

**ESTABLISHING THE RULE OF LAW  
IN AFGHANISTAN**

**Senate Foreign Relations Committee  
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**Testimony**

**By**

**Robert M. Perito  
Special Advisor, Rule of Law Program  
United States Institute of Peace**

**Mr. Chairman.**

**Two and one half years after the defeat of the Taliban, security remains the primary concern in Afghanistan. During 24 years of war, the rule of the gun replaced the rule of law. Today, Afghanistan faces the combined threat of resurgent terrorism, fractional conflict and dependence on narcotics.**

**In the south, US-led Coalition forces are engaged in a running fight with a resurgent Taliban and al-Qaeda. From sanctuaries in Pakistan, bands of terrorists stage cross-border raids, targeting foreign aid workers, Afghan security forces and Coalition troops. A total of twelve foreign aid workers have died, while 40 Afghan police and one American soldier have been killed in the last two weeks alone.**

**In the north, warlords and militia commanders maintain private armies and engage in armed clashes over territory, border crossings and transportation routes. They use intimidation and violence to control the local population, and rely upon criminal activities, particularly narcotics trafficking and extortion to finance their activities.**

**Some of the most powerful warlords hold positions as provincial governors, but ignore central government directives and refuse to turnover tax revenue. In addition to a regional powerbase, other warlords hold key positions in the central government. Defense**

**Minister, Mohammed Fahim, captured Kabul in 2001 and his Tajik-dominated troops still garrison the city.**

**Throughout the country, there has been an explosion in poppy cultivation, opium production and narcotics trafficking. According to the UN Office of Drugs and Crime report for last year:**

- **Afghanistan is the world's largest producer of opium.**
- **Opium production has spread from traditional growing areas in the south to 28 of 32 provinces.**
- **Opium production earned Afghans \$2.3 billion, an amount equal to half the country's legitimate GDP and five times the government's annual budget.**
- **Afghanistan provides 70 percent of the heroin consumed in Europe.**
- **The international trade in Afghan opiates generates a total of turnover of \$30 billion worldwide.**
- **Narcotics poses the greatest threat to the country's future. Afghanistan is in critical danger of becoming a "narco-state and a haven for narco-terrorists."**

## **NARCOTICS PROBLEM**

**The narcotics problem is exacerbated by the pervasive involvement of local and regional power holders and many national figures. Growers, brokers and traffickers enjoy the protection of police chiefs, militia commanders, provincial governors, and even cabinet ministers. These officials use the proceeds from drugs to fund personal armies and to maintain their independence from the central government. Profits from narcotics trafficking also find their way through supporters to the Taliban and al Qaeda and are used to finance local and international terrorism.**

**Narcotics also finance trafficking in weapons and the world's largest black market arms bazaar. Weapons left over from the Soviet period**

and the civil war are on sale along with quantities of modern arms contributed by the US to the Northern Alliance. Prices are low and the possession of automatic weapons is virtually universal. Crew served weapons and shoulder fired anti- aircraft missiles are also readily available. These weapons are used to arm gunmen that protect the narcotics trade.

In a situation where there are almost no disincentives and few equally lucrative alternatives, the country's rural population has turned to opium production. Afghanistan's renowned orchards and vineyards were sown with landmines and withered with the destruction of irrigations systems during the conflict. In contrast, opium grows well in arid terrain.

Opium brokers and drug traffickers provide a highly organized "agricultural extension service." Farmers are provided with seed, fertilizer, advance payments, technical training and an assured market for their product. Opium is easy to package, store and transport and does not spoil. Growing poppies enables farmers to earn ten times the income from other crops. Opium production is particularly attractive to returning refugees who require start-up assistance or who find work and good pay helping other farmers to grow poppies.

## **INTERNATIONAL ASSISTANCE**

With the assistance of the UN and the UK, the Afghan government has put in place the legal and institutional framework to begin a counter narcotics program. Afghanistan now has a Counter-Narcotics Directorate, a national drug control strategy and a modern narcotics control law.

There also was an initial effort at eradication. In response to orders from the central government, provincial governors reported eradicating 21,000 hectares. In fact, the Afghan central government's writ stops at the edge of Kabul and it was not possible for the central government to verify if the claimed destruction of poppy occurred. Even the US DEA was unable to operate in the provinces for security reasons.

At present, the Afghan government is incapable of dealing with the narcotics problem. Afghanistan does not have a national civilian police

**force. Some 50,000 men work as police, but they generally are untrained, ill equipped, poorly paid (or unpaid), illiterate and loyal to local warlords or militia commanders.**

**International efforts to create a national police force, including a drug enforcement capacity, are just beginning. The US plans to spend \$110 million to provide training to 50,000 currently serving police. Training will take place in Kabul and at seven regional training centers that are being constructed. These training programs eventually may make a difference, but it will take several years before newly trained police can be counted on for effective law enforcement.**

**Germany, which is the lead donor nation for police training, has spent \$70 million on new equipment and on rebuilding the police academy in Kabul. Under the German program, 1,500 new police officers and 1,000 non-commissioned officers are enrolled in a five-year study-work program. This effort has very limited short-term impact.**

