abstraction in which the term moslihin risafadan may designate and institute a category of persons, even quantify them, but above all legitimise them in the assigned task. It is not he who is an elder who is able to perform this

15. The integration of the jirga in the Afghan legal system is said to have been suggested to the Supreme Court in 1350 of the Hegira by Ghulam Ali Khan, Director General of the Administration of Justice, which is said to have approved the measure in 1353, introducing it initially in the Districts of Shakardara and Bagram.
The jirga is legitimised and thus endowed with authority (Autorität) because it forms ad hoc at the specific request of clearly defined interested parties and forms in specific contexts which are socially recognised as such because they are bringers of conflictual processes, that is to say processes which disrupt the presumed social order-equilibrium.

At this point a number of doubts must be expressed, here in the form of questions put to an interlocutor yet to be identified: is it not the case that conflicts are sometimes devised so as to be able to define the interested parties who then legitimise the institutionalisation of a specific group as “elders”, and therefore the monopoly of sanctions, and thus the foundation of Zentralinstanz? (17). And is it not the case that the elaboration of conflicts to constitute ethnic, social and political identities occurs perhaps more often than is acknowledged?

The jirga deals de facto with civil cases, and criminal cases too, in cooperation with the Primary Courts. In the Afghan vision of Muslim law, cases of criminal import are conceived as being constituted by two different fields on which two different forms of action take place: divine action, from which man is obviously entirely excluded, and human action as performed by man as such and not necessarily by the state. On the latter field of action men, gathered in the jirga and the maraca, which are historicised variations of the shura, legitimately decide as men. Sura XLII of the Koran, known as the “Sura of the Shura”, establishes the whole juridical praxis of the jirga and even the institution of the vendetta, particularly in verses 37-41, as legitimate juridical institutions of Islam.

The contribution made by the Pashtun jirga and maraca to the administration of justice in Afghanistan is incalculable. In the system of formal justice a case presented before the Primary Court goes before the Secondary Court if it is appealed, and if appealed again it appears before the Court of Appeal in Kabul. The duration of this process is entirely unpredictable (18). In the meantime many civil cases are transformed or acquire substantial criminal implications as a re-

18. Most courts have been lacking structure and funding for decades. The Court of Appeal, for instance, may resume its work today year, after an indefinable period of inactivity.
result of the dissatisfaction and insufferance of the parties to the dispute.

The jirga is therefore seen as a real source of potential justice, because of the length of time required - it is very rapid - and the complete involvement of the local community, the lineages: leading actors in daily life as much in disorder as in order. All consider themselves and thus find themselves recognised as actors among the other social actors: in primis the parties to the dispute. The decision, unlike a clinical verdict, is accepted - very occasionally it is rejected by one party, never by both.

5. The jurisdiction of the jirga

According to the expectations and the directives of the Supreme Court every jirga should decide on cases passed to it by the courts, and is obliged to report on its activities and decisions to the District or Provincial Court. The jirga is also obliged to conclude a case within a month, within the same period sending three separate letters - one to each of the parties to the dispute and one to the court of reference - communicating the decision made. Above all, and this is surprising in many ways, the jirga may be assigned jurisdiction over any civil or criminal case of any size. Should one of its members be insufficiently versed in the state corpus juris and wish to refer to it, the court of reference, be it the District or Provincial Court, is required to prepare the appropriate texts and provide them to the jirga.

In the event of one of the parties failing to appear before the jirga within fifteen days or not accepting its decision, the representative of the jirga refers the case to the Court. The names of the parties to the dispute and of the members of the jirga are entered in the form prepared and distributed to the jirga by the courts. This, at least, is the principle. As is the de jure state-originated imperative incumbent upon the action of the jirga: “no jirga may decide against the law or against the shari’a”.

The juridical praxis of solving disputes, of which the jirga is the manifestation, bespeaks a remarkable understanding of the local historical, political, social and economic situation, and stands as a highly effective expression of the structure of social relations, that is to say of segmentary tribal structure, in particular of the Pashtun in south-east Afghanistan.
If the law is the continued expression of a collective effort, the criminal and civil procedure enacted by the jirga highlights the continuity in social relations, even in social flux and in the changes overtaking value hierarchies, the latter depending on national and international historical and political events and always being filtered through the principles informing locally-produced values.

6. Structure and organisation of the jirga

Membership of the jirga is established by appointment of the parties to the dispute and through election by the District and Provincial Courts.

The parties to the dispute designate the mediators, their representatives in the jirga, and while the latter are busy involving other people of their own choice to constitute the jirga that will hear the case in question - “wise” men, people with technical expertise relevant to the case, etc. - other members are appointed by the courts. Such men, arbiters to all intents and purposes, who are successful and show particular ability become recurrent members of District and Provincial jirgas, at least among the Pashtun. In other Districts and Provinces in Afghanistan, rather than being formed ad hoc, the jirga is available in a relatively stable institutional form. In some northern and western districts (in the provinces of Herat and Balkh for instance) there are institutionalised jirgas with a stable structural position, ideally one for every 50 “families” or 500-1,000 people (19).

The Supreme Court lays down the requirements for membership of these institutionalised forms of jirga which operate in the solution of disputes. They include being an Afghan citizen, being honest and trustworthy, being impartial, not having committed “bad actions” in the last five years, being at least 25 “but not too old”, and not being a state official or prosecutor. It also lays down that at least one member of the jirga should be able to read and write and be familiar with Hanafite jurisprudence (20).

19. The expenses incurred by this form of jirga are covered by a special provision in the budgets of the District and Provincial Courts. As these courts suffer from a chronic lack of funds, the jirga fend for itself and meets where it sees fit.

20. In this regard, I have the distinct impression that the Hanafite inter-
The members of the *jirga* appointed by the parties to the dispute may be state officials or prosecutors. The Court is also duty-bound to know the members of the *jirga* and recognise their tenure of the position “for at least two years but no more”.

The standard procedure, which admits of infinite exceptions and variations, provides that the members of the *jirga* elect a representative from among themselves; that they concern themselves exclusively with cases for which they are expressly authorised by the courts and by appointment or with the authorisation of the parties to the dispute; that they gather information from the parties to the dispute, and from any other person, at their discretion; that they assume the responsibility of informing the courts of their decisions; that if they are unable to solve the dispute they consign the case to the relevant court.

The chosen premises for sittings of the *jirga* are, according to the Supreme Court, public places such as mosques. In some cases, at the discretion of the President of the Court, the courts themselves may play host to the members of the *jirga* on their premises. In practice, a *jirga* will sit in session in any place able to contain the requisite number of people - an open square, if possible in the shade of a tree when the weather is hot, in a private home when the weather is bad or for other reasons. In fact the number of members of a *jirga* varies from 5-7 people to 200-300 people or even more, to which are added...

...interpretation of the *shari‘a* is giving way other schools of juridical thought and interpretation of the Koran, probably to the advantage of the Hanbalite school. According to all the classical western and Muslim texts, and as stated in the 1964 Afghan Constitution and reiterated in the 2004 Constitution, Afghanistan has always been home to the Hanafite school. However, on the basis of a number of opinions gathered and situations observed during my stay in the country, this no longer seems to me to be the case. The Taliban have left their mark. The Maturidi theological perspective appears to be ignored, and from the ways of celebrating the ‘*id* and from a number of gifts I have seen presented in the Supreme Court, I have gained the impression of a growing emphasis on visions more specific to the Muwahhidun - therefore Wahhabi - movements, with a full-blown Hanbalite interpretation of the Koran and the law. If this were to be confirmed by further in-depth research, we would be faced with a development as surprising as it is significant, at least in terms of understanding the possible social and political actions and dynamics, such as those of the actors discussed above, that would have a direct and profound effect on the law and its application.
witnesses and onlookers. This means that any location able to accommodate a jirga is considered suitable for the purpose: a mosque, a football pitch, a room in a private home or a courtroom.

In principle it is thought that the activity of every jirga should be recorded in a specific book held by the courts. In practice it is very hard to find archives of any kind in the vast majority of Afghan courts, or of other institutions.

Equally, just as the President of the Court has the right to dismiss a member of the jirga and appoint another in his place, in practice the overwhelming majority of jirgas are constituted ad hoc and completely independently from the institutional state legal process, although there is no opposition to links with it - on the contrary, efforts are being made in all quarters to establish them.

7. Informal procedure

When a dispute arises, it is the parties to it who themselves request the institution of a jirga or shura, that is to say of a maraca chian (21). The injured party and the defendant, assisted by their representatives, namayendagan islahi, invite the “elders” of their own clans and tribes, kheil and qaum, and of others, to participate. The representatives then ask the parties to the dispute to organise a banquet for all the participants in the jirga, and the parties draw lots, qorakashi, to decide who will bear the costs and prepare the food.

The first measure to be taken by the jirga or maraca is the official acceptance of the tiyori wack, a sort of full proxy issued by the parties, together with the establishment of the sum of the baramta, a form of deposit or security - usually in cash and weapons - provided by the contending parties and returned to them after the solution of the case if both parties have properly observed the entire procedure and accepted the decision of the jirga.

The moslihin then proceed to gather all the clues and documentary evidence relevant to the case. After which they officially ask the parties whether they intend to “solve the case according to nerkh, and according to which nerkh”. Everything not expressively covered by the

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21. The term jirga, the more frequently used, is of Turkish origin, while the term shura comes from Arabic.
nerkh, the traditional corpus juris, is dealt with by the reflections and consensual considerations of the entire jirga.

Finally, the moslihin make known their decision, at this juncture thus manifesting themselves as judges. If the parties accept the decision, after having it signed by the parties (with their thumbprints at the end of the document) the moslihin notify their decision to the court of reference. If the decision does not satisfy the parties, the jirga declares them to be kaberjan, “arrogant, obstinate, proud”, does not refund the baramta but divides it among those who have taken part in the mediatory and decision-making process (22), compels the parties to pay the costs - called khalat - incurred by the namayengan islahi and informs the court of reference of what has occurred. If the parties do not appeal to a second jirga, which they may convene at their discretion, the Court will hear the case in accordance with the procedures of formal Afghan law. If they do appeal to a second jirga and still fail to resolve their differences, a third and final jirga, called spin zadran, is convened - for the Pashtun in the Province of Pakhtia, it is held by the Zadran tribe. This jirga is numerically large, inter-tribal and with a high baramta. Should the decision of this last juridical instance of informal law also fail to be accepted, the social stigma attaching to the intractable party or the dissatisfied parties is such - because of the number of people involved and the contents of the case - that the parties to the dispute, no longer single individuals but entire qworanehs, have no option but to leave the country after forfeiting all their property.

8. Informal justice in the province of Pakhtia

Two main forms of nerkh, traditional corpus juris, are found and applied in the Province of Pakhtia: the nerkhi kharla (nerkhi kharliani) used by the Mangal and Zadran tribes, and the nerkhi ghalja (nerkhi ghaljani) used by the Ahmed Zai. The latter type, handed

22. If the debate within the jirga is marked by tension between the moslihin or personal responsibility for the failure to settle the dispute, the jirga will appoint four representatives - called takhom - from each of the tribes present in the jirga, who decide the disciplinary measures to be taken. These usually take the form of exclusion of the “elder” responsible for the failure from the share-out of the baramta and his exclusion from taking part in any future jirga.
down in written form, is considered by all social actors to be much more complex, rigid and above all severe (23).

Civil and criminal cases alike are considered and dealt with in accordance with the provisions of the nerkh. But the legal categories needed for an understanding of this informal body of law are to be found in the system of punishments and compensations for crimes.

A - poor: this indicates the goods - often money but also services - provided to the injured party to compensate for the injury received. The literal meaning of poor is “contracted debt”, of which there are two forms:

a. khosht poor (“wet debt”) is the main form of poor. It is considered as poor in its pure form, allowing of no counter-claims from the injured party. The payment of this poor constitutes final settlement of the dispute, since it is considered a perfect form of punishment for the guilty party and of compensation for the injured party (24);

b. wach poor (“dry debt”) is a monetary surrogate for the principal poor (25). This payment, or punishment, does not settle the dispute or end the consequences of the crime. Even after receipt of compensation in wach poor, the lineage of a victim of premeditated murder reserves the right to pursue the murderer’s family by mortgaging the killing of one of its members. When carried out, even one or two generations later, such a vendetta obliges the newly-homicidal lineage to nothing more than repayment of the wach poor. While with khosht poor the principle of add po add,

23. This is the work of codification of the traditional corpus juris carried out by Ahmed Baba.

24. For premeditated murder, for instance, the murderer and his relatives are required to give as poor to the injured party a married woman (mirokha), a girl (suara, khalasa, palai) and a girl child (werenay), at least in the more rigid version represented by the nerkh ghalja. It is interesting to note that the term suara literally means both “knight” and “transported female” (also on horseback), and that while the term werenay means simply “baby”, the term for “virgin or young girl”, palai, literally “pawn”, again makes reference to military terminology but also chess: women become objects in a game of physical intrusion in another lineage, or the intrusion of others in one’s own lineage.

25. The sum of money “corresponding” to the value of a woman, that is to say the average cost of marriage transactions, is at present (December 2004) about 5,000 Euros. More often, in an attempt to resolve the incommensurability between “wet” and “dry” values, it is fixed at double the cost of a marriage.
“bone for a bone”, is considered to have been observed in full, with *wach poor* compensation is considered to have been made by means of goods belonging to categories which are completely different and therefore incommensurable: the sphere of human exchange and the sphere of exchange of goods and services (26);

B - *sharm*: the sum of money and/or goods transferred to the victim of a crime, taking account of the degree of offence (*sharm*), especially to their honour, to which the victim has been subjected;

C - *nanawati*: acknowledgement of responsibility, act of submission, request for the forgiveness of the victim and/or the victim’s family. The culprit, always accompanied by the *mosafedan manteqa* (literally “elders of the local community”) (27), goes to the family of the injured party with one or more sheep, lambs or other, delivers them and if possible participates in their communal consumption during a cathartic feast;

D - *tiywori wack*: the full power of attorney issued by the parties to the dispute to the *maraca chian*, the collective components of the *jirga*. With it the parties remit themselves completely to the verdict to be issued by the *jirga*, accepting it *ipso facto* (28).

The punishments laid down by the Pashtun of south-east Afghanistan for the main crimes and offences - which in western legal classification would be the punishments and compensations provided in criminal and civil law - may be summarised as follows.

1 - Premeditated murder, voluntary murder

- Only the exercise of vendetta, *mikhai*, or receipt of *khosht poor* in its fullest form, with the compensation of *sharm* and the acceptance of *nanawati* can resolve the social and political consequences of this crime.

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26. Despite this, for many years now, irrespective of outside pressure, all *jirgas* have been trying to turn *khosht poor* into *wach poor*. That is because while the *wach poor* settlement does not ensure the end of the conflict because it is not considered able to re-establish order to the full satisfaction of the injured party, it is also true that the *khosht poor* settlement leads to such tension in the murderer’s lineage as to trigger conflict within it that can be resolved only by resuming hostilities against the outside, first of all against the injured party.

27. The *manteqa* is another term for residential group or tribal territorial unit.

28. The literal meaning of the term *tiyworek* is “flooding”.
2 - Culpable homicide, manslaughter

The _poor_ consists of a specific compensation, that is to say the transfer to the injured party of a married woman belonging to the lineage of the guilty party. It is essential that the woman in question be married (_mirokha_) prior to the crime. Should it not be possible to pay this compensation, recourse is made to the payment of a _wach poor_ in the form of a sum of money equal to the official cost of one or two marriages. In cases where the murder is doubtfully classified or taken particularly hard by the injured party, the latter will insist on being given a _khosht poor_, which means a married woman or at least a girl who is already betrothed, and unanimously recognised as such, to a member of the guilty party’s lineage. In the _nerkhi ghalja_, however, premeditated murder and all other forms of homicide are considered to be adequately recompensed solely by the complete _khosht poor_ (29): a married woman (_mirokha_), a virgin (_palai_) and a baby girl (_werenay_). The injured party will content itself with a _wach poor_ only if its political, economic and social position is particularly weak in that context (30).

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29. The married woman included in the _khosht poor_ demanded by the victim’s family is identified within the murderer’s lineage at the discretion of the injured lineage. This obviously provokes serious reactions and gives rise to bitter conflict between members of the murderer’s lineage: nobody wants to lose his wife. The only solution is to oppose the choice made by the injured lineage and propose in her place a woman taken in marriage just before the beginning of the transactions to solve the dispute between the parties. But in so doing no member of the murderer’s lineage intends to trigger another dispute within it. The injured party will naturally insist on its right to a free choice but the murderer’s lineage will resist this pressure and insist on paying the part of _khosht poor_ which goes by the name of _mirokha_, “married woman”, in the form of a woman just married, coming from lineages in difficulty or better still from outside Pashtun society. This is partly because everybody knows that the _mirokha_ very often “ends up living with the dogs, literally … sleeping in the straw with the other animals.” The fate of the “virgin”, _palai_, and the “baby girl”, _werenay_, is different - they generally end up fully integrated in the new lineage.

30. Cesare Beccaria would invite us to reflect on the death sentences carried out in some parts of the western legal world: on the political and economic weakness of those convicted and of course on the acquittals given
3 - “Death for a death” murder
If a man kills another person, the victim’s family (maqwil qworanek) may refuse the poor and claim the right to kill the murderer or a member of his lineage. The right of vendetta, mikhai, is inviolable. The second murder extinguishes the first and is not punishable by poor, sharm and nanawati. When the parties to the dispute intend to find a peaceful solution to it, they immediately convene a jirga. This begins with a singular ceremony: the two parties each build a clay cone about 30 cm high, following which one of the parties (moday) destroys the cone built by the other (moday) and vice versa (31). The ceremony closes with an embrace between the two parties. Then they pass to the payment of poor, the compensation of sharm and the ceremony of nanawati.

4 - Murder with insufficient evidence
If a man is murdered “at night or in the mountains or in the desert”, his lineage has nobody against whom it can claim payment of poor. But if it suspects somebody on the basis of a number of clues or thinks it has identified the murderer through motive, it may indicate the name of the alleged culprit (mashquq) to the jirga, which will have him swear an oath (qasam uki) before seven witnesses. If he refuses to swear, he is considered guilty of the murder (mujram, malamat, gram) (32). In the absence of seven witnesses, the suspect is required to swear his innocence seven times. If the injured party is not satisfied and rejects the validity of the oath, it will appeal to a second jirga.

5 - Murder during an intra-tribal conflict
The victim’s family have no claim to any form of poor unless they can identify the murderer (qa’el), in which case he is required to pay a poor to be quantified by the jirga.

in interesting cases such as that of O.J. Simpson in the USA.

31. The cone represents a mountain, that is to say the extent of what is destroyed when the life of a person of a lineage is taken by another lineage and the latter is deprived of women, that is to say lives able to generate other lives, by the former lineage.

32. After the oath has been sworn, the witnesses have the right and duty to keep a watch on the alleged murderer and to come to a conclusion on his guilt or innocence after months and years of observing his behaviour. If they are convinced of his guilt, they will have the case re-opened.
6 - Murder of a woman
The murderer is required to pay the victim’s lineage a poor equal to the cost of a marriage, or more often double that amount. Half the sum is given to the husband (mara) of the victim and half to her father (pelar). If the woman was pregnant, the poor due is doubled.

7 - Murder for an inheritance
A murderer who kills in order to come into an inheritance is banished from his village for ten years, after his house and belongings have been burned.

8 - Murder of strangers
When a man kills a “foreign” neighbour, that is to say a non-Pash-tun, not from his own qworaneh, any inhabitant of the province (pakhtiawal) has the right to kill him without having to pay poor: “in Pakhtia we have deep respect for neighbours of foreign origin”.

9 - Manslaughter in a road accident
Since the Pashtun consider this form of homicide to be absolutely involuntary, and see road accidents as independent of human will, the performance of nanawati, accompanied by the sacrifice of one or more sheep offered to the victim’s lineage, is necessary and sufficient to resolve any dispute arising therefrom.

10 - Murder and the right to asylum
A murderer has the right to asylum (pana warkawal) in the victim’s group of descent and/or residence, and the latter, even following the killing of a father or brother, is duty-bound to guarantee the safety and health (aman) of the murderer seeking refuge in their home. If the victim’s family is not prepared to accept a peaceful settlement, they must first perform the kandow tay ve bosa, “absolution from the right/duty of asylum”, with the participation of the jirga or another mediatory figure. They may then proceed to exercise their right to vendetta, mikhai, but only after the murderer has found another refuge (33).

11 - Abduction of a woman (tekhtawal)
A man who abducts a woman may be killed by any member of

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33. A qworaneh or kheil which gives hospitality to a man, that is to say which gives him the right of asylum, always has the right and duty to protect him physically and politically, whether he is a murderer or not.
the woman’s adopted lineage. If the latter relinquishes its right to kill the abductor and beings the case before the _jirga_, the abductor’s lineage has to pay the woman’s lineage _khosht poor_, consisting of a married woman and a virgin, in addition of course to the compensation of _sharm_ and the performance of _nana-wati_. A man who abducts a virgin does not thereby give the girl’s lineage the right to kill him. His lineage is required to pay _poor_ in the form of a virgin girl and to compensate _sharm_ with another virgin, in addition to performing _nana-wati_.

12 - Abduction of a girl

A man who abducts a woman who is neither married nor betrothed is required to marry her if the girl’s family agree. If they do not, they may exercise their right to _mikhai_.

13 - Adultery (_zana_)

A man and a woman caught in adultery are subject to the right of the injured party - the adulteress’ husband and his lineage - to kill them without incurring the duty to pay any _poor_.

14 - Elopement

The husband of a woman who willingly elopes with another man has the right to kill seven men: he may kill the man with whom his wife eloped and his wife, or the next six men she may decide to be with. If the woman manages to find an eighth matrimonial partner, that marriage is considered lawful and the dispute is closed. This kind of homicide entails no payment of any _poor_. The husband may relinquish his right to kill and demand compensation consisting of two married women, called _lotha_, from his rival’s clan.

15 - Rape

If a man rapes a woman he is not required to pay _poor_ but to restore _sharm_ with payment of a virgin girl. If a man rapes a girl he becomes _tor_, that is to say the preferential candidate for marriage with her. Alternatively, he is required to pay a _poor_ of a virgin girl and restore the _sharm_ of the raped girl’s lineage with another virgin. If a man intentionally touches or kisses a woman he is required to restore _sharm_.

16 - Injuries

All physical and moral injuries, including insults and offences to personal dignity, involve the concept of _sharm_, that is to say in-
jury to honour. Injuries are not considered so much in their potential effect of diminishing the efficiency and integrity of the body of the injured party so much as their effect of attacking or injuring the dignity and honour of the person. In Pashtun conception, the human being is made up of six parts, called ishipaq add (literally “six bones”): two hands, two feet and two eyes. So, if during the course of an argument one man injures another by cutting off his hand, the poor is thus established: if at that time the official cost of a marriage is 300,000 Afghani, about 5,000 Euros, the poor for a hand is one sixth of the value of a human being, conceptualised as a marriage unit; the injured party is thus entitled to damages of 50,000 Afghani. The same compensation will be due in the event of the invalidity of an arm or foot. And the damages payable for two hands cut off or two unusable arms, or one hand and one leg unusable or amputated, will be worth two-sixths of the value of a human being or a marriage. When the injury occasioned is a simple wound that does not compromise the injured party’s honour, agreement is reached on compensation proportional to the type of wound sustained. In the case of a deliberately caused fracture, one which may heal leaving no scars, agreement may be reached on a lesser poor to be established ad hoc by the jirga: in such a case there is no sharm but nanawati is required. If a man wounds the body - chest, stomach, groin - of another with a knife, he is required to pay poor, restore sharm and perform nanawati to the injured party (zakhmi). If a man wounds another in the face he is required to pay a poor to be established by the jirga, restore sharm and perform nanawati. If the wound is serious or particularly visible, sharm is made good by a woman in compensation. Under nerki ghajla the amputation of a limb or the “breaking of one of the six bones” entails payment of damages, in the form of poor, equal to the cost of a marriage.

17 - Breaking teeth

If a man breaks another’s front teeth, he must pay a poor and make good sharm. The amount of the poor is variable and established ad hoc, while the sharm has a fixed tariff (34). If a man

\[34. \text{More precisely, } 23 \times 20 \text{ pull (darwisht shale), } 29 \times 20 \text{ pull (nanawisht)}\]
breaks another’s molar (mela), he must pay the poor, and perform nanawati, but is not required to restore sharm because there is no disfigurement or visible humiliation. The breakage of any other tooth carries a set value but does not involve sharm except, therefore, in the event of damage to incisors or canines. Under nerki ghala the breakage of one or more teeth, whichever it may be, obliges the culprit to pay a poor to the tune of one woman.

18 - Theft

Until fairly recently a homeowner had the right to kill a thief caught in the act in his house, without having to pay any poor. Now, he remains entitled to kill him but is required to pay a poor, though the sum involved is a small one. If he kills the thief outside his house the amount payable as poor increases at the discretion of the jirga. If the homeowner does not kill the thief but identifies and “arrests” him, it falls to the thief to pay the injured party a poor, make good sharm and perform nanawati. The poor paid by the thief to the homeowner is called nogun poor (“the poor of nine times”). Thus, if the thief has stolen a sheep he must give it back to its owner along with eight others.

The sharm and the form of nanawati are decided by the jirga.

19 - Theft by a person or persons unknown

If the identity of the thief is not established beyond doubt, the suspect is brought by the injured party before the jirga, which interrogates him and demands an explanation. If this is not forthcoming it calls for trial by ordeal, sar toda, which has two common forms. Water is boiled in a vessel containing seven small stones, which the suspect is required to pick out of the water one by one. If he is scalded he is considered guilty. Alternatively, a piece of metal is heated in a fire and the suspect has to take it out with his hand. If he is burned he is found guilty, and the jirga proceeds in the normal way. If the ordeal is not considered sufficient to acquit the suspect, the jirga demands that he swear his

shale) or 30x20 pull (nahadir shale): “100 pull was worth 1 Afghani, when 2 Afghani would buy you a sheep!”, it was explained in a jirga. The number 20 was the basic unit of calculation in the reign of Amanullah: it was and is related to the tuman currency which was very common in rural areas at that time. Along with its multiples, the number is still used to symbolise social continuity and stability.
innocence before seven witnesses and releases him.

20 - Pederasty (in Dari: lewotat; in Pashtun: ghowol)
Both parties to the crime may and must be killed by the injured parties, which are the lineages to which they belong, without the payment of any poor being incurred thereby (35).

21 - Unilateral declaration of marriage
A man who declares that a certain woman is his wife without the previous consent of her family is called dawus, but this prevents him from paying suit to her in the future: da ghag shekhtan dawus dai (36).

22 - Insolvent default
A creditor may confiscate the property of a debtor, with the exception of weapons (topak), cows (ghua) and homes (qala).

23 - Killing of dogs
The killing of dogs belonging to a lineage entails the payment of a poor and the restoration of harm. The requisite poor is specified according to the context and is usually expressed in cash or sheep. Dogs not belonging to a lineage may be killed without

35. Pederasty is considered by the Pashtun to be a crime of heinous gravity. In the view of many western observers this stands in contradiction with other institutions extant above all in area of Kandahar and in the northwest but also in other areas of the country, such as the relationship between a male adult and a pre-pubescent boy, which continues until the latter reaches full adolescence. This institutionalised guardianship, which has the consent of the boy’s family, includes the performance of sexual acts and after adolescence becomes a patron/client relationship.

36. Literally, “he who shoots to make a claim is dawus”. Among the Pashtun, the institution of marriage involves a series of long and laborious agreements between the family of the suitor and the family of the intended bride. When these agreements have been concluded the matrimonial commitment is made public with a da ghag shekhtan dawus dai, a kind of “explosive marriage request”: the groom-to-be presents himself before the walls of the qala of his betrothed and fires off a few bursts with his AK 47. A young man who shoots on his own initiative outside the qala of his loved one declares himself to be her fiancé but does so “unlawfully” and may therefore be prosecuted for attacking the honour of her lineage. In such cases, as happens in the District of Zadran for instance, the injured lineage may demand that the lineage of the incautious suitor pay compensation consisting of two young women: one as poor, the other to make good harm; alternatively, they may demand the cash equivalent.
payment of poor (37).

24 - Crimes against the environment
Woods, mountains and streams highlight the administrative responsibilities of a lineage. Any tampering with these assets going to the detriment of the community will result in the lineages responsible being called before the jirga, which may impose fines upon them.

25 - Swearing oaths
Anyone accused of murder, theft or any other crime is called upon to conduct his own defence (modalahe), and is therefore required to find seven witnesses (po wona far) prepared to swear (qasam uki) that he is innocent (begona).

9. Informal justice and minors (38)

In the Province of Pakhtia minors cannot stand accused of crimes, but their families can. In cases of theft, for example, the family will acknowledge the responsibility of the youngest of the adult brothers of the boy in question. He is the one who will pay poor and restore sharm. In cases of murder, too, mikhai is carried out against the culprit’s adult brother: «... in Mangal District a 12 year-old child

37. In Mangal District there is a well-known case of the killing of a dog, kept for defence and combat, which remains unresolved to this day. The owner sued the killer before the jirga, but the defendant refused to pay any form of poor. The dispute continued and so far nine deaths have been recorded in the two lineages. Similarly serious situations have been known to arise following the killing of a tazi, the splendid greyhound used to guard the qala and as a sheepdog, considered an attribute of its owner’s dignity and honour.

38. Field research was carried out by a team from the Faculty of Law and Political Sciences at Kabul University, together with Professor Najibullah Amin, in the summer of 2003 in the Province of Pakhtia (which is composed of 11 Districts), specifically in the Districts of Gardez, Zurmat, Jaji, Sayed Karam, Chamkani, Mangal and Zadran. A questionnaire was drawn up in cooperation with UNICEF to gain specific information, entirely lacking, regarding the concept of a minor in the informal justice system. Problems of security and significant difficulties in ensuring their personal safety encountered by some researchers did not prevent the participation of entire Pashtun villages and clans from debating the legal topics in agenda. The results will be published in a specific paper on the subject.
killed a person and the killed person’s family did not react because the guilty brother worked in Kashmir. Then the killed person’s family called him. When he arrived, the killed person’s family told him “your younger brother killed one of our family members… in this case we kill you”. Then they killed him …».

Although negotiations to resolve disputes involving minors depend to a great extent on specific circumstances, a minor is not considered personally responsible. The family, qworaneh, always answers for his actions.

The concept of a minor and the concept of justice related to it depend exclusively and directly, from a local perspective, on the attribution of intent to the performer of the action, which is of civil and criminal relevance to western and Islamic law alike. This process of attribution takes place within the local and/or descent group, binding intent to sexual maturity and reproductive capacity, both for males and females: a boy or a girl thus become a persona (a legal concept, linked to accountability, shared - though considerable simplification is required here - by the three main legal systems in question: Afghan customary laws, state law and Muslim law). This maturity, that is to say intentionality - and the corresponding accountability - was translated by the interviewees into bio-chronological terms, fixing the ages at 12-15 years for males and 10 years for females. These two ages, with all the attendant social and legal consequences, are therefore a local translation carried out by local communities in an effort to make themselves comprehensible to the outside world, whether the latter be represented by the Afghan state, Islamic law or international agencies. The implications are of enormous scope.

Informal justice is done between the families involved, the families of the individual who carried out the action and of the individual upon whom it was carried out, that is to say those perceived by the local community to be the injuring and injured parties. The process of confrontation between the families may include the intervention of mediators: elders or persons enjoying particular prestige or authority, such as moslihin and rishafidan, and other members of the village jirga or maraca or of the shura. But all intervene in a process of pacification between the families. The families are actors in the process in a framework of absence of intentionality and account-
ability: a minor is not the object of any legal action, either in the role of victim or in the role of perpetrator.

The achievement of sexual maturity, or reproductive capacity, marks the birth of the persona. In disputes or actions in which s/he is actor or victim, this persona enters the informal process of justice, the process of resolution of disputes. And in this process the institutions of mediation, arbitration and judgement play their crucial roles in the solution of disputes. In theoretically ascending order - though this scheme is excessively reductive and fails to reflect some specific local features - recourse is made to the jirga, the maraca and/or the shura and subsequently to the courts of formal justice (Primary Courts first, but also Secondary Courts). The extent to which these main institutions become involved (jirga, maraca and/or shura and courts of formal justice) varies from one province to another, that is to say it varies from one tribe to another, and depends on the contingent factors determined by the powers and vested interests present on the ground.

In this context, therefore, a minor outside a family - an orphan - is a weak subject (39) compelled to undergo trial - more moral than juridical - before the whole community. A weak subject becomes a scapegoat and is often treated outside the mechanisms of customary law based essentially on a language of relations between kinship groups. He is therefore remanded, “entrusted”, to state justice as a person, that is to say as an adult.

10. Informal law in Pakhtia and strong social actors

Even under the nerkh all tribal social actors claim de facto and de jure reference to the shari’a, paradoxically precisely in order to free the local community’s daily life from the state’s Islamic cultural practice of claiming direct reference to the Koran, which legitimises central power. This self-legitimising claim of the state triggers a process of “denial through ignorance”, a functional more than linguistic ignorance of any other alternative, and tends to give rise to fragmenting, that is to say centrifugal, consequences. It moves away

39. We consider minors from the standpoint of local communities and above all in the perspective of international law - up to the age of 17-18.
first of all from the very possibility of practising informal justice, and secondly from the possibility of speaking in general of positive law, primarily of customary law. And in so doing it rules out any chance of the establishment of a counter-power, which by definition would be illegitimate, that is to say anti-Islamic.

The informal justice of the Pashtun, *anjumanhai solhia*, is a pre-first instance justice which functions perfectly in a local perspective and is not to be interpreted as an extra-judicial system. The question of human rights remains open, but I think that it also remains an open question in European legal systems and even more so in Common Law, which continues to use capital punishment - inexorably administered and carried out above all as a spectacle (40).

Tribal groups’ continual appeal to *shari’a* is the foundation of an episteme, that is to say an attempt to define a rule of law legitimised and ennobled by reference to the Koran. From the point of view of the clans, everybody is aware, beginning with the *moslihin*, that *shari’a* and Pashtun informal law do not necessarily coincide but are considered compatible in the light of the Koranic concept of *shura*.

In addition, local law is considered particularly punitive, even by local communities, but also highly attentive to the position of the injured party, in contrast to state systems, where it is all but ignored. And in its role as a lineage, the injured party is conceptualised as a society. The local *corpus juris* is thus considered to be particularly effective as a deterrent against attacks on the life of the community as well as quintessentially retributive and restorative of the balance of power between the parties.

The retributive dimension is actually shared by all state systems - and the Afghan system is no exception - and is clearly centralised and monopolised by the state. The idea of re-establishing balance is also shared. But such concern for the injured party, in particular for the victim of a crime, for his social and political sensitivity as a person, is truly specific to an informal order such as that of the segmentary Pashtun society.

The tribal reliance on the *shari’a* - irrespective of its pertinency -

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40. A dreary question arises: “And what about privacy…?”. Where is the dignity of the onlookers staring at the face of a man who has been given a lethal injection?
highlights an attempt to forge and gain recognition for “objective” rules not dependent upon individual will, even in the knowledge that informal justice is most effective precisely in its situational capacity to embrace and reformulate the terms of a conflict in a way which is tailored to the parties to the dispute in the specific context in question.

What in all events is feared by social actors is arbitrariness, the unpredictability of decisions. What is feared is the weakness of the state, considered as just one khan among many, and not even the most powerful at that. This is an institutional weakness that social actors presume can be made good by an increase in faith - the Muslim declaration of faith in the form of submission - and by acknowledgement of the foundation of an effective identity between ‘umma and state. What is feared above all is personal private power, the overweening power of the warlords. With the denial of ‘umma implicit in his political and social conduct, this private individual has an interest in exploiting faith through an increasingly assertive appeal to the “purity of Islamic precepts”, which are reduced - given such private individuals’ virtually complete ignorance of theology and fiqh - to the familiar gender-based cultural imperatives: the segregation of women, the chadri (burqa), etc.

In Egypt in the late 19th century, following the preaching of the great Afghan revolutionary Sayyid Jamal ad Din al Afghani, neo-Muslim modernisers attempted to resolve the law-arbitrariness-‘umma question by rethinking the Muslim state, starting by reconstructing political, social and economic relations on the model of the first Muslim community and a return to the “pious forfathers”, as salaf as salih, and thus to the days of purity: the exclusive community of men and warriors in predatory expansion in the epoch of Mohammed and the “well-led Caliphs”, now to be transformed into a community in religious and financial expansion.

This was a path already taken up in Afghan Asia in reformist neo-conservative theological-juridical schools - schools, that is, which were at once fundamentalist and revivalist. The best known of these was Deoband University, the Daru al ‘ulum steeped in the Indo-Wahhabi spirit, founded in about 1860. Over a century later it still stood as a highly significant factor in the origin of Taliban politics and theology, which were flatly hostile to the nerkh.

And it was that Islamic and nationalist intellectual environment
which nurtured charismatic figures such as Ahmed Baba, codifier of the integralist *nerkhi ghalja* of the Ahmed Zais, in an effort to save informal law from integralist criticism (41).

11. The relationship between formal and informal justice

Dealing with the informal justice system of the Pashtun, we are thus faced with an unavoidable dyad: “definition of procedure/system of values”. The question may be summed up as follows: in the achievement of power at a national level by the state, a successful defence of roles and status is in contradiction to the successful defence of values, to the retention of local power by the tribes (42). The question allows a number of considerations.

If the Code of Criminal Procedure is a top priority for the state, it makes sense to pass laws designating (limited) responsibility for certain values - at least those “not contradictory” to the interests of

41. About the difference between traditionalism, fundamentalism and integralism in Afghanistan, cfr. Roy (1985).

42. Now the Pashtun find themselves between a rock and a hard place. The Afghan state insists on the assertion of one criminal procedure for the whole territory, and with that same measure intends to constitute one territory, while the “international community” - with the “independent organisations” in the front line - insists obsessively on the adoption of a system of, how can I put it? global, values - in the name of human rights or some other grand récit, to use Jean-François Lyotard’s well-known term. And the Afghan state is a rock between the same hard place and another rock. The same “international community”, in another performance of grand récit, insists on the adoption of a code of criminal procedure as close as possible to the Common Law system - trial by prosecution, the pre-eminent role of lawyers, aggressive front-line prosecutors, etc. - irrespective of the historical experience of Afghan state law, which has tried hitherto, when allowed to by historical events, to follow another direction entirely. With regard to the value system, the performers of this other grand récit are prepared to compromise in the name of the Ausnahmezustand: as long as the *burqa* is removed, capital punishment can and must remain. Max Weber warned that the *Sozialwissenschaftler* is no prophet. But, given the number of actors in this pièce and their political and existential determination, not even the little boy who marvelled when taking the tram will marvel at what happens in the future if these conditions last.
On informal justice in Afghanistan

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the state - to local law, through a gradual process of legislation.

