STABLISHING RULE OF LAW AND GOVERNANCE IN POST CONFLICT SOCIETIES

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The Bonn Agreement: Transition to Democracy and the Rule of law

By

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Distinguished colleagues and dear friends:

First, I would like to thank the organizers of this conference, and in particular thank the Harvard Center for the Rule of Law, the UN-America Association and Koc University for focusing this conference on developments in Afghanistan.

The Bonn Agreement, signed in December 2001 by Afghan factions, provides a political process for a freely-elected constitutional government in Afghanistan. Specifically, the Bonn Agreement required the establishment of an interim administration headed for six months by then Chairman Hamid Karzai. Further, it called for transfer power in six months to a transitional administration chosen by a Loya Jirga, or a traditional Grand Council. The Transitional Administration would hold power for 18 months, during which it would hold a constitutional assembly and pave the way for free elections.

The role of the United Nations has been also specified in the Bonn Agreement, which is to support Afghans during each step of the political process.

The Loya Jirga

The convening of the Loya Jirga in June, even a milestone as it was, was only the completion of one fourth of the political process envisioned and agreed to at Bonn. According to the Bonn Agreement, the recently held Loya Jirga had three tasks: 1) Elect head of the Transitional Authority; 2) Approve structure of the government; and 3) Approve appointments of key posts. The Loya Jirga was also expected to provide: 1) legitimacy to the government, as it would be elected by representatives of the people; 2) pave the way for creation of an ethnically balanced government; and 3) provide an opportunity for the formation of an accountable and effective government.
The process of convening the Loya Jirga began by the establishment of a 21-member Independent Loya Jirga Commission for formulating the rules and conducting the election and selection of delegates to the Loya Jirga. The Commission was made-up of mostly legal scholars and professors, several of whom were women.

In broad terms, the Commission agreed that the Loya Jirga would have about 1600 delegates, 1000 of which would be elected and about 600 would be selected from various sectors of the society, including civil society, refugees, and professionals. 160 of the selected seats were allocated for women. Further, the Commission formulated a two-tier process for filling elected seats, which included the elections of members at the district level and then at the regional level. The reason for the two-tier process was to provide broad participation and security of the process.

Remarkably, the Loya Jirga was held according to the Bonn timetable despite enormous logistical, technical and security obstacles. The Loya Jirga Commission teams, accompanied by UN staff and international observers, canvassed the country for months to hold election of the delegates. More than half of Afghanistan is covered by high mountains and the communication infrastructure is virtually nonexistent. So to reach remote areas of the country, the Loya Jirga teams used high tech tools, such as helicopters, where available, and low-tech machines, such as mules, where nothing else was handy.

Further, the teams faced many technical difficulties. There has not been an actual census in Afghanistan for more than 20 years and millions have moved during those two decades, creating a challenge to establish the number and place of the electorate. To appreciate the difficulties, imagine holding elections in Turkey without census and voter registration.

The technical and logistical challenges, however, paled when compared to security risks. The Loya Jirga process was not only threatened by actions of ex-Taliban and Al Qaeda forces explicitly opposed to it, but also by periodic infighting between factions in several parts of the country. Further, elections are competitive by nature and since Afghans are heavily armed, the risk of violence was always there. I can share a personal experience about this type of violence; As a United Nations representative, I was monitoring elections in a district in an Eastern province when two candidates started a fist-fight. All of a sudden one of the candidates pulled out a hand grenade. Normally, people would run away from such a situation. However, here the crowd continued to beat up the man with a hand grenade, increasing the risk of an explosion. Fortunately, the device did not blow up. But the incident showed that the risk of violence was everywhere.

Nonetheless, elections were held in all, but a few districts and the process was completed in time. It happened so because of the overwhelming support of the people for the process. Even warlords whose hold on power was threatened by the process had to co-operate, lest they became branded public enemies.
The Days of the Loya Jirga

On July 11, more than 1600 delegates representing the Afghan nation gathered under a tent to decide their political future. As expected, the group agreed about many issues and disagreed on a number of others.

The delegates voiced strong support for a government of national unity, demanded the formation of national institutions, the most important of which they said was a national army. They also asked for the rehabilitation of the infrastructure and rebuilding of their livelihoods.

At times, the group pushed for variant political options. First, a large number of the Loya Jirga advocated that the Former King should assume an executive role. However, the Former King declined to assume any executive role, partly because at 84 he is too old to do so, and instead, supported Chairman Karzai for that position. While the pro-Former King constituency seemed to be the largest, the conservative Islamic and Jehadi groups, as they are called, made a substantial showing at the gathering and dominating much of the debate.

Chairman Karzai was the choice of both of the Jehadi groups and of the pro-Former King constituency because of, perhaps, his Jehadi background and progressive outlooks. Chairman Karzai comfortably won 1295 of the about 1600 or 81% of the votes. The Loya Jirga then approved President Karzai’s proposals regarding structure of the government and key posts of his cabinet.

Beyond the Loya Jirga

The Loya Jirga was a first tentative step towards a representative government in Afghanistan by involving popular participation in key political decisions. The Loya Jirga extended greater legitimacy to President Karzai as he was elected through secret ballot with a high margin. Many questions have been raised, however, whether the new cabinet is more ethnically balanced and whether it would be more effective than the previous one.

First, there were some changes in the ethnic make-up of the cabinet. Many participants of the Loya Jirga clearly stated that the government should not be dominated by one ethnic group. In particular, they demanded diversity in the security sector, which includes the army, police and intelligence agencies. In response, the Loya Jirga-approved cabinet replaced the Minister of Interior who controlled the police. The major question now is whether the change in the ministerial level will in fact mean changes on the ground.

Further, the new government includes most of the former figures. So Afghans have been debating whether the new government will be more effective and accountable to the people than the one it replaced. At the start of the Loya Jirga, Chairman Karzai
promised a smaller cabinet for greater effectiveness. However, his new cabinet is even larger than his previous one. To be sure, there are several new professional ministers in the economic sector, who are expected to play important roles during the months ahead. More generally, though, the new government would be more responsive to popular demands because it has been elected and approved by the people. In any case, only time could accurately tell the future.

The role of the United Nation is to support the new Afghan government to succeed. As the Loya Jirga participants demanded, the new government needs to assert its authority over provincial power bases. It needs to reign on the warlords in provinces, so that they follow instructions from the Center and, among other things, turn in revenues to the Center. Further, the central government would have to be perceived as truly representative of all Afghans to give it the legitimacy and power to extend its control over the country. Therefore, national institutions must be built with sincerity and speed. In addition, the Central Government would have to take concrete steps toward re-building the physical and economic infrastructure of the country, so that ordinary Afghans throughout the country share dividends of peace and international cooperation.

The success of the new government also depends on the efforts of national institutions such as the Judicial Commission, the Human Rights Commission, and the Civil Service Commission and on programs such as the DDR, or Disarmament, Demobilization and Re-Integration of militias, which my other colleagues here would talk about in detail.

The next major step of the political process is to hold the Constitutional Assembly in about 18 months, which will pave the way for free elections and democracy. No doubt, Afghans and their international friends face formidable challenges ahead. The recent tragic killing of the Vice-President in broad daylight in front of his office in Kabul point out the fragility of peace and the political process. However, Afghans are more hopeful about peace and their future now than they have been before during the past 23 years. Their international friends must remain so as well. While the cost of success and the risks ahead may seem high at times, the price of failure is unimaginable for Afghans and incalculable for the rest of the world. So the Afghan peace process and we MUST succeed.

Thank you for your attention.

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