**The UK, which is the lead donor nation for counter narcotics programs, will spend \$12 million over the next three years to create an anti-narcotics task force to conduct eradication. The UK has also promoted crop substitution and alternative livelihood programs for Afghan farmers. In addition, the US will spend \$123 million on the counter narcotics effort.**

## **JUDICIAL REFORM**

**Even a trained Afghan police force will not be able to provide genuine law enforcement, however, if there is no functioning criminal justice system. At best, police training alone will improve the capacity to provide public order; at worst, it will enhance the capacity of warlords and other power holders to control and abuse the population. Without an integrated approach to establishing the rule of law, police training alone will fail to constrain the arbitrary and corrupt exercise of power that now characterizes the conduct of security forces and of the criminal justice system in Afghanistan.**

**Despite the immense importance of the justice system to security, protection of human rights, economic development, and political reconciliation, the needs in the justice sector have received little**

attention. There is no master strategy or even consensus on priorities. While well intentioned, Italy, the lead donor nation for the justice and prison sectors, has failed to coordinate the activities of the relevant Afghan institutions, which have squandered time and resources in bitter turf battles. There is also a critical shortage of trained judicial personnel, buildings, equipment, and financial resources. International funding for judicial projects has been low. As of November 2003, only about \$19 million in assistance was disbursed.

There is also an ongoing debate about what law to enforce and about the role of religion in the legal process. The new Constitution concentrates the power to appoint judges in hands of the Chief Justice of the Supreme Court. The current Chief Justice, a conservative mullah, has packed the court system with fellow clerics with no legal education.

## **CORRECTIONS**

The critical area of corrections—jails and prisons—has been almost entirely ignored. Prison conditions in Afghanistan are normally described as inhumane, lacking adequate food and sanitation, trained personnel and space. Responsibility for prisons was transferred from the Ministry of Interior to the Ministry of Justice in 2003, but the personnel are unchanged and there is confusion about lines of authority. Outside of Kabul, warlords and regional power holders control detention facilities and conditions are even more deplorable.

International assistance for corrections has been severely limited. Other than a few NGO projects, the UN Office of Drugs and Crime (UNODC) is working alone on jail and prison improvement. UNODC is currently spending only \$2 million over two years on very basic renovation of the detention centers in Kabul and three cellblocks of the infamous Pul-e-Charki prison. The UN is also providing limited training to administrative staff. The International Committee of the Red Cross regularly visits prisons, and has provided food and water to detainees.

## **RECOMMENDATIONS**

The interrelated problems of narcotics, corruption, organized crime and terrorism are extremely serious, but the situation may still be reversible. Afghan farmers are reluctant to engage in activities that

are illegal and viewed as immoral by Islam. Any hopeful scenario, however, involves a race against time.

If action is not taken, Afghanistan will become a narco-state and a haven for narco-terrorism. The United States should take a number of coordinated actions now to prevent this from happening. A law enforcement effort coupled with programs to introduce alternative corps and livelihoods will have a positive affect. The US should assist the Afghan government to match law enforcement and eradication with programs for crop substitution and alternative employment. US police training programs will help, but US counter narcotics and development specialists must be enabled to operate outside of Kabul.

The US-led Coalition and the International Security Assistance Force (ISAF) must actively assist in the fight against narcotics. Military forces must begin pro-actively performing at least a limited number of counter narcotics enforcement functions. These would include intelligence sharing, destruction of drug warehouses and heroin laboratories and drug seizures. This would also help correct the misimpression of Afghans that the US military condones participation of warlords in the drug trade.

Warlords and militia commanders are a major source of insecurity and a threat to the central government. Secretary Powell has said that warlords have no place in Afghanistan and private armies must be disbanded. US military support for “regional influentials,” is in conflicts with our overall policy of promoting national unity and a strong, democratic, central government.

Efforts to deny support to warlords and to control the narcotics trade must be coupled with a vigorous effort to curtail corruption. We should assist the Afghan government to start paying appropriate salaries to police, judicial and prison personnel. It is impossible to have judicial reform when police officers and judges earn only \$15.00 and \$36.00 per month, respectively and are not paid. In addition, police stations, courts, prosecutors’ offices and prisons are in need of repair, and lack furniture and office equipment, supplies, communication, and vehicles.

**The US should insure that equal attention and resources are paid to the judicial system and prisons. Emphasis on police training at the expense of the other parts of the justice triad will produce the kind of failures seen in Haiti and Iraq. Absence effective courts and humane prisons, there can be no rule of law. As events in Iraq demonstrate, we cannot continue to ignore conditions and practices in Afghan detention facilities.**

**The US should move beyond the 'lead nation' approach in training and technical assistance. The US has both the most experience and the most at stake. The effort to promote burden sharing has not worked well and the US must stop waiting for other donors to take effective action. In particular, we must begin investing heavily in developing human resources through adult education and professional training. The crushing burden of illiteracy must be lifted.**

**The missing ingredient in assisting Afghanistan is leadership. Afghans realize they need assistance. Americans are respected and looked to for guidance. We need to move quickly, however, before it is too late.**

**Thank you Mr. Chairman**

*The views expressed in this testimony are my own. They are not the views of the US Institute of Peace, which does not take positions on policy issues.*