If the state considers that the process of its constitution cannot
and must not fail to take account of the tribe as a political actor - or
at least as a framework of political action for many citizens - and
therefore cannot fail to recognise the tribe as the source of a value
system and promoter of an order with which it must enter into dia-
logue, it must begin a gradual and complementary process of formal-
ising the system of informal justice. For that matter, state law is
structurally too weak in present-day Afghanistan, and there are no
signs that it will not remain so for some considerable time to come.

The juridical process is gradual and complementary in any case.
Each step is taken and supported only when the centre and the
periphery are able to assess where that step may lead.

A starting point lies in the awareness of every Pashtun jirga that
from the state’s point of view the prosecutor is certainly and always
exclusively responsible for action under criminal law: he is the
promoter of the procedure. The jirgas understand that it would not be
appropriate to reject the highest dogma of state law: the identifica-
tion of the state in the prosecutor.

On the basis of this recognition it is possible to introduce the
concept of “grounds for proceeding”. This concept, understood and
accepted by western and Muslim jurists and backed by consolidated
praxis, may be easily accepted on the ground. And if the state accepts
that in its political and juridical relations with the tribes it is appro-
riate to introduce conditions of grounds for proceeding for its own
action, we know that one important ground for proceeding is a suit.

It is thus sufficient to define what a suit is in Muslim Law, Com-
mon Law and European Law, identify its local isomorph, that is to
say the Pashtun equivalent, and apply the suit to crimes to be iden-
tified (and/or defined) in the state Criminal Code, linking it with the
Code of Criminal Procedure.

This is a task for anthropologists of law, a job to be carried out
within the jirga. A project designed to recognise the dignity of differ-
ences in a reciprocal interaction.

If a person does not provide grounds for proceeding, he may ask
the jirga (or another dispute-settling institution locally recognised by
the parties to a dispute) to consider the case, provided that he does so
within a set period of time after the commission of the crime. It is
practically useful to place limits on grounds for proceeding, on the suit, to decide whether and how it may be revoked, and in any case to set time limits.

The jirga trial is conceived as a choice that prevents the access to the Court through suit according to the principle: electa una via non datum recursus ad alteram...

Indeed, this is what informal law - that is say the alternative processes for the solution of the dispute, with “traditional” judges, by means of “customary” law - consists of: achieving immediate law. Law which is immediate not in temporal terms but because of the aufgehobene Rolle der Zentralinstanz. This is what is dealt with in many legal systems by figures such as the justice of the peace, the conciliating judge and the magistrate: disputes rich in affective content, collective and social values (territory, health); suits concerning fixed assets whose value does not exceed a specific quantification (immediate territory: home, district, village, pasture); conflicts of high social value (evictions, possessory actions, dismissals, family maltreatment, falsehoods); brawls; urgent measures.

This law reduces the workload of the formal justice system. Above all, this law shows the presence of the state in its function as guarantor of the law and not as a centraliser and redistributor of order, for the establishment of which in any case the state does not have the strength.

To sum up: crimes belonging to definable categories, that is to say already defined in the Criminal Code but to be defined ad usum through dialogue between the centre and the periphery, through state-tribe interaction, are considered devolved to the self-administration of justice and placed in the charge of the local dispute-settling practice before the intervention of inexorable action of the state prosecutor (43).

The enactment of a simple ad hoc law, appointing the jirga as the social actor inasmuch as it the institution identified with the tribal practice of settling disputes, would act as a link between state and

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43. For some crimes, such as certain types of homicide, it is possible to set a maximum on the sentences that may be pronounced by the jirga, that is to say custodial sentences not exceeding a certain number of years. As a matter of fact the present system already assigns the jirga a certain responsibility in criminal cases.
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On informal justice in Afghanistan tribe, between centre and periphery, between the centralised organisation and the segmentary organisation of society. Such a legally recognised agreement of principle, that is to say a law which lays down which crimes are actionable under the conditions of grounds for proceeding and which are actionable under state criminal prosecution, may contribute to maintaining the prerogative of centrality of the Zentralinstanz while implicitly recognising the qworanehs and the kheils of the Pashtun. Because that is the problem: the reciprocal recognition of the difference and its dignity.

12. Effectiveness of informal justice, community participation

Informal justice has an anchoring function and is profoundly effective, in addition to being widespread, rapid and immediate in the local perspective.

In the first place, the parties to the dispute deposit a baramta whose value is highly significant (cash, weapons, animals or other). This pledge, entrusted to the jirga, maraca and shura but also to other people involved in the mediation, arbitration and judgement, is irretrievably lost by the parties who do not accept the decision of the jirga, the institution that they themselves have contributed to forming and to which their own representatives belong.

The second stabilising and anchoring factor in the informal dispute-solving mechanism is provided by the highly feared loss of credibility in the face of the local community that will be suffered by whoever refuses to accept the verdict to whose production he has contributed. This loss of credibility would affect all aspects of the social, economic and political life of the individual and/or the clan in question.

The third deterrent is the following action involving the local institutions: if the verdict is not accepted by one of the parties to the dispute, the jirga lodges an appeal before the jirga of second instance and last instance (or before the formal Courts) and testifies against the defaulting party, itself appearing as the injured party.

The informal justice system is the expression of an intense and absolute participation of the local and descent group in the legal process as part of the social process; an expression of the interaction between family groups, that is to say descent groups, and between residence groups. Relations between these groups require an action
of mediation which is found in the action of people, the namayendagan isolahi, who are part of the community itself.

Only when the community fears that dissatisfaction produced by its autonomous decision-making process can prolong the conflict between the parties, or even intensify it, and it acknowledges its inability to define a solution satisfactory to all parties, does it turn to the outside. And this outside is asked for an intervention, considered legitimate when it makes reference to Islam and/or state law, both of which are icons of an extra-social justice.

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Peter Hammer Verlag, Wuppertal.
Set in the heart of Asia, Afghanistan is a landlocked, mountainous country with an estimated population between 15 and 26 million.

As an introduction, it should be mentioned that the main purpose of this essay will focus on the role and place of the different ethnic groups in the process of constitution-building in the country. This matter will be briefly analysed starting from 1747, when the territory was named Afghanistan.

Although the fulfilment of this task would require multi-faceted research, especially from the legal point of view, we will only indicate some main points which could be developed in the future.

In order to discuss the different ethnic groups present in Afghan territory it is important to have an idea of the neighbouring countries.

To the north: Tajikistan, Uzbekistan and Turkmenistan, (previously Tsarist Russia and then the Communist Soviet Union);

to the north-east: China;

to the east and south: Pakistan (British India up to 1947);

to the west: the Islamic republic of Iran.

The major ethnic groups are: Pushtun, Tajik, Hazara, Uzbek and Turkoman. Many other ethnic groups of smaller size form minorities. The Pushtun form the largest ethnic group and are therefore the majority native population in the territory. This diversity of population goes back to the historical strategic position of the Afghan land, which has been the stage of many expansionist wars: for the wealth of “golden India” by the Russian Tsars and the British Empire, and by the Soviet Union in the last years of the 20th century for new strategic purposes. A short chronology will help understand the roots of the already existing diversity:

BC: 329-327: Alexander the Great crossed the Hindu Kush into India

AD: 8th century: Islam penetrated the Afghan region
1219: Genghis Khan and his Mongol armies swept into the Afghan region
1398: Babur the Tiger descends on India
At the beginning of 17th century the British East India Company was formed and in 1747 Amir Ahmad Shah named the region Afghanistan for the first time
1839-1919: Three wars with Britain (in 1919 Independence was proclaimed by Amanullah)
1929: Amanullah was ousted and Nadirshah became king
1933: Nadir was assassinated and Zahirshah succeeded him
1973: Daoud took power by a coup and proclaimed a Republic
1978: A bloody Communist coup took place and a pro-Soviet regime was established
1979: The Soviet Red army occupied Afghanistan
1989: Soviet soldiers left Afghan territory, defeated
1992: Mujahedin Islamist parties took power from the last pro-Soviet government and established the Islamic State of Afghanistan. This year marked the beginning of civil wars (wars for political power) which lasted many years
1996: The Taliban gained power and ousted all other parties from power
2001: The USA attacked and wiped out the Taliban regime from Afghanistan.

As history shows, after 1747 Afghan kings also carried out some invasions of India and later, their successors were always fighting each other for the throne until the 3rd Anglo-Afghan war, which resulted in the external independence of Afghanistan.

Naturally in this situation of continuous war, no ruling party ever thought about drafting a Constitution or a judicial system for the people of Afghanistan. The societies of the country have nevertheless always remained mostly tribal and almost all tribes and ethnic groups have been involved in the system and shape of the various regimes. The rulers created laws to benefit their own power and a King’s words were themselves Law. From 1839 to 1919, the three wars with Britain marked nearly a century of colonial wars imposed on Afghans, in which almost all the existing ethnic groups in Afghanistan were united with each other against the aggressor. In intervals between the wars, ruling was in accordance with the conditions stipulated in the
contracts and treaties that the Afghan kings signed with the British Viceroy in the Indian sub-continent. No attention was paid to constitution or constitutionalism in the country. Kings ruled despotically and suppressed national minority unrest, which meant that a kind of forced unity was kept between the various ethnic groups.

After 1919, during the reign of king Amanullah, Afghanistan got its first constitution, which followed continental European models. Unfortunately, Amanullah’s programme was premature and the existing cultural, traditional, religious and conservative character of society was not taken into consideration at all. Thus, a small uprising forced the king to escape the country in 1929.

In 1929, Nadir Shah became king with help of the British but was killed in 1933 by an Afghan high school pupil. Mohammad Zahir succeeded his father and ruled with absolute power. Only in 1964 was a constitutional monarchy promised, but it opened the way to democracy and legality only on paper because the ruling class itself violated it and, by denying the civil and political rights of the Afghan people, never allowed them to establish political parties in Afghanistan. At the same time, underground parties were established by ethnic groups.

After 1973, during the short period of the republic, Daoud drafted a constitution for himself because civil and political rights were to be given to society only after the political consciousness of the Afghan people had reached maturity.

Following the 1978 Communist coup d’état, the Afghan people were ruled by revolutionary decrees of the proletarian dictatorship type which brought foreign soldiers to suppress the nation and to strengthen the power and government of the Afghan Communist elite. Later, constitutions were also drafted and passed by artificial Loya Jirgas (Grand Assembly) and simultaneously amended and changed in response to the resistance of the people against Communist rule.

The period from 1978 to 1992 was characterised by the Russification of Afghanistan’s legal system, which only formally respected the Islamic Shariaa. Ethnic groups were employed for ideological and political (national and international) interests in this period, and in application of the old British policy of divide and rule in Afghanistan, they were even armed with modern weapons and different ethnic militia armies were established. On the Mujahedin side, the same ethnic groups were united against the pro-Russian regime of Kabul. Despite all this,
the various ethnic groups played a very negative role after 1992 by using light and heavy weapons and killing each other for power and wealth, causing the death of thousands of civilians. Lawlessness continued until the Taliban took power in 1996 and proclaimed the Sharia as their constitution. The Taliban regime was overthrown by the USA at the end of 2001. The present constitution of January 2004, though mostly oriented toward the establishment of a presidential regime in Afghanistan, has openly stipulated rights for some ethnic groups, aiming at strengthening the National Unity of the Afghan people. This might be achieved in long term if the constitution is respected by all parties and by the government itself. Of course, this is the only peaceful way of solving differences and disputes between the different ethnic groups in this country. In other words, the constitution can play a positive role as a factor of unity of all the different ethnic groups through legal means.

To conclude, one can see that in Afghanistan the legal culture has never prevailed to establish law and order or to solve ethnic problems and strengthen national unity in the country. But this time, after nearly three decades of continuous war, the present constitution is working to some extent in order to remove ethnic differences. Such problems can be solved if democracy prevails and it is only the rule of law that can ensure democracy and human rights and protect the observance of the constitution.

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1. The rise of the Taliban

Early in 1994 - after the departure of the Soviets, after the Najibullah government and under the Borhanudin Rabbani government (also known as the Mujahideen period) - the Taliban militia (about 25,000 strong) appeared in Afghanistan and managed to take control of about three-quarters of the country. In so doing they confined their opponents - the troops under General Dostum and those of the old “lion of the Panjshir valley” Massoud - to the extreme north (1). In just three years, each of the main communications routes in the country fell into the hands of this new militia: Ghazni-Kandahar, Jalalabad-Kabul and the strategic Salang Pass (see map). In short, they took possession of what is known in strategic terms as “useful Afghanistan”.

As their name indicates (2), the Taliban are students of the Pakistan Islamic schools [madrasas (3)] which in the 1980s took in the

1. The legendary hero of the fight against the Red Army, Massoud was killed by two suicide bombers on September 9th 2001, just two days before the attack on the Twin Towers and the Pentagon, as if to highlight the link between the two events. In his latest book, Ettore Mo describes him as a man «free from the Russians, from the pro-Soviet government of Najibullah (1987-1992), from grim warlords such as his rival Hekmatyar, leader of “Hezb-e-islami” (party of Islam) and from the Taliban» (Mo 2001: 265).

2. The term taliban derives from the Arabic active participle talib, which means “student of the Koran”.

3. Madrasas are only the appendages of a much vaster movement which is based in Pakistan and springs from the reformist fundamentalism of the Deoband movement, founded in 1867 in the town of Deoband, north of Delhi. Rooted in British India and Hindu-Muslim conflict, the Deobandi set
sons or orphans of Afghan refugees from the Soviet occupation. In these schools (totalling about 8,000 nationwide) - almost all of which are in Baluchistan and the North Western Frontier Province (NWFP) - they lived and were educated in Arabic or Urdu away from their traditional environment, mixed in groups of various ethnic origin in an atmosphere of “universal Islamism”.

Each madrasa of any level of importance has a “centre for *fatwas*” (sentences), in which the ulemas, after consulting the holy scriptures, hand down fatwas written in answer to questions put to them on the legitimacy of everyday actions. Hence the importance of these schools, which by means of the practice just mentioned came to constitute an autonomous Islamic universe able to bring pressure to bear on civil and political society in Pakistan and influence decision-making.

Organised around the network of madrasas attended most of all by youths from traditional rural and urban families from the lower-middle class, the ulemas were in a position to negotiate with the government in Islamabad and demand continued financing to provide free services to their student guests (4). The spiritual leaders also requested jobs for their graduates who had no connections outside the religious environment. This meant that on entry into society, graduates worked for the Islamicisation of the law and the administration of the banking system in a logic which mixed political and religious power (5).

For Pakistan, supporting the madrasa system by subsidising poor out to train ulemas (doctors of religious science) who by means of fatwas establish what is in conformity with the principles of Islam and what runs counter to them, in accordance with an interpretation very similar to that of the Saudi Arabian wahhabis. The teaching given in the madrasas is based on recital of the Koran litany and the learning of Arabic, allowing little space for scientific subjects or English. See Metcalf (1982).

4. In the 1980s, during Ramadan the Zia government was already levying a compulsory 2.5% tax (*zakat*) on bank accounts. The proceeds were given to the madrasas, which used them to provide board and lodging for the disenchanted masses they hosted.

5. The two main ulema parties defending the madrasa system are the JUI (Jamiat- e ulama- e islam, association of the ulemas of Islam) and the JUP (Jamiat-e ulama-e Pakistan, association of the ulemas of Pakistan). The former is an expression of the real Deoband tradition, while the latter is more inclined to mysticism and the cult of saints, disliked by the JUI.
students meant exercising control over a huge and potentially dangerous social class which the ulemas could mobilise whenever they wished. The political and religious system of the ulemas bears considerable resemblances to Israel’s ultra-orthodox parties. The religious parties in both states, in order to have Judaism or Islam prevail over common membership in the state, started to participate in the political system so as to act as a factor for national cohesion, in return for subsidies for their schools, thereby entering the governing coalitions.

In recent years madrasas have become full-blown centres for initiation into the Koran and the jihad. They have also begun to accept Muslims from all over the world, as is demonstrated by the cases of the two main Islamic studies centres, in Karachi (Jamia Uloom) and the NWFP (Dar-ul Uloom), which host students from 40 Muslim countries (6).

Devotees of the most rigid interpretation of Islamic law, the Taliban, graduated from the madrasas and under the spiritual leadership of Mohammad Omar, set out to bring down the Afghan government of President Rabbani, whom they considered corrupt for having betrayed the true teachings of the Koran. They left from Kandahar, near the Pakistani border, occupied Herat and then moved on Kabul, attacking it simultaneously from the south-west and the east.

Having taken Kabul, they overthrew the Rabbani regime, forced Massoud to retreat to his stronghold in the Panjshir valley (50 miles north of Kabul) and imposed a strict observance of Islamic law, repressing everything not allowed by the letter of the Koran (7). The Taliban were particularly severe in the capital and the big cities, which were supposed to be showpiece of their government and a model for the whole Islamic world. In the outlying areas their interpretation of Islamic law could not be imposed with the same severity (8).

6. The Dar-ul-Uloom, located in Akhora Khatak, is a ramshackle complex of buildings on the road between Islamabad and Peshawar. It includes a residence block for 1,500 students, a high school for 1,000 outside students and twelve smaller madrasas.

7. Women suffered particularly badly under the Taliban regime. They were subjected to the most barbaric torture, reduced to illiteracy and unemployment, confined to their homes and forced to wear the burka.

8. This is a difference that should be emphasised in the interests of a proper understanding of the jubilation manifested in Kabul following its
The origins of this chain reaction of successes scored by a small group relatively unversed in military arts can be traced to two factors. The first is the historical hostility between the various factions established in Afghan territory, and the second is a series of geo-strategic questions.

In ethnic terms the meteoric rise of the Taliban and the support they initially enjoyed in the provinces they conquered is explained by their almost exclusive membership of the Pashtun group [Afghanistan’s dominant ethnic group (9)] and of the Durrani lineage in particular. The Durrani founded the first Afghan empire and enjoyed a long dominance over the other main Pashtun lineages, the Ghilzai and Afghanistan’s other ethnic factions (10).

The Soviet invasion, however, drove the Pashtun from their traditional ruling position and they were unable to regain it, even after the Red Army’s withdrawal from Kabul (11). This factor is important for an understanding of the importance and the speed of the ascent of the Taliban, who were welcomed as liberators as soon as they entered the Afghan provinces (especially in the central and south-eastern

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liberation by Northern Alliance fighters and American troops, an expression given excessive prominence by the western media. In actual fact the severity of the sharia imposed in the capital was unknown in the rest of the country and thus disliked by the local Pashtun. And illiteracy, all too hurriedly associated by the western media with the inferiority forced upon women by the Taliban regime, was actually a status common to most of the Afghan population, which still lacks the most basic necessities.

9. Contrary to many superficial views, the severity and bigotry of the Taliban did not derive solely from a blind interpretation of the Koran, but also drew on the imperative character of their tribal code. Indeed, for the Pashtun the line separating the sharia and the Pukhtunwali (the unwritten code of the Pashtun) has never been clear. The Taliban’s wish to force their interpretation of Islamic law on the other groups ended up exacerbating inter-ethnic conflict in Afghanistan precisely because non-Pashtun groups considered this attempt as an imposition of Pashtun tribal law on the whole country.

10. Of the ten members of the Shura, the Taliban decision-making body based in Kandahar, no fewer than seven were from the Durrani clan.

11. With the pro-Communist Najibullah regime (1987-1992) ensconced in Kabul and the northern provinces controlled by Dostum and Massoud, until the mid-1990s the Pashtun had no choice but to remain confined to the Pakistani provinces of Baluchistan and the NWFP.
areas of the country). In addition, for the local populations their arrival meant an end to the perennial fighting between the various warlords. In a way they embodied the feeling of revenge of the Pashtun over their ethnic rivals, especially those who had taken part in their removal from power: the Tajiks under Rabbani and Massoud and Dostum’s Uzbeks.

Looking at the question from a strategic standpoint, however, no Taliban ascent would have been possible without the logistic and technical support of the Pakistani secret services, the Inter-Service Intelligence (ISI). They were responsible for the weapons supplied to the Taliban and the route used in their advance on Kabul.

The Taliban movement is therefore a Pakistani creation, and forms part of the country’s traditional policy of intervention in Afghanistan. In this regard the Taliban today represent for Islamabad what the Mujahideen represented in the 1980s. In strategic terms there is no difference in the significance of the two movements.

During the Soviet occupation the ISI, with the connivance of the CIA, set up camps at Cherat and Nowshera, near Peshawar, to carry out a secret programme of military training for Afghan refugees, who included the future “lion of Panjshir”, Massoud, and Islamabad’s protégé Hekmatyar. After the fall of Kabul’s last Communist government in the 1990s, Hekmatyar and his party (Hebz-e-Islami) were progressively abandoned by the Pakistani government. This was firstly because he failed in his attempt to place a pro-Pakistani government in Kabul, and secondly because since the beginning of the decade Washington had been viewing his political ambitions and his links with international terrorism with increasing suspicion. The outbreak of the Gulf War and Hekmatyar’s support for Saddam Hussein definitively alienated him from the United States and Saudi Arabia, who started to put pressure on Pakistan to abandon him.

The ISI thus set about finding a replacement and they found one, equally fundamentalist and equally Pashtun - the Taliban, that is to say those who were to become Pakistan’s instrument for the construction of the Peshawar-Kabul axis pointing towards central Asia. Not for nothing, the day after Kabul had fallen to the Taliban, did Pakistani President Benazir Bhutto hail the «reunification of the country, a factor for stability for the entire region and a key to the
true independence of the central Asian republics» (12). The conquest was made possible by the fact that the military structures given by the ISI to Hekmatyar’s Mujahideen in the 1980s were used in the following decade to train the “students of the Koran”.

Without the support of Pakistan (and states traditionally allied to it) it is unlikely that the Taliban would have had:
- equipment suited for the helicopter-borne operations they undertook in the mountain areas to encircle Kabul;
- efficient tank repair units, which allowed them to recover all the knocked-out armoured vehicles from the Afghan war abandoned in the north by Massoud;
- a strategic rear in which to withdraw if necessary and organise field hospitals.

In addition, the telecommunications systems in the possession of the Taliban, whose operation is not taught in madrasas, betrayed an international involvement going well beyond a simple revolution made by a group of men in the name of Allah (13).

Playing on the Pashtun desire to get their own back on the other ethnic factions, Islamabad appealed to the jihad in encouraging the Taliban to strive for the “pacification” of Afghanistan. The aim was to rid the trade routes running through Afghanistan from Pakistan to central Asia of the myriad Mujahideen commanders whose presence made them unusable (14).

So it was that in their debut as “guerrillas” - in the cause of free trade - in 1994 the Taliban went to the aid of a convoy which had been intercepted and held by Mujahideen in southern Afghanistan. The thirty lorries in the convoy belonged to a Pakistani army company named the National Logistic Cell, which had transported cargoes of weapons and drugs at various times during the war against the


13. The interception of a Russian cargo plane over Kandahar, as effected by the Taliban in 1995, required radar equipment that only Pakistan could provide.

14. Relying on the arsenals captured during the war with the Soviets and on income from opium poppy cultivation, after the departure of the Russians the various warlords divided Afghan territory into spheres of influence.
Afghanistan, the Taliban and the “Great Game”  

Soviets. The Taliban intervention allowed the convoy to reach Turkmenistan and return loaded with cotton.

This was the basis for the unification of power in Afghanistan wished for by the United States, Pakistan and Saudi Arabia, but above all by the main players in the fresh chapter of the Great Game in central Asia: the gas and oil multinationals.

1.1. Great game for black gold

It rapidly became clear that behind the military manoeuvres of the Taliban lay the interests and agreements of big western multinationals, attracted to the region by the rich oil and gas deposits in the new central Asian republics. For their part, since independence these countries had been waiting to be able to export their oil and gas resources by means of routes other than those running through Russia.

The Argentine company Bridas, in the person of its president Carlos Bulgheroni, was the first player from the finance and oil industry to contact the Taliban, in the conviction that their control of the route for exporting central Asian gas and oil could render his company’s mineral exploitation plans feasible (15). Almost simultaneously an initiative was launched by the American company Unocal, which proposed the construction of its own gas pipeline on a route similar to the one suggested by Bridas. Thus, the beginning of the 1990s saw the start of the Great Game in the new theatre of Central Asia.

Turkmenistan, from whose territory the pipeline was supposed to run, did not wish to miss the chance to curry favour with the American company and the Clinton administration, which could return the favour with economic benefits. And Pakistan, which was training the Taliban, was persuaded by Washington to switch its support from Bridas to Unocal.

In October 1995 the die was cast. The Turkmen government signed an agreement with Unocal and its Saudi partner Delta Oil Compa-

15. In November 1994, while the Taliban were consolidating Kandahar as their dogmatic stronghold, Bridas persuaded Turkmenistan and Pakistan to form a working party to conduct a feasibility study for a gas pipeline running through Afghanistan to Pakistan. In the following spring Pakistan and Turkmenistan signed an agreement authorising Bridas to draw up a pre-feasibility study for the gas pipeline.
ny for the export of gas and oil through Afghanistan. After completion of the gas pipeline the project stipulated the construction of an oil pipeline to the Arabian Sea coast in Pakistan. The idea was to transport oil and gas through non-Russian territory in order to break Moscow’s monopoly control of central Asian energy resources. Just one piece was missing for the completion of the design: unification of Afghan territory involved in the route under single political control that would safeguard the oil companies’ investments. On the basis of information provided by the Pakistani ISI, the CIA and the American administration decided to lend their support to the madrasa students, hoping in their rapid conquest of Afghanistan.

Once the Taliban had taken full control of Kabul, Unocal did not conceal its satisfaction at the latest developments in Afghanistan. Chris Taggart, the Unocal executive responsible for the pipeline project, said that his company was making “non-financial donations” to the Taliban in exchange for their cooperation in the deal (16) and that their military successes were a “positive development” considering that “the latest events [are] likely to favour the project” (Degli Abbati, Roy 1986: 334). Indeed, in the spring and summer of 1997, when the Taliban were beaten back from the Northern Alliance stronghold of Mazar-e-Sharif with heavy casualties, Unocal vice-President Marty Miller said that the project was in danger since peace in Afghanistan depended on a stable government, whichever it might be (17).

In December 1997, by which time the Taliban conquest of Afghanistan no longer seemed in doubt, Unocal paid 900,000 dollars to the Centre of Afghanistan Studies of the University of Omaha (Nebraska) to open a school in Kandahar. The school was run by Gerald Board, who had distinguished himself in the 1980s as director of the

16. Following the Taliban conquest of Kabul, a Unocal delegation visited the Afghan capital to seek an agreement with mullah Zahid for the opening of an office there. Zahid told the British agency Reuters that the Taliban had also been invited to send a delegation to the Turkmen capital to take part in the formation of a tripartite committee on Afghanistan, made up of representatives from Turkmenistan, Afghanistan and Pakistan. Pipeline consortium needs peace in Afghanistan, “World News”, 28th October 1997.

17. The momentary setback suffered by the Taliban at Mazar compelled Pakistan, Turkmenistan and Unocal to revise the project’s launch date. It was put back from 1997 to 1998.
Peshawar office of the American Agency for International Development, which was instructed to provide any and all forms of assistance to the Mujahideen.

Also involved in the project, though there is no direct evidence of direct contact with the Taliban in Afghanistan, was the Saudi Delta Oil Company, which ran a large number of other businesses in central Asia (18).

These two multinationals oversaw the constitution of a consortium called Central Asia Gas Pipeline (CentGas), specially formed to carry out various projects designed for exploiting the region’s natural gas resources. CentGas was composed of seven members: Unocal (United States), holder of 46.5% of the capital, Delta Oil Company (Saudi Arabia, 15%), the Turkmen government (7%), Indonesia Petroleum (Inpex, Japan, 6.5%), Itochu Oil Co. Ltd (Czech Republic and Japan, 6.5%), Hyundai Engineering & Construction Co. Ltd (South Korea, 5%), Crescent Group (Pakistan, 3.5%). The consortium was supposed to have been joined by the Russian giant Gazprom with a 10% holding, but Moscow opposed the idea in an attempt to prevent central Asian gas and oil being exported through pipelines not under its own control.

According to the CentGas project, the gas pipeline was to run 1,271 kilometres from the Afghan-Turkmen border to the city of Multan in northern Pakistan. There it was to join the existing system which runs northwards and southwards from Sibi, covering the entire backbone of Pakistani territory. Of this total of 1,271 kilometres, the pipeline was to cover 743 in Afghanistan and 528 in Pakistan. The Turkmen government would be responsible for connecting the pipeline with the Dautelabad gasfields 169 kilometres from the border. From Pakistan the pipeline was subsequently to have been extended by a further 644 kilometres to run to New Delhi.

The pipeline planned for oil exports was to run through western Afghanistan. From Chardzou in southern Turkmenistan it was to cover 1,667 kilometres to the Pakistani terminal at Gwadar on the Makran coast, the site planned for the infrastructure needed to load

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18. Delta Oil Company was also a stakeholder in the Azerbaijan International Operating Company (AIOC), which carried out oil prospecting and development work in all the central Asian republics.
the big tankers serving the Asia-Pacific markets (19).

Both projects were shelved in the 1990s when the Americans, convinced that the Taliban could not win a rapid victory, started to distance themselves from the movement and from Pakistan, directing their attention to alternative routes for exporting the resources of the former Soviet republics (20).

It was thus the multinationals’ interests and strategies regarding the exploitation of central Asian oil and gas that underpinned the formation of the Washington-Riyadh-Islamabad political-economic axis, a factor which brought about the initial success of the Taliban and the subsequent overturning of alliances (21).

2. Origins and development of the great game

In antiquity central Asia, sitting astride the Eurasian continental landmass, was considered to be the centre of the world. At various times its warlike nomad tribes conquered parts of Russia, Europe, India, China and Turkey. The Chinese emperors built the Great Wall as a barrier against the marauding central Asian tribes. A large part of Russia’s ancient history is the history of wars fought against the Muslim Tartars (22).


20. Among the causes of the change in American policy, mention should also be made of the fierce opposition to Unocal policy mounted by American feminists, who objected to the company’s collaboration with a group (the Taliban) responsible for discrimination against Afghan women, and the bombing of the American embassies in Kenya and Tanzania, which in turn provoked the American attacks on Osama bin Laden’s training camps in Afghanistan (summer 1998).

21. The support of the American and Pakistani secret services for the Taliban, considered as a tool for clearing away anything which might stand in the way of the plans of the multinationals, was explicitly stated by Charlie Santos, the American assistant to Mahmud Mestiri, former UN representative in Kabul: «The Taliban are the liberators of Afghanistan». A year after making this remark Santos was appointed to the board of Unocal. See Akbarzadeh (1996).

22. When he occupied the Tartar capital Kazan in 1552, Ivan the Terrible commemorated the event in Moscow with the construction of St.
The great central Asian empires, those of the Mongols, the Timurids and the Shayban Uzbeks, dominated half the known world and begat other empires: the Mogul Empire in India and the Ottoman Empire in Turkey. In the 19th century Sir Halford Mackinder, the founding father of modern geopolitics, defined central Asia as the political centre of the world because it contained more borders than any other region. Whoever controlled central Asia would wield enormous power: “It is the world’s biggest natural fortress, guarded by polar ice, deserts, arid plateaux and mountain chains” (Hauner 1990).

The opening up of maritime routes between Europe and Africa, India, China and the Americas had a rapid influence on the importance of central Asia, drastically reducing the volume of trade along the Silk Road. With no outlet to the sea, central Asia was now isolated, an appetising pawn to be used in great power rivalry. In what came to be called the Great Game, Russia and Britain competed for power by expanding their empires towards the Asiatic continental landmass. Too weak to stand against the great powers and cut off from their Muslim neighbours to the south, one by one the central Asian regions caved in before the attacks of the Russians. But after the Russian revolution central Asia lost its geostrategic significance. Solidly incorporated in the Soviet Union, it was of no further interest to the superpowers, and was seen by the Soviets as nothing more than an appendage of their own Russian empire.

After 1991 all this changed. Russia continued to dominate the region, but two other great powers, the United States and China, stepped in and brought about rapid geopolitical alterations in the foreign relations of the newly-independent central Asian republics. This new great power rivalry first emerged in the race to exploit the gas and oil reserves of the Caspian Sea and central Asia, but it soon extended to other strategically important questions, such as how to maintain stability in a vast and fragile region bordering on such a large number of volatile countries, in particular Afghanistan.

Central Asia’s position at the heart of a huge continental landmass remains one of the greatest problems, and the great powers have tried to formulate policies which would allow them beat their

Basil’s cathedral, whose onion-shaped domes symbolised severed Tartar heads wrapped in turbans.
competitors in controlling access to the sea and trade routes. But the superpowers are finding out that this time the game has become more difficult. The leaders of the central Asian regimes, each with his own game to play according to his own rules, refuse to accept the role of pawns in the superpower game. It is a completely different game, and it is being played by Islamic militants.

3. The United States and the importance of oil

American oil companies were among the first international groups to realise the importance of the region. Even before US embassies were opened in each of the new republics, the biggest companies had already ascertained the region’s energy potential, spurred by Chevron’s first detection of oil and gas deposits in Kazakhstan. But in the aftermath of the Cold War, when the US was faced with a new strategic landscape presenting many unclear challenges, central Asia was not one of its high priorities. Washington’s primary aim was to define its new relations with non-Communist Russia, and until this was achieved the other former Soviet republics would be of secondary importance.

Under the Clinton administration, the US was not even able to decide how to achieve short-term objectives in central Asia. Although attempts were made at a certain official level to formulate a strategic vision for the region, as long as the US followed the “Russia first” policy, Washington saw central Asia through Moscow.

In the mid-1990s the Americans went to the opposite extreme, obsessed by the idea of creating a pipeline for transporting oil and gas from Baku in Azerbaijan to Ceyhan in Turkey. Thus the long-awaited Great Game between the major powers, in the Caucasus and central Asia for the routing of the pipelines, rapidly began to take shape.

After the emergence of the IMU (Islamic Movement of Uzbekistan) in 1999, the Clinton administration changed its central Asian policy to the fight against terrorism and an attempt to increase the republics’ military capabilities. But what it failed to do was make its support conditional upon a commitment by those governments to introduce political and economic reforms, not to mention human rights.

In July 1997, in an important policy statement on central Asia, vice Secretary of State Strobe Talbott gave an assurance that the US
had no interest in a replay of the Great Game. «Our aim», he said «is to prevent and actively discourage this atavistic outcome». The central Asian states «have the chance to put behind them once and for all the experience of being pawns on a chessboard while the great powers play for wealth and influence at their expense (...) The consolidation of free societies (...) from the Black Sea to the Pamirs will open a valuable trade and transport route along the old Silk Road between Europe and Asia. But there is an ominous downside: if economic and political reforms are not enacted, if internal and transnational conflicts continue to simmer and break out, the region could become a breeding-ground for terrorism, a nursery of religious and political extremism, a battlefield for open war. It would be a cause of grave concern for the United States if this were to happen in an area sitting on almost 2,000 billion barrels of oil. This is another reason why the solution of conflicts must be the number one commitment for US policy in the region» (Talbott 1997).

Talbott’s warning was as far-sighted as his ideas on future US strategy. The problem is that Washington did not adopt them.

If the United States had had a serious strategic vision for central Asia its leaders would not have had to confine themselves to talking about conflict resolution, they would have seen it as priority number one. In particular the US should have thrown its political weight behind the UN’s attempts to put an end to the civil war in Afghanistan, which represented the most serious external threat to central Asia. The Americans could have stabilised Tajikistan’s economy with development funding, exercised concerted pressure to end the conflict between Azerbaijan and Armenia, worked on improving its relations with Iran and established an explicit linkage between pipeline projects and military aid on the one hand and the implementation of reforms by the central Asian republics on the other. Instead, Washington showed greater clarity with regard to its enemies than its friends, designating its two major regional rivals, Russia and Iran, as its rivals and competitors without identifying a single regional power as an ally.

By declaring the IMU as a terrorist group at the beginning of the game, the US denied itself any opportunity of mediating between the movement and the Uzbek government, and the absence of any allies in the region deprived Washington of any say in Afghan affairs. Since central Asia is far from America and US influence there was mar-
ginal, Washington could not hope to implement a regional policy by itself. The US needed allies in the region - without them, even small-scale initiatives were doomed to failure. With the powerful influence of the oil companies on the Bush administration, observers of central Asia hoped that Washington would be able to develop a broader political strategy, but there were few signs of this coming about, and all the time the threats posed by Afghanistan and the IMU were growing.

Immediately after the IMU offensive of spring 2000, the central Asian states were bombarded with a series of visits by senior American representatives such as Secretary of State Madeleine Albright, CIA director George Tenet and the head of the FBI Louis Freeh. In June of the same year the leaders of the central Asian states attended an anti-terrorism conference organised in Washington. They were treated as guests of honour, and were even shown around the headquarters of the CIA and FBI. In February, in fact, CIA director George Tenet had already pronounced a chilling verdict on the IMU: «We are increasingly alarmed by the activity of the IMU, a terrorist group of insurgent extremists whose annual raids in Uzbekistan have become more bloody and substantial with each passing year. In central Asia corruption, poverty and other social ills provide a fertile terrain for Islamic extremists, terrorist networks and drugs and arms trafficking which will have an impact on Russia, Europe and beyond», he stated to the US Senate (23). Although Tenet identified the problem clearly enough, the measures taken by the Clinton administration were confined to anti-terrorism, ignoring the “social ills” afflicting the region.

When Secretary of State Albright was visiting central Asia, Washington announced a security initiative for the region under which Kyrgyzstan, Uzbekistan and Kazakhstan would receive three million dollars each to contribute to the improvement of their counter-insurgency capacities. And in 2001 this aid was extended to Tajikistan and Turkmenistan. Troops of the central Asian republics began to train with new American material: uniforms, helmets, night vision equipment and communications apparatus. American army personnel organised joint exercises with Kazakhstan, Kyrgyzstan and Uzbekistan under the NATO Partnership for Peace programme, which comprised

23. Testimony of CIA Director George Tenet before the Senate Select Committee on Intelligence, 8th February 2000.
many countries from the Commonwealth of Independent States.

