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The Campaign against International Terrorism: prospects after the fall of the Taliban

This paper provides an update on the campaign against international terrorism following the fall of the Taliban regime in Afghanistan. It examines the main developments since the end of October 2001, including the ongoing military campaign, the Bonn agreement on a new interim administration for the country, and the humanitarian situation. The paper then looks at the state of al-Qaeda three months after the attacks of 11 September and discusses possible options for the next phase in the broader campaign against international terrorism.

More detail on the background to the conflict and developments during September and October can be found in Library Research Papers 01/72, *11 September 2001: the response*, of 3 October 2001, and 01/81, *Operation Enduring Freedom and the Conflict in Afghanistan: An Update*, of 31 October 2001.

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Summary of main points

This paper provides an update on developments in the campaign against terrorism between 31 October and 10 December 2001. It examines the events surrounding the collapse of the Taliban in Afghanistan, the negotiations on the formation of a new broad-based interim administration, and the humanitarian situation. It also discusses the state of al-Qaeda and looks at the various options under discussion for potential future phases of the campaign against terrorism.

More detail on the background and developments prior to the start of military action is contained in Library Research Paper 01/72, *11 September 2001: the response*, of 3 October 2001. The earlier paper examines the reaction within the United States, the United Kingdom and the wider international community to the 11 September attacks on the USA. It provides background information on the main suspect, Osama bin Laden, and the al-Qaeda network, and looks in detail at the situation in Afghanistan, Pakistan and the wider region. It also examines the relevant issues of international law.

A further Library Research Paper 01/81, *Operation Enduring Freedom and the Conflict in Afghanistan: An Update*, of 31 October 2001, provides an overview of developments following the start of military action on 7 October 2001. The paper starts with an examination of the stated objectives of the campaign and outlines its military components. It then looks at the situation on the ground in Afghanistan, both in terms of the conflict and the humanitarian situation, and discusses the ongoing efforts to form a stable future administration. It also contains information on developments in the United States and outlines regional, British and international reaction to the current situation.

Researchers in the International Affairs and Defence Section and the Economic Policy and Statistics Section are covering different aspects of the crisis. For further information and updates on the Middle East and Central Asia, including Afghanistan and the bin Laden network, contact Tim Youngs (Ext. 6765); for military aspects contact Mark Oakes (Ext. 3852); for South Asia, including Pakistan, the United Nations and aspects of international law contact Paul Bowers (Ext. 3621); for the United States contact Carole Andrews (Ext. 3978); and for European involvement contact Vaughne Miller (Ext. 4327). For information on the humanitarian situation and international relief efforts, contact Patsy Richards (Ext. 4904).

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I Objectives of the Campaign against Terrorism

When the USA was attacked by terrorists on 11 September 2001 President Bush indicated that action would be taken against those responsible. This would take the form of a campaign on many fronts, including military action, anti-terrorism legislation, international co-operation in matters of extradition and intelligence, and moves against sources of funding for terrorism. The action would have the aims of bringing to justice those responsible for the 11 September attacks and defending the USA against further attacks. It would be directed against terrorists and states harbouring terrorists.¹

The al-Qaeda network, led by Osama bin Laden, was identified as the culprit for the attacks. This network had operatives in many countries, but the Taliban faction in Afghanistan had allowed Mr bin Laden to use territory under its control as a base from which to train terrorists, plan attacks and issue inflammatory appeals. For two years the Taliban had been subject to a UN Security Council Resolution demanding that it surrender Mr bin Laden to justice and cease its support for international terrorism.² It did not comply, and during this period Mr bin Laden's influence on the Taliban leadership grew, and his terrorist activities continued, culminating in the 11 September attacks. Following these attacks the USA reiterated the demand that the Taliban surrender Mr bin Laden to justice. After a period of debate, and consultations among Afghan religious leaders, the Taliban leadership declined to comply. Military action began, under the codename Operation *Enduring Freedom*, on 7 October 2001.

The USA and the UK made the necessary notifications to the UN Security Council that they were acting in self-defence. The USA stated that its defensive actions "include measures against Al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan."³ It also stated that "further actions" might be required "with respect to other organizations and other States."

Mr Bush described the wider campaign against terrorism in terms that might also apply to the military action:

Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success.⁴

He also spoke of a conflict to be won by "a patient accumulation of successes."⁵

¹ More detail on the background to the current situation is contained in Library Research Papers 01/72, *11 September 2001: the response*, of 3 October 2001, and 01/81, *Operation Enduring Freedom and the Conflict in Afghanistan: An Update*, of 31 October 2001

² UNSCR 1267, 15 October 1999

³ Letter from Ambassador John Negroponte, Permanent Representative of the USA to the UN in New York, to the President of the Security Council, S/2001/946, 7 October 2001

⁴ White House press release, 20 September 2001

The military action involved air strikes and special forces operations, and was coordinated to some extent with moves by Afghan forces opposed to the Taliban. Initially, the United Front, a group of factions known informally as the Northern Alliance, made gains in the north, west and centre of the country. Later, their efforts were complemented by anti-Taliban fighters in the south, provoking widespread defections and surrenders by Taliban units. The Taliban fled Kabul on 13 November 2001 and their control of territory was quickly reduced to one major city, Kandahar, and a few outlying pockets. The surrender of Kandahar came on 7 December 2001.

The UN convened talks in Bonn in order to establish an interim administration, which would govern Afghanistan while efforts were made to establish new constitutional arrangements of a lasting nature. Four groupings attended the talks, and they agreed on an Interim Authority, to be led by Hamid Karzai, a former deputy foreign minister and a tribal leader from the majority Pashtun ethnic group. The predominantly Tajik Jamiat-e-Islami, part of the Northern Alliance, took the foreign affairs, defence and interior ministries. An international force will be mandated by the UN to provide security, initially for Kabul and possibly for other areas as well, until indigenous security forces can command confidence in these tasks. The Interim Authority will run the country for six months, during which time a Loya Jirga (a meeting of tribal, political and religious leaders) will be convened. This will appoint a Transitional Authority, which will govern until democratic elections are held, no more than two years later. During the period of the Transitional Authority another Loya Jirga will be convened to write a new constitution.

As of 10 December the search for Mr bin Laden and his operatives continues, with the focus centred on the Tora Bora cave complex in the east of Afghanistan. US bombers have been mounting heavy raids on the area, and anti-Taliban forces, aided by British and US special forces, have moved up significant numbers of men and tanks. Latest reports suggest a surrender may have been negotiated with some elements of al-Qaeda.

Attention is now turning to the possible next phase of the campaign against terrorism, which could involve targeted military action against suspected al-Qaeda infrastructure in other countries.

Mr Bush gave the following comments on terrorism in his Pearl Harbour Day speech on board the USS Enterprise:

We've seen their kind before. The terrorists are the heirs to fascism. They have the same will to power, the same disdain for the individual, the same mad global ambitions. And they will be dealt with in just the same way. Like all fascists, the terrorists cannot be appeased: they must be defeated. This struggle will not end in a truce or treaty. It will end in victory for the United States, our friends and the cause of freedom.⁶

⁵ Presidential address to the nation, 7 October 2001

⁶ *Remarks by the President on the USS Enterprise on Pearl Harbour Day, 7 December 2001*, at <http://www.whitehouse.gov/news/releases/2001/12/20011207.html>

II Conflict in Afghanistan

A. Evolution of the bombing campaign

The wider campaign against terrorism involves various elements and goes beyond purely military action. However, the air campaign in Afghanistan has thus far resembled a conventional operation comprising three main stages. The campaign began with the targeting of al-Qaeda and Taliban air defences, command and control facilities, air bases and training camps. This was followed by daylight raids carried out by jet fighters against 'targets of opportunity' such as military vehicles, and by bombers against defence emplacements around major cities such as Kabul, Kandahar, Jalalabad and Mazar-e-Sharif.

The third and final stage, involving heavy bombing of Taliban and al-Qaeda troop concentrations, appeared to have been delayed in the hope that elements of the Taliban could be persuaded to defect. This delay gave rise to suggestions by many commentators that the military campaign had become stalled. However, at the beginning of November the Pentagon moved to set the stage for a ground offensive by Alliance forces by intensifying bombing of Taliban and al-Qaeda ground forces on the frontlines around Mazar-e-Sharif and north of Kabul.

In the second half of October there was an average of 60-70 sorties per day, which included AC-130 *Spectre* gunships and B52s. This increased in November to over 100 sorties per day involving greater use of heavy bombers. B52s dropped 'sticks' of bombs from high altitude, spreading the explosives in a line along Taliban trenches. Most symbolic of the escalation in bombing was the introduction of the controversial 15,000-pound BLU-82 'Daisy Cutter' bomb.

The BLU-82 is the largest conventional bomb in existence and was originally used by the US Air Force (USAF) in Vietnam to clear areas of jungle for helicopter landing zones. Eleven such bombs were dropped in Iraq during Operation *Desert Storm*, initially to test their ability to clear mines but later for their psychological effects. During the first week of November two BLU-82 bombs were dropped in Afghanistan as anti-personnel and intimidation weapons, due to their very large lethal radius (variously reported as 300-900 feet). The bomb is the size of a small car and is detonated just above ground level.

General Peter Pace, vice chairman of the US Joint Chiefs of Staff, commented on the USAF's use of the BLU-82 at a DoD press conference on 6 November:

They are 15,000-pound bombs that literally are fit on a pallet on a C-130. They're pushed out the back of the C-130 and float down by parachute. They have a probe that sticks out so when the probe hits the ground, they explode about three feet

above the ground, [...] the intent is to kill people [...] It would be extremely useful against troops that are in light defensive positions.⁷

The escalation in the air raids on frontline positions represented a shift in the Pentagon's attitude to the Northern Alliance forces. The earlier, somewhat guarded, support given by the Bush administration to the Northern Alliance became more overt and extensive. At a press conference on 5 November, Rear Admiral Stufflebeem stated that the previous day:

coalition efforts focused on supporting opposition group forces and preparing the battlefield for future offensive actions by those forces; continued to degrade and destroy al Qaeda and Taliban command and control, particularly caves and tunnels; struck Taliban and foreign forces where we found them...⁸

In addition to the air bombardment of Taliban and al-Qaeda ground forces, Donald Rumsfeld confirmed on 30 October that a "very modest" number of ground troops were providing a liaison and targeting role for Alliance forces in northern Afghanistan. On 6 November Mr Rumsfeld stated that these forces had been reinforced in recent days:

The forces on the ground have gone up, since I made that comment, about two-and-a-half times. And there are others prepared to go in as soon as weather and circumstances on the ground permit. And I continue to be of the same mind, that it is a – helpful to the United States to have Special Forces involved on the ground to assist with communications, liaison, resupply, humanitarian activities, as well as targeting, and that is their goal and their purpose...⁹

Later in the press conference General Pace confirmed that the US was supplying the Northern Alliance with munitions and facilitating the delivery of weapons supplied by other states, including Russia. US intelligence operatives and special forces and anti-Taliban tribal leaders were also reported to be engaged in negotiations with disaffected Taliban commanders in central and southern Afghanistan.

On 7 November, one month into the military campaign, General Pace provided this assessment of how the operation had gone:

... we've flown over 2,000 sorties since 7 October, in support of the campaign. And in the process of doing that, we have taken down their air defense systems, we have taken their command and control communications equipment, we have disrupted their lines of communication, we have provided support for the opposition forces on the ground. [...] We do know that during the course of this month, that there have been significant military effort applied against the Taliban.¹⁰

⁷ DoD News Briefing, 6 November 2001 at <http://www.defenselink.mil>

⁸ *ibid.*, 5 November 2001

⁹ *ibid.*, 6 November 2001

¹⁰ *ibid.*, 7 November 2001

B. Northern Alliance advance

The decisive phase of the war came in late October with the start of intensive bombing of Taliban front-line positions by US fighters and heavy bombers.¹¹ By 9 November, little more than ten days into this phase of the air campaign, Alliance forces had captured the northern town of Mazar-e-Sharif, which occupies a strategic position on the routes to the east, west and north to the border with Uzbekistan. Despite claims from the Taliban that it was carrying out a strategic withdrawal from the north, it soon became apparent that its forces were retreating in disarray, weakened by a month of air strikes and a series of defections by allied commanders. Taliban troops began to fall back towards Herat in the west and towards Kunduz in the east. Within days six provinces across northern Afghanistan had fallen to the Alliance, along with its former provisional capital of Taloqan. On 12 November Herat fell to the forces of former governor Ismail Khan and the central Bamiyan province was taken by Shi'ite Hazara forces.

The Taliban collapse accelerated as Alliance forces mounted a push north of Kabul. Again, heavy US bombing and a series of defections had weakened the Taliban frontline to such an extent that Alliance troops encountered little organised resistance as they advanced over the Shomali plains. During the night of 12-13 November Taliban units evacuated the capital, leaving it at the mercy of the Alliance. In spite of repeated assurances by Alliance political leaders that they would respect international calls not to capture Kabul, advance elements entered the city on the morning of 13 November. It was feared that the fall of the capital to Tajik elements of the Alliance could jeopardise UN-brokered negotiations on a new post-Taliban broad-based interim administration. In the event, sporadic acts of looting were reported, but the situation remained calm, if tense.

Alliance forces began to push east, encountering local tribal groups that had emerged as the Taliban retreated. On 14 November, the strategic city of Jalalabad, which straddles the road east from Kabul to Pakistan, was captured by the former mujaheddin commander, Younis Khalis.

In the north, Kunduz remained in Taliban hands, the last northern city under the movement's control. Reports suggested that up to 10,000 Afghan and foreign fighters had retreated to Kunduz after being cut off from escape routes to the south. The city eventually fell on 25 November after heavy bombardment by US aircraft and prolonged negotiations on the terms of surrender.

Around 500 mainly Chechen, Arab and Pakistani Taliban prisoners captured at Kunduz were taken to the Qala Jangi fort outside Mazar-e-Sharif – an area controlled by forces loyal to the ethnic Uzbek military leader, General Adel Rashid Dostum. Two CIA

¹¹ For more information on developments in the conflict prior to 31 October, see Sections II and III of Library Research Paper 01/81, *Operation Enduring Freedom and the conflict in Afghanistan: An Update*, 31 October 2001.

operatives were at the fort and were reportedly engaged in interrogating some of the prisoners when a revolt began on 25 November.

The precise train of events remains unclear, but reports suggest some of the Taliban had not been properly disarmed. As heavy fighting broke out between the Taliban fighters and Northern Alliance troops, US and British special forces rushed to the scene to coordinate the response. Air strikes were called in to suppress the uprising and Alliance troops moved in, resulting in the death of almost all the Taliban in the fort. The CIA confirmed that one of its operatives, Johnny 'Mike' Spann, had been killed early on in the revolt. Five US special forces troops were injured in a friendly-fire incident involving a stray US bomb, and several dozen Alliance troops were killed in the fighting.

The incident provoked some disquiet, particularly as reports suggested that some of the Taliban dead had been found with their hands bound. Amnesty International and the United Nations called for an enquiry to establish what had happened, although the suggestion was rejected by both the US and British governments.¹²

C. Factors behind the Taliban's collapse

In addition to the heavy damage inflicted on Taliban forces by the air campaign, analysts have pointed to a series of factors that contributed to the sudden collapse of Taliban control. Firstly, as several commentators pointed out at the start of the US-led campaign, the movement had become highly dependent on manpower drawn from a variety of local militia and mujaheddin groups, which had tenuous loyalty to the Taliban. The extensive efforts made by anti-Taliban forces and US special forces to encourage defections from these groups proved beneficial once the Northern Alliance advance began, leaving core Taliban units exposed and unable to mount an effective defence.

A second, related factor behind the Taliban's decline has been the role played by the significant numbers of foreign fighters linked to Mr bin Laden, whose presence has generated considerable resentment among ordinary Afghans and within Taliban ranks. In the eyes of many Afghans, the foreign fighters linked to al-Qaeda are seen as the cause of many of their country's ills. The decision to deploy al-Qaeda fighters and leaders to bolster 'suspect' Afghan Taliban units also served to increase resentment and create the impression that Afghan independence was under threat.¹³

Thirdly, the Taliban apparently took a strategic decision once military action began to continue to occupy all the territory under its control, rather than fall back to its core areas in the south and east. A large part of the Taliban's order of battle was committed to the

¹² For a discussion of the legal issues surrounding this incident, see Adam Roberts, 'The law of war and the prison revolt', BBC News web site at <http://news.bbc.co.uk>, 29 November 2001

¹³ See, for example, Victor Mallet, 'War-weary Afghanistan is desperate to embrace peace', *Financial Times*, 3 December 2001

defence of the northern frontline around Mazar-e-Sharif and Taloqan. These forces were dependent on tortuous and exposed supply lines via Herat through areas populated by ethnic groups that were hostile to the presence of southern Pashtuns. The success of the anti-Soviet mujaheddin had rested on their fighters' greater mobility and knowledge of the terrain and a recognition that attempting to hold territory in the face of a militarily superior enemy was bound to fail. The Taliban, by contrast, was caught in static defensive positions, which could be bombarded from a safe distance by US air power. Once the Northern Alliance had broken through the frontline, large numbers of men – including several thousand Pakistani and al-Qaeda fighters – were cut off in a pocket around Taloqan and Kunduz, resulting in the loss of a significant part of the Taliban's combat strength.

D. Surrender of Kandahar

As the Taliban completed its hasty withdrawal from Kabul, Mullah Omar announced the start of a new phase of the conflict, saying his fighters would mount a guerrilla campaign against US forces. Rather than dispersing into the highlands, though, most of the surviving Taliban units retreated to the area in and around Kandahar.

During late November the city came under sustained air attack and pressure on the ground from the forces of various southern anti-Taliban factions. On 25 November US Marines, airlifted in from ships in the Arabian Sea, established a forward operating base at Dolangi airfield outside Kandahar, from where they began to mount operations against Taliban units. Earlier, on 13 November, the Pentagon had announced that US special forces were operating across the south of the country in an attempt to intercept al-Qaeda members.

In spite of repeated exhortations by the Taliban's spiritual leader, Mullah Omar, for his fighters to sustain their resistance, the situation for the Taliban continued to deteriorate rapidly. By early December Taliban forces in Kandahar had been seriously weakened by weeks of bombing, coupled with desertions and ammunition shortages. An unnamed Taliban official told *Agence France Presse* in early December that up to 10,000 fighters had been killed by US air strikes on the city.¹⁴ There were widespread reports of declining morale, a breakdown in discipline, public hangings of people who had suggested surrender, and sporadic fighting between Taliban units.¹⁵

On 6 December it was announced that Pashtun tribal leaders around Kandahar – including Hamid Karzai who had just been appointed as the head of the new interim administration for Afghanistan – had held talks with senior Taliban commanders and reached agreement on the surrender of the city. Taliban fighters in the city, and in the towns of Spin Boldak and Lashkargah, began to lay down their weapons on 7 November. The Taliban's former

¹⁴ *Agence France Presse*, 6 December 2001

¹⁵ 'Surrender signals demise of Taliban', *Financial Times*, 7 December 2001

ambassador to Pakistan, Mullah Abdul Salam Zaeef, said the decision to surrender had been taken to “save the life and dignity of Afghans.”¹⁶

An amnesty was agreed for those Taliban fighters willing to dissociate themselves from al-Qaeda’s terrorist activities, although the status of the top Taliban leadership, in particular that of Mullah Muhammad Omar, remained unclear. Mullah Zaeef insisted on 6 December that Mullah Omar’s “life will be saved and he will be allowed to live with dignity.”¹⁷ The Bush administration declared it would not tolerate any amnesty for Mullah Omar, and on 7 December Dr Karzai stressed:

We have made it very clear that Mullah Omar has associated himself with terrorism and he has not yet made any statement that would disassociate him from terrorism. So he does not fall in the category of people who have security [under the amnesty agreement].¹⁸

E. Fighting continues

As of 10 December, the whereabouts of Mullah Omar remains unclear and the situation on the ground remains fluid. There have been reports of growing lawlessness and sporadic outbreaks of violence between rival Northern Alliance factions around Mazar-e-Sharif and Kunduz. US officials have warned that surviving elements of the Taliban and al-Qaeda are still capable of inflicting casualties on coalition forces. Richard Haass, a State Department official responsible for the co-ordination of policy on Afghanistan, told the Senate Foreign Relations Committee on 6 December that:

We need to be prepared for tactical setbacks. Attacks by individuals or small groups of terrorists or Taliban sympathisers could continue for months or even years.