During her visit Albright listed the political and social measures to be taken by the republics’ leaders if they wished to prevent the spread of disorder, but rather than being made dependent on these reforms, American aid was channelled directly into counter-terrorism. A number of members of Congress realised that the deepening crisis in central Asia was being fuelled more by the states’ regimes than the IMU. Dan Burton, for instance, said «Kazakhstan is the jewel in the crown of the region and therefore probably another target for extremist Islamic groups, but it is the Nazarbayev regime itself which is doing most to fuel the growth of Islamic extremism» (24). But such comments had little effect on American policy.

When General Tommy Franks, chief of the American Central Command (CentCom), made a visit to the region in 2001, he reiterated the danger presented by terrorism in the region. «I think it is possible for a small number of determined terrorists to bring great instability and a feeling of insecurity to the region’s population. The countries of central Asia take this threat very seriously and in recent years have been working to be able to face it», stated Franks at a briefing in Tashkent in May of that year (25). He asserted that relations between the American and Uzbek military were excellent, and promised that CentCom would continue training Uzbek soldiers and American special forces would conduct exercises with the Uzbek army. These activities provided a convenient cover for US army units to remain permanently stationed in Tashkent.

There was one positive development during the early months of the Bush administration. With American officers training the Uzbek army alongside Russian military advisers, and with the first extension of American economic and military aid to Tajikistan, a Russian satellite state, it became clear that the US and Russia no longer perceived each other as strategic competitors in the fight against the Taliban and the IMU, but had become strategic partners, at least for the time being.

This result was due in part to an anti-terrorism working party set up by...
up by Russia and the US in 2000 with the task of monitoring groups such as the Taliban, the Chechens and the IMU. Franks acknowledged that American and Russian interests no longer conflicted, that now they “intersected” in the region - an admission that would have been impossible only a few months earlier. After more than a decade of trying to keep American influence out of central Asia, Russia had finally understood that it needed US support to maintain its own presence in the region and provide military aid to its beleaguered regimes. While Putin and Bush had clear differences with regard to missile defence and nuclear non-proliferation, they were finally able to agree on the need to fight terrorism and the IMU.

4. The new great game

China, Russia and the United States will very probably remain rivals in central Asia, but the Great Game has changed. In the 19th century Russia and Britain used the states of central Asia as pawns. Now the superpowers find themselves at the mercy of forces they themselves helped to unleash but can no longer control. The threats coming from Afghanistan, the Taliban, Osama bin Laden and the IMU have highlighted the weakness of the great powers and forced them together into bilateral agreements. Today the great powers have a common interest in weakening the Taliban and the IMU and strengthening the military capabilities of the central Asian states, even though they remain at odds over the pipelines and the best way of exploiting the region’s energy resources.

The events of September 11th dramatically highlighted just how much the game has changed. With the commitment of Russia and China to collaborate with the US in the effort to destroy the Taliban and Al Qaeda, the great powers suddenly find themselves united in the war on terror and Islamic extremism in Afghanistan and central Asia. The three can now hope not only that the Taliban can be beaten and a new broad-based multi-ethnic government take power in Kabul, but that the IMU will be neutralised as a threat to central Asia and Xinjiang province.

Also, China is convinced that US-led attacks will weaken links between Uighur separatists and radical Islamic movements in Pakistan and Afghanistan. For as long as the alliance continues to fight
the Taliban and Al Qaeda the great powers will certainly remain united, but what is less clear is how relations will develop once the fighting has stopped. If, as Russia fears, the United States aims to keep a permanent military presence in central Asia, there will almost certainly be a recrudescence of rivalry in the Great Game.

Russia and China have converged on a number of questions - in particular they both hope to prevent the US emerging as a unilateral global power. But while the two countries share the same security interests in central Asia, Russia will be increasingly unwilling to accept a Chinese military presence in its own back yard, just as many of the region’s republics look askance at the prospect of an open Chinese military presence. For their part, the republics have their own Uighur minorities to worry about. So they have a difficult balancing act to perform, encouraging Chinese support for their armies while discouraging an open Chinese military presence or influence in the region.

China and the United States have yet to find common ground in central Asia. Besides ensuring Chinese support for the American-led alliance, Washington is reported to have exchanged information with Beijing on the involvement of Uighur militants with the Taliban and the IMU. The two countries remain at odds on many other questions, however. Once the military threat has receded, if the central Asian republics prove able to improve economically and politically, the three-way rivalry will intensify. Central Asia’s interest lies in leading the great powers to a common platform that goes beyond threats to their security and involves them in an even-handed exploitation of the region’s energy resources. This in turn could lead to economic development and political liberalisation in central Asia.

There is still hope. For the first time the great powers have come together in central Asia in defence of the region’s territorial integrity with the aim of freeing it of terrorism. Perhaps in the future they will be prepared to cooperate on oil and gas pipelines from central Asia to the outside world, facilitate the economic development of the region’s poorest states and bring enough economic and political stability to Afghanistan to enable it to return to the international community. The terrible war that began on October 7th 2001 with the American attack on Afghanistan could be translated, for the first time in the region’s history, into cooperation rather than competition between the great powers.
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Part II

SOCIETY AND ECONOMY
THE TRIBAL LANDS IN THE NWFP AND
THE LONG-STANDING PROBLEM OF
AFGHAN REFUGEES: IS A SOLUTION AT HAND?

Nicolò Gasparini

1. The overall picture

Administratively, Pakistan is divided into four provinces: the Punjab, whose capital is Lahore; Baluchistan (Quetta), the Sindh (Karachi), and the North-West Frontier Province (NWFP), whose capital is Peshawar.

The NWFP also comprises the Federally Administered Tribal Areas (FATA), located on the country’s north-west frontier and forming a belt of territories bordering on Afghanistan. The tribal lands are run by seven Agencies and six Frontier Regions: the Khyber Agency, the Kurram Agency, the Bajaur Agency, the Orakzai Agency, the Mohmand Agency, the Northern Waziristan Agency and the Southern Waziristan Agency; the Frontier Regions are Peshawar, Kohat, Bannu, Dera Ismail Khan, Tank and Lakki.

The FATAs were established under British rule in 1890, when four of the seven Agencies (Khyber, Kurram and North and South Waziristan) already existed. Mohmand was set up in 1951, Orakzai in 1973 and Bajaur was drawn from the old Malakand Agency.

The tribal lands are located between the “settled areas” that make up the rest of the NWFP and the Afghan border, which follows the Durand line and is about 2,400 kilometres long. This location has endowed the tribal lands with a position of primary strategic importance in the Indian sub-continent in particular and Asia in general. The arid, rugged mountain terrain typical of these lands has always stood as the compulsory point of entry to the sub-continent, and over the centuries the passage of Aryans, Macedonians, Persians, Durranihs, Turks, Mongols, Tartars and Moghuls has in particular highlight-
ed the importance of the Khyber Pass.

The controversial history of the Durand line began in 1893, when the Afghan authorities accepted the division proposed by Sir Mortimer Durand, representing the British colonial administration in India. The dividing line, however, was never ratified by the Afghan government, which gave rise to a number of territorial claims (1), especially on the part of the Pashtuns, who from the outset saw the border as an unnatural division of the homogeneous Pathan (2) community. In the view of a great many members of the Pashtun community, «… in legal terms the Durand line remains an imaginary line which separates the families living on the border …» (3). Apart from the Orakzai Agency, all the Agencies are located on the Afghan border.

The tribal lands, covering an area of about 27,220 square kilometres (4) and home to about 5.7 million people, may be divided geographically into three macro-regions: the northern region, between the Swat and Kabul rivers, which comprises the Bajaur and Mohmand Agencies; the central region, made up of the Khyber, Kurram and Orakzai Agencies and the Frontier Regions of Peshawar and Kohat; the southern region, composed of the North and South Waziristan Agencies and the Frontier Regions of Bannu, Dera Ismail Khan, Tank and Lakki. The main rivers crossing the tribal lands are

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1. In 1893 the British authorities and Afghan king Abdul Rahman Khan signed a document which was to establish the border between Afghanistan and British India. The dividing line had been identified and proposed by the British officer Sir Mortimer Durand, and took his name. The document, which was to be ratified by the Afghan parliament and remain in force for 100 years, was never approved by Kabul. Despite insistent pressure from the Pakistani government, it has never been renewed, which has resulted in an increase of tension between the two countries in recent years.

2. In this paper the terms Pashtun (Pukhtoon or Pashtoon) and Pathan are used synonymously. Tradition has it that Pakhtoon derives from the word Pukhtna, which means “hill people”, whereas the term Pathan is said to be of Arabic origin, deriving from the word “Batan”. For more information, see: “The Pukhtoons - Culture and traditions”, Articles, http://www.peshawar1.com/html/articles01.html.


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the Kurram, the Gomal Tochi, the Swat and the Kabul.

The lands also include the famous Khyber Pass, crossing the Sefid Koh mountain range which separates Pakistan from Afghanistan. Used for centuries by various invaders as the gateway to India, the Pass runs for 53 kilometres on both sides of the border (5). In addition to this gateway for all trade and migration into the sub-continent, the arid mountainous areas in the tribal lands are served by the passes of Nawa, Peiwar, Kotal Tochi and Gomal.

The populations inhabiting the tribal lands belong to the wider Pashtun community which, living mostly beyond the Durand line in Afghanistan, is about 17 million strong.

The Pashtuns living in the FATAs belong to a range of tribes and sub-tribes, of which the biggest are the Afridis, the Mohammans, the Shinwaris, the Waziris, the Orakzai and the Mahsuds (6).

These tribes are in turn divided into clans, or *khels*: the Mahsuds, for instance, are composed of three clans, and the Afridis eight. Below the khels are sub-clans and families. Although the vast majority of the people living in the tribal lands are Muslims, there are also very small Sikh and Hindu communities. The language most widely spoken in the tribal lands is Pushtu. The populations of the tribal lands cultivate a special attachment to and respect for the ancient traditions and principles of the Pashtun tribes, subscribing to the “Pukhtoonwali”, the Pashtun code of living. The central features of the Pukhtoonwali are *badal*, *melmastia* and *nanawatey* (7).

*Badal* is the tribal law prescribing justice based on the reciprocity of actions. This entails, and according to some scholars is based on, vendetta for wrongs suffered in line with the unwritten principle of “an eye for an eye, a tooth for a tooth”.

5. The pass still bears the marks of its tormented history. Today it is still possible to come across a British cemetery, a Buddhist sanctuary and a number of fortified bases.

6. Other tribes living in the lands are the Utman Khel, Tarkan, Safi, Turri, Bangash, Dawar, Shelmani, Mulagori, Parachinar, Moszai, Saidgai, Bhittani Kharasin, Gurbaz, Ustrana, Utmanzai, Ahmadzai and Shirani.

Melmastia, an equally important value in Pashtun tradition, demands special attention for guests, and is manifested in - sometimes lavish - hospitality. Weddings, circumcisions and funerals are the major events in Pashtun social life and are organised down to the smallest detail, involving enormous expense and the presence of hundreds of people (such celebrations, called “Kherat”, often involve whole communities). The sumptuous banquets and the quality of the entertainment laid on for the guests reflect the status and influence of the hosts, who thereby increase their power and strengthen their clan ties. This gives rise to great competition in offering the best treatment and most expensive ceremonies to the guests of the family.

Nanawatey is the name given to the right to shelter, or refuge. It must be given to whoever asks it, and especially in the tribal lands it often takes the form of food and shelter for Afghan refugees, more recently for the Taliban and members of Al Qaeda.

In a book which is still essential reading for an understanding of this people, Caroe provides a stereotyped - but useful - description of the Pathans: «The strength of character of the Pathans, the bravery of the Pathan fighter, the astuteness of the Pathans’ political calculations at one time led this people’s ancestors to positions of command outside their own country. This still happens… They must have no fear of exercising their authority, they are like the Scots in Britain. Like other mountain peoples, the Pathans in Pakistan will soon control the fortunes of their own country» (8).

2. The political and legal system

The FATAs became part of Pakistan in 1948 after partition from India, on the condition that they would keep a substantial degree of autonomy, particularly in the adherence to the traditional values and rituals of Pashtun culture. The autonomous status of the FATAs was sanctioned by the Pakistani government by means of the “Instrument of Access” signed in January 1948 by Quaid-i-Azam Mohammad Ali Jinnah during a Jirga held in the tribal area of Bannu. The Instrument has subsequently been confirmed in every version of the Pakistani Constitution.

8. The Pathans, written by a British governor, Olaf Caroe. See also Adeel Khan (2003).
That is why the FATAs, even though they belong to the North-West Frontier Province, enjoy a unique status whereby under Article 247 of the Pakistani Constitution they are subject to the executive authority of the federal government and allowed to maintain special alliances and economic ties with neighbouring Afghanistan.

The Governor of the NWFP, acting in the name of the Pakistani President, administers the FATAs with the assistance of Political Agents, who constitute an essential institution in the political-administrative running of the tribal lands. The institution has its roots in the colonial period, when the British devised a system able to ensure a satisfactory level of control over proud populations which were unwilling to abandon their systems of government.

As officials of the central government, the Political Agents (PAs) play a key role which, according to Bangash, is a combination of juridical and administrative functions (1997: 39-59). They exercise their power in the seven FATAs on the basis of the Frontier Crimes Regulations, also known as the “black law”, introduced by the British in 1901. Control on the ground is provided by 3,616 Maliks and 3,441 Lungi Holders, the names given to individuals listed and recognised by the PAs as influential leaders of specific tribes, responsible to the government for maintaining order within their tribes.

Some years ago, NWFP Governor Iftikhar Hussein pronounced words of considerable praise for the Maliks, describing them as “our hands and feet” (9). Precisely as a result of the power concentrated in those hands, a broad power not easy to control, the Maliks have been repeatedly accused of embezzlement and abuse of power. And after the fall of the Taliban regime they were accused of aiding and abetting individuals associated with the Mullah Omar government and leaders of the Al Qaeda terrorist network. The management by the Maliks and PAs of public funds and income from the flourishing cross-border trade has also given rise to frequent protests and discontent.

Law and order on the ground is in the hands of local police forces, who in the form of the Khassadars keep order within the tribal lands.

Tribal law, lent substance by the Frontier Crimes Regulations, revolves around the institution of the “Jirga”, the foundation stone of

Pathan culture and obviously in force in Afghanistan. Tradition has it that the Jirga has held sway for about five thousand years, and it is frequently compared to the Athenian model. In its simplest form, the Jirga is a meeting of elders called upon to express their judgement on questions raised by the community. In practice it stands as a body invested with legislative, executive and judicial power. In concrete terms it has been defined simply as «a group of elders, mostly uneducated, who meet to resolve disputes according to tribal usages, customs and traditions in the shortest time possible» (10). Indeed, according to a much-used saying in the tribal lands, “justice delayed is justice denied”.

Each family assembly (Jirga) appoints a representative to sit in the village Jirga, which in turn appoints one of its number to take part in the sub-tribal Jirga, which is subordinate to the tribal Jirga, to which are “accredited” leading members of the sub-tribal Jirga, and so on up the pyramid whose pinnacle is represented in Afghanistan by the Great Assembly, the Loya Jirga. Every member is appointed ad hoc and has no permanent representative role. The Jirga has no president or any one member endowed with special powers. The most senior elders and the members directly involved in the decision to be made take precedence in the debate. Once the inclination of the assembly has been identified, a decision is taken by a majority vote. The sitting is concluded with a prayer for the rapid and positive application of the decisions. A Jirga may be convened anywhere, without any special formal procedures being required (11).

In the Pashtun tradition some of the punishments meted out to those responsible for crimes are extremely harsh: death by stoning, for instance, is carried out on those found guilty of “illicit relations”. In the 1980s stoning was used as a punishment to counter the growing incidence of abductions. A peculiarity of this system is the practice of collective justice, which involves the entire family community of the culprit and often entails the destruction of their homes (12).

3. The economy

The economic situation in the FATAs is extremely difficult, primarily because of the striking backwardness which marks the area as a whole. The electric power supply is very precarious, and the grid leaves out vast swathes of territory. Power cuts are so frequent that anyone wishing to set up even a small production business has to acquire a generator. The water supply network is no better, and the supply of natural gas is even worse. Under these starting conditions and with precious little in the way of hopeful signs - on the initiative of NWFP Governor Ifthikhar Hussain Shah the Tribal Area Chamber of Commerce and Industry (TCCI) has recently been established - not only is the area virtually devoid of industrial development, any real economic growth in the short-to-medium term seems impossible.

The mainstay of the FATA economy is trade. The area’s geographical position has historically been conducive to trade with nearby Afghanistan, which is not subject to customs duties. Under the Trade Transit Agreement (TTA) goods bound for landlocked Afghanistan can pass through and be transported to Pakistani ports without incurring duties.

Carpets, precious stones and fabrics daily cross the Afghan-Pakistani border and are then transported to the richest bazaars in the neighbouring countries. A common method of evading production tax is the export of consumer goods to Afghanistan and their subsequent re-entry into Pakistan through the tribal lands (13).

The economy of the tribal areas is also based on animal husbandry and agriculture. The percentage of arable land actually put under the plough is very small, even compared to the rest of the NWFP. Irrigation remains one of the main problems, together with the ever-present risk of drought. The staple crops are wheat, maize, rice, peanuts, peaches, apricots, pears, apples, walnuts and vegetables which vary according to the local terrain. Since the food produced in the FATAs is not sufficient to meet the needs of the population, they all depend heavily on the rest of the NWFP.

13. «The clandestine re-export to Pakistan of goods imported under the TTA has always been tolerated despite the protests of Pakistani industrialists, and the agreement stands as a sort of symbol of the friendship between the two countries» (Natale 2001b).
The remainder of agricultural activity is - worryingly - organised around the production of opium, which makes the FATAs one of the world’s most dangerous drug nurseries. This “banned” crop has a market and produces profits which are infinitely more advantageous than any other produce. This, together with non-existent central controls and the poppy’s ability to take root with spectacular spontaneity on FATA terrain, makes opium production one of the most attractive specialisations for local farmers.

4. The FATAs after 1979

4.1. In Afghanistan

Until 1973, when king Zahir Shah was deposed, Afghanistan enjoyed reasonable political stability. Following the bloodless take-over of power by the king’s cousin Mohammed Daoud, supported by the army, Marxist groups close to Soviet reformist and revolutionary policies began to gain increasing power in Kabul. Daoud’s assassination was followed a year later in 1979 by the Soviet invasion, justified under Article 51 of the United Nations Charter with the pretext of coming to the aid of the Afghan government, which had asked for Soviet intervention. Requested by a puppet Afghan government fearing an imminent attack by Pakistani-backed Afghan rebels, China and the US secret service, the invasion was launched on Christmas Eve 1979 and after a few months the country was occupied by over 100,000 Soviet troops. Marking the beginning of a bloody campaign of Afghan resistance, the invasion resulted in a massive wave of refugees seeking shelter in Pakistan, above all in the tribal lands.

4.2. In Pakistan

The Soviet invasion of Afghanistan put Pakistan in a wholly new strategic position, turning it into a frontline state and placing it in the middle of the security belt surrounding the Soviet empire. The country’s border areas (the tribal lands of the NWFP) had become its most crucial region in the struggle to resist the Communist empire. At an international level, General Zia-ul-Haq’s regime became an essential interlocutor for the powers alarmed by Soviet expansionism. First and foremost the United States, under the Carter administration,
offered a full range of financial, strategic and military aid with the aim of bolstering the Pakistani regime and its capacity to support the rear of the Afghan resistance. In 1981 the United States and Pakistan signed an aid agreement involving $3,200,000,000 over six years (14). It was extended in 1986 to provide another four billion dollars.

In domestic terms Pakistan’s new strategic role manifested itself in an exponential growth in military spending and the progressive militarisation of Pakistani society, by means of which Zia aimed to strengthen his leadership. At the same time the dictator raised the profile of religion in the country, turning Pakistan into the spearhead of Islam’s religious struggle against the secular faith of Communism. This enabled him to secure the support of Saudi Arabia and a number of Gulf states, whose attention then focused on their “poor brothers” in the tribal lands, who thus became the beneficiaries of substantial investments funding the construction of Madrasas (Koran schools) and mosques and financing the resistance in Afghanistan.

Peshawar and the FATA area, though itself remaining relatively calm (15), thus became the strategic rear of the Afghan war, attracting from all the Islamic countries thousands of resistance fighters, the Mujaheddin. The tribal lands were turned into full-blown strategic sanctuaries, with training camps for fighters and supply bases for weapons and the full range of support material for the war.

At the same time hundreds of thousands of families left Afghanistan to escape the brutality of the war and sought a safe refuge in the tribal lands. It is estimated that in the ten years of fighting brought to an end in 1989 by Gorbachev’s order for a withdrawal of Soviet troops, over three million refugees fled Afghanistan and settled in the

14. «Immediately after the Soviet invasion of Afghanistan in December 1979, Zia declined the Carter administration’s assistance package offer of US$400 million as “peanuts”. It was not until 1981 that Pakistan concluded an assistance agreement with the United States, which provided for US$3.2 billion over six years, divided equally between economic and military aids. “Pakistan becomes a frontier province”, “Country Study & Guide”, www.-allrefer.com.

Pakistani border areas (16). According to the UNHCR, in 1990 Pakistan still had 345 villages of Afghan refugees. Of these, 68.5% were located in the NWFP, with an average population of about 10,000 per camp (17), mostly women and children (18).

The tribal lands had become a cauldron, teeming with people who had gone there to escape the war or prepare new attacks, an area which for historical-cultural reasons was outside the control of Islamabad and the Pakistani army and became a pressure-cooker ready to explode at any time. While the Afghan war gave the Islamic Republic of Pakistan a central role in world affairs, it also saddled an economically struggling developing country with the enormous burden of the refugees. It is hard to say whether or not the humanitarian and financial aid donated for the refugees actually found its way to them, or whether or not the Pakistani government did all it could under the circumstances. What is certain is that conditions of bare subsistence continued for years in hurriedly-built refugee camps in the tribal lands.

Together with many other NGOs, UN agencies provided substantial aid. Between 1979 and 1997 the UNHCR allocated over a billion dollars to assist the Afghan refugees in Pakistan’s tribal lands. While such aid improved the refugees’ conditions, however, it also created a harmful state of dependence (19). «After the fall of the Najibullah regime in 1992, UNHCR (United Nations High Commissioner for Refugees) and WFP (World Food Program), ceding to donor pressure and against the evidence of continuous warfare in Afghanistan, decreased assistance to camp refugees. This was most dramatic in the case of WFP, which stopped food assistance altogether» (20).

The refugee emergency amplified the problem of opium produc-

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19. «... camp refugees in Pakistan have become dependent on UNHCR ...» (Michael, Corbett, Mola 2005: 11).

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The tribal lands which, despite a formal undertaking by the Pakistani government to put a stop to drug production, were judged by American experts to be the source of most of the heroin reaching the West. An idea of the size of the problem is given by a press agency release of the time, according to which in 1983 Pakistani customs officials confiscated «... 2.5 tonnes of heroin from Afghanistan and the tribal lands, about 10% of exported production. It appears that the efforts of the government are beginning to make themselves felt, however. In Karachi, home to 50,000 addicts, a heroin cigarette costs one hundred rupees. Three months ago it cost ten» (21).

Drug production nonetheless remained profitable for farmers, since a kilo of heroin could fetch up to ten thousand dollars - an astronomical sum in such a poor region (Roland 1983). When the government’s commitment to combat drug production is translated into practical measures on the ground, still today it comes up against the total anarchy which permeates the area, and can easily spark off an escalation of violence. «Any armed operation against traffickers can provoke a ‘reaction of solidarity’ among the tribes, which are usually fighting one another but are always ready to join forces to strike the representatives of government authority» (ibidem).

It clearly emerges that the difficulty in putting a stop to drug production and flushing out traffickers is a direct result of the peculiarities of the tribal areas. «The traffickers have no homeland, and some tribes, settled on either side of the border, have already moved their clandestine laboratories to Afghanistan. The state of anarchy caused by the war is giving them a free hand. It will always be extremely difficult to reduce heroin trafficking between Afghanistan and Pakistan. The frontier is practically uncontrollable» (22). And after the Soviet invasion, with the Islamic revolution under way in neighbouring Iran, the only outlet for the drug trade was the tribal lands, and the Khyber Pass in particular (23).

21. “Pakistani drug tribes hand over laboratories and stocks”, ANSA article, 28th February 1984, 10.16.
23. «Heroin traffickers chose to escape the Islamic revolution and shift to the less closely controlled Khyber Pass, which quickly became one of the world’s biggest drug supply routes», “Pakistani-Afghan border increasingly explosive” (2), ANSA-Reuters article, 15th April 1985, 15.40.
Alongside the drug emergency, the huge influx of refugees engaged in the anti-Soviet resistance brought about a worrying growth in arms trafficking. Despite official denials (24), there is evidence that the Pakistani government and powers sympathetic to the Mujaheddin provided weapons as well as technical assistance to the resistance. And for its part, the pro-Soviet Afghan regime armed Pashtun tribes which were hostile to the Mujaheddin and to Pakistani interference (25).

According to the then Pakistani Minister of the Interior Aslan Khattak, in 1986 the tribal lands contained over 300,000 Kalashnikov assault rifles (26). «The men of the tribes, mostly illiterate, used to rifles dating back to the First World War, quickly learned the value and the workings of modern weapons: AK-72s, anti-aircraft guns, mortars and rockets which the Afghan anti-Soviet rebels received from abroad and in part sold on» (27) in the bazaars, where opium and Kalashnikov AK-47 automatic rifles were and still are openly sold.

It is no surprise that the arrival of several million Afghan refugees in Pakistan in 1979 produced a unique social upheaval. The Pakistani neighbours in the NWFP initially welcomed their fellow Muslims in flight from Communist oppression with a spirit of altruism and solidarity. The sense of brotherhood was felt all the more strongly because most of the refugees were Pashtuns, though there were also small groups of Baluchis, Hazaras, Tajiks and Turkomens. Geographical proximity was another common factor - most of the refugees came from eastern Afghanistan, near the Pakistani border.

As the years passed the protected concentration of refugees, initially supposed to seem a temporary arrangement, began to cause protests

24. «In Islamabad the government is openly stating its concern over the influx of weapons flooding the frontier and denies that it is supplying any arms to the Afghan anti-Soviet resistance». “Peshawar: An Afghan-Pakistani Beirut?” (3), ANSA-Reuters article, 21st February 1986, 8.28.

25. «Officials also accuse Kabul of arming anti-Pakistani Pashtun tribes in the lawless border region. Wali Khan Kukikhel, chief of the main anti-refugee tribal group, has openly stated that he receives weapons from Kabul». “Peshawar: an Afghan-Pakistani Beirut?” (3), ANSA-Reuters article by Tom Heneghan, 21st February 1986, 8.28.


27. “Pakistan-Afghan border increasingly explosive” (2), ANSA-Reuters article, 15th April 1985, 15.49.
among the indigenous population. Pakistanis in the tribal lands objected to Islamabad’s unconditional support for the resistance, a stance which consolidated not only drug trafficking and the spread of weapons, but other factors even more intolerable to the local population. They were enraged above all by the privileged status enjoyed by the refugees in their right to UNHCR aid and that of other humanitarian organisations. As a result the UNHCR was compelled to cut down the volume of food and other aid it was distributing (28).

Pakistanis who had always lived in the tribal lands were also frustrated by a degeneration of control on the ground. The region is mostly arid, sparsely-populated desert, and the tribes living there were accustomed to doing what they pleased with it. With the arrival of their “Afghan brothers”, the establishment of “temporary” refugee camps - which are still there - gave rise to discontent and envy in the local population, resentful at the reduction in their arable land. The Pakistani authorities and their Political Agents found it increasingly difficult to maintain control of the region and stood by in the face of worsening environmental degradation in the areas around the refugee villages, which were actually more like agglomerations of mud huts. This ramshackle state of affairs and the tenacious refusal of the Pakistani authorities at all levels to countenance the building of any remotely decent structure has been a constant factor in the life of these unfortunate Afghan communities for the last 25 years.

When the support of humanitarian organisations was cut off or curtailed, many Afghans left the rural areas to seek their fortunes in towns and cities, especially in Peshawar, flooding the job market with a workforce whose cost was below Pakistani standards. «The withdrawal of assistance resulted in a mass migration of up to one million Afghan refugees into urban centres in Pakistan» (Micheal, Corbett, Mola 2005: 11).

For the NWFP and the FATAs in particular the Soviet invasion of Afghanistan meant a deterioration of security. Anti-personnel mines, 28. «To assist Pakistan in preventing conflict by keeping the refugees separate from the local population, the UNHCR placed restrictions on disbursements of food and other goods in its refugee camps in the North-West Frontier Province and in Baluchistan», “Repercussions of the War in Afghanistan”, Federal Research Division, Library of Congress, 1986-1998, www.- //countrystudies.us/.
armed assaults and bomb attacks became increasingly frequent, further reducing personal security in the tribal lands and standing as a serious obstacle to any economic recovery.

An article dated February 21st 1986 describes the discontent of the Pakistani population living in the tribal lands, a feeling which they were finally able to express after the lifting of martial law: «After eight and a half years of martial law, political life in Pakistan resumed last December. This has brought growing opposition to the total support provided by Islamabad to the refugees and to anybody fighting the Soviet-backed Kabul government. A series of bombings in the NWFP (which the police attribute to the Khad, the Afghan secret police) is increasing tension and suspicion of anything Afghan. (...) Bomb attacks and pro- and anti-refugee demonstrations have brought more police than ever to the streets of Peshawar» (29).

The increasingly numerous political movements in Pakistan demanded the refugees’ expulsion from urban centres and from the country as a whole (30). In the mid-1980s the central government responded by restricting the movement of refugees within Pakistan. The withdrawal of the Red Army from Afghanistan in 1989 brought no immediate change in the situation. In 1989 and 1990 no more than 90,000 refugees returned to Afghanistan.

Between 1990 and 2000 the number of refugees fell from 3,200,000 (31) to 1,200,000 people living in the 203 officially recognised refugee camps. The highest number of refugee returns was registered in 1992, though further concentrated waves were recorded later in the decade (32). According to the Pakistani government, however, over two million Afghan refugees have not returned home and have settled in Pakistani towns and cities (Unhcr 2000: 22).

5. The FATAs since September 11th

The terrorist attacks of September 11th 2001 in New York and Washington had extremely serious repercussions for Afghanistan and, by extension, for the tribal lands in Pakistan. The American air attack, launched on October 7th in a legitimate exercise of the right to self-defence under Article 51 of the UN Charter (33), subjected the Taliban regime to a massive bombardment that to a large extent compacted the Pashtun tribes living either side of the Afghan-Pakistani border.

Most of the Pashtun tribespeople settled in the FATAs felt personally involved in the attack, and the spirit of the Islamic jihad quickly reappeared. The partisans of the holy war against the Soviet invaders turned themselves into fighters in the “defensive jihad” against the empire of evil, embodied this time by the United States: «The Anglo-American air raids have certainly weakened the Taliban militarily. But, assert the leaders of Afghan and Pakistani Pashtun tribes, they have brought out a wave of sympathy for the fundamentalist militia, considered blood brothers» (Natale 2001a).

The tragedy of the Twin Towers left Pakistan in an extremely delicate position. General Pervez Musharraf, who had come to power two years earlier, had to choose sides: was he to be for or against the world power of the United States, for or against the Taliban regime to which he had hitherto extended his friendship and support (34)? At an international level he decided to follow a rigid realpolitik which changed the Islamic Republic of Pakistan from a supporter of the fundamentalist regime in Kabul into a faithful ally of the US in its war on terror, providing invaluable assistance in intelligence gathering, the use of Pakistani air space and logistic support. Musharraf explained his abandonment of the Taliban regime with a speech focusing on Pakistani nationalism, the country’s strategic priorities (especially Kashmir) and the need to guarantee national security - the new alliance came across as something he had entered into almost against his will (35).

34. Pakistan, Saudi Arabia and the United Arab Emirates were the only countries in the world to have recognised the fundamentalist Taliban regime.
35. «Musharraf said that Pakistan had done ‘all it could’ for Afghanistan and the Taliban, but now the country had to make a choice. ‘I have spoken to
Musharraf’s decision was repaid by American loans and funding which gave a much-needed shot in the arm to the Pakistani economy, as well as the immediate lifting of the American-led sanctions against Pakistan’s nuclear programme (36). Islamabad proceeded to seal the Afghan border, thus stopping the flow of refugees, revoked the Trade Transit Agreement and banned all trade with Afghanistan.

This alignment with the United States aroused a good deal of opposition in Pakistani society, especially in the north-west, where the Taliban regime enjoyed considerable support. “Musharraf’s ‘realist’ stance gained the approval of the country’s main political parties but brought cries of betrayal from Islamic fundamentalists” (37).

At the end of September the international aid community swung into action, planning what would soon take the form of much-needed assistance for the new wave of refugees from Afghanistan. The UN High Commissioner for Refugees was thus involved in an intense programme of initiatives at a number of levels. In collaboration with the Pakistani authorities he assessed possible sites to set up temporary

over twenty heads of state and government,” he went on, ‘pleading their [the Taliban] cause, but now the whole world is against them’. The general recalled that a delegation sent by him had ‘tried to explain the situation’ to Taliban leader Mullah Mohammed Omar. ‘I shall do my utmost,’ he added, ‘to prevent suffering for Afghanistan and the Taliban’, clearly implying that the Afghan fundamentalists now have to fend for themselves. Musharraf spoke of his consultations with political and religious leaders and media chiefs (…) ‘The US has the backing of the UN resolutions against terrorism’ which, he pointed out, ‘have been approved by all Muslim countries’”. “Attack on the US; Pakistan sides with the US”, ANSA article, 19th September 2001, 19.35.

36. «What Pakistan gained after joining the US coalition in post-September 11 period is a 600 million dollar grant, 300 million dollars for looking after and providing comforts to the US troop bases within Pakistan and 143 million dollars worth of additional exports. And of course a 12 billion dollar debt relief negotiated after September 11 provided about Rs 87 billion fiscal space in the 02-03 budget. But the US did not provide any tariff concession to Pakistan’s exports. The EU did and it helped Pakistan in gaining extra access and earn a little more foreign exchange from 1.2 billion dollars in 2000-01 to 1.5 billion dollars in 2001-02…» (M. Imtiaz Shahid, M. Shahid 2004: 297).

reception camps «along the border, no more than eight kilometres inside the frontier, as requested by Islamabad» (38); he pleaded the cause of the refugees with international donors; he oversaw the procurement and placing of the essential supplies (tents, blankets, mattresses, hygienic and medical kits) needed to assist the 350,000-plus Afghan refugees expected.

In the meantime demonstrations of solidarity with the Taliban regime multiplied all over Pakistan, but above all in the tribal lands and the NWFP. Peshawar, the city symbolising the Afghan exodus, was placed under strict control by the Pakistani army and movement from the tribal areas to Peshawar was prohibited for fear of violence breaking out at the protest marches.

In addition to hundreds of demonstrators arrested, many religious leaders were placed under house arrest by the army in an attempt to restrict their appearance at rallies and prevent incendiary speeches: «The mullahs of Jamaat Ulema Pakistan (the JUI party), whose leaders have been under house arrest since last week, harangued the crowd with inflammatory speeches expressing their unconditional support for the Afghan Taliban and Bin Laden, accusing the US and Britain of terrorism in their bombing of Afghanistan» (B. Natale 2001).

As they had been in 1979, the FATAs were again out of the control of regular armies, a perfect strategic base for the jihad of the Islamic fundamentalists. The population’s total support for the fundamentalists took the form of financing (mostly derived from drug trafficking) and new recruits prepared to sacrifice themselves to the common cause of the struggle against the invader. According to contemporary sources, only ten days after the beginning of the air attacks 8,000 fighters were ready to cross the Durand line to join their Afghan brothers in the fighting (39).

Estimates made four months later put the number of young Pakistanis who actually went to fight at no more than 3,000. Many died or went missing, at least 1,500 were taken prisoner by the Northern Alliance. Bacha Khan, Awami National Party leader in Peshawar and spokeswoman for the mothers of volunteer fighters, said that most of

38. “Attack on Kabul: Refugees; a race against time, UNHCR”, ANSA article, 8th October 2001, 14.15.
them were «excitable boys, and none of them well-educated. They were taken in by agitators, and now if they are trapped it is the fault of charlatans who were trying to exploit the situation for their own political ends, dirtying the name of Islam» (Logroscino 2002).

In the face of this spontaneous development, which was entirely beyond the control of regular Pakistani troops, Islamabad could do nothing but acknowledge its powerlessness and humbly. «Worried by its domestic instability, Pakistan has renewed its appeal for the world to prevent a ‘tragedy’ and ensure humane treatment for the non-Afghan fighters in the Islamic militia. Pakistan does not ask for their release, but wishes that they be considered prisoners of war under the international Conventions» (Alighiero 2001). At that time the Pakistani weekly “Independent” reported that Pakistani fighters in Afghanistan were being robbed, beaten and killed as they attempted to return home (ibidem).

From November 19th 2001, in addition to the immense burden of another wave of refugees, the tribal lands had to take on the spectre of the world’s most wanted terrorist, Saudi millionaire Osama Bin Laden. It was on that date that persistent rumours began to circulate that the leader of Al Qaeda was in hiding in the FATAs, possibly one of the most inaccessible and mysterious areas in the world. According to a Pakistani Urdu-language newspaper, Bin Laden crossed the Tora Bora mountains on November 19th and entered the tribal lands in the Bajaur district, an area under the protection of local fundamentalist leader Sufi Mohammad, founder of the pro-Taliban Islamic group Terikh-e-Nifaz-e-Shariat-e-Mohammadi (41).

The shadow of this “distinguished” presence, together with the thousands of refugees fleeing Afghanistan, put the tribal lands in the international spotlight. On one hand international aid agencies arrived in the area in increasing numbers, and on the other American and Pakistani special forces launched coordinated operations in areas which were considered by analysts to contain Taliban training camps

40. «Thousands of Pakistanis from the 14,000 madrasas (Koran schools) with 800,000 students (talibs), have crossed the border in recent months to fight alongside their brothers in the jihad against the infidel West» (Alighiero 2001).

and hideouts. There is information to the effect that Al Qaeda had inherited and was still using the camps set up by the Pakistani secret service (ISI) with western and Saudi money to train Islamic fighters in the anti-Soviet resistance in the 1980s. These were the camps Bin Laden himself attended during the five years he spent in the school run by Egyptian fundamentalist leader Abdullah Azaam in Peshawar.

After ten wearying years of fighting the Soviets, the people in the tribal lands - with the exception of militants in the most fundamentalist religious organisations - began to resent the presence of Afghan refugees. In 2001 the Islamabad “Independent” reported that «... in Malakand, where there are many refugee camps, people are calling for the expulsion of the Afghans» (Alighiero 2001).

An idea of the scale of the influx of refugees in Pakistan is given by the fact that by October 15th 2001, just a few days after the American attack, over 30,000 refugees had managed to cross the various mountain passes on the Pakistani border (42). The response of the humanitarian organisations was swift, and by October 24th four refugee camps had been set up in the tribal lands: two in the Mohmand district, one in the Khyber district and another two kilometres from Chaman at Killi Faizo - all close to the border (43).

The forces fielded by the West in the “war on terror” attempted to exploit the widespread discontent by means of various expedients, the first of which was to offer rewards of millions of dollars for information leading to the capture or killing of Al Qaeda leaders, above all Osama Bin Laden and Mullah Omar. Initially valid only in Afghanistan, these rewards were then extended to Pakistan and the tribal lands in particular. Five million dollars was offered for every Taliban or Al Qaeda leader accurately reported or arrested. At the same time the American forces resorted to psychological warfare: US aircraft began dropping leaflets written in Dari and Pushtu calling for cooperation in the capture of Taliban and Al Qaeda militants, who were defined as “cowards and murderers”. And the NWFP authorities offered safe conduct to foreign terrorists who were prepared to leave Pakistani territory (44).

44. “Terrorism: Pakistan, Al Qaeda members offered safe conduct”,

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Enlisted for the war on terror, the Pakistani army played its part by moving “for the first time in over 100 years” (45) into the tribal lands and starting a blanket round-up operation. Besides more than 40,000 Pakistani troops, the operation involved US marines and units from the British SAS (who had official authorisation to cross the Pakistani border). It was also accompanied by restrictive measures which were decided by Islamabad but difficult to enforce - one was the order given out to Madrasas not to enrol any more Afghan or Arab country citizens, even for the sole purpose of study (Logroscino 2002).

The results were mixed. The military operations of the beginning of 2002, together with the Mountain Storm offensive launched on March 16th, led to the arrest of over 500 guerrillas. From March 2004 the Pakistani government took a much harder line in its domestic “war on terror”, especially following two attacks which had threatened the personal safety of president Pervez Musharraf.

Planned in close cooperation with the Pentagon, Mountain Storm was a combined intensive air and mortar attack on southern Waziristan, specifically on an area of 35 square kilometres between the Afghan border and Wana, capital of southern Waziristan (46).

The Pakistani troops ran into serious trouble, and there were heavy casualties on both sides. Interviewed by the Ansa correspondent in Pakistan, Safdar Hussein acknowledged the difficulties of bringing the wild tribal lands to heel: «It’s not easy to fight against these people. They are all very well trained, they let our troops come to within six or seven metres of them and then they shoot. It’s also hard for us because we don’t know whose side the local tribes are on. Our targets are poorly defined, it’s like chasing shadows» (Zucconi 2004).

The toppling of the Taliban regime in Afghanistan had significant political consequences in Pakistan. An alliance of six Islamic parties called Muttahida Majlis-e-Amal (MMA) came to power in the October 2002 local elections held in the NWFP. Two of the six parties were openly pro-Taliban. And the new provincial administration introduced measures very similar to those in force in Afghanistan

45. “Bin Laden/Saddam: Bush, we’ll find them sooner or later” (2), ANSA article, 24th June 2003, 19.21.
under the Taliban, setting up the Sharia as the overriding law to be enforced by local courts. «The province is the first for many years to reintroduce Islamic law in Pakistan, thus distancing itself still further from the government of General Pervez Musharraf» (47).

A year after the start of the US attacks and the influx of Afghan refugees, the establishment of the provisional government under President Karzai instilled enough confidence for thousands of refugees to return to Afghanistan. According to the UNHCR, in the first five months of 2002 over 800,000 refugees returned home, mostly from Pakistan (48). Substantial though these numbers were, however, in November 2002 more than two million Afghan refugees were still in Pakistan (49). Of these, 45,000 were "new arrivals", that is to say those who had reached Pakistan in 2001 and 2002 and were camped out in the FATAs.

At that time the UNHCR was still engaged in running ten refugee camps (50) entirely dependent on assistance (above all “community services”); these constituted an addition to the camps set up in 1979, which had acquired a sort of permanent status. The organisations bringing aid to the Afghan refugees quickly encountered evident differences between the needs of the old and the new refugee camps in the FATAs, which in turn differed from the requirements of refugees settled in urban areas. The massive differences between old camps and new camps manifested themselves in terms of intervention methods.

Refugees in the camps set up in 1979 had established and conso-

48. "UNHCR spokesman Yusuf Hassan stated that 635,000 had taken part in Operation 'voluntary return', launched on March 1st by the UNHCR in Pakistan and April 9th in Iran. A further 150,000 people had spontaneously returned home before the operation got under way. The returns outstripped UNHCR expectations, '580,000 people from Pakistan in just ten weeks', in the quickest operation to be carried out since the phenomenal return of 800,000 ethnic Albanian Kosovars from Albania and Macedonia in summer 1999". “Afghanistan: 800,000 refugees back home, UNHCR”, ANSA article, 19th May 2002, 16.01.
49. Until 2000 the exact number of refugees staying in urban areas had never been established by accurate demographic methods.
50. “Afghanistan: With the arc-lights of war switched off, the odyssey continues”, ANSA article, 29th November 2002, 18.58.
lidated methods of subsistence for over 25 years, with entire genera-
tions born and raised in that specific context and accustomed to deal-
ing with drought and other forms of environmental hardship. Aid or-
ganisations working there were thus called upon to react to the needs
of the communities as expressed by camp spokesmen, taking care not
to override the system of self-government which had taken root over
the years. In the new camps, by contrast, the requirements were of
the full range typical of a newly-formed agglomeration of refugees.

The main differences between the old and new camps were their
physical position, refugees’ access to the services and opportunities
made available to them and interaction with the local population - an
extremely important factor. The main problems affecting the refugee
communities accommodated in the FATA camps, as identified by aid
workers, were the following:

1. Illiteracy. A survey carried out in February 2003 by an NGO in
   the Bar Kalay camp in the Bajaur Agency found that only 22% of
   men and 17% of women were able to read and write. In the Basu
camp in the Kurram Agency only 10% of women were found to
   be literate. It emerged that literacy was not considered to be a va-
   lue, to be an advantage for young Afghans, because it was not
directly associated with the acquisition of vocational skills.

2. The gender issue. This is a particularly sensitive question in Paki-
stani society. Among the Afghan refugees, and therefore in the
context of the equilibriums that have regulated their society for
centuries, women’s role is almost invariably subordinate to men.
The main problem identified by aid workers in this regard was the
lack of opportunities for women to socialise, a predicament made
worse in the camps because most of them were shut away in
cramped tents or mud huts. As a direct result of this physical con-
finement, Afghan women were found to be completely excluded
from any decision-making in the running of the camps, and some-
times entirely vulnerable to physical abuse. The NGOs working
on the ground thus made an effort to provide meeting places for
women and organise basic education for them.

3. Protection for vulnerable groups. In addition to women, who of-
ten fell victim to ill-treatment, violence and rape, there was found
to be a substantial body of under-privileged categories who were
unprotected in the refugee camp communities. Some of these
were ethnic groups (Cuchis, Baluchis, Hazaras, Tajiks and Turkmens) other than the predominant Pashtuns. There were also a great many cases of little boys and youths who had been maltreated and raped by adult males in the continuation of an ancient and deplorable tradition practised by the nomad warrior tribes living on the Afghan-Pakistani border.

4. Healthcare facilities. Such hospitals and health centres as there are were found to be entirely inadequate to deal with the needs of the Afghan communities camped in the FATAs. Afghans had to turn to Pakistani health facilities, and were provided with service below the level of that given to Pakistanis.

5. Lack of job opportunities and poor skills differentiation. To tackle this problem the aid agencies worked hard to provide Afghan refugees with specific work skills (termed “real income-generation opportunities”) that would be useful when they returned home and would enable them to climb out of permanent economic dependence.

6. Lack of accurate information on the situation in Afghanistan. Refugees were often found to prefer a status quo of suffering and destitution in overcrowded camps because they were unaware of the situation in their homeland and were thus unable to decide to return.

Between February 25th and March 11th 2005 the Pakistani government, in collaboration with the UNHCR (51), conducted the first thoroughgoing census since 1979 of the Afghan population staying on Pakistani territory. The resulting document contains the most accurate qualitative and quantitative demographic data on the Afghans in Pakistan currently available to scholars and politicians (52).

According to the census, conducted throughout Pakistan, at least 548,105 Afghan families are in the country, making a total of 3,049,268.

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51. The census was conducted by 3,143 government officials of the Population and Census Organisation and monitored by UNHCR personnel.

individuals, of whom the vast majority are young people (53). Most Afghans have been in Pakistan for a good number of years. More than half the families arrived in 1979 or 1980 and more than 80% were there by 1985. The findings published thus far make it clear that the majority of the Afghans were born in exile and have never visited or lived in Afghanistan. The predominant ethnic group, the Pashtuns, account for 82% of the Afghans in Pakistan, and they were found to be less inclined than other groups to return to Afghanistan.

In terms of nationwide distribution, 62% of Afghans live in the NWFP (1,861,412 people), 25% in Baluchistan (783,545), 4% in the Sindh (136,780) and 7% in the Punjab (207,754). Another 44,637 Afghans are staying in Islamabad and 13,097 in Kashmir. Over half the Afghans living in Pakistan (58%) are not settled in UNHCR refugee camps. The census also reveals that 62% of Afghans originate from six provinces, including Nangarhar (17%), Kabul (11%), Kunduz (10%) and Kandahar (8%).

Very few Afghans have steady jobs. Over half (55%) stated that they worked on occasional days and a mere 9% reported regular employment. Over 17% of interviewees, about 532,000 people, stated their wish to return to Afghanistan in 2005, a number greater than the UNHCR projection of 400,000 made at the beginning of the year. In the first eight months of 2005, 280,000 Afghans returned to their country, taking the total number of repatriations since the beginning of 2002 to 2,600,000 (54).

As to the reasons for their failure to return home, 57% of interviewees cited lack of protection and the unavailability of arable land, while 18% referred to the lack of means of subsistence in Afghanistan. It is interesting to note that the problem of security no longer stands as the main obstacle to repatriation.

In view of the success achieved by the Voluntary Returns programme the UNHCR, in collaboration with the Afghan and Pakistani governments, decided to close the last camps set up as a response to the refugee wave following September 11th. Effective as of September 1st 2004, the decision - deemed premature by a number of obser-

53. According to the report, 19% of Afghans in Pakistan are under five years of age, compared with 14.8% of Pakistani nationals in the same age group.
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vers on the ground - took many refugees by surprise, not to mention some of the NGOs working in the camps. Specifically, the NGOs complained of the Pakistani government’s hostility to the Afghan refugees and its outright opposition to any plans to integrate Afghans in Pakistani society, manifested in delays and deliberate refusals to authorise project implementation. The majority of the Afghans in the new camps were repatriated under the Voluntary Returns programme, while some of them found accommodation in urban areas or in the old camps.

In an effort to tackle the refugee problem on a joint basis, in 2002 the Afghan government, the Pakistani government and the UNHCR signed the Tripartite Agreement, a scheme for cooperation and mutual assistance in a joint strategy to organise the phased return of Afghan refugees. Over three years the Agreement oversaw the repatriation of about 2,300,000 refugees: 1,600,000 in 2002, 343,000 in 2003 and 383,600 in 2004. The UNHCR predicts that by the end of 2005 another 400,000 Afghans will have returned home (55). The Tripartite Agreement (56) was originally planned to expire in March 2006, but after intense negotiations has been extended to December 2006 to enable Afghans still present in Pakistan to return home under the UNHCR programme (57).

In 2005 international attention has focused frequently on Pakistan, especially after the July 7th terrorist attack in London. In an attempt to crack down on “terrorist schools” operating in Pakistan and to show loyalty to the US- and British-led western coalition, in the wake of the London bombings President Musharraf ordered the immediate expulsion of all foreign students from Islamic schools (Madrasas), particularly those located in the tribal lands (58). According


58. “Pakistan madrasas under attack”, by Naveed Ahmad, 10/08/2005, International Relations and Security Network ISN, Security Watch,
to the government order, which quickly aroused fierce controversy, by December 31st 2005 all Madrasas will have to register with the Ministry of the Interior - on August 2nd 2005 only 6,148 out of a total of 11,221 had registered with the provincial government (59) - and foreign students, even those with dual citizenship, will have to leave Pakistani territory. The government estimates that there are about 1,400 foreign students - some British and American - out of a total of a million attending the Madrasas. Unofficial sources put the total number of Madrasas at about 10,000.

As a part of its more rigorous policy, in May 2005 the Pakistani government decided to accelerate the return of Afghan refugees by announcing the closure of the camps located in the unruly region of Northern Waziristan (60). The decision, which gave rise to considerable hardship and sparked fierce opposition, was supported by the UNHCR. The Agency had reported continual armed clashes between Pakistani forces and fighters from rebel tribes, which rendered the whole area highly unsafe (61).

Determined to clamp down even harder, on August 6th the government announced a landmark decision to close all the refugee camps still operating in the FATAs - specifically in Bajaur and Kurram (refugee for over 105,000 Afghans). By the end of August all Afghans staying there would have to choose between returning to Afghanistan or being moved elsewhere in Pakistan (62). Islamabad just-


61. According to the UNHCR at least 85% of the people staying in the 12 refugee camps in North Waziristan decided to go home, making a total of 4,539 families (27,537 people) benefitting from UN assistance.

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tified this move by pointing to concerns over security in the area and the impossibility of bringing the FATAs under control as long as the camps offered shelter to Taliban fighters. In addition, the area’s instability made it difficult and dangerous to provide assistance to the refugees staying there.

The UNHCR “understands the need for the transfer but has asked that the Afghans be given enough time” (63) to prepare for the move. The UN Agency stated its readiness to assist Afghans wishing to return to Afghanistan, but the costs of relocating refugees within Pakistan would be borne by the Pakistani government.

Alongside the UNHCR, the Afghan government asked Islamabad to postpone the August 31st deadline and complained of a lack of cooperation between the signatories to the Tripartite Agreement: «The Afghan government points out in an official statement that all decisions concerning the fate of the 32 camps earmarked for closure should be postponed until agreement has been reached between Islamabad, Kabul and the UNHCR» (64).

Sensitive to pressure from the international community, the Pakistani government decided to extend the 31st August deadline to allow withdrawal from the tribal lands to be effected with more method and less haste (65). The resentment simmering in the large Afghan refugee community in Pakistan came to a head seven days after the original August deadline in a ferocious night attack on the UNHCR office in Peshawar carried out by hundreds of Afghans - proof, if proof were needed, that the situation in the FATAs had become even more explosive and security still more precarious (66).

Conclusion

This paper has attempted to present the wholly unique features of an area whose geographical location and political-cultural significance give it a role of primary importance in the dynamics of what is known as the new Great Game in central Asia (Hopkirk 1990). The region’s historical, cultural and ethnic complexity is reflected in its political-institutional arrangements. These have developed completely separately from the rest of Pakistan, combining a degree of independence and tribal self-government without parallel in any other country.

This uniqueness has been overlaid by historical events which, by virtue of the common ethnic membership of the populations involved, have turned the FATA tribal lands into the region with the world’s largest number of refugees. The geographical and environmental features characteristic of the FATAs have bestowed upon them the ambivalent role of a shelter - a home for refugees and a base for fighters to cross the border into Afghanistan to carry out lightning raids on selected targets. These two distinct functions have been inextricably tied together in a knot that history has been unable to undo.

Hence the policy recently adopted by the Pakistani government which, turning the situation to its advantage in domestic political terms, is trying to regain control of the tribal lands under the pretext - though in certain cases the justification is legitimate - of the war on terror. In this regard Pakistan’s foreign policy is suited to the aim of entering the tribal areas, building roads (needed for patrolling the region) and finally exercising control over a strip of the country hitherto abandoned to the self-government of the Pashtun tribes. The refugee camps, their closure and the crackdown on the Madrasas may thus be seen in the framework of a broader design to put an end to the exceptional status of the FATAs.

What the Pakistani government perhaps underestimates is the powerful cohesion that unites the Pashtun tribes in a tradition of solidarity and mutual assistance which makes it impossible to draw a clear distinction between Pakistani Pashtuns and Afghan Pashtuns. The latter escaped the instability in their own country but could, if cornered, export to Pakistan the explosive insecurity that still afflicts Afghanistan.
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Introduction

Justice, as a philosophical concept, has been part of political discourse since the time of Ancient Greece. The “genesis” of transitional justice instead, that is the measures by which a society accounts for past crimes when moving from a dictatorship to a democracy or when emerging from the ravages of an international or internal armed conflict, can be traced back to the Nuremberg trials of Nazi officers and officials for the human rights atrocities committed during World War II.

The setting up of two ad-hoc tribunals by the United Nations, in 1993 and 1994 respectively, to prosecute individuals for the crimes committed during the Yugoslav and Rwandan conflicts, the adoption of the Statute of the International Criminal Court in July 1998, the arrest in London of Senator Pinochet late the same year, and the indictment of President Slobodan Milošević in May 1999 are but a few examples of the progress made in the “struggle for global justice” during the 20th century (Robertson 2002; Sands 2003).

At national level too, countries emerging from oppressive regimes or from conflicts over the course of the 1980s and 1990s have struggled with the multiple challenges of transitional justice in different ways: by creating Truth Commissions or Commissions of Inquiry, by holding national trials or by setting up quasi-judicial traditional justice mechanisms, by employing a strategy of lustration, to mention only a few.

The study of transitional justice is now considered as a distinct subject of the broader field of inquiry into post-conflict democratic transitions and nation-building. The field is now experiencing unpre-
ecedent developments that warrant rigorous analysis by academics, practitioners and policymakers.

This new discipline has slowly taken shape against the backdrop of important progress in the substantive area of international human rights and humanitarian law. Indeed, since the establishment of the Nuremberg and Tokyo Tribunals in 1945-1946, international law has significantly developed into a solid body of norms on the basis of which individuals can be held accountable for the most heinous crimes such as genocide, crimes against humanity and war crimes. The fact that it took almost half a century for the international community to start making use of this body of law does not diminish the importance of the “Nuremberg legacy”. It is rather a confirmation of a persistent reality in which power, national interests and state sovereignty remain the predominant factors (Overy 2003: 29). The transitional justice discourse as much as the human rights discourse is thus, inevitably, a highly contested and politicized one.

Despite the progress made in the fight against impunity, there is still a significant gap between the call for justice in war-torn societies and the institutional responses put in place, both at international and national level, to ensure accountability for human rights atrocities. Without doubt, transitional justice is an exceptional response to extraordinarily complex situations. Post-conflict environments are always thorny and chaotic and political and moral compromises are often unavoidable. There seems to be no “model of justice” which can alone respond to the multiple needs of the victims and the perpetrators in the aftermath of a conflict and to the challenges of building a sustainable peace.

The complex array of legal, political and ethical dilemmas that influence the choices individual governments as well as the international community make on how to deal with past human rights atrocities cannot be overlooked if the cause for justice is to be further pursued.

The fall of the Taliban regime in late 2001 has opened the door to transitional justice issues in Afghanistan as well. During more than twenty years of continued conflict all the warring parties in Afghanistan, including some of those now back in power, are known to have committed war crimes or gross violations of human rights. Regrettably, the pattern of human rights abuses still continues today, as does
the pattern of impunity.

The difficult process of political transition and nation-building in Afghanistan necessitates an answer to those decades of gross human rights violations. This reckoning with the past is not only a due act of respect towards the victims of those violations but also a necessary stepping stone in the long path towards the rule of law, a stable and legitimate government and, ultimately, a durable peace.

The aim of this paper is to offer an analysis of some of the many challenges associated with transitional justice in post-Taliban Afghanistan with the aim of sharpening the terms of the debate over the struggle for peace, justice and human rights in a difficult time of transition and nation-building. The paper also examines the role of the United Nations from the perspective of transitional justice and human rights. While acknowledging the complexity of the issues at stake and the many conflicting interests involved, the paper suggests that the UN policy of “light footprint” adopted in Afghanistan could be challenged from the perspective of its effectiveness in helping the country address the hard legacy of past gross human rights violations as well as the difficult task of fighting impunity for present human rights abuses.

For the purpose of this paper the central question is: what is the “degree of justice” possible in present-day Afghanistan and how can the international community assist the Afghan government and Afghan society in ensuring accountability for past human rights atrocities and in bridging peace with justice? This question is approached through the examination of the following three propositions:

1. Justice is not a “luxury” for present-day Afghanistan: transitional justice is part and parcel of the nation-building process.
2. There can be no “one fits all” transitional justice policy. A combination of different mechanisms, specific to a given culture and time, may be the best answer to the quest for justice in any post-conflict society.
3. The UN human rights discourse in post-conflict situations risks being contradictory. The UN has new responsibilities in the area of justice and human rights: but is the organization up to the task?

Through a review of some of the main features of the transitional justice debate of the 1990s, this paper begins with an analysis of the main factors affecting transitional justice policies in Afghanistan (Section II). The goal here is descriptive and analytical more than
prescriptive: the objective is to refine the thinking around the main dilemmas associated with post-conflict justice and to come up with a conceptual framework that suits the Afghan context. Despite the multiple challenges and obstacles identified, this section posits that justice is not a “luxury” in present-day Afghanistan and that the choice between justice and peace is indeed fallacious and deceptive. Section III looks at some possible transitional justice scenarios for Afghanistan and considers the role of cultural and religious factors in shaping these choices using the conceptual framework proposed under section II. Section IV offers a critique of the UN’s role in the area of human rights and transitional justice. More specifically, this section argues that the UN and the international community should take more seriously and consistently their responsibility towards the achievement of justice and the promotion and protection of human rights in post-conflict situations. It is argued that sustainable peace cannot be achieved in Afghanistan if justice is overlooked. Finally, the paper offers, for further reflective considerations, some conclusions on the virtual impossibility of “absolute justice” and on the inevitability of political compromises in post-conflict societies.

Before moving to the analysis of these topics, some brief terminological clarifications are called for. The notion of “human rights atrocities”, as used in this paper, refers to those international crimes such as war crimes and crimes against humanity, which attract individual criminal responsibility (1). The term “impunity” means “the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings” (2).

1. For a legal definition of these crimes, see the Statute of the International Criminal Court (ICC) articles 6, 7 and 8 and the Elements of Crime adopted pursuant to article 9 of the ICC Statute, both documents are available from the ICC website at www.un.org/icc. The ICC Statute appears especially significant in this regard as many of the definitions of the crimes under its jurisdiction are largely viewed as a codification of existing statutory and customary international law.

2. See UN report on the Question of impunity of perpetrators of violations of human rights (Civil and Political Rights), final report prepared by Mr. L. Joinet, pursuant to Sub-commission Resolution 1995/35, UN Doc. E/CN.4/Sub.2/1996/18, 20 June 1996; see also the UN Commission on Hu-
This paper approaches the transitional justice debate from a policy perspective more than from a technical international law perspective. This choice may be best understood with reference to the underlying assumption that post-conflict justice is, first and foremost, a political discourse.

The core ideas presented in this paper are based on a review of secondary sources, namely the extensive literature on transitional justice. UN documents and official reports prepared by various international and Afghan organizations and human rights institutions are also considered. Informal interviews with Afghan and international officials working on justice and human rights issues have been an additional precious source of information and inspiration for some of the ideas and arguments put forward here. Lastly, the reflections presented in this paper draw on the author’s direct involvement in justice programs in various post-conflict countries over the course of the last years, including in Afghanistan (3).

1. Revisiting the “justice in transition” debate: A model for the analysis of transitional justice policies in Afghanistan

The peace-building and nation-building processes in present-day Afghanistan offer a special fertile ground for an analysis of the many challenges associated with transitional justice policies in post-conflict societies.

After the fall of the Taliban regime in late 2001 and the signing of the Bonn Agreement in December the same year, Afghanistan embarked on a very difficult path of regime change, state-building and reconstruction. Indeed, as noted by an international expert, “the cause of peace in Afghanistan brought an intensity of purposes unseen in other recent peace-building arenas” (Thier 2004: 41). In Afghanistan, the gigantic challenge of (re)constructing a whole nation after more than two decades of continuous war heavily overlaps and often conflicts with the agendas of external actors. This includes, first and foremost, the continuing war on terror and the fight against the Taliban and Al-
In Afghanistan, the quest for justice and the issue of accountability for past gross human rights violations are part and parcel of this difficult and tenuous peace and nation-building process. At the risk of oversimplification, the whole debate around post-conflict justice and accountability for past crimes can be summarized in the following two propositions: «peace before justice” versus “peace and justice» (Friborg 2004-2005: 30). Those who support the first one argue that the fragility of the peace process and the persistent lack of security in the country do not allow for any serious consideration of accountability and justice for past crimes. In other words, justice ought to be postponed in the name of the allegedly superior and separate goals of peace, stability and security. This position is well summarized in the following statement made by President Karzai in an often-quoted BBC interview during the Emergency Loya Jirga held in Kabul in June 2002: «Justice is a luxury for now; we must not lose peace for justice» (Doucet 2004: 73).

Supporters of the second proposition would argue, instead, that peace and justice are not competing goals; on the contrary, the marginalization of justice and the continuing impunity for past and present gross human rights violations would be in themselves a threat to the peace process. That is to say that peace cannot be achieved without justice. As eloquently argued by one author and practitioner in the field, «The political process of peace-building in Afghanistan is inherently unstable and unsustainable because it is based on impunity [...] the first step to restoring security and stability in Afghanistan will require replacing peace-building based on impunity with peace building based on accountability [...] addressing human rights violations has come to be seen as threat to security rather than a necessary component of dealing with insecurity» (emphasis added) (Mani 2003: 1-2).

4. The primary justification for the American-led military intervention in Afghanistan in late 2001 was to overthrow the Taliban regime and to destroy the terrorist military networks present in the country. This has remained the primary goal of the coalition forces in the years following the signing of the Bonn Agreement. See Friborg (2004-2005: 9) (available at www.diis.dk); see also Stockton (2004: 9-36). The author’s analysis focuses in particular on the contradictions of the post-September 11 Pax Americana.
The ideological underpinning of the “peace and justice” case is that peace is more than the absence of violent military activities (negative peace). Peace (positive peace) entails the much bigger challenge of addressing the underlying causes of conflicts through structural changes in the rule of law, good governance, human rights, access to economic resources and social justice (5). It is a fundamental assumption of this paper that peace ought to be conceived within this broader meaning.

The debate around peace and justice is one of the main aspects of the transitional justice discourse. A lot has been written already on transitional justice issues and how to deal with the heavy legacy of gross human rights violations. This extensive literature need not be reviewed in detail here. A general overview of some of the main arguments presented by leading scholars, academic commentators and practitioners can be, however, a useful prelude to an analysis of the transitional justice debate in Afghanistan (6). The perspective chosen here focuses on the dilemmas between the ethical imperative demanding full accountability, primarily in the form of criminal prosecution, and the political necessity of compromises dictated by the realities prevailing in each specific situation. It will be argued that full accountability may well be ill-advised in certain situations.

Most of the early writings on this subject, which go back to the late 1980s and early 1990s, examine the issue of transitional justice with reference to the experience of countries in Central and Latin America emerging from military dictatorships and authoritarian regimes and to post-1989 Eastern Europe after the fall of communism. One early comprehensive analysis of these issues, which may be a useful starting point for our reflections, is that proposed by the Bel-

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5. The notions of “negative peace” and “positive peace” are developed by Galtung, cited in Mani (2002a: 12-13).
6. The literature review presented in this section does not include any citation of the many books and academic articles dealing with transitional justice policies adopted and mechanisms instituted to deal with the past in specific post-conflict countries, such as Ethiopia, the former Yugoslavia, Rwanda, South Africa, Sierra Leone and East Timor, to mention only a few. If a reference is made, it is only to extrapolate some more general observations which can be used to substantiate the ideas discussed in the paper. For a useful introduction to key transitional justice issues and dilemmas see, e.g., Minow (1998); Hayner (2002); Teitel (2003: 893).
gian sociologist Luc Huyse in an article published in 1995 (Huyse 1995: 51-77). Huyse identifies the following factors as the main variables affecting the choices successor elites make in dealing with violence and systematic human rights violations committed by previous authoritarian regimes: i) the legacy of the past, that is the nature, pattern, scope and duration of the violations committed against individual citizens; ii) the balance of power between the old regime and the new elites (7); iii) social factors, that is the general mores and customs of the community which affect the structure of the society’s collective memory and its capacity to forgive and forget the injustices committed; and iv) the international context at the time of transition. While acknowledging the need for some form of accountability, the author supports the proposition that there are no miracle solutions to the question of how to deal with a repressive past and that the crucial challenge is to strike a balance between the ethical imperative of satisfying the societal and individual quest for justice and the political constraints dictated by the material circumstances of the transition to democracy. From this perspective, transitional justice is seen as a wrenching “political assignment”. A new or reinstated democracy is often a very fragile political and societal construct and accountability for past crimes, pursued through criminal prosecution, can sometimes seriously jeopardize democratic transition.

A similar approach to transitional justice issues is proposed by Neil Kritz (1996: 127-152; 1995). Writing in 1996, the author reviews the effectiveness of various accountability mechanisms for mass violations of human rights, both at national and international level, with particular reference to the work of the ad-hoc international criminal tribunals for the former Yugoslavia and Rwanda. Kritz argues that total impunity for past crimes, in the form of amnesty laws or lack of any other accountability mechanism, would be «immoral, injurious to victims and in violation of international legal norms» (Kritz 1996: 129). The author speaks of a paradigm shift over the course of the early 1990s in the attitude of individual 7. Huyse proposes the following typology of power relations at the time of transition: a) violent overthrow of the repressive regime; b) gradual transition at the initiative of reformers within the old regime; and c) negotiated settlement between the old regime and oppositions groups. Each scenario will affect transitional justice choices.
states and the international community towards the need for account-
ability, with international negotiators and mediators increasingly
looking at justice and accountability for past human rights violations
as key elements of any peace process (8). Similarly to Huyse, he con-
cludes that no accountability mechanism alone can satisfy the search
for peace and justice and that in all likelihood a mix of approaches
will have to be followed to achieve the best possible degree of
justice, truth and reconciliation in states emerging from a repressive
regime or a violent conflict.

A vocal advocate of justice as a tool for peace-making and peace-
building is Justice Goldston, former Prosecutor for the Yugoslav and
Rwanda Tribunals (1995-1996: 485-503). Like the authors mention-
ed above, he argues that transitional justice choices are strongly in-
fluenced by the way the transition happens. While acknowledging
that justice is a question of principles and ethics, the degree of justice
possible in a society in transition will depend on many historical,
political, socio-economic and even military factors. In this perspec-
tive, justice is seen as only one aspect of a multi-faceted approach to
peace and reconstruction in times of transition after a repressive
regime or in the aftermath of an armed conflict.

In his reflections on transitional justice policies in Latin America
during the early 1990s, Zalaquett posits that political leaders dealing
with past gross human rights violations should be guided by what
Max Weber called the «ethics of responsibility, as opposed to the
ethics of conviction» (Zalaquett 1991-1992: 1430). He submits that
transitional justice policies, to respond to this ethics of responsibility,
ought to be guided by a minimum set of principles: i) they should
have the clear objectives to prevent future gross human rights viola-
tions and to repair the damage caused in the past; ii) they should be
adopted by a legitimate and democratic institution; and iii) last but
not least, they should be in line with the relevant norms of interna-

8. For a detailed and comprehensive analysis of the interaction between
peace agreements and human rights, see Bell [2003 (in particular chapter 9 -
“Dealing with the Past: Prisoners, Accountability and Truth”: 259-291)]. A
useful collection of provisions related to justice, accountability and human
rights in various peace agreements can be found in Bassiouni [2002: 399-424
(Appendix: Excerpts from treaties, UN resolutions, and UN reports on ac-
countability and post-conflict justice)].
tional law. This last point started acquiring increasing importance in the transitional justice discourse in the mid-1990s as a direct consequence of substantive developments in the field of international criminal law, human rights and humanitarian law (Ratner, Abrams 2001).

Professor Morris, in her 1996 essay, proposes a vision of post-conflict justice as the result of a spectrum of possible compromises between full accountability and full impunity (Morris 1996: 29-39). The author uses the concept of “taxonomy of compromise” when considering the chronic obstacles to accountability such as lack of political will (both at national and international level), resource limitations, imbalances of powers between old and new elites. She suggests that the development of international guidelines against impunity for international crimes could greatly contribute to a move towards a progressive “regime of consistent and meaningful accountability”.

To be sure, the transitional justice debate of the late 1990s is dominated by the discourse over the “role of law”; in particular international human rights law and international criminal law, in the policing of the past. The idea is that governments dealing with past gross human rights violations committed either during a conflict or by a previous authoritarian regime do not have absolute freedom in deciding how to account for the past. International law sets the parameters for the legality of transitional justice choices. In the words of Professor Bassiouni, one of the most authoritative scholars in this field, «Granted, peace and justice are ideals founded on certain values whose meanings vary epistemologically and according to group and individual beliefs. Yet however relative these ideals and their outcomes may be, they are nonetheless subject to the world community’s norms and standards which represent the threshold of international legality» (1996: 13).

In line with Bassiouni’s approach, several other scholars have argued that human rights violations which are now unanimously considered by the world community as international crimes - such as genocide, war crimes and crimes against humanity - can never be subject to amnesty laws. On the contrary, there is a duty to prosecute those individuals responsible for these atrocious crimes (9). Bassiouni’s cen-

tral critique is that justice is too often bartered away for political settlements and that this choice ultimately works against the global struggle for peace and human rights.

Thus, the dilemma of balancing ethical concerns and legal obligations on one side, and the hard realities of politics on the other, recurs time and again in most of the writings about transitional justice. The fundamental disagreement lies between a strict ideal justice position informed by Kantian principles of universal justice and peace and a position grounded on a more practical sense of the wider and complex political interests which are inevitably present in any post-conflict society (Cohen 1995: 43). Regardless of the preference given to one mechanism over another to deal with the legacy of past gross human rights violations, most authors seem, at least, to agree on the basic proposition that «no set of rules can dictate precisely how to navigate the complexities of the issues at stake» (Benomar 1993: 14).

Nowhere are all these dilemmas more acute than in those countries, like Afghanistan, where the search for justice for past human rights crimes is only one aspect of an extremely complex process of state (re)construction. What seems to be needed the most in those difficult post-conflict situations to respond to any legitimate quest for justice is a mosaic of remedies which must go beyond the use of law, understood in the classical criminological sense of retribution. Indeed, in most post-conflict situations, and Afghanistan is certainly one of those, justice may not always be found within the realm of (criminal) law (Balint 1996: 103-126). President Karzai’s statement that justice is a “luxury” that Afghanistan cannot afford now could perhaps appear as more ethically and politically sound if understood narrowly as a reminder that justice, in the prosecutorial sense only, may be at odds with the immediate objectives of restoring peace and security in a country devastated by decades of war and struggling with multiple goals at the same time.

Using some of the arguments put forward in the literature on transitional justice reviewed above, a conceptual framework for a critical assessment of possible transitional justice policies in post-Taliban Afghanistan is proposed below (10).

10. The suggested framework borrows primarily from the analysis of the following three authors Huyse (1995) supra note 13; Morris (1996) supra
Box 1 - Debating transitional justice policies: a conceptual framework

<table>
<thead>
<tr>
<th>Objectives of transitional justice</th>
<th>Minimum conditions required for a transitional justice policy to be seen as legitimate</th>
<th>Main variables affecting transitional justice policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>To fulfill victims’ right to justice, truth, reparation and compensation</td>
<td>Policy endorsed by a legitimate, democratic and representative institution</td>
<td>The legacy of the past, i.e. the pattern and nature of the abuses committed</td>
</tr>
<tr>
<td>To break the culture of impunity by holding perpetrators accountable</td>
<td>The existence of a strong public demand for justice</td>
<td>The balance of power: i.e. type of transition and nature of the peace settlement</td>
</tr>
<tr>
<td>To promote official acknowledgement of the abuses committed: truth as the ultimate form of justice</td>
<td>Impartiality and independence of transitional justice institutions</td>
<td>International context at the time of transition</td>
</tr>
<tr>
<td></td>
<td>Efficacy and efficiency of the mechanisms put in place to account for past crimes</td>
<td>Resource limitations at national level</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Social/cultural/religious factors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State obligations in the field of international human rights (based on treaties and customary law)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Internal and external demand for justice</td>
</tr>
</tbody>
</table>

The framework suggests that a useful starting point for debating transitional justice in Afghanistan may be to answer the following prior set of questions: first, are the objectives of transitional justice clearly stated by the government and is there a common understanding of what ought to be achieved? Secondly, are the minimum conditions for a transitional justice policy to be considered as legitimate met? Thirdly, are the main variables affecting transitional justice choices being seriously and responsibly weighed against each other by the various institutional actors (national and international) involved in the debate?

But before going any further, some clarifications on the theoretical framework proposed and the questions raised above are in order. When defining the objectives of transitional justice it is understood that these cannot be established once and for all. If the ultimate goal of accounting for the past is the achievement of “justice”, then this goal must depend on the way a given society conceives the value of justice in itself. Some societies may associate justice primarily with retribution and the establishment of the rule of law (liberal theory) (11). Others may put more emphasis on the notion of restorative justice and social justice, or rectificatory justice (12). In some contexts the demand for justice may well include all of these approaches.