Some disagreement and even infighting among the Afghans themselves is to be expected. Not everyone is going to endorse the emerging order... Yet these and other challenges should not preclude what has the potential to be a strategic trajectory of progress.¹⁹

Some officials have expressed concern that several thousand Taliban and al-Qaeda forces could still be at large in the countryside and may be preparing to mount a guerrilla campaign against US forces and the new interim government. A number of pockets of resistance have already been identified around the northern town of Balkh and Mazar-e-Sharif. A crucial factor in this regard may prove to be the local popular support, or lack thereof, that any remaining Taliban and al-Qaeda elements receive from within the

¹⁶ *Financial Times*, 7 December 2001

¹⁷ *ibid.*

¹⁸ BBC News web site at <http://news.bbc.co.uk>, 7 December 2001

¹⁹ *Financial Times*, 7 December 2001

Afghan population. At the present time, such support appears uncertain at best: there is widespread war weariness among Afghans, many of whom hold the foreign fighters of al-Qaeda and Mr bin Laden responsible for the state of their country.

US attention now appears to be concentrated primarily on the eastern Jalalabad region around the Tora Bora cave complex. Tora Bora was developed extensively by the mujaheddin during the Soviet occupation as a highly fortified base that was virtually impregnable to air attack. It comprises a network of interlocking caves, with numerous concealed entrances and escape corridors. Mr bin Laden has reportedly taken a close personal interest in improving and strengthening the complex.

US bombers have been mounting heavy raids on the area, dropping bunker-busting precision-guided munitions and 'Daisy Cutter' 15,000 pound bombs. Anti-Taliban forces, aided by British and US special forces, have moved up significant numbers of men and tanks and have reportedly captured parts of the cave complex. It is believed that the estimated 1,000-2,000 al-Qaeda and Taliban fighters have been putting up stiff resistance, but may have been forced into the open by the intensity of the US bombing. Latest reports suggest a surrender may have been negotiated with some elements of al-Qaeda.

F. Implications for Pakistan

Some commentators believe that military pressure may force Mr bin Laden and the remaining Taliban and al-Qaeda forces across the border into neighbouring Pakistan. To counter this possibility, the Pakistani authorities have reinforced the troops along the Afghan border, in particular along the mountainous routes which lead to Tora Bora, and there are reports that the Inter Services Intelligence (ISI) have entered Afghanistan to assist in the search for Mr bin Laden.

However, there are reported concerns among Western agencies that some ISI officers may not share Mr Musharraf's conviction that Pakistan's former support for the Taliban is no longer appropriate. According to the *Times*,

a report in the English language magazine *Herald* said that ISI operatives continued to provide support to the Taleban even after the start of US-led airstrikes. Military officials deny the report, but privately admit that there are extremist elements in the army ranks.²⁰

²⁰ *The Times*, 30 November 2001

There have been reports of retired Pakistani soldiers fighting with the Taliban, and these have been denied with vehemence. One allegation was that some were rescued and flown out of Kunduz by Pakistani aircraft. Official Pakistani sources have described these reports as 'baseless' and 'malicious' and suggested that the journalists responsible should be sacked.²¹

Details of co-operation with the allies have been contested as well. In late November 2001 there were reports, initially from Pakistani sources, that British troops had entered a village in Pakistan's Balochistan province to search for suspected al-Qaeda operatives, but these were later denied by the provincial authorities. A coalition spokesman, Kenton Keith, later said that US and British forces would not pursue fleeing Taliban or al-Qaeda members over the border into Pakistan, as it was capable of dealing with such elements itself:

When asked whether the coalition would chase fleeing Taleban or Al-Qa'idah leaders into Pakistan, Keith said no, adding Pakistan is an active, enthusiastic and effective member of the coalition.

Pakistan authorities are perfectly capable of guarding their borders and that is their responsibility, Keith replied, when again asked whether coalition would chase the fleeing Taleban into Pakistan.²²

There are fears that the influx of al-Qaeda and Taliban fighters could have a detrimental impact on the stability of Pakistan, although the rapid demise of the Taliban has served to undermine confidence in some of the more aggressive Islamist groups in Pakistan. In particular the Taliban's tendency to abandon Pakistani volunteers as they retreated has caused reflection among some villagers in the tribal areas. According to Khalid Mahmood from the Institute of Regional Studies in Islamabad,

most people were shocked by how easily the Taliban ceded ground to the Northern Alliance ... The Taliban seemed to have abandoned the Pakistan volunteers to their fate.²³

The Islamists have also lost personnel in the fighting, estimates ranging from several hundred to many thousands.

The Pakistani authorities do not consider that the Islamists pose a serious threat to the regime, and their capacity to galvanise the discontented appears to have diminished. However, some analysts argue that this retreat may be temporary. Much may rest on the ability of the interim authorities in Afghanistan to integrate the Pashtun communities into government and within the reconstruction effort. Other ethnic groups in Pakistan,

²¹ *The Times*, 30 November 2001

²² *Associated Press of Pakistan*, in *BBC Monitoring*, Asia-Pacific, 1 December 2001

²³ *Financial Times*, 30 November 2001

including the majority Punjabis, have no desire to encourage cross-border Pashtun unity.²⁴ Some argue that the demise of the Taliban will remove religion from the thinking of Pashtun nationalists, and thus help to give them a wider appeal,²⁵ and a sense of underrepresentation in Afghanistan's political future might bolster this.

According to Husain Haqqani, an adviser to successive civilian leaders of Pakistan, it will not be possible for the Musharraf regime to neutralise the Islamists, many of whose leaders have been placed under house arrest or imprisoned, without changing policy on Kashmir. The *Financial Times* reported his views thus:

as long as Pakistan's Kashmir policy retains its Islamist character, Gen Musharraf will be forced to rely upon religious groups to supply the volunteer 'freedom fighters' that help sustain the struggle.

"There is a nexus between the Pakistan military and the religious groups which helped promote the Taliban in Afghanistan and which helped sustain the freedom struggle in Kashmir," says Mr Haqqani. "One part of that nexus was broken when Pakistan joined the US coalition. What will happen to the other?"²⁶

²⁴ 'Pashtuns may demand own state,' S Paracha, *IWPR Reporting Central Asia*, 23 November 2001

²⁵ *ibid.*

²⁶ *Financial Times*, 30 November 2001

III Future Political Arrangements in Afghanistan

One part of the campaign against terrorism is a concern to bring stability to ‘failed states’, those countries in which central authorities are either non-existent or so weak as to be unable to police their territory in even the most basic ways. These states provide an alternative base for terrorists now that many of the former, more organised state sponsors of terrorism have attenuated their activities. A classic example of a failed state is Somalia, where the overthrow of the dictator Mohammed Siad Barre in 1991 was followed by a continuing civil war in which no party was able to take decisive control of the levers of central power. Aspects of Somali culture supported the factionalism, and the precarious nature of the economy encouraged the rise of warlords, locally dominant men who were able to impose control over resources in their own areas at the expense of co-operation with others at the national level. It has become apparent that al-Qaeda made use of Somalia in the 1990s, and there are clearly parallels with the fractured conditions in Afghanistan, although the religious extremism of the Taliban made it a more committed ally for al-Qaeda.

The Bush administration and the British Government placed emphasis on the need to bring stability to Afghanistan in an effort to give it a central authority capable of policing the whole country, which might be engaged by the West through development aid and political support to cooperate against terrorism and also against narcotics production.

A. Prior to Bonn

Since the start of military action in October significant diplomatic effort has been devoted to reconciling the rival interests that divide Afghan society. The key phrase that emerged in this context was the need for a ‘broad-based government’ that reflected the various ethnic, political and religious factors within Afghan society and the extensive exile community. The task was widely recognised as extremely challenging, given the legacy of over two decades of Soviet occupation and civil conflict.

Ethnically, the country is a patchwork of disparate groups. Pashtuns (or Pathans) form the largest ethnic contingent, comprising around 40 per cent of the total Afghan population of between 22 million and 26 million.²⁷ The Pashtun population, from which the Taliban draws most of its support, is located predominantly in the south and east of the country and includes further ethnic subdivisions and political rivalries.

The areas to the north of the main Hindu Kush mountain range, which dominates the centre of the country, are inhabited by the other major ethnic groups, including Tajiks (around 25 per cent of the population) and Uzbeks (around 6 per cent). The Shi’a Hazaras populate the central mountain region and form around 19 per cent of the total

²⁷ Accurate population figures are not available given the unstable state of the country in recent decades. All official figures are based on projections of likely population growth since the 1980s.

population. Tajiks, Uzbeks and Hazaras form the main components of the Northern Alliance, which has itself been riven by internal disputes and rivalries.

The ethnic differences have been exacerbated by the decade-long civil war. During the early 1990s the anti-Soviet mujaheddin splintered. In 1992 a power-sharing agreement was reached, but this collapsed and the country lapsed into violent conflict among rival factions and warlords. Many of the leaders involved in the civil war have emerged as key figures within the anti-Taliban opposition, which now controls most of the country.

Many have voiced concern that the disintegration of the Taliban would leave a power vacuum that would open the way for local commanders and political leaders to seize control, rendering efforts to restore order and some form of centralised administration extremely difficult.

As the demise of the Taliban became a prospect, the UN Secretary-General's Special Representative for Afghanistan, Lakhdar Brahimi, began consultations on a future dispensation for the country. Mr Brahimi is a former Foreign Minister of Algeria and the author of an important report on UN peacekeeping.²⁸ He carried out a range of consultations, including with Afghans living abroad, and visited Pakistan and Iran before making proposals to the Security Council.

Mr Brahimi briefed the Security Council on 13 November 2001, the day that Kabul fell. Before giving his proposals he discussed views in the region. He argued that

consensus between Afghanistan's neighbours is essential. Without it, Afghans themselves will find it extremely difficult to achieve a durable solution free from undue interference in their own affairs.²⁹

He indicated that Pakistan and Iran

shared the view that the international community should help the Afghans to find a political solution on their own because only such a home-grown solution would be credible, legitimate and sustainable. [...]

[They] also emphasized the need for the sustained engagement of the international community in providing the resources necessary for the reconstruction of Afghanistan and the repatriation of Afghan refugees to their country. The two governments asserted that the international community should not again walk away from the Afghan people as it did in the early 1990s. Both governments viewed drug production in Afghanistan as a threat to their national security.

²⁸ *Report of the Panel on United Nations Peace Operations*, A/55/305 - S/2000/809, 21 August 2000

²⁹ Briefing to the Security Council, 13 November 2001, <http://www.un.org/News/dh/latest/afghan/brahimi-sc-briefing.htm>

Mr Brahimi endorsed the view that “the international community at large will need to make a massive commitment, politically and financially, to the long-term stability of Afghanistan.” He concluded that the strategic aim should be

to help the people of Afghanistan establish a responsible, representative, accountable and stable government which enjoys internal and external legitimacy, is committed to respecting and promoting the rights of all its men, women and children, enjoys peaceful and friendly relations with all its neighbours, and is able to ensure that Afghanistan never again is used as a breeding and staging ground for terrorism or for traffic in drugs.

1. Brahimi proposals

Mr Brahimi made a number of proposals as to the steps that should be taken to achieve this aim. These were based on ideas common among the three main ‘processes’ taking place among Afghan exiles and the Northern Alliance. The proposals included a meeting among these four groups, under the auspices of the UN, to agree on a framework for a political transition. This would suggest concrete steps which might be taken to form a Provisional Council, which would include representatives of all ethnic and regional groups. He stressed that the credibility of the Council would be enhanced by the Chairmanship of an individual ‘recognized as a symbol of national unity around whom all ethnic, religious and regional groups could rally,’ and by the participation of groups, including women, ‘who have not been engaged in armed conflict.’

This Provisional Council would propose the composition of a transitional administration, a programme of action for the political transition and security arrangements. The transition would last no more than two years. An Emergency Loya Jirga would be convened to approve the transitional administration and its plans, and to authorise it to prepare a new constitution. A second Loya Jirga would be convened later to approve the constitution and create a government.

Mr Brahimi stressed the need to involve Afghans in the process of transition, and indicated that there was ‘significant capacity’ among diaspora Afghans, especially the younger generation.

He also addressed the need for a new security force for Afghanistan. He argued that a unified all-Afghan force would not be created speedily, suggesting the need for an outside actor to bring security to the environment in which the transitional administration would operate.

There are two models for this kind of force: a UN peacekeeping force or a force mandated by the UN but remaining under national command. Mr Brahimi suggested that a UN peacekeeping force could not be recommended, partly because of the time it would take to form and partly because

UN peacekeepers have proven most successful when deployed to implement an existing political settlement among willing parties - not to serve as a substitute for one. Any security force established in the absence of a credible cease-fire agreement or political settlement, whether constituted by Afghans, international personnel, or both, could quickly find itself in the role of combatant. This is not a role for 'Blue Helmets.'

Mr Brahimi also drew attention to the need for short-term humanitarian assistance, and for longer-term support for the reconstruction of the country. He argued that

the reconstruction of Afghanistan is going to be key to bringing peace and stability to that country. It is not something to be undertaken once a government is in place, but is at the heart of the political transition.

He characterised the reconstruction effort as one which could give Afghans a stake in their society, rather than in the contest for power, and which could help to reintegrate those whose lives have been spent at war. He stressed the need for significant financial and technical assistance from abroad, and for 'imagination, flexibility and co-ordination' from Afghans.

2. Security Council Resolution 1378

On 14 November 2001 the Security Council adopted its Resolution 1378. In this it expressed

its strong support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government, both of which:

- should be broad-based, multi-ethnic and fully representative of all the Afghan people and committed to peace with Afghanistan's neighbours,
- should respect the human rights of all Afghan people, regardless of gender, ethnicity or religion,
- should respect Afghanistan's international obligations, including by cooperating fully in international efforts to combat terrorism and illicit drug trafficking within and from Afghanistan, and
- should facilitate the urgent delivery of humanitarian assistance and the orderly return of refugees and internally displaced persons, when the situation permits.

It also called on the Afghan factions to adhere to their obligations under human rights and international humanitarian law and called on states to provide support for a new administration, urgent humanitarian assistance and long-term assistance for the social and economic reconstruction of the country. Finally, the Security Council encouraged states

to support efforts to ensure the safety and security of areas of Afghanistan no longer under Taliban control, and in particular to ensure respect for Kabul as the capital for all the Afghan people, and especially to protect civilians, transitional authorities, United Nations and associated personnel, as well as personnel of humanitarian organizations.

B. Bonn talks

With the fall of Kabul to the Northern Alliance in mid-November, the UN stepped up its efforts to secure agreement on a broad-based government. On 20 November it was announced that all the major groupings had agreed to attend a summit in Germany, in spite of pressure from former president Burhannudin Rabbani for the talks to be held in Kabul. The venue for the summit was switched from Berlin to the Petersberg complex outside Bonn at the instigation of Mr Brahimi, who believed the talks would have a greater chance of success in a more secluded location.

The delegates that began arriving in Bonn on 27 November included representatives from four main Afghan groupings: the various factions of the Northern Alliance; the Rome Group composed of associates of former king Zahir Shah; the Peshawar Group of Pashtun tribal and religious leaders based in Pakistan; and the Cyprus Group of non-Pashtuns with close ties to Iran. The delegates also included some women, although several key figures, including Zahir Shah and Mr Rabbani, were not in attendance.

1. The Bonn Agreement

After a week of negotiations, the Bonn summit culminated in the adoption of an agreement on the future governance of Afghanistan, with specifics for the next two years.³⁰

a. Main components

The Agreement establishes an Interim Authority, which will take power on 22 December 2001. The Interim Authority will convene an Emergency Loya Jirga within six months, and this will decide on a broad-based Transitional Authority. The Transitional Authority will govern until a “fully representative government can be elected through free and fair

³⁰ *Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions*, 5 December 2001, annexed to letter from UN Secretary-General to the President of the Security Council, S/2001/1154, 5 December 2001. The full text of the agreement is reproduced in Appendix 1.

elections,”³¹ not later than two years from the date of convening the Emergency Loya Jirga. Within 18 months of the establishment of the Transitional Authority a Constitutional Loya Jirga will be convened. This will decide on a new constitution for Afghanistan, and it will have the assistance of a Constitutional Commission, to be established with the help of the UN. An international force will be established pending the creation of trained Afghan security and armed forces.

The Interim Authority includes three main bodies. There is an Interim Administration (the government), a Special Independent Commission for the Convening of the Emergency Loya Jirga, and a Supreme Court.

b. Interim Administration

The Interim Administration will be presided over by a Chairman. It will have five Vice-Chairmen and 24 other members. The members of the Interim Administration were selected from lists submitted by the participants in the talks, and they were chosen not only on the basis of professional competence but “with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.”³²

Among the tasks of the Interim Administration, with the assistance of the UN, will be the establishment of a Central Bank of Afghanistan, an independent Civil Service Commission and an independent Human Rights Commission.

c. Special Independent Commission and Emergency Loya Jirga

The Special Independent Commission for the Convening of the Emergency Loya Jirga will not include members of the Interim Administration. It will be established within one month (i.e. by 22 January 2002), and will consist of 21 members, chosen from lists submitted by participants in the talks as well as by Afghan professional and civil society groups. At least some of the members will have expertise in constitutional law.

The Special Independent Commission will decide how many people will participate in the Emergency Loya Jirga and on its procedures. It will also oversee the process of indirect election or selection of nominees in order to ensure fairness and transparency.

³¹ Bonn Agreement, section I, 4

³² *ibid.*, section III, A, 3

Its tasks will include drafting rules and procedures to specify:

- (i) criteria for allocation of seats to the settled and nomadic population residing in the country;
- (ii) criteria for allocation of seats to the Afghan refugees living in Iran, Pakistan, and elsewhere;
- (iii) criteria for inclusion of civil society organizations and prominent individuals, including Islamic scholars, intellectuals, and traders, both within the country and in the diaspora.³³

The Special Independent Commission will also

ensure that due attention is paid to the representation in the Emergency Loya Jirga of a significant number of women.