There are complex reasons in culture, ideology, philosophy, religion, history and even political expediency why one notion of justice prevails in a given society at a given time. But this is too large a matter to be debated here. Bearing this theoretical complexity in mind, it is posited, in more general terms, that transitional justice should first and foremost respond to the victims’ needs and demands. Its central objective should be also to ensure accountability for the crimes committed: the debate should be around the possible forms of accountability (criminal prosecution, lustration, truth telling, etc) rather than around the Manichean platitude of criminal trials versus impunity.

11. The “liberal theory” is often associated with an absolutist trust in the power of law to ensure social order in modern societies. As noted by one commentator though, “liberal theory does not promise salvation through legal rules; what it promises is a society that does a better job in protecting people from intolerance, prejudice and oppression that it would if law was dispensed with”. See Altman (1990).

12. For a an introduction to these issues, see Mani (2003: 23-50).
Lastly, it is suggested that transitional justice should respond to the individual and societal demand for truth. Transforming the *knowledge* about past human rights atrocities into *acknowledgement*, that is making the past officially known, is a necessary step towards the achievement of justice. An official truth telling process after mass atrocities has the important functions of protecting historical truth from hateful distortion through narrowing the range of tolerable lies. This is perhaps the “ultimate form of justice” (13).

With regard to the basic principles that should inform any transitional justice policy it is held that at the very minimum such a policy shall stem from a legitimate government or institution. It shall be the result of broad consultations, which should include first and foremost victims’ associations. Choices on how to deal with the legacy of gross human rights violations shall also be impartial and independent from any political bias. Any mechanism established to account for the past shall be adequately supported in terms of financial, technical and human resources in order to work efficiently and effectively. In the absence of these minimum requirements any transitional justice policy would lose credibility and legitimacy. Justice would neither be done nor seen to be done, nationally or internationally.

Lastly, the model suggests that there are some recurrent variables which are likely to determine the outcomes of any transitional justice policy along a continuum going from full accountability to total impunity. These factors ought to be responsibly assessed to avoid any “gambling with justice” in fragile times of political transition, nation-building and reconstruction. The next section examines the transitional justice discourse in Afghanistan, building on the framework proposed above, and attempts to draw some conclusions about the desirability and feasibility of the various policy choices.

2. On the possibility of different “Afghan paths” to transitional justice: Exploring the field

Justice is a slippery concept, «unwilling to be captured in a formula even though it remains a word of magic evocation» (Rosen 2000: 153).

Maintaining the validity of this assumption, the main question this section tries to answer is the following: without ignoring the experiences of other post-conflict countries, how can one envision different transitional justice scenarios that take into account Afghan historical, cultural, religion and political specificities? In particular, to what extent can the rich Afghan legal culture, with its mixture of Shari‘a, secular laws, tribal customs and informalism be “mobilized” for the cause of justice, peace and human rights?

It is perhaps useful to start the exploration of this topic by briefly summarizing the few actions taken so far in the area of transitional justice in Afghanistan and by identifying the actors involved in this field.

Neither the Geneva accords of 1988 nor the Bonn Agreement of 2001 contained any provision on accountability for the crimes committed by the various warring forces during the different stages of the long Afghan civil war. This was undoubtedly a lost opportunity for peace and justice (14). The Bonn Agreement only refers to the establishment, with the assistance of the United Nations, of an Afghan Independent Human Rights Commission (AIHRC) whose responsibilities shall include «human rights monitoring, investigations of violations of human rights and development of domestic human rights institutions» (15).

Transitional justice was first put publicly on the Afghan political agenda on the occasion of a workshop on human rights convened in Kabul in March 2002 (16). On that occasion, President Karzai made an explicit reference to the possibility of establishing a truth commis-


sion to investigate the crimes of the past and stated that «a truth commission is needed here to protect our human rights and to heal the wounds of our people» (International Crisis Group - ICG 2003: 16).

Despite this initial, promising start, the issue of transitional justice was completely dropped from the agenda during the Emergency Loya Jirga (ELJ) convened in June the same year. This is not surprising. As noted by one political analyst, «There were no illusions inside the tent that the Loya Jirga could be a fully democratic process. Compromise between and with those still prepared to use force to achieve their political ends remains unavoidable in today’s Afghanistan» (17).

In October 2002, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions undertook a mission to Afghanistan. In her report to the 59th session of the Commission on Human Rights she recommended the establishment of an international and independent commission of inquiry, to be backed by the United Nations, as a first step towards accountability for past crimes (18). As a follow-up, a memorandum of understanding was signed in 2002 between the United Nations Assistance Mission to Afghanistan (UNAMA) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) for the carrying out of a mapping exercise to document grave human rights violations as originally recommended by the Special Rapporteur (19).

17. Thier (2004: 56). It is instructive to note that at the ELJ up to one hundred additional “delegates”, who had not been elected, were allowed to enter the tent and to take part in the Assembly proceedings. These were mostly local and regional political-military factional leaders. Through intimidation they were able to substantially influence the decision-making process. The result is that both the opportunity for real democratic participation and the legitimacy of the whole process were wasted to a great extent.

18. The mandate of the commission was to be limited to the gross violations of human rights, which could well constitute crimes against humanity, committed in Afghanistan between 1978 (the “Saur Revolution”) and 2001 (establishment of the Afghan Interim Authority). See UN Doc. E/CN.4/2003/Add.4.

19. Subsequent meetings were held in Geneva and Berlin over the course of 2004 to review and agree upon the terms of reference and to discuss the preliminary findings of this mapping exercise. Information provided by UNAMA Human Rights Advisory Unit, Office of the Special
In the meantime, with technical support from the ICTJ, the AIHRC is undertaking a series of public consultations in the country on justice issues (20). The findings of the consultation, along with recommendations on possible transitional justice mechanisms, will be submitted to President Karzai prior to the presidential elections scheduled for the fall of 2004. This will coincide with the submission of the OHCHR final report on the human rights mapping exercise.

There seems to be a general consensus among Afghan government officials that a public discussion on the findings of the national consultation on transitional justice along with the publication of the human rights report based on the mapping exercise just before the forthcoming Presidential elections, would be a major political mistake. These initiatives, it is argued, would have the effect of further destabilizing the already unstable political landscape by alienating the support of key local and regional leaders that still wield political and military power in the country (21). One the contrary, it could be argued that a gradual process of political de-legitimization of those figures allegedly responsible for war crimes, which may eventually result in their exclusion as candidates at future political elections, may be a better response to the demands for accountability and justice that both the Emergency Loya Jirga and the Constitutional Loya Jirga were unable to handle.

The process briefly sketched above, regardless of the limited outcomes produced so far, is an important one in itself. In comparison with other post-conflict situations, in Afghanistan there seems to be, at least, recognition of the importance of generating some public discussion on possible mechanisms for transitional justice. This does not appear to have been the case in other contexts in the past. In countries such as the former Yugoslavia and Rwanda, for instance, the decision to address the legacy of past human rights atrocities

Representative of the Secretary General (author’s correspondence with K. Sritaran, human rights officer, dated 15 June 2004). The Terms of Reference for the human rights mapping exercise and the minutes of the technical meeting held in Berlin in March 2004 are on file with the author.

20. Information provided by M. Wierda, Senior Associate, ICTJ (correspondence dated 16 July 2004).

primarily through the establishment of an international ad-hoc tribunal was taken by the international community (based on an initial request by the government, in the case of Rwanda) with no involvement of the local populations. In South Africa, the decision to establish a truth and reconciliation commission (TRC) was part and parcel of the difficult negotiations between the ANC and the apartheid regime. Granted, there was a parliamentary discussion on the 1995 National Unity and Reconciliation Act that instituted the TRC, yet the choice to address the legacy of past crimes through non-judicial means, which included also the possibility of granting individual amnesties, was not the result of a bottom-up process. The experience of some central and Latin American countries, where truth commissions were created by presidential decree with no parliamentary debate at all, is even more indicative of what could be defined as a serious “democratic deficit” in most transitional justice processes (22).

Thus, two and a half years down the Bonn Agreement road no definite policy choice has been made yet in Afghanistan on how to account for the human rights atrocities of the past. This delay is the result of multiple factors: the fundamental fragility of the peace process, very slow progress in stability and democratization, lack of security, the lack of political will at national level. The marginalization of human rights issues, both with reference to past and present crimes, is also the result of the weak commitment of the international community in ending impunity and building justice in Afghanistan. This last point will be debated in more details under section IV further below.

The following examination of possible transitional policies is only intended to highlight some key issues and raise few critical questions for further debate and analysis.

i) Hunting Afghan war criminals for prosecution: a human rights utopia?

The Nuremberg legacy encourages an identification of post-conflict justice with criminal trials. Paraphrasing one author writing on the Nuremberg legacy, it seems impossible to look today at Slo-

22. For a detailed inventory of the process and the work of various truth commissions from all over the world, see Hayner (2002).
boden Milošević standing trial before the International Criminal Tribunal for the ex-Yugoslavia or, more recently, at Saddam Hussein appearing before the Iraqi Special Court without thinking of the Nazi officials standing in the defendants’ dock at Nuremberg more than half a century ago (Douglas 2001: 1). Indeed, it is precisely the memory of those historical trials that nurtures the conviction and expectation that today’s war criminals cannot and should not escape the law.

But are criminal trials the best answer to war crimes and other human rights atrocities? This is not the place for an examination of the engaging debate over the power and the limits of the law to account for human rights atrocities. This task is well in hand elsewhere (23). Suffice it to say that putting criminal trials at the top of the hierarchy of responses to war crimes and other human rights atrocities is not always the best way to advance the cause of justice. Addressing the legacy of gross and systematic human rights violations in a post-conflict society is a much more complicated endeavour than the setting up of a court and the application of codes (24). This is a topic that raises complex questions that are as much moral, political and philosophical as they are legal and technical in nature.

In the case of Afghanistan, could prosecution of individuals for war crimes and other human rights atrocities be seen as a double transitional justice option? If prosecution is conceived before an international ad-hoc tribunal, then the first legitimate question to raise would be to what extent the international community could be seen as having the legitimacy to establish an international tribunal for the crimes committed in Afghanistan. It is well known that foreign countries have been heavily involved, directly or indirectly, in the various stages of the Afghan civil war and thus played an important role in enabling gross human rights violations (25). The most internal of civil wars and peace processes always have key international


25. For a thoroughly documented analysis of the entire Afghan conflict from the 1978 Saur revolution to the fall of the Najibullah regime in 1992, see Rubin (1995).
players. Should the role of these external actors be investigated as well by an international ad-hoc tribunal for Afghanistan? Should the possibility of having these countries contributing to compensation and reparation measures for the agony suffered by the Afghan civilian population during decades of war be considered by an international judicial institution?

Another related question would be to what extent an international tribunal would be seen by the Afghan population as a credible institution administering justice in a fair, independent and efficient way. Indeed, the experience of international criminal justice institutions, from Nuremberg to The Hague, does legitimately fuel the suspicion that what these judicial fora ultimately pursue is “political justice”. And yet what should distinguish judicial activities from politics is precisely the attempt to create an impartial and independent institutional space. While the notion of perfect judicial integrity is perhaps an illusion, a more objective assessment of the quality of justice dispensed by international criminal tribunals would be a more useful and honest endeavour than any simplistic assumption that trials are the best way to achieve justice for mass atrocities (26).

It was argued that one key factor, which greatly limits transitional justice policies in post-conflict societies, is the balance of power between the old regime and the new transition government, that is ultimately the way the transition happened and the consequent nature of the peace process. The experience of other countries emerging from an internal armed conflict or an authoritarian regime seems to indicate that only in cases where the previous regime was completely defeated was prosecution before an international tribunal possible to account for past crimes. If these considerations hold true in the Afghan case as well, it could be concluded that the only individuals who could realistically be brought before an international judicial forum to account for past gross human rights violations are members of

26. For a scrupulous philosophical analysis of the topic, see Zolo (2000). The author convincingly argues against the presumed impartiality of the International Criminal Tribunal for the former Yugoslavia and its contribution to the achievement of peace and justice in Bosnia. His book also challenges Habermas’s theory of the universality of human rights and the moral virtues of international law and institutions as tools for the achievement of peace among nations.
the Taliban regime, which was militarily defeated at the end of 2001. By contrast, the indictment of individuals from other warring parties, that is the various mujahidin factions, on charges of war crimes and crimes against humanity would appear inappropriate for the time being because some of these very same individuals still hold important positions of power and authority in the present transition government (27). Furthermore, these individuals have gained full international political legitimation with the signing of the Bonn Agreement. This makes the perspective of international prosecution even more improbable at this stage.

Within such a political landscape, whose justice would an international ad-hoc tribunal for Afghanistan, if instituted, try to pursue? If the prosecutorial strategy of a possible international ad-hoc tribunal for Afghanistan is not perceived from the outset as being free from any political influence or bias, what legitimacy and credibility would such an international judicial institution have? Would “imperfect justice”, that is in this case selective prosecution, be preferable to no justice at all, that is full impunity for the most heinous crimes of the past?

There are other important factors which should be taken into account when debating the possibility of an international ad-hoc tribunal for Afghanistan. That is, how should such a judicial institution be created? Should it be the result of an agreement between the UN and the Afghan Transitional Government, as it was the case in Sierra Leone where a “hybrid” tribunal, that is a mixed national and international institution, was established?

27. War crimes and gross violations of human rights are known to have been committed by all military forces in Afghanistan for decades, since the country was plunged into chaos at the time of the “Saur revolution” of 1978. Thousands of civilians were imprisoned and summarily executed as political opponents by the PDPA regime (People Democratic Party of Afghanistan). With the Soviet invasion of 1979 the country was further thrown into a decade of political and military repression that caused immeasurable destruction, incalculable civilian casualties and massive refugee flows and internal displacement. After the withdrawal of the Soviet troops in 1989, the civil war continued amongst the various mujahidin factions. The subsequent struggle for the control of Kabul between 1992 and 1996 is estimated to have caused 50,000 civilian casualties and the destruction of one third of the city. See ICG Asia Report No. 45, (2003: 15); for a glimpse of grave human rights violations of the past see also UN Doc. E/CH.4/2003/3/Add.4, p. 12.
international forum, was eventually set up; or should it be instituted under Chapter VII of the UN Charter as was the case with the ad-hoc tribunals for the former Yugoslavia and Rwanda?

Another issue for debate is whether prosecution of Afghan war criminals before national courts would be a more realistic option than international trials in the present Afghan political situation. It could be argued that national prosecution is a fortiori a utopian goal in present-day Afghanistan, both for technical and political reasons. First, the Afghan formal justice sector is still heavily paralyzed by the lack of trained legal professionals, very little physical infrastructure and uncertainty about the applicable law, especially outside Kabul. This already makes the whole system virtually inaccessible to the vast majority of the Afghan population. The prosecution of individuals for war crimes or crimes against humanity (all charges that could potentially be brought against many of the local commanders and factional leaders politically legitimized at the Bonn Conference!) is an extremely complex legal endeavour in terms of investigations, gathering of evidence and interviewing and protection of witnesses. It is hard to imagine how the Afghan judicial system, in its current state, could cope with these tasks while complying with international standards for the administration of justice (28).

Another important issue to be investigated, if a prosecutorial strategy is pursued, concerns the substantive law to be applied for the prosecution and punishment of past crimes. Afghanistan is a state party to most of the relevant international human rights instruments (29). However, no specific law was ever passed in the country for the prosecution of crimes committed in violation of Afghan legal obligations under international law. Thus the question arises as to what extent the Afghan applicable criminal law, based on Shari’a, provides solid legal grounds for the prosecution of war crimes and other human rights atrocities of the past.

28. As stated by the UN Special Rapporteur on extra-judicial, summary or arbitrary executions, “the dilemma is that local capacity to deal with such trials is limited but at the same time the demand for justice cannot be shut out. [...] Local capacities must therefore be assessed and supported at every level for melting down the culture of impunity”. UN Doc. E/CN.4/2003/Add.4, para. 56.

It could be argued, for instance, that most of the atrocities committed during the war fall within the category of *qisās* crimes, that is one of the three categories of crimes in the Shari'a. In contemporary legal terminology, *qisās* crimes would include murder, intentional and unintentional homicide, crimes against the person’s physical integrity that do not result in death. Despite the gravity of these acts, the penalties for *qisās* crimes are not specifically provided for in the Qur'ān. Prosecution is at the discretion of the aggrieved party and the results can range from retaliation to compensation and forgiveness. Alternatively, it could also be argued that some of the war crimes and other human rights atrocities of the past fall within the category of *hudūd* crimes prescribed by the Qur’ān, that is those crimes deemed the most serious infractions of the social order. Since this category of crimes is seen as a “transgression of the limits of God”, their prosecution and punishment is mandatory under the *sunna* (Bassiouni 1988: 259-329; Yunusa Bambele 2003; Malekian 1994).

Interestingly, many Afghans interviewed on transitional justice issues cited both Shari'a and Afghan customs in support to their call for prosecution and punishment of past crimes based on the belief that the murder and mass killings of civilians are crimes against the fundamental principles of divine law and have thus long been prohibited in Islamic societies (Mani 2003: 27-18).

But beyond all these legal technicalities it seems very unlikely, from a political perspective, that any criminal proceedings will be instituted by Afghan authorities against those individuals who bear the greatest responsibility for the atrocities of the past, that is those regional or local commanders and factional leaders who are, *de jure* or *de facto*, in a position of power today. Any such action would in fact be perceived, understandably to a great extent, as a real threat to the very tenuous Afghan peace and nation-building process. What seems more plausible is national prosecution of minor war criminals who do not hold any military or political power in the present government (30). It could be argued that this may at least give a signal that

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30. See, for instance, the trial of Abdullah Shah, arrested in April 2002 for crimes committed from 1992 onwards. Shah became a *mujahid* in 1980 and was affiliated to Hizb-i-Islami. He is alleged to have carried out a number of mass murders and to have systematically inflicted torture on his prisoners. The commander was sentenced to death. The Shah case generated
someone is accounting for the sufferings inflicted on the civilian population during the long years of civil war. But this would inevitably beg a question: what kind of justice would this be? Prosecuting low-ranking officers for crimes of the past on the ground that this is the only politically viable option, while the most culpable perpetrators and the leaders responsible for ordering and supervising the commission of mass crimes are welcomed to the seats of power, is difficult to defend as a “just”, fair and impartial judicial policy (31).

A last option that might be considered to bring Afghan perpetrators of past crimes to justice is through the exercise of universal jurisdiction in third countries. The duty to prosecute, extradite, or surrender for the purpose of prosecution those individuals who are accused of international crimes such as genocide, war crimes, torture and the crime of apartheid is unequivocally stated in several human rights and humanitarian law treaties (32). Also, there is an emerging a great deal of public interest among Afghans and encouraged other victims’ families to consider instituting criminal proceedings against perpetrators of past crimes. While appreciating the efforts of Afghan authorities to address issues of impunity, the UN Special Rapporteur on extra-judicial, summary or arbitrary executions expressed deep concerns with regard to the impartiality and fairness of the trial and the application of the death sentence. See UN Doc. E/CN.4/2003/Add.4, para. 47-56.

31. The issue of the appropriate role of prosecutorial discretion is considered in the Proposed Guiding Principles for Combating Impunity for International Crimes developed by a group of eminent international law experts in 2001 (see Principle #6). More specifically, it is recognized that prosecution of all perpetrators of widespread international criminal acts is often impractical if not impossible in a post-conflict situation and that selective prosecution and use of “exemplary trials” may be the only option, provided the selection criteria are not arbitrary or impermissibly discriminatory. However, in the Commentary to Principle #6, it is unequivocally stated that “prosecutions that focus on the most culpable perpetrators best comport with common standards of justice”. The Guiding Principles can be read in Bassiouni (2002: 285-282).

international recognition of a customary law duty to prosecute individuals responsible for crimes against humanity even in the absence of a treaty containing the principle of *aut dedere aut judicare* (33). But even accepting that an international obligation to prosecute exists under international law, the exercise of universal jurisdiction would likely depend on decisions based on political considerations.

In conclusion, there are strong arguments for holding that prosecution of individuals responsible for past human rights atrocities is, in the present Afghan political environment, quite an unrealistic goal to achieve. To posit this is not to argue that impunity is *de facto* unavoidable in Afghanistan. It is rather to suggest that other forms of accountability should responsibly be explored to initiate a gradual erosion of the prevailing culture of impunity and to lay the ground for fair, impartial and effective prosecutions to be conducted when the national and international political situation allows.

There seems to be recognition at international level too that prosecutions of alleged perpetrators of human rights atrocities can be delayed for a reasonable period of time when, for instance, there are immediate concerns relevant to the consolidation of a fragile peace (34). This may well be the hard reality and the “unspeakable truth” of present-day Afghanistan.

With regard to accountability for present gross human rights violations, the newly constituted International Criminal Court (ICC) may be used (35). The question would be: if Afghan authorities adopt a non-prosecutorial approach for crimes within the ICC jurisdiction committed after the entry into force of its statute, on the ground that criminal prosecution is not politically possible, would this preclude the ICC from investigating the same crime? Or should this be precise-
ly the sort of situation that would trigger ICC involvement? These appear to be again, in the essence, complex political more than purely technical legal questions.

ii) Making the past officially known: could an Afghan truth commission contribute to justice?

Debating transitional justice in Afghanistan, an international legal expert made the following statement: «If you go to Kandahar people will tell you about the crimes of the Soviets; if you stay in Kabul people will speak about the crimes of the Taliban and so on. So, how to reconcile all these different “truths”? A truth-seeking process risks to further tear up the whole Afghan society; it is not in the interest of stabilization and pacification» (36).

It is argued here, on the contrary, that a truth commission could be a valuable contribution to post-conflict justice in Afghanistan. In the transitional justice discourse it is frequently stated that memory and truth are the ultimate forms of justice. How valid is this statement in the Afghan case? This is not a question that lends itself to an easy answer. Much depends, in the end, on how the notion of justice itself is defined and conceived within a given society. Seeking universal attributes of “justice” and “truth” may well be a hopeless chase.

It is not possible here to engage in a philosophical discussion on the Islamic conception of justice as this will take us far afield. Suffice it to say that the notions of truth and truthfulness are recurrent in the debate among Muslim philosophers, theologians and legal scholars over the nature of justice and the way it should be realized on earth (Khaddur 1984; Rosen 2000; Rosen 1989). Even in the Qur’ān, the word “truthfulness” (ṣidq) is used as one synonym for “justice” (‘adl) (Brockopp 2003: 69-73). The Arabic philosopher, al-Kindī (third/ninth century), answering the question who is the most “just” man, is reported to have said: “He is the one who sticks to the truth, never to depart from it nor to shrink from acting in accordance with the obligations imposed by it” (Khadduri 1984: 81). In the Islamic criminal justice system, up to the present time, confessions play an

important role and swearing an oath before God is taken very seriously in the belief that men will in the end be judged and punished by God for not having told the truth (37).

The point made here is that an Afghan truth commission, grounded in Islamic legal culture, might contribute to the complex process of seeking justice for the crimes of the past. The establishment of a truth commission would serve several important purposes: first, to create one official historical record of the human rights crimes of the past, which is necessary to prevent further violations and abuses as well as to reduce the margin of historical lies and the risk of various revisionisms; second, to arouse moral and political condemnation of individual perpetrators, or of certain military and political factions altogether; third, to lay the ground for sanctions other than prosecution for perpetrators; fourth, to propose victims’ compensation measures and to recommend specific institutional reforms. An Afghan truth commission could also provide a popular official forum for a public discussion on the notion of justice that is necessary for promoting a lasting rights-respecting culture.

As was the case in post-apartheid South Africa, an Afghan truth commission led by a respected religious leader might be able to gain the support of vast sectors of the population, beyond tribal, ethnic and political boundaries. In this respect, a truth commission may also gradually promote a process of national reconciliation, which could be seen as an essential element of the state-building effort.

It is instructive to note that the concept of “reconciliation” is not unknown to the Islamic legal culture. The principle of sulh-i-kull constitutes a recognition of diversity and calls upon one to be benevolent to all. It is generally taken to mean “accommodating oneself to people, good and bad, and regarding oneself, with all one’s defects, as a necessary part of this world” (Ali 1997: 846). In classic Islamic law, achieving reconciliation between the parties to a dispute is also the main task of a qadi, the judge in a Shari’a court.

To “call up” the relevant principles and traditions of the Islamic legal culture in support of any Afghan transitional justice initiative may be the best way to move forward along the long path of justice without running the risk of nurturing new forms of legal and cultural

37. For an analysis of Islamic courts, see Shapiro (1986: 194-240).
imperialism (38).

iii) Enhancing informal justice mechanisms: local efforts to deal with past crimes

It has been argued in this paper that pursuing transitional justice objectives in a post-conflict society is a very complex endeavour which in most cases requires a combination of different mechanisms. While a great deal of attention is often paid to judicial and quasi-judicial mechanisms, at national and international level, the possibility of using traditional informal justice mechanisms at local level to account for the crimes of the past and to build a culture of human rights is habitually overlooked. This is a mistake. Even more so in the case of Afghanistan where there is a deep-rooted tradition of informalism in the administration of justice (39).

It has been suggested, for instance, that existing dispute resolution mechanisms operating at village level, that is the local jirgas and shuras, could be used as public fora for truth telling (Mani 2003: 5). One academic commentator has gone a step forward in this respect, by suggesting the creation of an integrated model of post-war justice for Afghanistan which should integrate Afghan cultural traditions, religious values, legal norms and international human rights principles through the incorporation of local/tribal institutions into the

38. For a sharp critique of judicial reconstruction programs and the new global call for the rule of law in general, see Janson, De Sousa Santos (2000). The authors argue that the global interest in courts and the global expansion of judicial powers, driven by donor countries, international assistance agencies and international financial institutions such as the World Bank, are part and parcel of the western capitalist hegemonic globalization agenda. The working hypothesis is that the question of judicial reform is, above all, a political question. These reflections are even more pertinent in a post-conflict society where the legal systems have often to be built from scratch and are therefore more vulnerable to external pressures and manipulations.

39 Historically, the Afghan system has always functioned under a dual structure. On one side, a formal legal system, almost exclusively limited to Kabul and few other urban areas and largely based on Shari’a. On the other side, an indigenous tribal-based system of codes and customs, prevalent in the rural areas and traditionally resisting any interference from a centralizing authority. This is still the case in present-day Afghanistan. See Wardak (2003) - available at www.bglatzer.de/arg/arp.
official justice system at district level (Wardak 2003: 8). The involvement of local respected elders and religious and community leaders in collecting information and listening to people’s testimonies about the past may set in motion more credible processes of coming to terms with the past (40).

The intent here is not to “romanticize” communities as loci of ideal “restorative justice”. Afghan and international legal experts are all well aware of the limits of traditional mechanisms when it comes to the respect of some fundamental human rights, especially the rights of women. It is just a reminder of the need for flexibility and imagination in choosing the most appropriate remedies, or rather combination of remedies, when debating transitional justice policies.

Justice, ultimately, is what a community perceives as being a fair and acceptable solution of a dispute and therefore it is important that communities are involved in the process as much as possible.

3. The UN’s contribution to the search for justice: A human rights-based critique of the un “light footprint” approach

This last section deals with the issue of the UN’s role and responsibility in the difficult pursuit of transitional justice in Afghanistan. While acknowledging that any attempt to achieve accountability for past and present human rights violations has to be first and foremost part of an Afghan-led and owned process, it is argued that the UN’s performance in this field cannot but leave us, to say the least, with a profound sense of unease (41).

There can be little doubt that one of the most contradictory and ironic outcomes of the American-led military action to overthrow the

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40. One interesting aspect of the tribal jirgas/shuras is the notion of nanawate, which means seeking pardon/forgiveness from the victim of an offence with the aim of achieving reconciliation. It is against the tribal code to reject a nanawate. This tradition could be used to facilitate a gradual process of accountability and peaceful co-existence between individuals and groups at community level., Wardak (2003: 8).

41. Statements made in this section are based primarily on the author’s personal experience in Afghanistan as well as on informal conversations and correspondence with various Afghan and international officials involved in justice programs in different capacities.
Taliban regime in the fall of 2001 and the subsequent UN-led Bonn peace process is that some of the warlords that brutally carved up Afghanistan among themselves during the first half of the 1990s are now back in power (42). The biggest “sin” of the UN-brokered Bonn Agreement is perhaps precisely the full-blown international political legitimization of the Afghan warlords. Not only were those individuals recognized by the international community as legitimate parties in the peace negotiations. Their role was regrettably and rhetorically exalted in the final text of the peace Agreement where it is acknowledged that their (the Afghan mujahidin) sacrifice “has now made them both heroes of jihad and champions of peace, stability and reconstruction of their beloved homeland, Afghanistan” (43).

It is not surprising, then, that no provision on accountability for war crimes and other human rights atrocities was eventually included by the negotiators in the Bonn Agreement. The warlords could not possibly have been at the same time “champions of peace” and alleged war criminals. As was the case in other post-conflict situations, political legitimization has led to de facto immunity (44). This applies not only to those local and regional warlords who have regained military and political control outside Kabul but also to some of the factional leaders within the central government.

Some would argue that the primary objective of peace negotiators, including the United Nations, ought to be to end the fighting. Indeed, armed conflicts produce and aggravate human rights violations so there might be an urgency to bring the conflict to an immediate end to put a halt to those violations, even at the price of some painful compromises. From this perspective, it would be im-

43. The Bonn Agreement, Preamble.
44. Political legitimization occurs whenever individuals allegedly responsible for war crimes and other human rights atrocities are embraced by international mediators, the UN or others, as essential and legitimate “partners in peace”. De facto immunity resulting from political legitimization is best epitomized by NATO’s reluctance to apprehend indicted war criminals at large in Bosnia and in Slobodan Milošević’s immunity, until the spring of 1999, despite his clear culpability for the crimes committed in the former Yugoslavia. See Williams, Scharf (2002: 16).
moral and unwise “to pursue justice and accountability for yesterday’s victims of human rights atrocities at the expense of making today’s living the dead of tomorrow” (Anonymous 1996: 149).

Others would argue, instead, that justice and human rights are not negotiable items in a peace agenda. The United Nations should rather attempt to promote more principled approaches to peace and justice even if this may cause a more difficult and a slower post-conflict transition as well as an initial greater dependency on external military action in terms of peace enforcement and peace keeping (45).

Without being able to offer any clear-cut answer to this endless debate over peace and justice, it would seem plausible to posit that the United Nations’ human rights’ constitutional mandate (46) would call, at least, for more systematic, consistent and politically courageous policies in the area of human rights and transitional justice, especially in the aftermath of long, bloody armed conflicts such as the Afghan one. Any peace process presents both opportunities and threats for human rights. The impression is that in the case of the Afghan peace process risks, that is the risk of a renewed conflict, have been over-weighted in comparison to the opportunities opened by the fall of the Taliban regime (47). Thus, the attitude prevailing within the UN and the diplomatic community in Afghanistan in the post-Bonn transition time has been one of a reluctance to address issues of impunity and accountability. This attitude is well captured in the following statement made in 2002 by Lakhdar Brahimi, the architect of the Bonn process and former SRSG for Afghanistan, «Politics is the art of the possible and choices have to be made. Our responsibi-

45. Martin (2000: 1-10); for a similar position, see also Boyle (1996: 515).
46. See UN Charter, Articles 1(3), 55 and 62(2).
47. As noted by one western diplomat in Kabul, while the inclusion of the de-facto military power holders at the Bonn Conference and subsequently in the government was a political necessity, it could be argued that more should have been done to reduce their influence over time. For instance, «it can be discussed to what extent a realistic assessment of the strength of these irregular militias was made in the first post-Taliban period […] from the outset more resources should have been devoted to assess the military strengths of the militias, the personal objectives of the leaders and to devise a strategy on how to de-legitimize these leaders over time unless they cooperate with the central government […]» (Friborg 2004-2005: 7).
ty to the living has to take precedence over accountability for the
dead» (cit. in Niland 2004: 75).

But without international pressure it is unlikely that any sub-
stantial result can be achieved in the area of transitional justice. As
correctly stated by one international human rights expert, «Transi-
tional justice is among those concerns supported by Afghans that is
in danger of being marginalized. But we cannot hope to reverse that
process in a vacuum of political engagement on human rights at in-
ternational levels» (Gossman 2003: 9).

An Afghan official questioned on the reasons why the Afghan
Transitional government is not committed to transitional justice
answered, “The international community is leaving us alone with the
warlords. In the current situation, no one in the government believes in
any form of accountability for the crimes of the past” (48). Similarly, a
member of the Afghan Independent Human Rights Commission
(AIHRC) commenting on the international community’s commitment
to transitional justice said, «It is the Afghan people who are pushing us
(the AIHRC) for justice. [...] There is an overwhelming interest among
ordinary Afghans to deal with past human rights violations. In six
months only we received around 400 petitions from victims demand-
ing justice. On a daily basis we are receiving visitors from very remote
areas of the country asking for justice [...]. The only thing which is
absent is the international community’s interest in this process» (49).

Several lessons could be drawn from the international involve-
ment in Afghanistan, from the perspective of peace-building, justice,
human rights and aid. One which seems to be difficult to contest is
that the continued failure to address impunity and accountability, that
is above all the international community’s unwillingness and inabili-
ty to fight Afghan warlordism, is the main cause of today’s insecuri-
ty, violence and human rights abuses and the main impediment to
any transitional justice initiative (50). From this perspective, it may

48. Interview with an official of the Afghan Ministry of Justice who
asked to remain anonymous, Syracuse, Italy, 19 July 2004 (author’s notes).
49. Author’s e-mail correspondence with A. Nader Nadery, member of
the AIHRC, in charge of transitional justice, 18 July 2004.
50. For an analysis of the post-Taliban security environment and the dis-
tribution of military power among different factional militias on the ground,
both at central and regional/local level, see Thier (2004: 39-58); see also
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not be an exaggeration to say that what the international community, including the UN, is sponsoring in Afghanistan is an interval between hostilities more than a lasting peace. Thus, in a country that is still heavily armed and historically belligerent, even the post-conflict label sounds unpersuasive.

The slowness in supporting the implementation of the national demobilisation and disarmament programme is another important cause of the persistent insecurity in the country and, ultimately, of unchallenged impunity and the international community’s tolerance of present human rights abuses (51). Also, the UN choice to deploy only a very limited international military force, despite a strong Afghan demand for a bigger countrywide peacekeeping operation, is an unequivocal indication of the lack of international commitment to a lasting peace in Afghanistan (52).

In addition to the limitations of the Bonn formula and the subsequent post-Bonn political and military choices made, what have been the major implications of the “light footprint” approach promoted by the UN in Afghanistan from the standpoint of human rights and transitional justice?

The “noble” justification of the “light footprint” was, on paper, the UN’s desire to strengthen the capacity of the Afghan Interim Authority, first, and of the Transitional Authority, subsequently, to govern itself, an objective which could be reached only by limiting as much as possible the international presence on the ground. This choice represented an important departure from the more intrusive and extensive powers exercised by the UN in other post-conflicts

Steele (2003).

51. For an analysis of the links between the security sector reforms, the rule of law and impunity see Mani (2003: 18-20).

52. The International Security Assistance Force (ISAF) deployed in Afghanistan after the fall of the Taliban regime is composed of approximately 6,500 soldiers operating under the command of NATO. ISAF’s mandate originates from Security Council resolution No. 1386 of 20 December 2001 adopted under Chapter VII of the UN Charter and was originally limited to Kabul and the surrounding areas. A limited geographical extension of ISAF was approved by the UN Security Council in October 2003. See Friborg (2004-2005: 14).
situations (53). In this perspective, the Bonn Agreement itself was intended to provide only a framework for the immediate post-Taliban political transition.

While the “light footprint” approach may be conceptually an appealing one for its emphasis on capacity building, local ownership and self-determination, it is argued here that a more substantive involvement of the UN in the area of human rights and post-conflict justice would have been both desirable and more effective to achieve transitional justice objectives today.

Interpreting the light footprint policy, as well as its constitutional mandate to “promote” and “encourage” respect for human rights to the letter, senior UN officials left Afghan institutions, namely the Afghan Independent Human Rights Commission, to take the lead in all human rights activities, including the thorny issue of transitional justice. This should not come as a surprise. As rather provocatively noted by some authors, the UN’s conception of its human rights responsibilities, since its creation, has been limited, with the organization consistently (and conveniently...) seeing itself as a “benevolent promoter of human rights, at safe distance from where the real responsibilities for human rights protecting and guaranteeing lie, namely with the state” (emphasis added) (Mégret, Hoffman 2003: 315).

Certainly, states have primary responsibility for upholding the human rights of their citizens. But are these responsibilities the same in the case of a “failed” or “collapsed state”, or at least in the case of a state that is identified as such by the international community? Despite some positive results achieved in terms of state-building, Afghanistan risks falling within these categories. The situation of a “failed state” combined with the declared commitment of the international community not to abandon the country and its people to their own fate, should logically lead to more affirmative and incisive actions in the area of justice and human rights (54). In Afghanistan this

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53. For an interesting historical analysis of the UN’s involvement in post-conflict countries through the Twentieth century, see Chesterman [(2004) - in particular, Chapter 5, “Justice and Reconciliation: The Rule of Law in Post-Conflict Territories: 154-180].

54. I borrow this line of analysis from Mégret, Hoffman (2003: 328). The authors refer to those situations where the UN is effectively acting as a sovereign power, e.g. East Timor, Kosovo. They argue that with the as-
does not appear to have been the case and the idea that the UN should rethink its human rights responsibilities has hardly made its way into the official discourse (55).

The unfortunate result of this prudent UN policy has been a steady “green light” for all past and present human rights violators and the consequent perpetuation of impunity. This policy appears to be more the result of the subordination of the UN’s nation-building mandate in Afghanistan to the Washington’s “war on terror” agenda rather than being the expression of a genuine commitment to bolster the Afghan human rights capacity behind the mantra of the “light footprint” (56).

In conclusion, whether any substantive action to fight impunity and build justice in Afghanistan is taken will depend, to a great extent, on whether the international community is ready to support the assumption of sovereign-like functions and powers come also new responsibilities for the UN, including in the area of human rights enforcement. This could be seen as a first step into the direction of an, as yet utopian, world citizenship (ibidem: 342). Although Afghanistan is formally a sovereign state, the UN declared commitment to nation-building in the country would still argue in favour of more consistent efforts to uphold human rights and the rule of law.