The Emergency Loya Jirga will elect a Head of State for the Transitional Administration, and will approve proposals for its structure and key personnel.

d. *Legal arrangements*

The Supreme Court will be independent. It will be supplemented by such other courts as the Interim Administration sets up. The Interim Administration will establish a Judicial Commission to

rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.³⁴

The Agreement sets out constitutional and legal arrangements which will apply prior to the adoption of the new constitution. For the time being the constitution of 1964 will be adhered to, except for aspects which are inconsistent with the Agreement, and except for its provisions on the monarchy and on the executive and legislative branches. Existing laws and regulations will apply except for those which are inconsistent with the 1964 constitution, with the Agreement or with Afghanistan's international obligations. The Interim Authority may amend or repeal these laws and regulations.

³³ Bonn Agreement, section IV, 2

³⁴ *ibid.*, section II, 2

e. Armed forces

The Agreement contains the following provision on armed forces:

upon the official transfer of power, all mujahidin, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces.³⁵

Annex I deals with the international security force. It commits the participants in the talks to do all within their means to ensure security, and they in turn

request the assistance of the international community in helping the new Afghan authorities in the establishment and training of new Afghan security and armed forces.³⁶

The participants also request that the Security Council consider the early deployment of a UN mandated force, in view of the time needed to create an indigenous force. This would

assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centres and other areas.³⁷

The participants agree to withdraw their own military units from areas in which the international force is deployed. The security of the capital is important for the functioning of the new political arrangements, and the provision of that security by an impartial force is also important for the credibility of those arrangements.

At a more general level the participants

request that the United Nations and the international community take the necessary measures to guarantee the national sovereignty, territorial integrity and unity of Afghanistan as well as the non-interference by foreign countries in Afghanistan's internal affairs.³⁸

³⁵ Bonn Agreement, section V, 1

³⁶ *ibid.*, Annex I, para 2

³⁷ *ibid.*, Annex I, para 3

³⁸ *ibid.*, Annex III, para 1

f. Other provisions

The Agreement also commits the Interim Authority to cooperate with the international community in the fight against terrorism, drugs and organised crime. With regard to the cultivation of illicit drugs, Annex III urges the United Nations and the international community to provide Afghan farmers with resources for alternative crop production.

The Interim Authority and the Emergency Loya Jirga are obliged to act in accordance with Afghanistan's obligations on human rights and humanitarian law, to ensure the participation of women and to ensure the equitable representation of all ethnic and religious groups.

The issue of women's rights has long been a source of debate in Afghanistan and the period of Taliban rule has been marked by particularly harsh and brutal treatment of Afghan women.³⁹ The collapse of the Taliban as a governing force and the formation of a new interim administration has raised hopes of an improvement in the situation. On 4-5 December an Afghan Women's Summit for Democracy was held in Brussels to discuss the current situation and consider how best to promote women's rights in the future. In a message to the summit, UN Secretary-General Kofi Annan declared the "full and unstinting support" of the UN in reasserting the right of Afghan women "to participate actively in all sectors and levels of society and in all stages of the work to bring peace and development" to Afghanistan. He added that: "there cannot be true peace and recovery in Afghanistan without a restoration of the rights of women."⁴⁰

2. Composition of the new authorities

At the end of the negotiations the parties agreed on the postholders who will guide the six-month interim period. The Interim Administration, effectively the government, will be led by Hamid Karzai. It is noted in the Agreement that the parties invited Zahir Shah to chair the Interim Administration, but he declined in favour of a candidate chosen by the participants. The foreign affairs, defence and interior portfolios will be occupied by representatives of the predominantly Tajik Jamiat-e-Islami faction of the Northern Alliance. Abdullah Abdullah will take foreign affairs, Mohammed Fahim will take defence, and Younis Qanooni will take interior.

Two women have been appointed to the new interim administration. Sima Samar, an ethnic Hazara from the Rome Group linked to Zahir Shah, has been given the women's affairs portfolio and will serve as one of the five vice-chairs in the administration. Suhaila Seddiqi, an independent, will be in charge of the public health portfolio.⁴¹

³⁹ For more detail on human rights under the Taliban, see Chapter IV E of Library Research Paper 01/72, *11 September 2001: the response*, 3 October 2001, pp.43-45

⁴⁰ *SG/SM/8066*, 4 December 2001, from <http://www.un.org/News/Press/docs/2001/sgsm8066.doc.htm>

⁴¹ For the full list of the composition of the new interim administration, see Annex IV of the Bonn Agreement in Appendix 1 of this paper.

3. Reaction

The UN Security Council endorsed the Agreement in its Resolution 1383 of 6 December 2001.

White House Spokesman Ari Fleischer said that

the President is very pleased with the agreement that's been reached on Bonn concerning the future of the Afghanistan government. He believes it is a positive agreement that bodes well for the people of Afghanistan.⁴²

Ambassador James Dobbins, US Special Representative to the Afghan Opposition, commented on factors which may have encouraged success at Bonn:

One is a much greater level of American engagement. The second, and to some degree it's a function of the first, is that all of Afghanistan's neighbors and the countries that have traditionally played the great game with Afghanistan and in Afghanistan are all for the first time, at least in several decades, pushing the Afghans together rather than pulling them apart. The third reason is that because of the attention that has been focused on Afghanistan in the last couple of months, there is a massive amount of reconstruction assistance potentially available which has not been available in those dimensions before, which is on offer but only if the Afghans are able to come together to create a broadly based government that can partner with the international community in Afghanistan's reconstruction. And finally, after 20 years of civil war, there is an immense yearning for peace in Afghanistan. And that translated, I think, into pressure on all of the delegates in the conference in Bonn, all of whom were receiving numerous phone calls from Afghanistan throughout the conference to settle, to resolve their differences, to compromise and to come to a positive conclusion.⁴³

Mr Blair described the Agreement as 'a remarkable achievement' and set it in the context of the campaign against terrorism:

when we think that a few weeks ago, when we embarked on the action in Afghanistan, people worried whether that action would be successful militarily and whether what would take the place of the Taliban regime would be worse, or indifferent to, for example, the appalling oppression of women in Afghanistan, it is clear that what has happened today is remarkable in the sense that people have come together from all ethnic groupings in Afghanistan, agreed to the provisional Government and to a process that will increase dramatically the democracy, justice and basic representation of the people in Afghanistan. I hope that those

⁴² 'Bush pleased with Afghan agreement on interim government,' *Washington File*, 5 December 2001

⁴³ *Press Briefing on Afghanistan*, US Department of State, 7 December 2001, at <http://www.state.gov/p/sa/rls/rm/index.cfm?docid=6723>.

people who had doubts about the wisdom of the action that we are undertaking will look at what has been achieved and see that the future is bright not simply for the war against international terrorism but - not before it is due - for the people of Afghanistan.⁴⁴

Mr Hoon said that the UK would be prepared to supply troops for the international security force and that he would 'consider very carefully' a request to lead it. He suggested that this decision should involve discussion in the House as well as in Cabinet, and said that

I see every advantage of one country providing the main elements of headquarters of this operation - something the United Kingdom has done very well in the past.⁴⁵

According to the BBC, "army sources" said that "they favour Britain providing ground troops and helping to set up field headquarters in an operation which could involve up to 2,000 personnel."⁴⁶

The Chairman of the Defence Select Committee, Bruce George, said on 10 December:

It would be wrong for countries who have been willing the end of this conflict to not participate in some form of force afterwards. But certainly I would not envisage them wandering around the country becoming targets to anyone who dislikes a non-Muslim presence in Afghanistan. So it will be fraught with danger, and that is why the Government should think very carefully about whether to deploy and how many to deploy.⁴⁷

As mentioned, the planned deployment will not be a UN peacekeeping force, with strictly limited rules of engagement, but a force mandated by the UN yet remaining under national command. Similar arrangements have been used in a variety of situations, from the allied coalition in the Gulf War to the Australian-led Interfet force sent to East Timor to restore order after the referendum there in 1999. These operations are not without risk, but in volatile situations troop contributors often prefer the slightly greater freedom of action which they allow, and in particular the opportunity to avoid the sometimes entangling bureaucracy which can accompany a UN peacekeeping operation. It is anticipated that troops from Muslim states will be involved in the force for Afghanistan, and Turkey, Jordan and Bangladesh have been mentioned.

⁴⁴ HC Deb 5 December 2001, cc324-5

⁴⁵ *Breakfast with Frost*, BBC television, 9 December 2001

⁴⁶ 'UK troops in Afghan peace role,' BBC News website at <http://news.bbc.co.uk>, 10 December 2001

⁴⁷ *Evening News* (Edinburgh), 10 December 2001

C. Prospects for Afghanistan

The failure of previous attempts to implement a political agreement on governing Afghanistan, most notably in 1992-3, has led to caution and some pessimism. Interviews with ordinary Afghans reveal considerable scepticism over whether the political leaders involved in the Bonn process are capable of breaking with the past and engaging in a viable political process.⁴⁸ Fears that the new interim agreement reached in Bonn could unravel have been compounded by comments from key figures on the Afghan political scene, who are critical of the decision to give the influential foreign, defence and interior portfolios to the predominantly Tajik Alliance faction of Jamiat-e Islami.

On 6 October the ethnic Uzbek militia leader Abdul Rashid Dostum announced his intention to boycott the new interim administration. Mr Dostum, who controls a sizeable area around Mazar-e-Sharif through the powerful Jombesh-e Melli militia faction of the Alliance, was not present at the Bonn talks but played a key role in the defeat of the Taliban in the north. In an interview with *Reuters*, Mr Dostum, whose faction has been given the portfolios of agriculture and mining and industry, rather than the foreign ministry as it had demanded, described the division of posts as a “humiliation”.⁴⁹ He warned that his faction would boycott the new administration and would deny other officials access to the oil- and gas-rich north.