56. In support to this statement one could cite, for instance, the case of the Dasht-i-Laili mass graves in the northern region of Afghanistan. The incident refers to the forced move of Taliban prisoners of war from Kunduz to Shibergan after the last battle which defeated the Taliban forces in the north of the country (November 2001). There are allegations that at least three thousand Taliban combatants, and their foreign allies, who had surrendered or were captured, died of suffocation as they were transported in airless containers. This allegedly happened with the knowledge of American soldiers. The mass graves where the bodies were buried are located in a territory under the control of General Rashid Dostum, the most influential Uzbek warlord, an “indispensable” ally in the conduct of the Coalition war against the Taliban and Al-Qaeda. As soon as the incident became known it appeared clear that the UN had neither the means nor the willingness to take substantive action to investigate the massacre and to protect the site and the witnesses. See Niland (2004: pp. 67-68). The case is also reported in UN Doc. E/CN.4/2003/3/Add.4 p. 15; see also Rose (2004).
the Afghan nation-building process more strongly (57). This means, first and foremost, long-term investment in the judicial and security sectors and support to local governmental and non-governmental human rights groups. This paper has tried to demonstrate that failure to achieve these things may lead to the collapse of the peace process that was so publicly put in place in Bonn.

Conclusions

It might be useful to sum up the propositions discussed in this paper and the key arguments put forward to substantiate them in a few final words which will bring these reflections to a close.

First, it was argued that justice is not a luxury in present-day Afghanistan. Pursuing accountability and fighting impunity for past and present human rights violations is indispensable to the achievement of a durable peace. To state that prosecutions of alleged Afghan war criminals may not be, in the present political environment, a realistic goal to pursue does not mean that justice as a whole can be postponed. On the contrary, it is posited that other forms of accountability ought to be attempted. To be sure, solutions to the difficult transitional justice dilemmas cannot always be found within the realm of criminal law. The model proposed in section II suggests that multiple factors have to be responsibly taken into account when debating various transitional justice options.

Second, it was posited that seeking justice in the aftermath of a conflict requires a combination of different approaches which ought to be framed taking into account the historical, religious and cultural specificities of the country concerned. The engaging search for an ultimate and universal “grasp of justice” has been long debated among philosophers of all times and cultures. But seeking universal attributes of justice is perhaps an impossible task. This is true a fortiori in a war-torn society where the complexity of the issues at stake, the multiplicity of post-conflict objectives pursued and actors

57. In this respect the news reported by an Italian newspaper that UN officials in Afghanistan have requested the UN to withdraw its staff from the country in the light of the increased security threat is highly discouraging. See “L’ONU: Ritiriamoci dall’Afghanistan”, Il Manifesto, 22 Agosto 2004 - available at www.ilmanifesto.it.
involved in the process call inevitably for flexible and gradual approaches to justice. To point out the need for compromises and variations on the path towards justice is neither to engage in an exercise of pure political cynicism nor to espouse an absolute cultural relativism. On the contrary, it seems both politically wise and morally acceptable to pursue progressive targets in the field of justice without giving up on fundamental universal values of human dignity and worth.

The last proposition discussed concerned the responsibilities of the United Nations in the struggle for peace and justice in Afghanistan. It was posited that the light footprint policy adopted by the UN in Afghanistan is not proving to be effective to advance the fight against impunity for past and present human rights violations. The primacy given to the maintenance of peace in the short-term, prudence in addressing warlordism as a result of the Bonn formula, the subordination of the nation-building agenda to the military objective of fighting terrorism, have all been identified as the main causes of the UN’s reluctance to take on more assertive action in the area of justice and human rights.

Transitional justice demands political courage. In the words of one author, this is “the courage to forgo easy righteousness, to learn how to live with real-life restrictions, but to seek nevertheless to advance one’s most cherished values day by day to the extent possible. Relentlessly. Responsibly” (Zalaquett 1991-1992: 1438).

A final concluding reflection on the dialectical relationship between principle and pragmatism in the transitional justice discourse may be useful. One aspect of justice (‘adl) found in both Islamic sacred texts and common culture concerns the concept of balance. Justice, in this respect, is a “balance set up among mankind” (Rosen 2000: 158). The biggest challenge for transitional justice in Afghanistan is perhaps precisely to strike a “balance” between people’s legitimate cry for security, peace and respect for their human dignity after decades of violence and abuses, on one side, and the political necessity of using the appropriate means to realize that demand as much as possible, on the other. Neither a “perfect peace” nor “absolute justice” can be achievable goals in a society ravaged by an armed conflict. To state this is not to accept impunity for war crimes and human rights atrocities. It is again to reiterate the inevitability of compromises.
The notion of “compromise” has been used repeatedly in this paper. To those moralists who are in search of a “perfect peace”, compromise means possibly lack of moral integrity, consistency and honesty, an excuse for cowardice and inaction. Not for us. Paraphrasing the Israeli writer Amos Oz, the word compromise was used in this paper as a synonym of life. And where there is life there must be compromises. In certain situations, the opposite of compromise may be neither moral integrity nor idealism. It may be fanaticism, continued war, violence and death (Oz 2002: 25-26).

All these dilemmas are certain to repeat themselves. A serious investment in and commitment to conflict prevention is the real challenge ahead.

Bibliography

Digging up the past or burying it: Accounting for human rights ...


Digging up the past or burying it: Accounting for human rights ...

Today, October 9th 2004, the day I begin drafting these notes on the health of women in Afghanistan, is the day of the first election in the country’s history. There are high hopes, in Afghanistan and the rest of the world, that these elections can put an end to 25 years of war and enable the Afghan ruling class to concentrate on the many serious problems afflicting the everyday life of the people of this ancient nation.

1. The general state of health of the Afghan population

There is no doubt that one of the problems the president elect will have to tackle urgently is the recovery of the Afghan health service, an essential step in the attempt to improve the population’s health - at present among the poorest in the world. To give an overall picture of the health of the Afghan people, a few basic indicators are sufficient:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Afghanistan</th>
<th>Uganda</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>life expectancy at birth</td>
<td>M = 47</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>F = 46</td>
<td></td>
<td></td>
</tr>
<tr>
<td>infant mortality</td>
<td>155/1000</td>
<td>&lt;1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>230/1000</td>
<td>(&lt;5)</td>
<td></td>
</tr>
<tr>
<td>maternal mortality</td>
<td>1600/100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>health service coverage</td>
<td>35%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>literacy rate</td>
<td>M = 51%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>F = 21%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
For the purposes of comparison, the above table shows the same indicators referred to Italy and a developing country (Uganda) with an annual per capita income similar to that of Afghanistan.

One fact that emerges clearly from these health indicators is the particular vulnerability of Afghan women to the causes of early death. The observer is struck by three specific features: the fact that life expectancy at birth is higher for men than for women, while in the rest of the world women live longer than men; an extremely high rate of maternal mortality, the highest in the world, which, accompanied by a fertility rate close to 7 live births per woman, means that on average one woman out of nine dies in childbirth; the marked difference in the literacy rate between the sexes, to the obvious disadvantage of women, even though the percentage of educated males is low. It has been proved by studies carried out in many different countries and contexts that low educational levels of women is one of the main risk factors causing increases in maternal and infant mortality.

2. Origins and causes of the main health problems in Afghanistan

The figures recorded in Afghanistan are tragic, striking even for those who are familiar with the situation in developing countries. It would be too easy to attribute them solely to the tribulations of recent Afghan history. Afghan women have always been shut away in the home, denied all rights and subjected to all types of abuse. It would therefore be a mistake to ascribe their miserable state of health exclusively to the iniquitous treatment meted out to them by the Taliban regime. Confirmation of this is provided by the observation that the worst health indicators in the country, including the most horrifying rate of maternal mortality in the world, are those registered in the province of Badakshan, in north-east Afghanistan, where the Taliban never ruled.

Afghanistan is a country of ancient poverty and consolidated traditions, so resistant to change that its own tradition has given it the strength and cohesion to fight off successive invaders down the centuries. Travelling around the country, through the arid mountainous terrains that distinguish it, you sometimes get the feeling of being in Palestine at the time of Jesus. It is not unusual to come across families travelling by donkey, bringing to mind the flight of Mary and
Notes on the health of women in Afghanistan

Joseph with their baby from Egypt. Even the advent of the Taliban, according to Amid Rashid in his book on the subject, may be attributed in good measure to an appeal to traditional Afghan values, religious and social alike, by Mujaheddin leaders with the aim of keeping the various tribes united in the bitter and ultimately victorious struggle against the Red Army. And it was probably the long years of struggle for liberation, fought in the monastic isolation of the Hindu Kush and along the valleys converging in the legendary Panshir Valley, far removed from the comforts of city life and above from women, that forged the generation of proud fighters which unfortunately produced the aberration of the Taliban.

Afghan women are said, and photographically documented, to have worn mini-skirts in the early 1980s in Kabul, which was almost a compulsory stop for thousands of hippies on their pilgrimage to oriental mysticism. It seems it was precisely the breath of modernism brought by the Soviet and other “invaders”, manifested partly in women’s emancipation in mentality and customs, which provoked the reaction of the most conservative elements in Afghan society. If, as I have done in Kabul, you ask a group of middle-aged Afghans - who have lived through the struggle against the Russians and the civil war - how long they think it will take for Afghan women to reach the position of western women, you might well hear the answer “ten years”; pace those who in November 2001 welcomed the ousting of the Taliban and mass beard-shearing in Kabul as the end of obscurantism and theocratic extremism.

One of the few pleasant surprises awaiting me on my arrival in Afghanistan in April 2002 was the discovery that there was a woman Minister of Health. Doctor Swahila, army general and surgeon, a heavy smoker even in front of men, is a legendary figure of the fight against the Russians and of Afghan surgery, universally respected as a soldier and a doctor. She probably felt more at home sewing back lumps of mangled Mujaheddin flesh in field hospital than reinventing herself as a manager in a dilapidated structure like the Afghan Ministry of Health, where her predecessor was a mullah (a cleric), than when her colleague Omar (better known as Mullah Omar) came down with liver disease (too much alcohol?) and asked the international community to build a hospital specialised in treating that organ. Having a woman running the Ministry of Health in the coun-
try’s first post-Taliban government stands as a recognition of the importance of women’s health for economic, social and civil progress in Afghanistan. And the improvement of women’s health, represented especially by the struggle against maternal mortality, is one of the main aims of the country’s health policy, which pivots on the supply of a Basic Package of Health Services through basic structures and reference hospitals.

3. Problems of access to health services

One of the main obstacles to improving women’s health is the poor coverage provided by health services. The 35% reported in the Table indicates that at least six women and men out of ten have no access to basic public medical care because they live too far from the nearest dispensary, health centre or hospital. For women in particular, geographical distance becomes an additional obstacle to the use of health services in that any journey which entails a night away from home is frowned upon by the men in the family and often prevented or at least postponed until it becomes absolutely essential. What is more, a woman must always be accompanied by a man from the family or an older woman, who will stay with the patient for as long as necessary, even for months, which adds to the difficulties and expense for the whole family.

Another factor often cited in explanation of Afghan women’s limited access to health services is the lack of women doctors. Although this is true in absolute terms and reflects gender disparity in all professions, the impression gained and the first-hand accounts heard in Afghanistan are in some ways different from the ideas spread outside the country by the mass media. I refer specifically to the prohibition on professional work imposed on women doctors by the Taliban regime, widely condemned in the world press. Though I think that the excesses perpetrated by the Taliban deserve worldwide blame and the perpetual condemnation of all civilised nations to prevent the repetition of anything of the kind, conversations with male and female colleagues in Kabul and other Afghan cities have made me aware that in actual fact the medical profession was the only one women were allowed to practise under the Taliban regime. On the absolute condition that they examine and treat women and
children only. There is a certain logic to the fact that a sexophobic regime such as that imposed by the Koran school students on the Afghan people should be concerned to prevent any contact between men and women, even for medical consultation. Even though they were legally allowed to practise, however, not all women doctors continued to do so. In many cases their husbands prevented them from going to work for fear of personal reprisals. Under the Taliban regime it was the husbands who were punished, often severely, if women were caught committing acts out of keeping with morality, at least the morality imposed by the Koran students. It should also be remembered that many doctors, men and women alike, then as now, earned most of their income from private rather than public practice. Public employees, including health service doctors, were paid only sporadically and sometimes in kind (food and clothing) rather than cash. Even today a hospital doctor earns about 40 US dollars a month. Aware that people, doctors included, had to struggle to make ends meet, the Taliban allowed public service doctors, who accounted for almost 100% of the total, to leave their posts at 1.00 pm and devote their afternoons to private practice, their only source of real income. Since women, for reasons we have seen, had no access to private medical care, many women doctors gave up medical practice altogether. Although the Taliban regime fell in November 2001, the proportion of women doctors has not greatly increased, a factor which continues to impede women’s access to medical care.

4. Main causes of illness in Afghan women

Social segregation has always and everywhere been a cause of precarious health. So it comes as no surprise that in Afghanistan the health of the most marginalised group in society - women - is extremely delicate. In addition to maternal mortality, to which I shall return later, one of the main killers of Afghan women is infectious diseases, including tuberculosis.

Afghanistan has one of the world’s highest incidences of this disease. Every year about 70,000 Afghans contract tuberculosis, the equivalent of 300 new cases per 100,000 people, and about 20,000 people, after months or years of suffering, die of it. These figures are very close to those of the African countries worst hit by endemic
tuberculosis. And in Afghanistan, unlike sub-Saharan Africa, HIV is virtually non-existent. If the country were to be invaded by this infection, as some people predict in the light of the AIDS pandemic in nearby India, it would be overtaken by a health crisis of unimaginable proportions.

A peculiar feature of TB epidemiology in Afghanistan is the marked prevalence of women in the cases registered and placed in treatment in recent years. A gender breakdown of all the cases of tuberculosis (pulmonary and extra-pulmonary) in the years 2001-3 shows that no less than 65% of TB patients are women - female patients between the ages of 15 and 49. Practically two women contract TB for every man with the disease. This is particularly striking because in almost all the other countries with a high endemic rate of TB the opposite is the case - men represent the majority of tuberculosis patients. This bizarre epidemiology could not fail to attract the attention of the Afghan health authorities and the specialised agencies of the UN. It should be borne in mind that by its very nature tuberculosis is a faithful indicator of economic and social distress in a population or group, and as such is the object of campaigns against poverty. In this context the lowering of the incidence of tuberculosis in poor countries is one of the UN Millennium Development Goals. In the light of the above statistics, in May 2003 the World Health Organisation programme for the control of tuberculosis in Afghanistan decided to finance and coordinate an anthropological research project designed to identify possible causes of the excessive number of TB cases among the country’s women. Headed by Antonio Palmisano, Professor of Cultural Anthropology at the University of Trieste, the field survey was carried out by a team of Afghan doctors working under the National TB Control Programme.

Besides generating working hypotheses and points of interest for further projects, the conclusions of the research add up to a shocking picture for Afghan women. The incidence of tuberculosis once again acts as a litmus paper for the presence of enormous inequalities, human rights violations, lack of access to the most elementary forms of health care and living conditions bordering on the intolerable. Though for the time being it has not been able to ascertain the causes of the “Afghan anomaly” of the higher incidence of TB among women, the research has confirmed that at the root of the high rates of
infection with and death from TB lies the most abject poverty and its consequences. It is poverty which generates malnutrition, overcrowding, poor domestic hygiene and other risk factors, which relegates the treatment of disease to the secondary needs of individuals and families, which deprives men and women of the knowledge required for prevention. In Afghanistan in particular, poverty is associated with the above-mentioned denial of women’s rights, and this in itself might explain their higher rate of illness.

Comparison with the situation in other countries, in Africa for instance, reveals the presence of an apparent paradox, however. In most African countries, unlike Afghanistan, tuberculosis is prevalently a male disease. But there are serious reasons for doubting whether the higher incidence of TB among African males reflects a greater real risk of infection for them. It is believed rather that the prevalence of males among the notified cases of TB is a statistical artefact stemming from the fact that for social and economic reasons men have easier access to medical care than women. This would explain why about 55% of notified TB cases in Africa are men. If this state of affairs applied in Afghanistan, there would be no explanation as to why, in sharp contrast to the “African model”, women account for the majority of notified cases of TB. It would be an incredible paradox if women in Afghanistan, confined to the home since time immemorial, had easier access to medical care than men. Further and complex epidemiological studies, to be conducted at community and nuclear family level, are needed for a sure answer to this question. One hypothesis thrown up by the Palmisano study is that women actually have less access to medical care than men but suffer from a prevalence of TB so much higher than men’s that they have a higher rate of notification. In other words, the illness is widespread among women to a degree sufficient to counterbalance the lack of notification caused by women’s lower access to health care compared with men (Palmisano 2005).

There is another hypothesis, almost diametrically opposed to the one just outlined, which centres on various forms of “health seeking behaviour”, that is to say what patients and their families do to obtain medical care, be it public, private or traditional. A full understanding of the health seeking behaviour prevalent in Afghanistan must take account of the fact that, unlike Africa, Asia has a well-developed pri-
vate health care network. Besides a cultural tradition in which private health care is perceived as better and more reliable than the public system, in countries like Afghanistan the decline of public health services has made the biggest contribution to the prosperity of the private sector. That is why the main square in Kabul is festooned with signs advertising the services of doctors, surgeons, pharmacists and healers of every description, and the same urban landscape is to be found in every major city in the country. But the private health sector is not concentrated solely in big cities. An illustration is provided by the brief story in the box below.

One of the main problems that may arise with the private health system in countries devoid of any medical insurance schemes is that all expenses are borne by the user. It is therefore the availability of cash which determines the ability to accede to private, that is to say - at least the in the majority perception - good, medical care.

It should be borne in mind that in addition to the direct costs of medical care (examinations, medicines, clinical tests, hospitalisation) the health expenditure of a family living, as do 80% of Afghans, in a rural area is composed mostly of costs associated with travelling to the nearest health centre and staying there for the time required for treatment, which is very often a matter of days or weeks. On top of that, for working men and women, direct expenses are accompanied by the loss of income incurred as a result of lost working days. Since the income of an average Afghan family is irregular and generally too low to allow for any sort of saving, it is almost invariably necessary for the nuclear family to set rigorous spending priorities. And the fact is that in many families medical care for women is not at the top of the priorities.

Another important factor is that in accordance with Afghanistan’s patrilineal social system, after her wedding a bride moves into the home of her husband’s parents and brothers, whom she must respect and obey. The bride’s dependence on her in-laws is accentuated by the fact that her husband is often compelled to leave home, sometimes for long periods, immediately after the wedding so as to earn as much as possible to repay his family for the costs incurred for the wedding. A groom’s family will often get deeply into debt to pay for the wedding and to indemnify the bride’s family against the loss of a productive working member. In his research Palmisano reports two
basic consequences of the transfer of a young bride (many weddings are between adolescents) to the home of her in-laws. The first is that the young woman suddenly loses all the bonds of affection that have marked her life hitherto and finds no compensation in her husband, often absent for the reasons stated above. The second is the creation of latent or unconcealed conflict with her in-laws, who see the wife of their son or brother as an intruder and, what is worse, as the cause of the family’s financial decline which compels one of its members to leave home. In the light of these two factors, allied to the bride’s young age and ignorance of the world and people outside the walls of domesticity, it is easy to understand how many young women fall into depression. And depression in turn is often the cause of deterioration in women’s physical condition. Palmisano reports that many women associate the onset of TB symptoms with marriage and moving in with their in-laws. Even if TB is not diagnosed, women overcome by depression stop eating, lose interest in life and no longer take care of themselves. Post-wedding depression and its consequences are in themselves able to favour the contraction of many diseases, especially infectious diseases, because of the reduction of immune defences they entail. Literature and films have recently publicised the frequency of female suicide in Afghanistan, an extreme consequence of the domestic segregation into which women are confined by the country’s traditional social system.

Awareness of the situation described above enables us to understand why, as stated above, the illness of a married woman is very unlikely to be considered a priority in the allocation of tight family budgets. This in turn may explain why women are in practice obliged to use the public health service, which is usually free. If this hypothesis were true, it would be understandable that dispensaries, health centres and public hospitals report such a high incidence of TB among women: the simple fact is that women, unlike men, do no have the money to consult a private doctor. And since private practitioners in Afghanistan are not required to notify cases of TB, the cases examined and treated in the private system (presumably almost all male) go unreported.

Another illness which starkly illustrates the complex links between disease, social status and the vulnerability of Afghan women is an infectious condition which seems to have a preference for the
female gender: cutaneous leishmaniasis. This is a parasitosis, transmitted by the bite of a sandfly, that has taken on epidemic proportions in Kabul as a result of particularly favourable environmental and epidemiological factors. In 2002 the WHO estimated that there were about 200,000 cases of cutaneous leishmaniasis in Kabul alone. The distinctive feature of this disease is that its effects are confined to the skin and do not interfere with the functions of vital organs. Death from this disease is extremely rare, but the damage it wreaks, especially in women, can be devastating. The sandfly usually bites exposed parts of the body, injecting the skin with leishmania, the parasites which give the disease its name. They multiply in the layers of the skin and after a time (measured in months or years) produce a large deep-seated sore. If the leishmaniasis ulcer, often called the “Damascus button”, breaks out on the face, the patient is marked for life. It is not hard to imagine the serious psychological repercussions caused to a young woman by such disfigurement. And this moral damage is soon augmented by material damage, as the poor girl and her family realise they will never find a man prepared to marry a woman with a ruined face. As is the case with TB, leishmaniasis is a disease notified above all in women. Statistics collected by the National Centre for Malaria and other Carrier-Transmitted Diseases in Kabul show that 70% of cases are recorded in women. However, this apparent biological anomaly (there is no evidence that the sandfly is naturally attracted by female pheromones) is explained by the different importance attached to the disease by the two sexes: while women, rightly concerned with their physical appearance, turn quickly to a doctor at the first sign of a pustule, men avoid going to a doctor for insignificant lesions. In 2003 a survey was conducted in Kabul on the presence of cutaneous leishmaniasis in nuclear families, using at-home interviews with a significant sample of people at risk. The result was a fairly even distribution of the condition between the two sexes, which confirms the theory that what varies is men and women’s perception of its seriousness and consequently their respective health seeking behaviour, as mentioned above.

I would now like to discuss the main cause of death in Afghan women - mortality in pregnancy and childbirth. A study carried out in 2002 by UNICEF and the Atlanta CDCs showed that about half the women who die at a fertile age (15-49 years old) lose their lives
as a result of complications arising during pregnancy or childbirth. This percentage is clearly subject to geographical variations, ranging from a low of 16% in Kabul, where women have access to adequate clinical facilities, to 64% in the mountainous province of Badakshan, which is still prevalently agricultural and endowed with scant health care coverage. The tragedy of a death bound up with a new life is well depicted by one of the stories included in the study.

Mohammad lost his wife and the child still inside her. Last winter, when his wife began to show the signs of a difficult labour, Mohammad started walking from his house in a remote part of Badakshan to go to the nearest health centre. It was a five-day march through snow and windstorms. When Mohammad finally reached the centre, he found only one health worker, but he was already busy with another difficult case and could not help him. To his despair, all Mohammad could do was hurry back to his village, where he was told by his tearful mother-in-law that his wife had died while he was away, taking the child in her womb with her to the grave. Mohammad and his three-year-old daughter now have no wife and no mother.

That story exemplifies one of the most common occurrences in Afghanistan, women living in remote locations, a long way from even the most basic health facilities, who have no chance of travelling. An apparent paradox is that Badakshan is one of the biggest opium-producing provinces in the country. The extreme poverty characterising the province shows that the illegal poppy trade, which is highly profitable for traffickers, is of no benefit to the poor. The situation is not very different in the other provinces producing opium, the income from which accounts for 50% of Afghanistan’s gross national product.

In the majority of cases, maternal mortality is a double death: 75% of children born to a mother who dies giving birth die in the first year of life because there is nobody to breastfeed them and take proper care of them.

Conclusions

We have seen that Afghan women and men have enormous difficulty in obtaining quality medical care. This depends on many factors, not all of them examined here. Besides the shortcomings of the
health service, the precarious state of women’s health is largely the result of their living conditions, sometimes unimagnably harsh. It is this harshness which lies at the root of the frequent complications afflicting pregnancies, whose most direct and common cause is the high number of pregnancies themselves, closely following one another in a virtually unbroken sequence from puberty to menopause. As in many other countries with predominantly rural economies and traditions, in Afghanistan people are reluctant to abandon the idea of having as many children as possible. The efforts of aware Afghans and foreign and international organisations will not be enough to change this state of affairs. It will be a long, difficult road, strewn with many more needless deaths, avoidable suffering and painful setbacks. It is hard to see Afghanistan being able to change its standard of living in a short space of time, as the United Arab Emirates - to cite one example - managed to do in the 1960s. Apart from opium production, which the western economic powers are trying to abolish, the country has no great source of wealth. The history of countries similar to Afghanistan, essentially poor and devoid of exploitable resources, shows that people’s state of health can be improved without a significant rise in per capita income. It depends on the targeted use of the scarce resources available, the decision to prioritise access to basic health care for all, giving precedence to prevention and treatment of the most serious and most common illnesses, and managing the public health service so as to meet the needs of the majority. We have seen examples of pathological conditions which are very common in the Afghan population and place a heavy burden of direct and indirect hardship on the lives of individuals and the communities to which they belong. Afghan health policy, the above-mentioned Basic Package of Health Services, has embraced the importance of these conditions and put them at the centre of health professionals’ work. The next step is to make crucial decisions in favour of the health service, a choice for welfare which falls to the people, with their right to vote, to make.

Besides the natural vulnerability to which they are heir, Afghan women and children are the principal victims of a social structure that tends to perpetuate roles and behaviour patterns inherited from models no longer compatible with the needs of a modern society. Afghanistan is now in a phase of transition between the last vestiges
of a protracted conflict and the beginnings of a democratic regime which, though for the most part promoted and influenced by forces external to Afghan society, seems to be the only way to push forward the country’s development. We all hope that the transition is a rapid one and that progress will include a clear improvement in the health of Afghan women.

To close, I present the story of a young couple I met in December 2003 in Herat. I think it exemplifies the situation of men and women present-day Afghanistan, the challenges facing them and the hopes they can legitimately hold.

They are young, little more than adolescents. They come from a small village in a remote province, where there are four doctors to take care of 200,000 people. She, the wife, is curled up on a bed in the TB unit of Herat Hospital; he, the husband, stands beside her. We ask to hear their story, we are always anxious to understand what difficulties are encountered by tuberculosis patients on their path, often a very slow one, to effective treatment. We do not expect to hear a story like the one they tell us, and at the end we are all moved. She began to suffer from TB about three years ago, immediately after the birth of her first child. Her condition deteriorated rapidly, leaving her unable to breastfeed her baby boy. He died at the age of eight months. Reinforced by depression over the loss of her son, the disease progressed. The husband spent a fortune to continue his wife’s treatment. Unfortunately in their province there are no centres supplying proper anti-TB drugs, so the couple had to turn to private quacks and pharmacists, who mostly prescribed any palliatives, vitamins and antibiotics that came to hand. Nothing really effective. The husband got into so much debt that he had to sell the house, but he refused to give up his efforts to save his wife even in the face of the open hostility of his parents and brothers, who saw the family capital consumed in the attempt to treat that little woman who was not even able to give the family an heir. One night the little women had a crisis, it seemed that the end had come. But her little big husband did not lose heart. He managed to scrape together the equivalent of the 400 US dollars needed to pay a shark of a taxi-driver (the bus journey would have cost 15 dollars) and took his wife to hospital in Herat. Here she was immediately diagnosed and the treatment begun. The treatment was long (eight months) and complex, because her condition was drug-resistant, probably as a result of the inappropriate and incomplete treatment received earlier. Today, when we meet the couple, is the day they leave hospital to go home. There’s not much to cele-
brate, because this illness has cost them the life of a son, their house and their relationship with their closest relatives. We are left speechless. An Afghan colleague takes down the details of the couple’s story and writes it up in Farsi, the language most used in Afghanistan. A few days later he reads it out at a national meeting of health workers involved in the TB programme, arousing strong emotion.

An unhappy post scriptum: a few months ago the WHO office in Herat, which among other things ran the TB control programme in that part of the country, was razed to the ground by the marauding supporters of Ismail Khan, the local warlord removed from power by Karzai. The same Ismail Khan who in June 2003 ordered the completion of the hospital wing dedicated to the treatment of patients with TB.

Bibliography

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After a generation at war, Afghanistan is slowly regaining peace. The fall of the Taleban at the end of 2001 coincided with the severest drought in recorded history, lasting from 1999 to 2002. Both factors together caused crop production in 2001 to be only one half of the normal amount. In 2002 and 2003 agricultural production strongly recovered, and the cereal harvest of 2003 was estimated to be an all-time record with 5.5 million tons, including 4.4 million tons of wheat, the country’s main staple food. In 2004, however, production decreased again, due to excessive rains in some critical times in certain parts of the country, and near drought conditions in others. Progress in Afghanistan, regarding crops and also in other spheres, is uncertain, fragile and easily reversed.

Agricultural infrastructure remains weak, especially in irrigated areas damaged by years of neglect and still afflicted by the protracted effects of the long recent drought. More than one third of land under irrigation schemes is not receiving water due to infrastructure damage, protracted effects of drought, or water management conflicts. Almost empty reservoirs are slowly refilling, much-descended underground aquifers are slowly replenishing, and people everywhere in the country are repairing damaged canals and other facilities with the scant resources at their disposal and little support from the cash-strapped Government or from a surprisingly tight aid budget. Continuing conflict and isolation in some areas (especially in the Southern provinces of Zabul, Uruzgan and Kandahar, but also elsewhere) are still constraining factors keeping the country in a prolonged emergency condition.

The most positive development in food production during the war
years and immediately afterwards was the slow spread of improved seeds and a more widespread use of fertilizer. This has led to yields well above pre-war levels, when traditional low-yield cereal varieties were almost universally grown. In a survey carried out in 2003, more than 40% of the wheat area has been planted with high-yield seeds, and the percentage was increasing from 2002 (Maletta, Favre 2003). Long term efforts at seed development and multiplication by FAO and other international agencies, maintained against all odds even through the most difficult times, were finally showing their impact on production. This technological progress resulted in average irrigated wheat yields of about 3 MT/Ha in fields sown with the new varieties, peaking at more than 6 MT/Ha in some locations (as compared with less than 2 before the war), and an average 1.1 MT/Ha in rain-fed wheat for 2002/03 with peaks up to 3 MT/Ha (up from about 0.6 to 0.8 in previous times). These averages still include wide areas being planted with traditional seeds (or older strains of improved seeds showing declining yields due to inbreeding). As more areas adopt newer varieties, average yields would tend to increase even further.

Besides cereals, mostly grown for domestic demand, the re-opening of the economy after the war implied increased opportunities for export. In recent decades Afghanistan has lost a long-standing place among top exporters of dried fruit (especially apricot and sultana raisins) and selected nuts such as almond and pistachio, as well as fresh fruit of various kinds including the renowned Afghan melon. Many fruit plantations have been ravaged or abandoned during the war, and their recovery would undoubtedly take some time. Besides the above, Afghanistan is also exporting some pulses (chiefly chickpeas and the diminutive mung beans). Figures on trade are neither abundant nor reliable, but various sources agree that agricultural exports have strongly grown since 2002. The lack or low quality of processing industries and the gross inadequacy of roads and storage facilities conspire against this, and even promote imports (1). How-

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1. The sorry state of large-scale wheat mills in the country, producing impure flour rejected by many customers, creates room for the importation of good quality flour from Kazakhstan or Pakistan. In some cases, Afghan wheat is temporarily exported to neighbouring countries and re-imported as flour. Village level artisan mills, on the other hand, do not have the problems evidenced in larger mills.
ever, already in 2003 a steady flow of mung beans and melons from, among other places, the North-eastern provinces of Baghlan and Kunduz was finding its way down to Pakistan across the difficult Salang Pass, and similar ventures were taking place from other areas. Also flocks started to recover after the long drought, which had forced many shepherds to liquidate their stock. As a consequence wool exports (especially of the prized Karakul variety) also started to grow back.

Recent trends in the production of cereals are reflected in Table 1. Only 2002 and 2003 can be considered as “normal” years, since the previous three were marked by severe drought.

Table 1 - Trends in Afghanistan cereal production, 1999-2003 (million Ha, million MT)

<table>
<thead>
<tr>
<th>Crop</th>
<th>Area 2003</th>
<th>Production 2003</th>
<th>Area 2002</th>
<th>Production 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheat</td>
<td>2 294</td>
<td>4 361</td>
<td>1 742</td>
<td>2 686</td>
</tr>
<tr>
<td>irrigated</td>
<td>1 059</td>
<td>3 017</td>
<td>1 045</td>
<td>2 110</td>
</tr>
<tr>
<td>rain fed</td>
<td>1 235</td>
<td>1 345</td>
<td>697</td>
<td>576</td>
</tr>
<tr>
<td>Barley*</td>
<td>276</td>
<td>410</td>
<td>236</td>
<td>345</td>
</tr>
<tr>
<td>Maize**</td>
<td>104</td>
<td>310</td>
<td>100</td>
<td>298</td>
</tr>
<tr>
<td>Rice** (milled)</td>
<td>145</td>
<td>291</td>
<td>135</td>
<td>260</td>
</tr>
<tr>
<td>Total cereals</td>
<td>2 819</td>
<td>5 372</td>
<td>2 213</td>
<td>3 589</td>
</tr>
</tbody>
</table>

Note: Totals may not match because they are computed from un-rounded data.

* Combined rain-fed and irrigated
**Irrigated summer season crops

Source: Fao/Wfp crop and food supply assessment missions and Maah/Fao national crop output survey
The Assessment Mission of 2004 (FAO/WFP 2004) was unable to measure yields at harvest time, as did the previous ones, and had to rely on a post harvest survey asking farmers for estimates. This suggests the estimates obtained were probably understated, since farmers in Afghanistan (as in other countries) are known to under-report their output (2). While the assessment report based on post harvest reports by farmers estimates a drop of 47% in wheat production, correcting for underreporting would attenuate the estimated fall to about 25%, a significant setback in any case.

What are the future prospects of Afghan agriculture? As in many other regards, the future is not easy to foretell in Afghanistan. However, existing information allows for some educated speculation and (with some limits) long term optimism.

Future expansion of crops in Afghanistan may result from a larger planted area, increasing yields per hectare, or both. Besides, a change in the crop mix is expected along the growth process, generally switching from subsistence to cash crops as trade opportunities increase, and thus increasing the value of output.

There are in all Afghanistan about 3 million Ha of irrigated land, of which only 1.9 million were cultivated in 2002/2003, some of them twice a year. The rest remained idle because of damaged canals, low water supply in reservoirs or aquifers, or illegal water management depriving some farmers of access to water. There are also about 3.4 million Ha of rain-fed land which is cultivated on a rotational basis, at about 1.2 million Ha per year on average. In exceptional years of good and sustained rainfall, like 2002/03, up to 70% or about 2 million Ha

2. Farmers’ responses for the 2002 harvest were about 30% below field estimates by FAO and WFP, as reported in Maletta and Favre (2003: 57): for irrigated wheat farmers reported 1.38 MT/Ha on average in a survey taken after the harvest, some 31% below the 2.02 MT/Ha estimated by FAO/WFP (2002) based on careful field measurements; for rain-fed wheat farmers reported 0.56 MT/Ha, 30% below the analogous FAO/WFP estimate of 0.80 MT/Ha. In 2004 the post harvest survey estimated 1.93 MT/Ha for irrigated wheat and 0.56 MT/Ha for rain-fed. Applying the same correction would increase those figures to 2.75 and 0.8 MT/Ha, which seem realistic enough. Total corrected wheat output would be 3.3 million MT instead of 2.29 million MT, and the fall in output relative to 2003, under these assumptions, would be -25% instead of -46%.
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may be cultivated, but in dry years rain-fed crops may shrink to much less, concentrated almost exclusively on wheat [the acreage of rain-fed wheat was about 0.7 million Ha in 2000/01 and 2001/02, and about 0.8 million Ha in 2003/04 (3)].

Given this picture, the only foreseeable expansion in cropped area is the full use of the irrigated area. However, this hangs on rehabilitation investments in irrigation systems, and better management which in turns depends on better law enforcement in rural areas. Even considering a long period ahead, it is difficult to think of the whole idle being restored to cultivation. It is also difficult to think of irrigation systems being expanded without very considerable investments (which are not likely to take place in the presence of large areas of unused irrigated land). A reasonable prospect is that the proportion of irrigated land that is actually used may grow from the current level of 2/3 to about 90%, and the amount of irrigated land cropped twice a year may increase from the current 0.3 million Ha to about 0.6 million Ha. This would result, say in 2020, in 3.3 million Ha of irrigated crops growing on 2.7 million Ha of active irrigated land. Regarding rain-fed crops no expansion in planted area can be foreseen, and thus the average would remain at some 1.3 million Ha per year.