Two other key figures in the groups opposed to the Taliban have also expressed their dissatisfaction with the Bonn agreement. Pashtun spiritual leader Sayed Ahmed Gailani has declared that “injustices have been committed in the distribution of ministries”.⁵⁰ The former governor of Herat and an influential member of the Northern alliance, Ismail Khan, has been similarly critical of the imbalance in the allocation of posts, arguing that:

Our brothers in the Bonn Conference have just negotiated positions for themselves and have been unfair to others. In allocating the key positions, as well as the whole of the interim administration, the ethnic and geographical realities on the ground, and the important role of those who have fought, have not been taken into account.⁵¹

Another potential stumbling block was the involvement of Professor Burhannudin Rabbani, who has remained as the internationally recognised president of Afghanistan since the collapse of the last power-sharing agreement in 1993. It appears that Professor Rabbani, who exerts only limited authority within the Alliance, has been persuaded to stand aside by the emerging younger generation of Tajik Alliance leaders, led by Abdullah Abdullah, Mohammad Fahim and Younis Qanooni.

⁴⁸ See, for example, Victor Mallet, ‘War-weary Afghanistan is desperate to embrace peace’, *Financial Times*, 3 December 2001

⁴⁹ *Reuters*, 6 October 2001

⁵⁰ *ibid.*

⁵¹ BBC News web site at <http://news.bbc.co.uk>, 6 December 2001

It remains unclear whether critics of the Bonn agreement would be willing to undermine the interim administration or to resort to force of arms and risk condemnation from the international community. This could have implications for the international security force envisaged in the Bonn agreement. James Cotton made relevant comments in the context of the UN operation in East Timor, warning that

if the inhabitants and their élites, or a significant number of either, fail to behave as modern citizens, not only is the entire intervention at risk, but those military forces integral to the exercise may be called to discipline or control recalcitrant members of the body politic.⁵²

In the past such problems have been encountered in Cambodia and, to a lesser extent, in Kosovo.

Analysts point to a number of factors that distinguish the current situation in Afghanistan from that seen in the recent past. Firstly, there is undoubtedly a high degree of war weariness among many Afghans and a desire for an end to conflict. Secondly, the neighbouring states have indicated their support for the process started in Bonn, despite a long history of foreign interference in Afghanistan's internal affairs. Thirdly, the carrot of considerable amounts of international aid and funds for reconstruction, coupled with the stick of possible exclusion, is seen as an important factor in persuading the various Afghan political groups to co-operate.

Nonetheless, the task remains daunting. *The Economist* wrote in early December:

A quarter-century of war and three years of drought have made Afghanistan almost unimaginably wretched. Nearly 4m Afghans have left the country and about 7m, a third of those who remain, depend on food aid for their survival. More than a quarter of the children die before they are five; only 6% of girls are in school. The drought has cut agricultural production, the livelihood of most Afghans, in half. Land mines and unexploded bombs kill or injure 500 people a month. In some areas, irrigation systems have been mined to displace the local population. Institutions that function in other poor countries barely exist in Afghanistan. Most doctors have left and 85% of teachers have either joined them or been killed.⁵³

Devastation, though, at least brings clarity, for it means that Afghanistan can be rebuilt without repeating the mistakes made by other countries in the region. There is not much talk of reform at the Islamabad [international donor] conference, because there is little to reform. The word reconstruction itself seems inapposite. Much of what Afghanistan must now build never existed or was in its infancy decades ago.⁵⁴

⁵² James Cotton, 'Against the Grain: The East Timor Intervention'; *Survival*, Spring 2001, p.139

⁵³ *The Economist*, 1 December 2001

⁵⁴ *ibid.*

D. Humanitarian situation

UN Security Council Resolution 1383 of 6 December 2001 calls for all Afghan groups to support “full and unimpeded” access by humanitarian organisations to people in need and to ensure the safety and security of humanitarian workers.⁵⁵ It urges all bilateral and multilateral donors to work with the UN and all Afghan groups to continue to assist with the rehabilitation, recovery and reconstruction of Afghanistan, in co-ordination with the Interim Authority and “as long as the Afghan groups fulfil their commitments”.

In spite of the progress on the political front, the humanitarian situation remained critical. The most difficult areas for humanitarian agencies to reach were in the south, but also around Mazar-e-Sharif and Kunduz in the north. Much of northern Afghanistan was in the grip of winter and this was endangering internally displaced persons (IDPs), especially children. There were reports of children having died in the camps in Sari-Pul and Mazar-e-Sharif, where a significant number of people were also said to be suffering from severe to moderate malnutrition.⁵⁶

However, the UN had managed to increase the humanitarian presence in some key areas, and had started working with the authorities in Kabul to consider how to return internally displaced persons from the capital to areas outside the city.

On 7 December 2001 the UN reported that it was continuing to re-establish humanitarian aid facilities, including in the western city of Herat. The UN’s Deputy Humanitarian Co-ordinator for Afghanistan said that there were now 23 international UN staff in Herat plus foreign NGO staff. He added that “while conditions in the camps in Herat are well below international standards, people will have enough food, warm clothes, blankets and shelters to survive the winter”.⁵⁷

The WHO says that in the IDP camps in the Herat area, where approximately 350,000 people are living, about half the people who have consulted health staff are suffering acute respiratory infection, with over 2,100 cases in one week alone. Such infections, including pneumonia, are the number one killer in Afghanistan. Diarrhoeal diseases, TB, malaria, typhoid, and measles have been reported in the camps. The situation in the Maslakh camp is especially serious, with thousands of people without adequate shelter as winter arrives. Mortality data for the camps are currently considered unreliable.⁵⁸

⁵⁵ This section has been provided by Patsy Richards of the Library’s Economic Policy and Statistics Section.

⁵⁶ ‘Humanitarian situation in Afghanistan remains ‘critical,’ UN officials say’, UN news briefing, 6 December 2001

⁵⁷ ‘UN begins to re-establish humanitarian aid facilities in Afghanistan’, UN news briefing, 7 December 2001

⁵⁸ WHO Information Briefing-Islamabad 6 December 2001

The World Food Programme (WFP) now has 14 international staff in Afghanistan, compared to 34 before the current crisis.⁵⁹ WFP says it is now sending food aid into Afghanistan from Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan, by road, rail, air and river. At any one time it has over 2,000 trucks transporting food aid along its delivery network, although overland routes may be cut off by snow. It is therefore necessary to position supplies before the winter sets in too far. WFP's temporary airlift from Tajikistan to Faizabad in north-east Afghanistan resumed on 5 December after bad weather disrupted flights for a few days.⁶⁰

The situation varies by region according to geography and climatic conditions. Over the weekend of 8-9 December WFP planned to dispatch the final shipments of wheat required to supply nearly one million people in the Central Highlands through the winter. Since September WFP has sent more than 33,000 tonnes of food aid across difficult terrain to distribution points in this remote area. The Quetta-Kandahar-Herat corridor represents a key supply route to the central-western provinces of Ghor and Badghis. The Agency estimates that about 436,000 people will require some 22,000 metric tonnes of food aid in Ghor and Badghis to survive the winter, so security needs to be re-established along this axis.

The Department for International Development (DFID), drawing on reports from UN agencies, says that countrywide food delivery targets were met during the last two weeks of November. WFP aims to dispatch 100,000 tonnes of food aid to Afghanistan during December and will distribute food aid to an estimated 1.1 million residents in Kabul, to whom it has issued tokens which will entitle residents to a one-month food ration. WFP reports that only 20% of the food needs of the north have been met due to continuing insecurity. A WFP Avalanche Control Unit will travel to Afghanistan to assess the safety of mountain passes in the Central Highlands for food convoys and if necessary, trigger controlled avalanches.⁶¹

Following the collapse of the last Taliban stronghold in Kandahar, UNHCR appealed to countries of asylum not to return refugees forcibly, and warned refugees against returning home too soon. On 4 December it was reported that over 24,000 Afghans had headed home from Iran following the fall of Herat. The vast majority had voluntarily repatriated and aimed to return to the Herat region. But UNHCR remained concerned that some Afghans had been deported to their homeland and could, if not appropriately coordinated, add to the problems in Herat given the region's limited absorption capacity.⁶²

⁵⁹ WFP in Afghanistan: Update from the field no.41, 7 December 2001

⁶⁰ *ibid.* no.40, 6 December 2001

⁶¹ *Afghanistan Crisis: Situation Report*, DFID, 7 December 2001, from <http://www.dfid.gov.uk/>

⁶² UNHCR Emergency updates, 5 December 2001, Afghanistan Humanitarian Update No. 44

On 7 December the UN High Commissioner for Refugees advised millions of Afghans in Pakistan and Iran against a hasty repatriation. The conditions inside Afghanistan were still too fragile to receive an estimated 3.5 million returning refugees, and UNHCR stressed again that forced deportations of refugees were unacceptable.

The refugee agency said that the collapse of Kandahar had produced little effect thus far in the border areas. Indeed there are still refugees arriving in some areas; some 17,000 newly arrived Afghan refugees are in two camps near the border town of Chaman in Pakistan's Baluchistan Province. UNHCR further estimates that at least 2,000 destitute people were waiting in the no-man's land near Chaman, where there are heavy dust storms and low night-time temperatures. Pakistani authorities were allowing UNHCR to register only about 400 persons a day at its Killi Faizo staging site.⁶³

UN High Commissioner for Refugees Ruud Lubbers addressed the Berlin meeting of the Afghan Support Group on 5 December 2001. He welcomed the Bonn agreement for a new interim government and pledged UNHCR's support in creating a lasting peace "in which millions of Afghans could finally go home". The situation involved the world's largest population of refugees and displaced people; their return would have a significant impact on the stabilisation and economic recovery of Afghanistan. Even before 11 September, more than 3.5 million Afghan refugees were in Pakistan and Iran alone and hundreds of thousands of Afghans had never seen their homeland. He outlined a new UNHCR Plan of Action which will run to mid-2002 and cost US\$ 140 million, and which has four objectives:

- Voluntary return of refugees - Preparing for the resumption of regional activities aimed at facilitating the voluntary return of refugees to their homes. This will include the identification and promotion of safe environments for return. If appropriate, support will go [to] returnees and local communities in areas of return.
- Providing protection and assistance to internally displaced persons and other vulnerable groups inside Afghanistan in support of the UN inter-agency framework.
- Emergency preparedness - Maintaining an adequate regional emergency preparedness capacity.
- Continuing provision of protection and assistance to refugees in countries of asylum. This includes both refugees who were in these countries before September 11, and new arrivals who number some 200,000 people, mainly in Pakistan.⁶⁴

⁶³ 'UNHCR urges refugees not to rush home despite Taliban collapse', UNHCR Update, 7 December 2001

⁶⁴ UNHCR Emergency updates, 5 December 2001, Afghanistan Humanitarian Update No. 44

IV Al-Qaeda and the Campaign against Terrorism

A. Impact on al-Qaeda

The collapse of the Taliban as a governing force in Afghanistan has been widely welcomed, but was not in itself a primary aim of the US-led military action. Washington viewed the Taliban as an obstacle in its path towards eradicating the al-Qaeda network, which had established a powerful and influential presence in Taliban-controlled Afghanistan.

Al-Qaeda was able to develop so rapidly and to operate so effectively primarily due to the freedom of action it enjoyed in Afghanistan. Osama bin Laden invested great effort in fostering ties with Mullah Omar, using financial inducements and military support that ultimately made him indispensable to the core Taliban leadership. As a result, al-Qaeda was able to establish an intricate system of training camps for operatives, who were able to gain valuable experience on the frontline against the Northern Alliance, before graduating to training in more unconventional forms of warfare, such as sabotage, hijacking and suicide bombing.⁶⁵

The US-led military campaign has undoubtedly impacted heavily on al-Qaeda operations in Afghanistan. Reports from Afghanistan suggest that Taliban casualties run into the tens of thousands and it seems likely that foreign al-Qaeda fighters have also suffered heavily.

Several figures in the al-Qaeda leadership are reported to have been killed or injured by US bombing. Mohammad Atef, the influential chief military strategist who is believed to have masterminded the 1998 embassy bombings and the attacks of 11 September, died in a US strike in mid-November. Peter Bergen, author of the book *Holy war inc.: inside the secret world of Osama bin Laden*, said Mr Atef's death represented "a significant blow" to the network.⁶⁶ Ahmed Omar Rahman, a high-profile al-Qaeda member and the son of Sheikh Omar Abdel Rahman – an Islamist cleric imprisoned in the US after the 1993 World Trade Center bombing – was captured by Northern Alliance forces near Mazar-e-Sharif in late November. One of Mr bin Laden's closest allies, Ayman al-Zawahri, was allegedly injured by a US bomb in early December, although this was denied by his associates. As of 10 December, the whereabouts of Mr bin Laden remained uncertain, with Pentagon officials stating that it seemed likely he was commanding al-Qaeda fighters in the vicinity of the Tora Bora cave complex near the eastern city of Jalalabad. Other speculation suggested he had fled across the border into Pakistan.

⁶⁵ For more detail on the origins and growth of the al-Qaeda network, see Section III of Library Research Paper 01/72, *11 September 2001: the response*, 3 October 2001.

⁶⁶ *The Guardian*, 17 November 2001

US officials also claim to have unearthed significant amounts of evidence in Afghanistan linking al-Qaeda to the attacks of 11 September. In early December, the *Washington Post* reported the discovery in Jalalabad of a video tape of Mr bin Laden, which, according to US Vice President Dick Cheney, leaves no doubt about the al-Qaeda leader's involvement.⁶⁷ Mr bin Laden reportedly says the attacks on the World Trade Center were more devastating than anticipated. The video also indicates that some of the hijackers may not have known they were on a suicide mission.

The attacks of 11 September have proven counter-productive for al-Qaeda, since they have provoked a considerable military response from the USA, and allowed Washington to gain broad support from other states. This had not been the case with the smaller-scale attacks al-Qaeda had perpetrated in the past.

As a result of the US-led military action, it may take several months, if not years, for al-Qaeda to reconstitute elsewhere the training facilities and support network it had in Afghanistan. The demands of the UN Security Council for the hand-over of Mr bin Laden for trial would complicate any attempt by him or his associates to seek refuge in other states. The scale of the US response against the Taliban and the strong international condemnation of Mr bin Laden and al-Qaeda may prove to be decisive factors in the calculations of any state considering offering him sanctuary. On the other hand, there are still areas in which he might seek refuge beyond effective state control.

Nonetheless, there are few expectations that the capture or death of the top leadership would cause al-Qaeda to wither away. The network has a loose, rather fluid structure and maintains links with a number of other groups that share its broad aims. This gives its operatives access to safe houses and logistical support across the globe. In the past, particularly in the aftermath of the 1998 embassy bombings, it has demonstrated a high capacity to replenish its losses, making it difficult to disrupt, degrade and destroy.⁶⁸ Consequently, some analysts believe a co-ordinated and simultaneous effort is required against al-Qaeda to ensure its operatives cannot simply relocate and rebuild the network.⁶⁹

Analysts believe al-Qaeda retains at least some capacity for operations, due to its intricate network of cells and operatives in up to 60 countries. The full extent of this capability remains unclear, although it has become apparent that, prior to 11 September, al-Qaeda successfully infiltrated sizeable numbers of operatives into the United States and Western Europe. The men involved in the 11 September attacks were a mixture of operatives flown in just beforehand and 'sleepers' who had been living in the country for many

⁶⁷ BBC News web site at <http://news.bbc.co.uk> , 10 December 2001

⁶⁸ See Rohan Gunaratna, 'Blowback', a special report on al-Qaeda, *Jane's Intelligence Review*, August 2001, p.45.

⁶⁹ See, for example, Daniel Byman and Kenneth M Polack, 'Bin Laden's group will survive him', *Newsday*, Op-ed piece from the Council of Foreign Relations web site, 25 September 2001

years. Some al-Qaeda operatives may have been picked up in the wave of arrests in the USA and elsewhere,⁷⁰ but as Home Secretary David Blunkett warned on 9 December:

The reality is that three months on, we are no less at risk now than we were on 12 or 13 September. Although we've made tremendous progress against the al-Qaeda network and Osama Bin Laden, their network is out there.⁷¹

Progress has been made towards cutting off some of the funding network that enabled the 11 September attackers to move significant amounts of cash as required. Nonetheless, analysts warn that it is possible to restrict the flow of money, but not to cut it off entirely.⁷²

In the past, al-Qaeda operations have hit a variety of targets, which nonetheless all fit within a certain pattern. The targets selected in known or suspected al-Qaeda attacks have been generally high profile and of significant symbolic value: the bombings of USS Cole (2000), the US embassies in East Africa (1998), the US military base in Saudi Arabia (1996), and the two attacks on the World Trade Center (1993 and 2001) and Pentagon (2001). Operations have also been characterised by patient and methodical planning: there has been a gap of around one year or more between each attack, perhaps caused by the complexity of mounting such operations.

It remains to be seen if the network retains the capability to mount similar attacks on high profile targets. There have been reports from India that two al-Qaeda suspects have admitted planning to carry out further suicide attacks on 11 September against targets in the United Kingdom, Australia and India. The UK targets to be struck reportedly included the Houses of Parliament and Tower Bridge. The men involved in the planned operation apparently fled en route to the airport once news of the attacks on the United States came through.⁷³

In mid-November Mr bin Laden declared in an interview with a Pakistani journalist that he had secured access to nuclear weapons and that he would be prepared to use them in response to an attack involving weapons of mass destruction (WMD). US officials expressed doubt over the claims: Defense Secretary Donald Rumsfeld declared on 11 November that he thought it "unlikely that he has nuclear weapons", but added that: "He certainly wants them, there's no question."⁷⁴

⁷⁰ President Bush claimed in late November that around 350 al-Qaeda members and other terrorist suspects had been arrested around the world. More than 600 people are still being held by US authorities in connection with the attacks of 11 September. Sources: *Los Angeles Times*, 30 November 2001, and BBC News web site at <http://news.bbc.co.uk>, 30 November 2001

⁷¹ BBC News web site at <http://news.bbc.co.uk>, 9 December 2001

⁷² See, for example, Vince Cannistraro quoted in 'The spider in the web', *The Economist*, 22 September 2001, p.19

⁷³ 'Al-Qaeda 'planned more attacks'', BBC News web site at <http://news.bbc.co.uk>, 6 December 2001

⁷⁴ *Far Eastern Economic Review*, 22 November 2001

Intelligence on the activities of al-Qaeda has been uncovered at former bases abandoned by the network as the Taliban retreated. The US military announced in late November that it had identified around 40 sites that potentially showed signs of research into WMD. Officials said exhaustive tests were underway to establish whether al-Qaeda had successfully developed chemical, biological or nuclear weapons. Documents found by the BBC in a former al-Qaeda safe house contained basic plans for building a rudimentary nuclear device and descriptions of how to produce various poisons. A recent US intelligence assessment concluded that al-Qaeda had made greater progress than previously believed towards acquiring a so-called ‘dirty bomb’, which uses conventional explosives to spread radioactive material over a wide area.⁷⁵

Other militant Islamist groups with ties to al-Qaeda have adopted alternative strategies, such as kidnapping or suicide bombings. It is conceivable that a rump al-Qaeda might turn to lower-profile targets or concentrate on more localised aims, perhaps in conjunction with the existing groups from which many al-Qaeda operatives are drawn. There were rumours during November of a possible al-Qaeda operation against the Saudi government, which is seen by Mr bin Laden as corrupt and un-Islamic due to its close political, security and economic ties with the United States.⁷⁶

B. Possible options

1. Debate on Iraq

As the campaign inside Afghanistan shows signs of drawing to a close, speculation has mounted over the possible extension of military action to other states. Particular attention has been devoted to Iraq, for two principal reasons: concern over its programmes to develop WMD and a suspicion in some quarters that Baghdad was linked in some way to al-Qaeda and the attacks of 11 September.