Regarding changes in the crop mix, it is foreseeable that the share and even the absolute amount of wheat may be reduced. Many areas of wheat production could not stand competition from imported wheat or grain produced in other parts of the country. Also, opportunities to grow other crops will be taken advantage of, displacing wheat for more profitable crops. Besides, per capita demand for wheat may decrease as a result of foreseeable diet diversification and somewhat reduced post harvest losses. As a result, one could foresee that the irrigated wheat area would decrease from 1.0 to 0.8 million Ha, while the average rain-fed wheat area diminishes from 1.00 to 0.80 million Ha. The area with barley, a traditional feed for livestock, is expected to remain more or less unchanged, while rice and

3. The Afghanistan Land Cover Atlas (FAO 1999) classifies 4.5 million Ha in “rain-fed cultivation”, but it includes a significant proportion of land which is actually uncultivable (rocky outcrops, steep slopes, etc.), as reported in Maletta and Favre (2003). For recent agricultural production in Afghanistan see the special FAO/WFP reports on crops and food supplies (FAO/WFP 1999 to 2004), and also Maletta (2002) and Maletta, Favre (2003).
Table 2 - Afghanistan crop production, 2003-2020

<table>
<thead>
<tr>
<th></th>
<th>Area (million Ha)</th>
<th>Yield (MT/Ha)</th>
<th>Output (million MT)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Current</td>
<td>2020</td>
<td>Current</td>
</tr>
<tr>
<td>Area under irrigation schemes</td>
<td>3.00</td>
<td>3.00</td>
<td></td>
</tr>
<tr>
<td>Irrigated area under crops</td>
<td>1.90</td>
<td>2.70</td>
<td></td>
</tr>
<tr>
<td>Irrigated double crops</td>
<td>0.30</td>
<td>0.60</td>
<td></td>
</tr>
<tr>
<td>Total irrigated area planted</td>
<td>2.20</td>
<td>3.30</td>
<td></td>
</tr>
<tr>
<td>Total rain-fed area planted</td>
<td>1.30</td>
<td>1.30</td>
<td></td>
</tr>
<tr>
<td>Total crop area</td>
<td>3.50</td>
<td>4.60</td>
<td></td>
</tr>
<tr>
<td>Irrigated wheat</td>
<td>1.00</td>
<td>0.80</td>
<td>2.75</td>
</tr>
<tr>
<td>Rain-fed wheat</td>
<td>1.00</td>
<td>0.80</td>
<td>0.90</td>
</tr>
<tr>
<td>Irrigated barley</td>
<td>0.12</td>
<td>0.12</td>
<td>2.00</td>
</tr>
<tr>
<td>Rain-fed barley</td>
<td>0.13</td>
<td>0.13</td>
<td>1.00</td>
</tr>
<tr>
<td>Maize</td>
<td>0.10</td>
<td>0.30</td>
<td>3.00</td>
</tr>
<tr>
<td>Rice (milled)</td>
<td>0.15</td>
<td>0.35</td>
<td>2.00</td>
</tr>
<tr>
<td>Total cereals</td>
<td>2.50</td>
<td>2.50</td>
<td></td>
</tr>
<tr>
<td>Other irrigated crops</td>
<td>0.83</td>
<td>1.73</td>
<td></td>
</tr>
<tr>
<td>Other rain-fed crops</td>
<td>0.17</td>
<td>0.37</td>
<td></td>
</tr>
</tbody>
</table>

“Current” is an estimate of an average year in the period around 2003, based on FAO/WFP reports and field surveys.
maize increase their area in a significant proportion as more people consume them as food and more maize is required by an expanding livestock sector (especially poultry). Paddy fields are expected to go from 0.15 now to 0.35 million Ha in 2020, while the maize area triples in the same period. Areas remaining for other crops are also expected to grow to about 2.1 million Ha in 2020, more than twice today’s acreage.

Regarding productivity, it can be expected that wheat yields grow to about 3.75 MT/Ha for irrigated fields and to 1.20 MT/Ha rain-fed as better seeds reach widespread use. Maize yields may increase to 5 MT/Ha and milled rice yields to 3 MT/Ha. These increases are well within the genetic potential of existing seeds, and only assume somewhat wider use of improved seeds and somewhat better cropping practices.

As a result of these expected changes in areas and yields (Table 2), total cereal production would increase from about 4.6 now to 7.01 million MT in 2020. What this increase would represent in terms of fulfilling the nation's food needs is examined next.

By 2003, total cereal requirements were estimated by FAO and WFP at about 5.88 million MT, including a stock build-up of 0.2 million MT. Assuming stocks do not vary, actual requirements would be about 5.66 million MT.

The total population in Afghanistan by 2003/04 was estimated at about 22.6 million, though this figure can be seen at best as an approximation since no recent census has been taken (since the only one, taken in 1979 under war conditions and never completed). Large population flows into and out of the country have taken place and are still taking place (including the seasonal movement of nomadic tribes into Pakistan, plus the large refugee return flow of 2002/2004). The growth of this population in the future is not easy to foretell either, but reasonable assumptions regarding fertility and mortality suggest an annual growth rate of about 2.25% as an average in the period to 2020 (4). This would lead to a population of 33 million by the beginning of 2020.

4. Current estimates by the Central Statistics Office, prepared in 2002 and 2003, use a demographic growth rate of 1.9%, but this rate would probably increase to about 2.25% because fertility is likely to remain high while mortality would surely fall from the levels observed during and immediately after the severe drought of 1999-2002.
Table 3 - *Cereal balance, 2003/2004 (000 MT)*

<table>
<thead>
<tr>
<th></th>
<th>Wheat</th>
<th>Rice (milled)</th>
<th>Maize</th>
<th>Barley</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Domestic availability</strong></td>
<td>4,471</td>
<td>295</td>
<td>310</td>
<td>410</td>
<td>5,486</td>
</tr>
<tr>
<td>Food aid in stock (WFP end-June)</td>
<td>110</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>114</td>
</tr>
<tr>
<td>Domestic production</td>
<td>4,361</td>
<td>291</td>
<td>310</td>
<td>410</td>
<td>5,372</td>
</tr>
<tr>
<td><strong>Total utilization</strong></td>
<td>4,749</td>
<td>409</td>
<td>310</td>
<td>410</td>
<td>5,878</td>
</tr>
<tr>
<td>Food use</td>
<td>3,620</td>
<td>385</td>
<td>45</td>
<td>23</td>
<td>4,073</td>
</tr>
<tr>
<td>Animal feed</td>
<td>0</td>
<td>0</td>
<td>213</td>
<td>297</td>
<td>510</td>
</tr>
<tr>
<td>Seed provision</td>
<td>275</td>
<td>4</td>
<td>5</td>
<td>28</td>
<td>312</td>
</tr>
<tr>
<td>Losses</td>
<td>654</td>
<td>20</td>
<td>47</td>
<td>62</td>
<td>783</td>
</tr>
<tr>
<td>Stock build-up</td>
<td>200</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>200</td>
</tr>
<tr>
<td><strong>Import requirements</strong></td>
<td>278</td>
<td>114</td>
<td>0</td>
<td>0</td>
<td>392</td>
</tr>
<tr>
<td>Commercial imports</td>
<td>278</td>
<td>114</td>
<td>0</td>
<td>0</td>
<td>392</td>
</tr>
</tbody>
</table>

The cereal balance sheet for 2003/04 is based on the following assumptions:
- Mid-year 2003/04 (December 2003) population is estimated at 22.626 million. This figure is based on the 2003/04 population estimate prepared by the Central Statistics Office (CSO). The figures reported by the CSO include 20.7 million settled and 1.5 million nomadic populations for a total of 22.2 million. This total was then projected forward using an annual growth rate of 1.92 percent - also used by the CSO.
- Per capita cereal consumption as food is estimated at 180 kg per year. This includes 160 kg wheat, 17 kg rice, 2 kg maize, and 1 kg barley.
- Feed use of grains is estimated at 213 000 tonnes of maize and 297 000 tonnes of barley for cattle, horses, donkeys, and chicken.
- Seed use is estimated at 152 kg/ha for irrigated wheat, 92 kg/ha for rain-fed wheat, 30 kg/ha for rice, 35 kg/ha for maize, and 110 kg/ha for barley. Cereal area next season is assumed as the average of the previous five years.
- Post harvest losses are assumed to be 15 percent for wheat, barley, and maize and 7 percent for rice.
- Following the bumper crop this year a cereal stock build-up of about 200 000 tonnes is assumed.

**Source:** FAO/WFP 2003.
Gross current per capita demand for cereals has been estimated by FAO and WFP at about 250 kg/year per person for the 2003/04 marketing year. This includes all uses of cereals (food, animal feed, seed, non-food industries and post harvest losses). Food cereal requirements are estimated at about 180 kg/year per person, of which 160 kg is wheat alone (see FAO/WFP 2003). Post harvest losses are currently estimated at 15% for wheat, maize and barley, and 7% for rice.

Reduction in losses and changes in diet may entail a reduction of gross per capita demand for cereals, from 250 to about 220 kg per year. This is consistent with the trend in comparable countries assuming a modest increase in per capita income and a very modest increase in urbanization. With more rapid growth and urban development the change in consumption patterns may be more radical. As land devoted to cereals remains stable, but total used area expands, room for other crops increases, and changes in the crop mix are also to be expected. With these assumptions, the expected picture for 2020 appears in Table 4.

Table 4 - Projected crop production and demand up to 2020

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>2020</th>
<th>% increase</th>
<th>% annual rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cereal utilization</td>
<td>Million MT</td>
<td>5.66</td>
<td>7.26</td>
<td>28%</td>
</tr>
<tr>
<td>Cereal production</td>
<td>Million MT</td>
<td>4.62</td>
<td>6.95</td>
<td>50%</td>
</tr>
<tr>
<td>Cereal imports</td>
<td>Million MT</td>
<td>1.04</td>
<td>0.30</td>
<td>-71%</td>
</tr>
<tr>
<td>Cost of imports</td>
<td>Million 2004 USD</td>
<td>$124.6</td>
<td>$36.5</td>
<td>-71%</td>
</tr>
<tr>
<td>Value of cereal crops*</td>
<td>Million 2004 USD</td>
<td>$554.6</td>
<td>$834.5</td>
<td>50%</td>
</tr>
<tr>
<td>Value of other crops**</td>
<td>Million 2004 USD</td>
<td>$400.4</td>
<td>$1,260.0</td>
<td>215%</td>
</tr>
<tr>
<td>Total value of crops</td>
<td>Million 2004 USD</td>
<td>$955.0</td>
<td>$2,094.5</td>
<td>119%</td>
</tr>
<tr>
<td>Crop exports value</td>
<td>Million 2004 USD</td>
<td>$20.0</td>
<td>$209.4</td>
<td>947%</td>
</tr>
<tr>
<td>Per capita crop value</td>
<td>USD per person</td>
<td>$42.3</td>
<td>$63.5</td>
<td>50%</td>
</tr>
</tbody>
</table>

(*) Based on a unit value of $120 per MT
(**) Based on $400 per Ha currently and $600 per Ha in 2020. The increase results from increased yields and shifting to more profitable crops
In this outlook, total crop production would grow at 2.3% annually, and per capita value of crops would increase at 2.3% per year. Non-cereal crops would grow most, at 6.6% per year. Cereal imports would decrease from about one million MT to only 0.3 million (5). Exports, on the other hand, would grow at almost 14% per year, from a meagre estimated flow of $20 million now to ten times that value by 2020. Cereals now account for about 60% of total crop output value, but are expected to reduce their relative weight to about 40% by 2020.

This analysis does not take livestock into account. Animals were decimated by the drought, and stocks are now slowly recovering. Assuming they recover their previous numbers, an increase in subsequent years is also to be expected. Growth in incomes and shifting consumption patterns would probably entail increased consumption of food of animal origin, and growth in chicken consumption will probably be the fastest. Figures are hard to come by regarding livestock, but according to the Livestock Census of 2003 there were about 12 million chickens in the country. With reasonable assumptions and disregarding imports this would mean a consumption level of about 6500 MT of poultry meat per year, or some 280 grams annually per person, which is pretty low by international standards. This amount may increase several times before 2020. A modest outlook would be an increase to 1 kg per capita in that year. For comparison, in 2002 per capita yearly consumption of poultry meat was 2.4 kg in Pakistan, 1.3 kg in India, 0.4 kg in Tajikistan, 2.2 kg in Turkmenistan, 0.9 kg in Uzbekistan. Egg consumption, also very low now, should also increase by the same measure, as would total meat consumption.

The foregoing analysis also ignores opium poppy cultivation, a major factor in Afghanistan’s economy. This illicit crop, whose area shrunk to almost nothing in 2001, has been growing fast ever since, in spite of an internationally funded eradication program and in close association with warlord finance. According to estimates from the UN Office on Drugs and Crime, by 2003 the total poppy area was about 80,000 Ha, most of them (77,000) irrigated (UNODC 2003). By 2004 the same organization estimates a further increase, as about

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5. Cereal imports (including food aid flows) were above one million MT in recent years, though they decreased to 0.5 million in 2003/04, only to increase again in 2004/05 when production declined again.
70% of farmers reported an intention to increase poppy production, and more villages started planting the crop, in spite of falling prices for opium (UNODC 2004).

The area occupied by poppy is of course not available for other crops at the same time. However, the area itself is relatively small (about 4% of all irrigated crops and 0.2% of rain-fed cultivated areas). Its principal impact is on farmers’ livelihoods and motivation to grow other crops or undertake other licit activities. As Afghanistan provides about 3/4 of world opium supplies, and demand is not growing very fast, a further disproportionate increase in the poppy area is not to be immediately expected, though it may keep increasing if law enforcement, control of warlords and alternative development programs fail to stop the expansion of the crop. It would probably be an exaggeration to project an opium area above 100,000 Ha by 2020, though that figure may well be reached in 2004 or 2005 before falling again. The area with opium in 2020 would probably be much lower if the country achieves more political stability and stronger law enforcement.

What will this agricultural outlook imply for food security and human nutrition? On the one hand, the country will improve self sufficiency. By 2020, cereal imports will be lower on average, and the country will be by far a net exporter of agricultural products. But there is more than self sufficiency to food security, and indeed self sufficiency itself is no longer regarded as a mark of food security in a world of open economies where trade and financial flows are thoroughly liberalized. The key problem is not self sufficiency at the national level, but sustainable access to food at the household level. In the midst of the recent drought in 1999/01, with war ravaging the country and cereal output at its lowest level, 70% of the Afghan population was undernourished, up from 58% in 1990/92, according to FAO estimates (FAO 2003 - Table 1). Several surveys of child malnutrition taken in 2001/03 suggest about 58% of children suffer from stunting. Even disregarding the drought-related years, taking instead the estimates for 1990/92, and considering that the improved situation in 2003/04 cannot be much better than a decade before, it is inevitable to conclude that Afghanistan still shows a widespread situation of inadequate access to food and high prevalence of malnutrition in several forms. This problem will not go away easily.

Besides insufficient access to staple foods, many Afghans suffer
from micronutrient deficiency, especially iron and Vitamin A, due to low consumption of fruit, vegetables and animal products in large sectors of the population. People living in the central Highlands or the Badakshan mountains, for instance, may go without fresh produce for months, due to the harsh local climate and difficult access from other regions during the winter. Several outbreaks of scurvy due to extreme lack of Vitamin C were reported in 2002 and 2003. Night blindness caused by low Vitamin A intake is also frequent. Not only Highland people, but Afghans living everywhere in the country, perhaps a majority of Afghans, find such nutrient-rich foods very hard to come by, due to their scant income. Millions subsist on a monotonous diet consisting mostly of bread and green tea.

Measured by the level of wages for casual unskilled labour, access to food has certainly gained ground since the fall of the Taliban. A day's work pay was equivalent to just 4-5 kg of flour in 1998-2001, but the purchasing power of wages soon rose to about 7-9 kilos of flour in 2002, to progress even further in 2003 and 2004 (see Maletta 2002 for wages in terms of bread, and WFP Afghanistan data for daily wage rates and the price of flour and other food commodities in major cities). By the latest count at the time of writing, in the third week of October 2004 the daily wage of a casual labourer was equivalent to 10-13 kg of wheat flour in the various major cities (WFP, weekly data on food prices and wage rates). This amount of flour is made from about 12-15 kg of wheat, whereas per capita wheat consumption for a family of six is about 3 kg of wheat per day. This means there is now money enough in the daily pay of a casual labourer to buy all the needed flour or bread plus other kinds of food, as well as other necessaries. Increased real wages reflect the opportune cost of labour also for people not necessarily engaged in casual employment, such as small farmers and self-employed urban dwellers, and thus indicate a general improvement in the purchasing power of the labouring poor. This continuing trend towards higher real wages, plus increased food availability due to good harvests in the last three years, may have entailed better nutrition for many Afghans. However, with real wages still at about $3.00 to $3.20 per day in most cities, i.e. less than $0.40 per hour, there is ample room for purchasing power to grow to new highs in the future, further improving the food situation of the country.
The outlook for 2020 formulated in this paper is but a conservative account of possible growth in agricultural production. More can be achieved with additional investment in irrigation rehabilitation, improved roads, storage and processing facilities. However, even the modest prospects envisaged above allow for a rather optimistic expectation for food security in Afghanistan. A generation after the end of the long war and also after the most severe drought in many decades, the country may achieve better food availability and much better food access and nutrition for most of its citizens.

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Part III

ROOTS
The crowded streets of Kabul display an extraordinary variety of dress styles: Pashtun men wearing white, black or grey turbans, or the karakul, like the Uzbeks; Tajiks with their characteristic mushroom headgear; Hazare with colourful embroidered skull-caps; soldiers of various origins wearing helmets or berets. And women – wearing black or white veils wrapped around their faces; wearing just a “symbolic” light veil that doesn’t even cover all their hair; or looking like blue turrets, walking around protected from stares as though they were in a tent with a little window in the front. Each style sends out a precise message: they are uniforms signalling ethnic membership, status, military rank, lifestyle, etc. The veil too, whether a man’s turban (a long strip of cloth wound around the head), or a woman’s chador or chadry, perhaps sends a message which transcends simple membership of Islam. As Peirone observes, «The use of the veil by women is much older than Islam. It is mentioned in the Old Testament and in Persian and Byzantine literature» (Peirone 1979: 503).

Islam developed in close contact with the Byzantine and Sassanid empires and in three religious worlds - Jewish, Christian and Zoroastrian.

Judaism and Christianity were born of the same culture - the Mediterranean Middle East which for centuries had been familiar with the veiling and segregation of women (1).

Rabbinical tradition to this day requires that married women wear a veil when out of the house as a sign of their husbands’ potestas. The message sent out by Byzantine veils seems to be linked to a certain form of Christianity. Ahmed puts it thus: «… The Church’s

increasing hostility towards the body and sexuality, both conceived as sinful, and the shameful character of sex, were tied more closely to the female body, which had to be completely covered. There are early Christian Syrian representations showing women so completely covered that not even their hands or faces can be seen» (Ahmed 1995: chapter II).

Michael Psellus, 11th-century Byzantine author and politician, heaped repeated praise on the Empress Irene because her observance of the injunction to hide the skin was so assiduous that she wore gloves in addition to a veil. Such constraints were most felt by upper-class women, however.

And Zoroastrianism, an expression of Indo-European culture, shared the same institutions that regulated social relations between men and women.

Seventh-century Mecca was a prosperous city, located on trade routes linking India, Persia, Babylonia, Ethiopia, Syria and Palestine. In addition to the local Arabs it was home to substantial Jewish and Christian communities. Unlike the highly compact Jews, the Christians were divided into three groups - the Nestorian Church of Persia or Ethiopia, The Armenian Church and the Church of Egypt. Rather than reaching the Byzantine extremes cited by Ahmed, these Christians probably drew inspiration from St. Paul, who in his First Epistle to the Corinthians (11) wrote: «… Every man praying or prophesying, having his head covered, dishonoureth his head. But every woman that prayeth or prophesieth with her head uncovered dishonoureth her head ...», having previously observed that «… the head of every man is Christ; and the head of the woman is the man ...». A few verses later he added: «… For this cause ought the woman to have power on her head because of the angels». And in a direct appeal to early Christians, he asked: «… Judge in yourselves: is it comely that a woman pray unto God uncovered?».

In Iranian society of the Achaemenid period women of high rank were already segregated, completely covered, placed in the charge of eunuchs and shut in covered carriages for short trips in town as well as long journeys (Cook 1982). Herodotus informs us of Iranian customs: «… Every Persian man marries many lawful wives, and acquires an even greater number of concubines ... In Persia a man’s merit, after military valour, consists of being able to display many
sons... A son is not shown to his father before five years of age; he stays with the women ...» (Erodoto 1997).

His description confirms the segregation of women in Iranian culture before the advent of Islam.

As for the pre-Islamic Arab world, the Encyclopedia of Islam states: «Pre-Islamic poetry proves that the custom had already been observed before the time of Muhammad, the veil having been the prerogative of women of a certain rank, who used for this nasiif, sitr, sidif, etc. » (2).

This is what had been clearly described by ‘Ali al Haashimii in his al Mar’a fi ’l-shi’r al Jaahili, and other authors (3).

As was the case with Iranian and Byzantine customs, then, we are talking here of women of rank. Not all Arab women of high rank seem necessarily to have been segregated in the pre-Islamic period, however. While it is true that the practice of infanticide was clearly confined to girls - and the Koran denounces the custom (XVI: 58-59) - it is also true that many women took an active part in all the activities of their communities, including war, religious worship and trade. Khadija, who was widowed or divorced before marrying prophet-to-be Mohammed, was a businesswoman who invested her earnings in the transport industry, that is to say the caravans that produced the wealth of the Hejaz - she could certainly not have been segregated. It was only towards the end of his life that Mohammed thus informed his wives: «O ye wives of the Prophet! You are not like any other women» (XXXIII, 32). He added: «And stay in your houses ...» (XXXIII, 33).

Other women do not seem to have been subjected to specific behavioural constraints. Even though “believing women” were required: «... to cast their veils over their bosoms» (XXIV, 31), the injunction was not observed to any great extent in Medina, as revealed by the Encyclopedia of Islam (4).

It is a prophet-turned-warrior that God addresses in verse 59 of Sura XXXIII. The context of the first years of the Hegira was

2. Steingass attributes a Persian origin to the last of these words: “sajaaf: a curtain hung before a door” and “sijaaf: a veil, a curtain”.

3. See ‘Ali al Haashimii (1960). He speaks of women in the poetry of the djahiliya, that is to say before Islam.

undoubtedly masculine and warlike. In a process of rapid expansion, Islam was necessarily concerned with the safety of its women and with protecting them and distinguishing them from others. It was a matter of vital importance: «O Prophet! Tell thy wives and thy daughters and the women of the believers to draw their cloaks close round them (when they go abroad). That will be better, so that they may be recognized and not annoyed ...» (Pickthall 1977).

It therefore seems that in pre-Islamic, Muslim, and to a certain degree Byzantine, societies, the significance of the veil was a social distinction rather than an attribution of religious identity, as it was for the Jews.

To conduct an analysis of the institution of the veil in Islam, then, it seems necessary to reiterate the need for a clear distinction between the teachings of the Koran and the customs in Muslim countries. In view of the inflexibility of certain Arab countries with regard to the veil and segregation, the Koran might be expected to provide clear rulings on the subject. In addition to the above-mentioned Sura XXXIII, 59, which makes explicit reference to clothing, Sura II has only verses 221-240 regulating relations between men and women. Sura XXIV, verses 30-31, calls upon believers of both genders “to lower their gaze and be modest”; and women, besides lowering their gaze and being modest, are simply required “to draw their veils over their bosoms”. The rules are thus less detailed than Jewish or Christian rules, such as those laid down by St. Paul. But in a comment on verse 31, in his “Initiation à l’interprétation objective du texte intranscutable du Saint Coran”, Dr. Salah ed-Dine Kechrid peremptorily opines: «... Donc la femme doit tout voiler de son corps excepté le visage (et non les cheveux) et les mains. Il va de soi que la bague par exemple est tolérée en meme temps que les mains. Ainsi la femme musulmane doit obligatoirement porter un vetement ample et non transparent qui lui couvre le corps exceptées la tete et les mains. Ce vetement est le “jilbaab”. Sur la tete elle porte un voile qui lui enveloppe totalement les cheveux et dont les deux pans lui recouvrent la gorge et la poitrine. Ce voile est le “khimaar”. Donc une femme non voilée est une grande pécheresse» (Kechrid 1990).

This appears to be an excellent example of the difference between the teachings of the Koran and the practices of certain Muslims.

It thus still remains to be explained why, given the initial “liberal”
Muslim approach - at least in comparison with the other two monotheistic religions of the time - there has been a continuous toughening, even in times of peace, of the laws, not even written in the Koran, that govern women’s lives and freedom of movement. And this applies as much to the Islamic countries that have never separated politics from religion, such as Saudi Arabia, as to those which experienced the Islamic revolution years after the constitutional revolution, such as Iran and the Afghanistan of the Taliban. It is true that Islam is multi-faceted. In addition to the Sunni-Shia division there are many others. Shia Muslims include Jafarites, Zaydites, Ismailites, Qarmati, Fatimids, Druzes and Nizarites, and the Sunni have four juridical schools - Hanafite, Malakite, Shafiite and Hanbalite. It is also true that these various forms of Islam are marked by substantial divergences on a number of questions, and they are not simply theological technicalities. But they all seem to agree on one subject alone: the veil for women. And on this, as we have just seen, the Koran says very little. It might be thought that the increasing interest in the veil on the part of some if not all Muslim societies is due to a perverse mechanism that has prevented Islam following the path of the other monotheistic religions, that is to say of reforming themselves and allowing, among other things, women to enjoy greater freedom and more rights. In some historically Muslim countries women gained more freedom, at least for a time, after constitutional revolutions in the 20th century: Turkey, Iran and Afghanistan… Or perhaps it would be more appropriate to say that a percentage of men and women were institutionally forced to relinquish their culture of origin - the police tore off women’s chadors and forbade traditional male headgear, allowing only brimmed hats. According to Guity Nashat, however, for many of them “… the veil was not a symbol of backwardness but of decorum, and a way of protecting themselves from the embarrassing stares of strangers” (Nashat 1982).

Indeed, in contrast to the western perspective, this is still the way the veil is perceived in Afghanistan - as women’s decorum and protection.

As a matter of fact it was British colonial Egypt that first saw the emergence of the equation “women’s veil = cultural and social backwardness”. Ahmed explains: “… although the androcentric Victorian establishment thought up anti-feminist theories and derided women’s
emancipation movements at home, it appropriated feminist language as a weapon for colonialism and aimed it at men belonging to different cultures. It was precisely in this context that the women’s question became intertwined with the cultural question. In other words, the idea of the oppression of women in colonised societies or those beyond the borders of western civilisation was used rhetorically by colonialism as a moral justification for its design to dismantle the cultures of the peoples it subjected» (Ahmed 1995).

Apart from the polemical tone used by Ahmed in her analysis, the fact remains that the veil, basically a feminine garment in origin, a distinctive status symbol and instrument of social differentiation and subsequently of separation from the world, became to western eyes the most visible symbol of the degradation of women in Islam, which was the great adversary of colonial interests at the time and is now the great adversary of Anglo-American and multinational interests. For that matter it is not politically credible that women’s intellectual development and the production of a culture of dialogue and inclusion was or is a high priority for the interests in question. So instead of being a garment of modesty that conceals, the veil has paradoxically become a flag for claiming a social identity denied. Women are thus doubly exploited: once by the colonialists or neo-colonialists and once by the fundamentalists.

The Islam that reached Persian society came up against ancient Indo-European culture and the Zoroastrian and Nestorian religions. It was the Islam of converts. As V.S. Naipaul observes in the prologue to Beyond Belief: «Islam in its origin is an Arab religion. Everyone not an Arab who is a Muslim is a convert. Islam is not simply a matter of conscience or private belief. It makes imperial demands. A convert’s world view alters. His holy places are in Arab lands; his sacred language is Arabic» (Naipaul 1998).

But for the women of the Persian-Afghan world Islam was not, as it was elsewhere, the bringer of drastic changes in their lifestyle - they had been veiled and segregated for centuries. But even then there were those who disapproved of the veil and segregation for the women of their country. The great mystic Mawłana Djlal ed Din Rumi, born in 1207 in Balkh - now a major provincial capital in Afghanistan - wrote in his Fiihi-maa-fiihi: «The more you force a woman to hide herself the more she is tempted to show herself; the
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fact that she is hidden increases the desire to see her. You think you have nothing to fear, whereas you are stoking the desire of the two parties, you think you are reforming things, but there lies the essence of corruption! If she is good by nature she will never do bad deeds, whether you forbid them or not. She will act simply by following her good inclinations and pure character. Be calm, therefore, and have no fear. If she is not, she will do as she wishes, and prohibition will actually do nothing but increase her desire» (Rumi 1982).

In support of his thesis he cites a prophetic tradition: «Man is greedy for that which is forbidden him».

Even after centuries of Islamicisation the Iranian-Afghan world has kept its Farsi-Dari terminology (5), which holds good for talking of God and veils. God is indicated with the word Khoda, while the word Allah is used in the liturgical language of prayer and the Koran. The same goes for the veil. For centuries Afghan and Iranian women wore a veil which is generally called a chador, or chadri to indicate the specific Afghan variety, with a net across the face. Chador also refers to the shawl worn by Afghan men. Besides covering their bodies and heads with it as protection from the cold, men use it to hide their mouths so as to be able to speak freely to women who belong to certain kinship or neighbourly categories. With the Islamic revolution Iranian women suddenly found themselves having to wear a hijaab or a miqna’a instead of a chador. The fundamentalist Islam of Ayatollah Khomeini demanded a “return to basics”, a purification and therefore re-Arabisation of customs and language, in an attempt to bring Islam back to its roots. So the chador is still used, but under it the hijaab is worn in addition.

The veil is thus referred to almost invariably with the word hijaab which, as we have seen, comes from Arabic. It is a term which appeals to the “origins”, the purity, of Islam (6).

5. Farsi-e darii or courtly Farsi, courtly language. In Afghanistan Farsi is now simply called darii, that is to say “courtly”. It was widespread from Turkey to India, where it was maintained as a literary and administrative language until the 19th century, making a substantial contribution to the formation of Hindustani.

6. Women are required to wear the hijaab, which should completely cover the hair, shoulders and chest, and when they pray in holy places they must wear a chador over the hijaab.
When the Taliban took power in Afghanistan women living in the major cities were again compelled to veil themselves, but instead of their ancient chadry we were informed by the media that they were wearing the burq’a.

At this juncture a number of considerations on the languages of veils seem appropriate so as to clarify some basic concepts, especially with regard to the ideas of hijaab and burq’a, or burq’u.

Hijaab has its root in the verb hajaba: “to hide from view, to conceal”. The noun is used to indicate any sort of veil which hides a person or an object, but is also frequent in medical terminology, as a part of compound terms, to refer to the pleura, the hymen and the diaphragm (7). We are also informed that virtually nothing is known about the use of the word hijaeb prior to the advent of Islam (8). And in the Koran the word is used a mere seven times, in passages where it generally indicates the idea of separation. It is a “tent”, for instance, when Mary uses it to isolate herself from her family (XIX,17). It is a “secluded” place of separate residence for the Prophet’s wives (XXXIII, 53; XXXIII, 32). As time passed, this separation would be extended to all free Muslim women.

The hijaeb thus seems to have been imposed as an institution of separation only after the advent of Islam. The individual veils worn by Muslim women are indicated by different terms in the various countries: lithaam, quinaa, burqu’u etc. where Arabic is spoken; chadar, chadri and purdah for where Farsi, Dari and related languages are spoken - Iran, Tajikistan, Afghanistan and Pakistan.

Hajaba-hijaab seems to be the exact equivalent of the Farsi word pardah. For the entry pardah in F. Steingass’ Persian-English Dictionary we find two whole columns containing a range of meanings and nuances: «… veil, curtain, caul, tapestry, film, membrane, a partition between two walls, the walls of a tent, a coating, a layer, the sky, a musical tone or sound, a note, a melody, … modesty, a secret …» (Steingass 1984).

The term pardah seems to be used mostly to refer to that which is most impalpable, such as the sky, the heavens, music, notes, painting, secrets, modesty, the membranes of the body - the eye, the heart,
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the hymen. By this it connotes something that divides, or separates, women from men. Since the word is a very old one, used in expressions such as *parda’i ahrimani* - “wicked spirits”, of Zoroastrian origin - we may postulate that the institution of male-female separation, or *pardah*, was imported and translated by the Arabs with the term *hijaab*. This hypothesis is lent weight by the fact that Arab society was essentially tribal in structure, with no central state model of its own, and thus inclined to use the administrative capacities of the Byzantines and subsequently the Persians. Their respective cultures and institutions thus served as models for an expanding Islam, especially when it came into contact with the urban world, where segregation and the veil initially became the symbol of a generally acknowledged social institution (Gardet 1977: 101 ss).

*Burq’u*, a word we have been familiar with for some years now, is the term used by the western mass media to indicate the veil worn by Afghan women, with its characteristic window or grille over the face. But in the *Encyclopedia of Islam* it appears among other types of Arab female veil under the entry *hijaab*.

It is significant that the term *burq’u* is virtually unknown to the vast majority of Afghan women. Outside the western media, *burq’u* or *burq’a* is the term used in the Sudan to refer to the veil worn by women belonging to the Reshaida tribe, which migrated from Saudi Arabia to the Sudan in 1846 (Beckwitt 1992). When I was in the country in 1982-1983 I spent several months as a guest of a Reshaida group, during which time I was invited to a number of weddings and had the chance to speak to women of all ages and social status. They were the ones I heard using the term *burq’a*, and to them it meant «… a heavy cloth mask embroidered with silver threads and beads».

During a stay in Afghanistan in 2003 I took part in a WHO-funded research project on Gender and Tuberculosis (Palmisano 2005). None of the hundreds of women interviewed by my Afghan colleagues, nor any of the many women of varying ages and status with whom I had the opportunity of discussing the project and other social and existential questions - mostly Pashtun women but also Uzbek, Tajik and Hazare - had ever used the word *burq’a*. Without a single exception, all these women - living in Kabul or outlying villages - used the term *chadri* to refer to the traditional veil with the grille, and *chador* to refer to the long veil covering the shoulders but not the
face of women, or the veil used by men to shelter from the ravages of the weather and society. The questionnaire prepared by the research team, administered to the women in Dari and Pashto, used the term chadri to be comprehensible to Afghan interviewees, while the English version of the questionnaire used burqa so as to be comprehensible to the international reader.

How did the word burqa get into Afghanistan? More important, why did it get there? These are legitimate questions, if we consider that none of its millions of inhabitants use the word, unless they have to speak in a Western language. And again, why does director Makhmalbaf use burqa in a Farsi interview about the film “Kandahar”? Could it be a paradoxical Anglicism? Might burq’u even be of Greek-Byzantine origin (9) and therefore have been borrowed by the Arab conquerors of Byzantium, then to have been preserved by rural and urban fundamentalists down the centuries to arrive with the Wahhabi- and thus Saudi-influenced Taliban in Pakistan and Afghanistan? Or are we to give an ironic thought to Bin Laden, who might have been in contact with the Reshaida tribe during his long stay in the Sudan? Is this how the magic word burqa finally reached the English-speaking and European world of the great advertising agencies and the global market of words?

It seems hard to follow such a path of historical philology without a political analysis of self-representation and the representation of the other.

The “Afghan” burqa might also be thought to be another attempt to restore the old colonialist equations “women’s veil = Islam” and “women’s veil = oppression of women”. But it is precisely in the Afghan context that the equation, paradoxically, is no longer sustainable, if it ever was. Because in Afghanistan some women wear veils in particular circumstances and not in others, other women wear veils in situations where others do not, and women wear veils before certain men and not before others. Men also cover their heads, with turbans and other headgear. Men also veil themselves in certain cases, they cover their mouths with the chador to speak to women belonging to certain clearly-defined kinship or neighbourly categories. As Anderson

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9. See purgos, ow: the first meanings given are mobile tower and gynaecaeum in Rocci (1987).
observes, «Veiling is a variable, not a constant and no single fact about persons accounts for this variation» (Anderson 1982: 397-420).

In Afghanistan the veil is part of a complex language which permits and regulates social relations between men and women. Anderson helps us to understand this language of social relations which in the world of the Afghan Pashtuns seems to have very little to do with the Muslim religion, even though every institution and every custom is always legitimised by reference to Koranic law: «The purdah or segregation falls on non-\textit{korwala} interaction» (ibidem: 401).

In south-east Afghanistan \textit{korwala} means the people living under the same roof. A woman who wishes or has to interact with men who do not share the same place of residence is required and wishes to observe \textit{purdah}. So she carries her seclusion with her, indeed «The veil (chader, chadrii) may be regarded as a context-bound permutation of purdah, as ‘portable seclusion’…» (idem).

It is no coincidence that the first literal meaning of \textit{chador} is “tent”. Like a house, a tent, a portable \textit{purdah}, the \textit{chadri} or \textit{chador} allows a woman to go out in public without having anything to fear in meeting “forbidden” men, that is to say men classified as strangers in the social idiom of her community. This idea of the \textit{chadri} as portable seclusion is confirmed by women who live in an urban environment and belong to other ethnic groups. In the WHO questionnaire one of the questions interviewees were asked was “how many and what clothes have you got?”. They answered, “I’ve got x pairs of trousers, y shirts, etc”. The \textit{chadri} never appeared in any of their replies. It did appear in all of the answers to the questions regarding household items and other goods in the home. The answers put the owners in the plural form: “We’ve got x saucepans, y glasses, a small, medium-sized or big carpet, and one, two or more \textit{chadri}”. The \textit{chadri} is thus considered as something that belongs to all members of the household and may be used by all of them. The poorest families often do not own one and so borrow it from their neighbours. Well-off families have more than one - at least one for daily outings and one for ceremonies - and a lady does not share hers with the other women of the household.

For the Pashtun the social norm is that two people belonging to categories of legitimate candidates for marriage may not have direct contact or non-mediated interaction. Thus, «That a woman takes her seclusion with her argues for seclusion itself to be a paradigmatic
solution to practical problems of living around a categorical interdiction on interaction between marriageable adults» (ibidem: 402).

Non-korwala individuals thus avoid each other in uncontrolled environments. If a man and a woman meet outside the kor, the restriction on interaction applies to both of them. The man will therefore “avert his gaze” (idem) and pretend “not to notice” (idem) a woman. He may also cover his face with a chador or simply turn to face a wall. The woman will do exactly the same. The Pashtun are perfectly aware of the situations this may give rise to and sometimes find them amusing. If they cannot avoid speaking to each other, a polite man avoids eye contact with the woman and covers his mouth with part of this clothing or with his veil, exactly as the woman does.

These rules are applied in peacetime, in a clearly-defined territory, among people known to each other. And they also hold good in an urban context. This is a far cry from the origins of Islam, which was in aggressive expansion. During my stay in Kabul I was taken around by a driver, a man trusted by my family and a member of an important Pashtun lineage. He was extremely embarrassed when he entered the house to carry out errands or dispense instructions to the staff. He expected me and my daughter to shut ourselves in our rooms and to communicate with me through a closed door. In the end we reached tacit agreement on a more flexible mode of interaction: I would wear a veil and we would speak without eye contact. In so doing we applied the Pashtun code of behaviour: we configured situations of hajah, that is to say “completely polite” behaviour, an essential requirement for relations with any woman not belonging to the man’s kor, alternated with situations of dzegh, “straight talk” or “instrumental roughness”, when specific communication was necessary to both parties (ibidem: 404). Day-to-day interactions were subsequently facilitated still further. After we were invited to dinner at his family’s house we became almost korwala. Speaking to my husband, when his father - a charismatic kheil (clan) leader - proclaimed “We have eaten together and shared salt”, the two established a pact of loyalty and mutual trust which included the unspoken component “Neither of us will touch your women”. This resulted in a considerable alleviation of purdah and the earlier mutual embarrassment did not recur.

The rules in an urban environment are certainly easier to observe:
avoid eye contact, avoid physical contact, wear a chador or chadri. In the narrow streets of the bazaar women wearing a chadri pull it off their faces to inspect the produce on display, haggle and even argue with old or young stall-holders who are unwilling to lower their prices. Leaving the market to return to the open streets, they restore the chadri to its previous position and walk on.

The chadri has the advantage of guaranteeing complete anonymity and is thus also worn by men who wish to move around undisturbed, that is to say unidentified. And this is an old and well-known practice.

The seclusion-veil is an effective counter to fear for and on the part of women, at least with regard to the consequences of behavioural mistakes, in a society where invasions and war, or at any rate semi-permanent conflicts, are frequent, and where the fear of abduction and the horror of rape are ever-present. All the more so in a society where the sense of namoos (10), that is to say of honour and women’s family ties, is so strong. The women interviewed in Kabul had no complaints about the chadri except that it was too hot in the summer, since it is now made of synthetic fabric. They repeated: “chadri is our tradition, it’s good”; «I prefer chador, it’s less hot,” or, “our men are not like the khariji men, we must wear chadri otherwise they stare, they don’t behave well» (Palmisano 2005).

The stranger’s gaze, fear of the “predatory eye” falling on the loved one, and other people’s envy of beauty or wealth are all local factors that cannot be ignored in an anthropological or even philological analysis of the concept of the veil. In Afghanistan social behaviour seems to be anything but exhibitionist: The qala, the country’s most common form of residential construction, has walls which in some cases are over 30 feet high and hide it from the gaze of all strangers (11). The room where guests are received is usually sparsely furnished, even in the houses of the well-off: a carpet, a few cushions and abundant courtesy. There is also considerable reluctance to express surprise or admiration for other people’s possessions. If a foreign guest innocently remarks “What a lovely bag!” there im-

10. See Steingass (1984): naamooos, (from the Greek nomos), reputation, fame, … honour, dignity … the female part of a family.
11. Like village walls, burqa.
mediately arises an embarrassing situation which requires the reply “mali-shoma ast!” - “It’s yours!”. And the host will insist that the guest accepts the gift. The former will certainly expect an equivalent gift in exchange sooner or later although there is no guarantee that it will be forthcoming. Every object upon which the stranger’s gaze falls is in some way confined to the margins of social action, suspended, as if it were marked down by the evil eye. Consequently, everybody tries not to show that which is most precious to him: his daughter and his wife, before all else. It is considered extremely impolite to ask after or send greetings to the wife of one’s interlocutor. If anything, it is advisable to speak of the family in general in such cases, but the best thing is to avoid the subject altogether.

We thus return to a situation similar to the one ironically described by Iranian Mohammad Ali Giamalzadeh, a well-known nationalist novelist from Isfahan, in his 1921 publication God makes them and puts them together: «One time I met a Persian, a good friend of mine and father of many children, and asked after his wife. I wished I hadn’t. He stared at me incredulously, red in the face, eyes protruding. I made my apologies and understood from then on not only that women do not exist in Iran but that the mere mention of them is unforgivable. A further oddity about this land is that a good proportion of the population, about half of them, are in the habit of wrapping themselves from head to foot in big black bags, without even a slit to breathe through. In the streets you see these black bags coming and going all the time - talking to them is forbidden and they are not allowed to go into cafés or any similar establishment. They go to separate public baths, and at public meetings, festive gatherings and religious ceremonies sit in separate areas. These strange individuals, as long as they are isolated, emit no sound. But as soon as they are gathered in a group, a shrill babbling ensues» (Bertotti 1989: 39-41).

The situation thus described rings true. Lifting the veil reveals the suffering of a society, the Persia of the 1920s, which mutatis mutandis is not very different from present-day rural Iran or from Afghanistan.

It seems to us that the problem of Afghan society should be analyzed with reference to the impossibility of non-mediated interaction between the sexes, which entails suffering for both sides. Once they reach the age of eight or ten, boys pass into the world of men. Apart from their sisters and mother, the only woman many of them will
ever see in the face is the wife chosen for them by their father - no
dating, no flirting at the pictures, no romantic walks. For girls, life is
a straitjacket. Their father enters into a marriage agreement with a
family and will receive a substantial sum of money. The daughter,
who has never been away from home, will be sent to live with a man
often entirely unknown to her, perhaps even an old man, in a family
which is almost certainly going to face enormous sacrifices to pay
off the debt incurred for the cost of marriage. Now a wife of about 17
years of age, the girl will find herself at the beck and call of a mo-
ther- and sisters-in-law who decide everything that happens to her.
She will not be able to go back to her family unless something extra-
ordinary occurs such as the death or marriage of clan relatives, and
even then she has no automatic right to go.

This is the suffering of many Afghans. It is the suffering of many
fathers when they see their beloved daughters given as brides to the
power of other clans. It is the suffering of mothers tormented by the
fear of failing to find a husband for their daughters, and so of failing
as women, or by the fear of not being able to see their daughters for
long periods. Above all it is the anguish of these young girls who go
for good into an unknown house; or who, having grown as refugees in
another country such as Iran, where they have lived in towns and
attended school, have to return to remote villages to become the wives
of complete strangers who are sometimes old and often violent.

Everybody, men and women alike, acts in and is acted on by these
behavioural patterns bound to the country’s social structure. But
change cannot be imposed from outside. There certainly is an Afghan
path to well-being, but it will require the willingness to call traditions
into question and ascertain whether they allow the society as a whole
to respect the fundamental rights of all its members.

To return to the veil, we observe that Orthodox Christian women
in Ethiopia, as do religious Jewish women, still cover their heads
when they walk out public. In the Catholic world, in southern Italy,
Spain, Greece and Portugal, many elderly women continue to cover
their heads when they are in the street, and young women wear a veil
when they go to church. So rather than setting up an immediate equa-
tion “veil = social and cultural backwardness”, it is certainly possible
to reformulate the question in terms of a juxtaposition between the se-
cular world and the world of faith. But it is more appropriate to con-
ceive the veil and the ideas of modesty and honour as being closely correlated in specific contexts, recognising that they are not seen by all the social actors as an expression of repression or self-repression.

It also seems that a number of extreme positions in Islam, that is to say the silence-and-assent (in the best of cases) of mullahs and muftis, do not merely concern the veil but entail the segregation and immobility of women in the absence of the express authorisation of a close male relative (12). And in this context the veil is not the emblem of rights denied but the sign of a required respect.

In the Afghanistan of the Taliban regime the problem was not the chadri, or the burq’u of globalised terminology, but the simple fact that women could not go out of the house, could not go to school and could not go personally to a hospital, no matter how inadequate it might be. And a woman who lost her husband, father or brother in the war and had no other male relatives could simply exist no longer. If she went out of the house she was ipso facto an outlaw and risked being killed because she “broke the rules”. Today the Taliban govern no more, but many women still wear the chadri, because the chadri is not only a portable seclusion which provides a way round the rigid rules of avoidance, it is not only a way of hiding the beauty and wealth which give rise to envy, but because it also conceals the poverty, the starved emaciation, the ragged clothes and the tuberculosis of so many women who struggle to survive in a country trying to get back on its feet after so many years of conflict.

The chadri is really the least of the problems facing Afghan women, and is not even representative of the problems they have.

In Afghanistan the veil is not perceived as a problem by women from traditional and rural backgrounds. In urban environments it is seen as an intrusion into private life and a lack of respect for the person by a restricted group of educated and professional women - doctors, lawyers and the like - either because they have lived abroad and been socialised according to other paradigms or because they have lived in a different Afghanistan - that of the Russians, for instance.

So the problem is not the veil in itself, but the exploitation to

12. In Saudi Arabia the written permission of a father, husband or brother is required for a woman to be able to travel or simply spend a night away from home, in a hotel.
which it is subject. Perhaps the time has come for the representatives of “pure” Islam to clarify the basics of their religion and place strict controls on all the traditions, such as the use of the veil and other - sometimes barbaric - practices such as female circumcision, that are attributed to Islam or legitimised through Islam. This would be the first, essential step towards a reform involving more trust in women, allowing them to become adults rather than the perpetual objects of protection, and giving them the right to make their own informed choices about their own lives.

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The interest in the cultural heritage of Afghanistan (Fig. 1) was dramatically raised in February 2001 when the Talibanans blew up the colossal Buddha images of Bamiyan (Fig. 2), perceived as a symbol of the western valour system. A few days after the blast, the local Talibans assaulted the Buddhist monastery of Tapa Sardar near Ghazni, smashing the clay images, painfully excavated and restored in the 1970s, which decorated the chapels of the stupa court. More destruction and looting, hardly heard about in the West and little emphasized by the international agencies, had been carried out before the Talibans seized power. The ancient Greek town of Ai Khanum, the innermost one ever discovered and excavated in Asia, was looted beyond recovery during the civil wars that ravaged the country, and serious damages were inflicted to Surkh Kotal, an imposing sanctuary erected by the Kushana Emperor Kanishka in the early second century AD. Again in the North, it is to the very extensive pillage of early necropolises that we owe the discovery of the hitherto little known civilization of proto-historical and early historical Bactria. South of the mountains, the Buddhist monastery of Tapa Shotor at Hadda near Jalalabad, displaying some of the best-preserved groups of clay sculptures ever found in the whole of Central Asia, was destroyed in 1992. The wars did not spare Islamic sites. The palace of Masud III, built in Ghazni in the XII century and lavishly ornamented, was robbed of all its marble slabs and brickwork. Looters have extensively robbed the unexcavated settlement at the foot of the famous minaret at Jam in Ghur. The examples could be multiplied, but one should rather emphasize the dramatic change which has taken place as regards the attitude towards the archaeological remains. The ancient mounds dotting the Afghan landscape used to be left untouched by the local population, and the
Fig. 1 – Map of Afghanistan with main archaeological sites
The archaeological perspective

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drain of artefacts outside the country was very limited in the past. The situation has now changed to the extent that the robbing of archaeological sites and the smuggling abroad of sculptures, ceramics, metalwork, manuscripts, etc. has become a crucial aspect of the country’s economy.

Fig. 2 - Bamiyan. Empty niche of largest Buddha in January 2002 (photo G. Verardi)

The largest coin treasure ever found in the world (about 550,000 coins), discovered at Mir Zaka in southeastern Afghanistan between 1992 and 1995, is now dispersed among the collectors of several foreign countries. The income deriving from this illegal activity is estimated as large as that derived from opium cultivation and trade (1).

1. First-hand information on the damages inflicted upon the cultural
Why are the ancient artefacts of Afghanistan so valuable and praised, why is there such a large market for them? Afghanistan is at the crossroads of Asia, and the heritage of the ancient civilizations that have left their mark on its territory since the III millennium BC is unparalleled (2). The borders of Afghanistan as a modern state, established at the end of the 19th century as a result of Russia’s advance in Central Asia and British interests in India (3), include very different regions. The northern part of the country corresponds to the southern part of ancient Bactria, a pivotal region in the whole of Central Asia since proto-historical times, when a civilization of its own developed, as has been recently recognized (4). In early historical times, the Assyrians tried to conquer Bactria, and for the Achae- menians it was the richest province of the empire. A major event was its conquest by Alexander the Great in 330-327 BC. After his death the Greek colonists succeeded in establishing an independent Greek kingdom that lasted until the mid 2nd century BC, when the nomad invaders from Central Asia put an end to it. The Greek historian Polybius, an admirer of the growing Roman power, observing from afar the collapse of Greek Bactria by the hands of the barbarians, predicted a similar fate to Rome (Mazzarino 1988: 24-25). In general terms, it can be maintained that northern Afghanistan is characterized by a deeply rooted Iranian tradition, partly modified by Hellenism.

Southwestern and western Afghanistan are little known, but we may include Mundigak in this region, an impressive, monumental site of the III and II millennium BC (Casal 1961; Allchin, Hammond 1978: 91-149) connected to the great bronze age civilizations of Iran and the Indus Valley. As to Afghan Sistan, it remains largely to be explored, despite the surveys conducted in the 1970s: only the Achaemenian site of Nad-e Ali has been excavated (Ghirshman, in Hac- kin, Carl, Meunié 1959: 39-48). As regards the Islamic period, the

heritage of Afghanistan can be found in Marigo (2001).

2. Allchin & Hammond (1978) still is the reference book as regards the archaeology of Afghanistan as a whole.

3. The Durand line of 1893 is «a classic example of an artificial political boundary cutting through a culture area» (Dupree 1980: 425). The territories of the Afghans, or Pathans, are now divided between Afghanistan and present-day Pakistan.

4. For an overall view of early Bactria, see Ligabue, Salvatori (n.d.).
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extensive ruins of Bost and Lashkargah further south along the river Helmand must be recalled, and, in the West, the 15th century monuments of Herat, a thoroughly Persian town.

The regions of southern Afghanistan were Achaemenian satrapies, too: ancient Arachosia corresponds to the region of Qandahar, the Paropamisadae can be identified in part with the region of Ghazni, etc. The Greeks settled also there, but no autonomous political power could develop and the region was conquered by the Indian emperor Ashoka (273-240 BC), the core territory of whose empire - that of the Mauryas - was in the middle Ganges plain. Southern Afghanistan may be considered a peripheral part of the Indian world, culturally merging with Gandhara (corresponding to northern Pakistan), whose prodigious artistic output in the early centuries AD needs no comment (5). The emergence, from the 6th century onwards, of large Buddhist monasteries in the mountains and high plateaus of Bagram (ancient Kapisa), Kabul, Logar and Ghazni is of particular interest. They are characteristically located along the mountain fringe encircling India, which the Buddhists were obliged to leave under the pressure of Brahmanic revivalism. Farther north, in the mountains of the Hindu Kush, the large, impressive monastic town of Bamiyan was also established at the end of the 6th century (6).

The Hindu Kush region of Central Afghanistan remains largely unexplored. Nothing is known about the early historical times there. The early middle age is characterized by Buddhist establishments

5. The art of Gandhara, mainly represented by narrative scenes relating the life of the Buddha and by Buddha and Bodhisattva images, has become a separate branch of Indian studies since the publication of Alfred Foucher’s epoch-making book (Foucher 1905-1918). Mention may be made here of the excavations carried out in Swat by Domenico Faccenna, who has published a full series of reports, and a recent, important study on early Gandharan production (Faccenna 2001). The reader is also referred to Fussman (1987) and Taddei, Verardi, Filigenzi (2003).

6. The date of the Buddhas and the monastic caves at Bamiyan has been debated for a long time. Klimburg-Salter (1989) and Kuwayama (2002: esp. 140-55) have convincingly shown that it is impossible to propose a date earlier than the establishment of the Turkish rule in Tokharistan (corresponding to earlier Bactria and the territories farther northwards in Central Asia) after AD 550.
(besides Bamiyan, the monastery of Fonduqistan and the caves of Jaghuri and Qarabagh south of the lake of Nawor may be recalled) (7), as well as by monuments connected to Iranian religious cults, such as the site of Dokhtar-e Noshirwan (Mode 1992; Klimburg 1993; Grenet 1995).

![Fig. 3 - Jam. Minaret and citadel (photo G. Sartori)](image-url)

It is in this impervious region that the temple of the mysterious god Zun, either of Iranian or Indian origin, has been tentatively located (Marquat, de Groot 1915; Verardi, Paparatti 2004: 100-101). Large fortresses built with the traditional sun-dried bricks dot the landscape, probably built in the period marking the passage from the Buddhist and Iranian period to the full establishment of Islamic power (Le Berre 1987).

Although Arabic and Persian sources are rich of information about early Islam, we are still wondering about the origin of a dynasty such as that of the Ghurids, which ruled Afghanistan and northern India in the 12th-13th century from remote Ghur, that is, western Hindukush. The beautiful minaret of Jam, still standing intact in a narrow, isolated valley may be taken as a mark of their still buried capital town, Firuzkoh (Fig. 3) (8).

Islamic art and architecture had already been impressively introduced by the Ghaznavids in the 11th century in Ghazni and Lashkar-gah near Qandahar. In terms of architecture and artistic output Afghanistan acquired a unity it had never known, although we must consider it as a unity partaking of the more general language of Seljuq and Persian art, largely affecting the eastern territories conquered by the Muslims, including India.

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Horace H. Wilson had understood the importance of the ruins and antiquities of Afghanistan as early as the 1830s, when he committed himself to writing *Ariana Antiqua*, where he published, among other things, a number of Graeco-Bactrian coins - the first emerging material evidence of Greek Bactria (Wilson 1841: 251 ss). In the 1830s, Charles Masson had investigated the ruins of Buddhist stupas of southern Afghanistan, especially of the Jalalabad-Kabul area, bringing to light reliquaries and inscriptions (Masson 1842), and Sir Alexander Burnes had published drawings of the Bamiyan Buddhas (Burnes 1833). Very little was known about ancient Buddhism in the first half of the 19th century, and even less of the material heritage left by the Iranized people from Central Asia who settled in Afghan-

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stan from the 2nd century BC onwards.

The discovery of Afghanistan’s archaeological past and its immense potential is largely the work of French scholars in the 1920s and 1930s, and of a few scientific teams (French, Italian, Japanese, British, Russian) which were active on the field from the 1950s until 1979, the year of the Soviet invasion. The French established the Délégation Archéologique Française en Afghanistan (DAFA) in 1922, at the time of the reformer king Amanullah, and actively took part in the establishment of the Kabul Museum in 1931. The DAFA initially devoted its efforts to the sites of Bamiyan and Hadda. The latter is a Buddhist sanctuary near Jalalabad, known in ancient times as Nagarahara, from where an extraordinary output of stucco images was recovered (Barthoux 1930; 1933). Though clearly connected to the art of Gandhara, and equally indebted to the formal language of Hellenism, they appeared to be chronologically later and were systematized as belonging to a separate artistic school, which came to be known as “Indo-Afghan” (9). Only in the 1970s it became increasingly clear that the stucco and unbaked clay production was not limited to Hadda but was typical of the majority of Afghan sites, and of the sites as well that Soviet archaeologists were excavating on the other side of the border, in Tajikistan and Uzbekistan. Two volumes of the DAFA were devoted to Bamiyan (A. Godard, Y. Godard, Hackin 1928; Hackin, Carl 1933). They presented the first plans ever published of the huge, spectacular rock-cult monasteries adjoining the colossi, and the first photographs of the paintings decorating the vaults of the huge Buddha niches and of many monasteries as well. These paintings revealed the influence of Iranian, particularly Sasanian, art and ignited a discussion that is still going on.

A startling discovery was made by the DAFA in the plain of Begram, north of Kabul in 1937. The region was already known for the existence of the Buddhist monasteries located, as is usual, in the outskirts of the town (10).

9. Many pieces from the Hadda excavations kept in the Kabul Museum went lost during the wars, but several of them are on display in the Musée Guimet in Paris.

10. Shotorak, whose imagery is characterized by peculiar iconographic traits, was excavated by Meunié (1942).
The latter, perhaps identifiable with Alexandria ad Caucasum, was only partly investigated (Fig. 4); however, what was to be known as “the treasure of Begram” came to light in two walled rooms of a large building. It consisted of a hoard of precious objects partly imported from India, partly from the eastern Mediterranean, and from China as well (Hackin 1939; Hackin et al. 1954) no find could better illustrate the role of “crossword of Asia” played by Afghanistan. Along with painted glasses and metal pieces, there were stucco plates from Alex-
andria used as models for producing objects decorated with classical motifs, an indication that it was not only a question of trade of luxury goods but of the conscious will to keep locally alive an artistic tradition going back to Alexander and strongly bearing on the identity of the local political elites.

Fig. 5 - *Ai Khanum. General plan* (redrawn after Tissot 1987)

The ivories from India were parts of richly decorated pieces of furniture dated to the 1st-2nd century AD, thus belonging to the period when northern India and western Central Asia were ruled by the Kushanas.

The two major excavations conducted by the DAFA when field activity was resumed after the second world war threw light both on
The Hellenistic past of Afghanistan and on the subsequent period of Kushana rule. The excavations at Ai Khanum, located on the Amu Darya (the Oxus of the classical sources) where the river leaves the mountains of Pamir and flows into the plain of Bactria, revealed the existence of a Greek town built by Alexander or one of his successors after 330 BC, possibly identifiable with Alexandria Oxiana (Fig. 5).

In the acropolis there was a theatre, and in the lower town, accessed by propylaea, there was a gymnasium, these being two of the most characteristic institutions of the Greek elite along with the heroon of the oikistes, that is, the tomb of the founder of the town, Kineas. Clearchos, a disciple of Aristotle, was to reproduce there the precepts of the temple of Apollo at Delphi. Yet, the huge royal palace in the lower town, which included a library, marked a sensible change with respect to the usual Greek urban model. As to the temple, possibly devoted to Zeus Oromazdes (Oromazdes being Ahura Mazda, the supreme God of the Zoroastrian religion), it was also not built according to Greek models, but rather inspired by Syrian prototypes. From the point of view of the building materials, clay, stucco and wood were widely used along with stone. The numerous reports devoted to the excavation of Ai Khanum are full of suggestions as to the way we should re-think the settlement history, as well as the history of art, of Central Asia and northwestern India in the early historical period (11).

Ai Khanum was conquered by Central Asian tribes in 145 BC. The long-distance effects of the new political power that replaced the Greek rule are best appreciated at Surkh Kotal, a huge temple excavated between 1952 and 1963. It was built by the Kushana Emperor Kanishka I in the early 2nd century AD (12).

In terms of plan and architectural features the main temple, rising on a high terrace at the top of a hill, to which gives access a fourfold

11. The annual reports on the excavations at Ai Khanum were published by Paul Bernard in the Comptes rendus de l’Académie des Inscriptions et Belles-Lettres since 1966; of the eight volumes published, we limit ourselves to recall Bernard et al. (1973), Francfort (1989), Rapin et al. (1992).

12. The year of accession to the throne of Kanishka is not known with certainty, and the entire chronology of the Kushanas remains unsettled, and is still discussed by scholars. Among the most recent contributions, cfr. Sims-Williams & Cribb (1996) and Falk (2001).
flight of steps cut into the rock, draws inspiration from Iranian prototypes.

Fig. 6 - Statue of Kanishka from Surkh Kotal, now in Kabul Museum (courtesy F. Tissot)

It has been argued that the temple was devoted to the Fortune of the dynasty, and the stone statues of the Kushana kings actually stood just in front of the main shrine (Fig. 6) (13). A long inscription giving us

precious information on the history of the Kushanas, was the first linguistic evidence of ancient Bactrian, an Iranian language written in Greek alphabet (14).

In the meanwhile, the panorama of archaeological research had notably changed: an Italian Mission started its activity in the 1950s, and other foreign teams followed, first coordinated by the Kabul Museum and later on by the Institute of Archaeology, whose scientific activity was mainly devoted to the excavation of Tapa Shotor at Hadda (Mustamindi 1969; Tarzi 1976). The thirty years or so which precede the Soviet invasion may be described as the period of maturity of archaeological research, favoured by the pro-West reform policy of King Zahir Shah, the defeat of whose policy in 1972 was to lead to disaster.

The Italians concentrated their work in Ghazni, where the palace of Masud III was excavated and restored. They first introduced the concept that sites should not only be excavated for scientific purposes, but should be also restored to become part of a shared vision of history - a perspective that is only possible within the frame of a modernizing reform movement. In 1964, they opened the Museum of Islamic Art in the restored mausoleum of Abdur Razak at Rauza, a historical suburb of Ghazni. The marble mosque of the Moghul Emperor Shah Jahan within the Babur Garden in Kabul was also restored in the same years. Excavations were also carried out at Tapa Sardar, which proved to be a Buddhist monastery dating from the early centuries to the 8th century AD, lavishly decorated with clay sculptures (Fig. 7) and testifying to the last days of Buddhism, which, after being challenged by Brahmanic revivalism, eventually yielded to Islam between the 8th and the 9th century AD (15). The groups of caves in the mountains west of Ghazni, left partly unfinished, also testify to the closing days of Buddhism (Figs. 8-9) (Verardi, Paparatti 2004).

14. The first tentative grammar of Bactrian was reconstructed by Maricq (1958) on the basis of the Surkh Kotal inscription. In 1993 another inscription was found at Rabatak, not far from Surkh Kotal, further detailing the history of the dynasty (Sims-Williams, Cribb 1996).

Fig. 7 - Tapa Sardar. Clay head of deva and detached golden leaf on debris (photo E. Monti)
Fig. 8 - Massif of Nay Qal’a with Buddhist caves in Ghazni Province (photo G. Verardi)

Fig. 9 - Tapa Zaytun (Ghazni Province), cave 23 (drawing E. Paparatti)
An up-to standard documentation of the Buddhist rock-cut monasteries of Afghanistan was carried out by the Japanese Mission of the Kyoto University, which produced the more complete documentation available on Bamiyan (16). We owe to the Japanese Mission the excavation of Tapa Skandar, an 8th-century Brahmanic temple rising in the Begram plateau, whose cult image was an inscribed stele of Umamahesvara (Fig. 10) (Kuwayama 1972).

The archaeological perspective

This exceptional find, characteristically executed in marble as to distance itself from the current Buddhist production in stucco and clay, was to cause the critical revision of all the Hindu marble icons that had been found in Afghanistan (Kuwayama 2002: 222-48), among which were those excavated by the DAFA in the Sun temple at Khair Khana, the pass leading from the Kabul plain to the plain of Begram to the north (17). Remaining to the south of the mountains, mention should be made of the excavations conducted in Old Qandahar by the British Mission. It had been argued that Qandahar might correspond to Alexandropolis, the Greek capital of Arachosia (Fischer 1967) and the excavators, too confidently applying a principle then emerging in archaeological research, that of a single problem-solving approach, got too quickly rid of the huge deposit overlying the early levels. However, it could be established that a walled town was built in the 1st millennium BC, and that the Greek presence was probably limited to a garrison (McNicoll 1996; Helms 1997). The use of Aramaic and Greek is attested to by the famous edict of Ashoka (Schlumberger et al. 1958; Pugliese Carratelli et al. 1964).

An extremely complex, largely new scenario was in the meanwhile emerging in northern Afghanistan. An extraordinary discovery was that of Shortugai, a colony of the Indus Valley Civilization, located at 7-800 km north of the northernmost Harappan sites of Panjab (Francfort 1989). Bronze Age Bactria, where agriculture flourished thanks to developed irrigation systems, was mainly investigated by the Soviet Mission, which started working there in the 1960s. Sites and finds appeared as being part of the broader context formed by northern Bactria, Sogdia and the other ancient regions of western Central Asia. A few religious monuments of III millennium BC were brought to light at Dashly-3, among which stands out the “Round temple” (Fig. 11), encircled by nine towers, apparently located at the centre of a settlement; later on, at the end of the 2nd millennium, was built the massive temple of Tillja Tepe, the “Golden Mound”. Five princely tombs in the nearby necropolis, excavated in 1978-79 belonged to the context of the nomadic, probably Saka tribes which entered Bactria in the 2nd century BC. The dead wore garments made of

thousands of golden plaquettes and jewels, and a great number of other precious objects were laid in the burials, pertaining to the art of the Steppes and to Greek art - the result of nomadic looting. The *terminus post quem* is given by a coin of the Roman emperor Tiberius (AD 14-37) (Sarianidi 1985; 1989).

Other sites excavated by the Soviets, like the temple of Dilberjin Tepe, preserved precious paintings both referable to the Hellenistic tradition (the “Dioscuri”), and to the later, Iranian milieu, and pertaining as well to the Indian tradition, like an image of Umamaheswara (Kruglikova 1974; 1977). They can be dated from the 3rd-4th century onwards, that is, notably later than originally believed.

The Soviet invasion and the civil wars which followed, not to speak of the Taliban regime, interrupted a complex work, largely involving Afghan institutions and students, which was giving extraordinary results, and especially so in northern Afghanistan, where a multi-disciplinary approach had started being applied.

* * *
The task which is ahead of the Afghan authorities, of international organizations such as UNESCO, and of foreign countries like Italy, Japan and France, which re-started fieldwork immediately after the end of the war, is extremely complex. Everybody agrees on a few priorities, such as the restoration of the antiquities kept in the Kabul Museum. The consolidation of the rock at Bamiyan, where the huge niches now without the Buddha images are hewn out, is also a shared priority. The restoration of the Jam minaret has already started, as well as the restoration of an endangered minaret in the 15th-century Musalla complex at Herat. In Kabul, the restoration of the Babur Garden, accompanied by trial excavations, is also being carried out. The re-opening of the Islamic Museum at Rauza, with a new presentation of its rare materials, is expected in the near future. As regards excavations, field activity was resumed in Bamiyan and at Tapa Sardar in 2002. The DAFA, which reopened its office in Kabul, has started working in Balkh, the ancient capital of Bactria, which still awaits proper investigations.

The question of archaeological excavations requires some comments, not so much in relation to the priorities, since it will largely be the political and practical contingencies which will decide where and what to excavate, but to the fact that archaeology as a discipline has undergone many changes in the last decades. The archaeological record is much more accurate and detailed than it used to be. The increasing number of questions posed by any archaeological research makes extensive excavations a complex, long and costly operation. At the same time, fully exposed sites, marking the land physically and symbolically, are a fundamental requirement of post-war Afghanistan. An example will help to understand the challenges we are confronted with.

In October 2003 a few members of the Italian Mission paid a short visit to Kafir Kot, a large, spectacular Buddhist settlement situated along the uppermost course of the river Charkh, a tributary of the Logar river in the secluded Kharwar plateau in the Province of Logar, at a short distance from Ghazni as the crow flies (18). The

18. The survey, funded by the National Geographic Society, could not be carried out as planned because of the law and order situation. The easiest route to reach Kharwar from Kabul is from the metalled road leading to Pul-e Alam, the capital town of Logar, and to Gardez. You turn right at Altamur, from where it is easy to reach the pass of Khwaja Angurak and the site. From
constant presence of water and a carefully controlled irrigation system allow cultivation and cattle-breeding. In Buddhist times, the territory was certainly more fully exploited, so as to support a community that was larger and richer than the present one. The site has grown of primary importance to the Afghan authorities because it has been, and is still being, extensively looted, thus exemplifying the problems facing the conservation of Afghanistan’s cultural heritage.

Fig. 12 - *Kafir Kot (Kharwar). Monasteries area and fortress* (to right) (photo E. Monti)

Kafir Kot (“The mound of the Infidels”) consists of a cluster of mounds (Fig. 12), from where several other ones, dotting the river course to the west of the main site, can be seen. The main site may be divided into four parts (Fig. 13). The first, which occupies the south-

Pul-e Alam you can also take the road to Charkh, a magnificent oasis with plenty of grapes, and then proceed to Kharwar via the alarmingly difficult pass of Kharpechak. Another route is from Ghazni via Zana Khan, following upstream a tributary of the Ghazni river.
eastern part of the settlement, corresponds to the ancient town. To the south of it, separated by a deep canal or ancient riverbed, rises a large mound (no. 12 on the map), which was not visited.

Fig. 13 - Kafir Kot (Kharwar). Plan (E. Paparatti & S. Tilia)

The third part into which the site may be subdivided lies to the west of the habitation area: it includes a fortress, built near the northern limit of the town, and a number of sacred buildings, forming a sort of amphitheatre at the centre of which there is a water spring. Finally, a series of mounds, not included in the map, lie to the northeast of the town along the mountain spurs which close the valley to the north.

The town is situated on a high terrace, and has a rather irregular shape, with recesses and corners. It is 15 ha. large. There is a large stupa in schist in the southwestern corner (Fig. 17, right). Potsherds cover the whole surface of the flat mound. The great majority can be classified as common red ware, sometimes stamped with round medallions or small-incised circllets forming floral motifs, or also with spiralled motifs. Functionally differentiated areas are recognizable. In the northeastern part of the terrace, an area heavily affected by
looting, only fragments of large jars are visible, a thing which may indicate the existence of specialized shops or depots.

Mound 2 may be tentatively identified with a fortified palace or fortress, preserving two-storeyed buildings entirely built with unbaked bricks (Fig. 14).

The walls are plastered with a thick layer of *pakhsa* (clay mixed with straw) and show traces of green paint. A round bastion in the northern corner, covered by a corbelled dome, is accessible through the tunnels excavated by looters. A corridor, 70 cm large, runs around...
the central, circular room, with which it does not communicate, and along the northern side of the fortress. The lower room (see section A-B) has a parabolic vault, and was never plastered. Two circular water tanks are seemingly situated at the centre of the inner court of the palace, measuring ca. 5 m. at the bottom, where there are lateral passages probably leading to similar adjoining structures. The round-bastioned structures documented in other sites of southeastern Afghanistan (Shotorak in Kapisa, Tapa Maranjan in Kabul, Gul Dara in Logar, etc.), and in Gandhara suggest a date from the 6th century onwards.

Fig. 15 - Kafir Kot (Kharwar). Monastery on western mound (drawing E. Paparatti)
The large mounds south of the fortress and west of the town are easily recognizable as stupas and monasteries. The sacred space is apparently defined by four stupas, approximately situated at the four cardinal points (Fig. 13). Stupa 5 is, however, much smaller than the others. The stupas are built in stone, while the chapels and, presumably, the monastic quarters, were made with unbaked bricks. Large mound 11, delimiting the whole area to the west, rises abruptly to the east of a river branch, and is occupied by a monastic establishment heavily affected by illegal excavations. The stupa court surrounded by a row of chapels, similar one to the other, is easily recognizable. The stupa has a diameter of 20 m and is made of schist. A large pit has been dug at its centre with the aim of reaching the relic chamber. Some of the chapels on the southern side of the quadrangle (Fig. 15) are entered through the tunnels made by the looters. Room 11E preserves two thrones in the northwestern and southwestern corners, where the lower parts of two clay images of Buddha or Bodhisattva, painted red, are still standing.

Fig. 16 - Kafir Kot (Khawar). Chapel in monastery on western mound (photo E. Monti)
The remains of the image of a donor are visible on the western wall. Chapel 11F, which has been left partly undisturbed by the looters, has a door giving into the stupa court. A stupa stood at its centre, and four images at the corners, according to a model known from Tapa Shotor and later Tapa Sardar. On the southeastern corner are visible the remains of a standing image and those of a few donors (?) along the southern wall. The next chapel to the west (11D) partly preserves a dome raised on squinches (Fig. 16), a feature introduced from Sasanian architecture in eastern Afghanistan not before the 5th or 6th century. It is likely that the other chapels had the same kind of vault. Here also there were images at the four corners, and traces of painting are visible on the surviving squinch in the southwestern corner.

The stupas in Mound 1, which closes the amphitheatre to the north, and in Mound 5 (Fig. 17) are very similar to that of the main stupa at Tapa Sardar in Ghazni. A detail of the stupa base in Mound 7 was also drawn; it has a cornice with torus and half-pillars, 1.2 m distant one from the other. There probably was an upper processional path (pradaksināpatha).

Although a very large number of clay sculptures, paintings, and manuscripts found at Kafir Kot have been illegally excavated and smuggled to Peshawar in Pakistan in recent years, the Afghan authorities could recover some sculptures, mostly clay heads, which are now kept in the Kabul Museum. The sculptures are made of clay, the commonest material used in the late and post-Gandharan Buddhist sanctuaries of Afghanistan and Central Asia. The images were shaped around a frame made of wood and straw, and the clay was also mixed with minute fragments of straw. The decorative details and some anatomic parts (hand fingers, hair locks, necklace beads, bracelets, etc.) were separately made with moulds and applied to the image when it was still wet.

The upper, thin coat of clay was painted or gilded. In some cases, a golden leaf was applied on the painted image, probably some time after it was first moulded. Tapa Shotor at Hadda and Tapa Sardar near Ghazni offer the best examples for comparison (Fig. 7). Here we give an example, that of the turbaned head of a young devotee, now in the Kabul Museum (Fig. 18).
Fig. 17 – Kafir Khot (Khawar). Details of unexcavated stupas (drawing E. Paparatti)
Fig. 18 - Kafir Khot (Kharwar). Head of devotee, now in Kabul Museum (photo E. Monti)

Only excavations will be able to answer the questions raised by the very existence of a site like Kafir Kot, but we can make some preliminary considerations. What we know about southeastern Afghanistan in the Buddhist period largely depends on the information we have from the Chinese pilgrims, and in particular from Xuang Zang, a learned monk who visited this region during his journey from China to India in about 630 AD and again on his way back some fifteen years later. Some of the Buddhist kingdoms he visited, such as Bamiyan, Begram/Kapisa and Jalalabad/Nagarahara, are de-
scribed at some length; others we are unable to identify. In the 7th century, there were two kingdoms south of the Hindukush: Jibin, corresponding to Kapisa and Kabul, and Caouza or Zabul, which we also know from the early Arabic and Persian sources. According to Xuanzang, one of the capitals of Zabul was Hosina/Ghazni. The other capital of the kingdom, Hesaluo, was as large as Ghazni. Both cities measured ‘above 30 li in circuit’ (a li corresponded to about 700 m), and ‘had strong elevated situations’. In Hesaluo ‘there were springs from which issued streams of water which the farmers used for irrigation. The climate was very cold, and frost and snow abounded (…)’ (Beal 1884: II - 283-84). This description may fit Kafir Kot, 2500 m high. There is a spring at the centre of the amphitheatre formed by the monasteries and stupas to the west of the town proper, and the river Charkh flows to the south of the settlement, making cultivation possible, while one of its branches flows to the west of the sacred area. Hesaluo is called Haosa Dacheng in a later Chinese source, the Monograph on Geography of the New History of the Tang Dynasty, and the rank of dacheng, great town or capital, would perfectly fit Kafir Kot.

Should fieldwork start in Kharwar, a question to decide would be whether to give priority to the excavation of the stupas and monasteries or to that of the town. The former, once excavated and restored, would make of Kafir Kot one of the major sites to visit in Afghanistan; the retrieval of sculptural and painted materials would enrich the museums collections. The town would not be as attractive, but would give us plenty of information on the material life of late ancient Afghanistan, which is almost completely unknown. A thorough survey of the Kharwar plateau would accompany the excavation of the town, with the aim to understand the settlement pattern of the region, but it would again be little rewarding in terms of antiquarian objects. Mediating between these diverging needs would be necessary, and a great amount of resources, in any case, required.

Fieldwork has started again, however, and there are good grounds for thinking that the re-organization of the institutions in charge of the protection of the cultural heritage and the promotion of scientific work will open a new chapter in the complex history of archaeological research in Afghanistan.
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