Iraq remains under a strict UN sanctions regime due to its failure to comply with demands made by the Security Council in the aftermath of the Gulf War of 1990-91. These demands, laid out in Security Council Resolution 687, include the requirement that Iraq disclose and destroy all of its WMD programmes. UN weapons inspectors made repeated attempts to establish the full extent of Baghdad’s nuclear, chemical and biological weapons programmes but were hampered by Iraqi obstructionism and deception.⁷⁷ As a consequence, no monitoring or inspection of Iraqi facilities have been possible since 1998, raising concerns that some of the weapons programmes may have been

⁷⁵ *Daily Telegraph*, 5 December 2001. For a discussion of al-Qaeda’s efforts to acquire WMD, see Section VII of Library Research Paper 01/81, *Operation Enduring Freedom and the Conflict in Afghanistan: An Update*, 31 October 2001

⁷⁶ See, for example, Paul Michael, ‘Is the Kingdom of Saudi Arabia about to fall apart?’, *Daily Telegraph*, 8 December 2001

⁷⁷ For a description of the known state of Iraqi compliance following the withdrawal of UN weapons inspectors in 1998, see Chapter IV of Library Research Paper 99/13, *Iraq: “Desert Fox” and Policy Developments*, 10 February 1999.

reconstituted. The UN sanctions regime provides one means of screening imports to determine whether they are relevant to WMD production, but Iraq has been successful in arguing that it contributes to the deteriorating humanitarian situation in the country.⁷⁸

During October there were persistent reports of disputes within the Bush administration over whether military action should be taken against Iraq as part of the campaign against terrorism. Commentators suggest Defence Secretary Donald Rumsfeld and his deputy, Paul Wolfowitz, are in favour of a concerted campaign, but that they have faced opposition from Secretary of State Colin Powell.

Advocates of military action argue that Iraq's WMD programmes pose a threat to global security. They believe the regime of President Saddam Hussein could be overthrown through the application of air power and the provision of support to opposition groups, such as the Kurds in the north of Iraq and the majority Shi'a in the south. On this view, the Iraqi government's hold on power is relatively fragile and would crumble under concerted US and opposition pressure. The apparent success of the US-led campaign in Afghanistan in removing the Taliban from power is seen as an argument in favour of this approach.

Opponents of military action against Iraq believe such arguments are flawed, and for a number of reasons. Firstly, it is argued that there is little if any evidence tying the government of Iraq directly to the perpetrators of the attacks of 11 September. Ed Blanche, writing in *Jane's Intelligence Review* in December 2001, characterised the evidence of Iraqi ties to al-Qaeda as mostly "circumstantial", adding that

there are suspicions that some of it may have been deliberately leaked to various newspapers and journals around the world in an attempt to discredit Saddam's regime and shore up the crumbling international consensus on maintaining [...] sanctions [...]⁷⁹

The Czech Interior Minister reported that one of the hijackers involved in the attacks of 11 September, Mohamed Atta, twice met with a senior Iraqi intelligence official in April 2001.⁸⁰ Allegations were also made in late November by two unnamed senior Iraqi defectors of the existence of a terrorist training camp in Iraq linked to Osama bin Laden.⁸¹ This would represent a major shift by the secular regime of Saddam Hussein, which in the past has shied away from ties with Islamist militant groups, perhaps fearing they could eventually come to pose a threat to the regime's own survival. In addition, Iraq has

⁷⁸ For a discussion of the impact of the UN sanctions regime on Iraq, see Library Standard Note 'Sanctions on Iraq'.

⁷⁹ Ed Blanche, 'USA ponders Iraqi role in terror network', *Jane's Intelligence Review*, December 2001

⁸⁰ For a discussion of this and other allegations of Iraqi ties to al-Qaeda, see Ed Blanche, 'USA ponders Iraqi role in terror network', *Jane's Intelligence Review*, December 2001.

⁸¹ See for example, David L. Phillips, 'To Stem Terrorism, Depose Saddam', *International Herald Tribune*, 5 December 2001. Some analysts argue that this infrastructure could potentially have emerged through Iraq's backing of the dissident Iranian group, Mujaheddin-e Khalq (MeK).

invested considerable effort since the Gulf War in rehabilitating itself in the Arab world, an effort that could be undermined by establishing close ties with groups like al-Qaeda.

A second argument against attacking Iraq is the concern that, in the absence of conclusive evidence of Iraqi complicity in the events of 11 September, a US attack would undermine the international coalition against terrorism and damage the image of the US in the region. The fragmentation of the coalition could hinder efforts to isolate and destroy al-Qaeda, given the reliance of the United States on the support and co-operation of other states in cutting off funding and prosecuting alleged members. Michael Herman, writing in *The World Today*, claims that

The loose coalition of the ‘war against terrorism’ was formed on a basis of intelligence briefings to governments [on the role of al-Qaeda in the attacks of 11 September], and this has subsequently been the glue holding it together.⁸²

Several Middle Eastern and Gulf States with close ties to Washington, including Egypt and Saudi Arabia, have indicated their strong opposition to military action against Iraq. It could also undermine the ongoing rapprochement with Russia and complicate other US foreign-policy objectives, such as pursuing a ballistic missile defence programme.⁸³ UN Secretary General Kofi Annan has warned against military action, declaring on 10 December that: “Any attempt or any decision to attack Iraq today will be unwise in that it can lead to a major escalation in the region and I would hope that will not be the case.”⁸⁴ He also indicated his view that further discussion would be required in the Security Council prior to any action.

Some US officials believe the threat of coalition fragmentation is overstated, arguing that warnings of splits have proven unfounded in the case of the continuation of military action in Afghanistan during the Muslim holy month of Ramadan. Others would argue that the process of coalition-building should not be an end in itself and if necessary the USA should be prepared to lose allies in the pursuit of its national security interests.

Some analysts have highlighted differences between the Afghan and Iraqi situations. The military campaign has coincided with rising war weariness among Afghans and growing distaste for the Taliban. In addition, the coalition has been able to exploit the existence of a relatively well-equipped anti-Taliban opposition. While militarily it might be possible to undermine the Iraqi regime, there would be political costs. In Afghanistan the coalition has also enjoyed the backing of most of the frontline states for logistical support. A concerted air campaign against Iraq might have to rely on aircraft carriers in the Persian Gulf and bases in Kuwait and Diego Garcia.⁸⁵

⁸² ‘Sharing Secrets’, *The World Today*, December 2001, p.9

⁸³ See ‘Unfinished Business’, *The Economist*, 8 December 2001

⁸⁴ BBC News web site at <http://news.bbc.co.uk>, 10 December 2001

⁸⁵ For a discussion of the various factors that may affect a decision on extending military action to Iraq, see Stephen Fidler and Roula Khalaf, ‘Back to Iraq’, *Financial Times*, 1 December 2001

An additional consideration is the agreement reached in late November between Russia and the US and UK on a proposal to revise the UN sanctions regime on Iraq. By June 2002 a revised regime should be introduced that would lift some of the restrictions on civilian imports, but tighten controls on military and weapons-related goods and restrict the sale of contraband oil by Iraq to neighbouring states. The British Government hopes the revised scheme would undermine arguments that the sanctions regime has an adverse humanitarian impact.⁸⁶ The proposal was discussed in the Security Council during the first half of 2001, but was eventually rejected by Moscow. Intensified military action against Iraq could jeopardise the prospects of securing final Russian approval for the revisions to the sanctions.

European governments have expressed their unease over the possible targeting of Iraq without clear evidence of a direct link between al-Qaeda and Baghdad. The French President, Jacques Chirac, said in late November that the war should not be extended to Iraq unless there was “incontrovertible evidence”, and the German Foreign Minister, Joschka Fischer, has declared that: “All European nations would view a broadening to include Iraq highly sceptically – and that is putting it diplomatically.”

The British Government has made clear it has not seen any evidence linking Iraq to the events of 11 September. Foreign Office Minister Ben Bradshaw told the House on 27 November that there was “no evidence of any state involvement [in the attacks].”⁸⁷ He reiterated the government’s position that the current military campaign in Afghanistan “was targeted and specific” and that its aim was “to bring to justice those responsible for the mass murder of 11 September.”⁸⁸ However, the British Government continues to insist that Iraq comply with its obligations under UN Security Council Resolution 687 of 1991 to allow the UN to verify the destruction of its programmes to develop weapons of mass destruction.⁸⁹

The Conservative Party leader, Iain Duncan Smith, said on 30 November that he would support an expansion of military action to other states if there was “clear and compelling evidence” that they were harbouring or sponsoring terrorists.⁹⁰

As the campaign in Afghanistan show signs of drawing to a close, one argument against action in other theatres become less tenable. US officials have indicated their preference for focusing the military effort on one objective at a time.

⁸⁶ Foreign and Commonwealth Office web site, 30 November 2001

⁸⁷ HC Deb 27 November 2001, c821

⁸⁸ *ibid.*, c819

⁸⁹ For more information on the state of Iraqi compliance with UN Security Council Resolution 687, see Sections IV and V of Library Research Paper 99/13, *Iraq: “Desert Fox” and Policy Developments*, 10 February 1999

⁹⁰ *Financial Times*, 1 December 2001

In a series of interviews in early December the Bush administration attempted to refocus attention on the Iraqi weapons issue. In comments on 26 November President Bush indicated that the administration saw a connection between states like Iraq that sought WMD and the broader campaign against global terrorism. He demanded that President Saddam Hussein allow access for UN weapons inspectors to verify compliance, but said only that “He’ll find out” in response to a question on what would happen if Iraq failed to comply.⁹¹

US officials apparently believe the threat of military action could force Baghdad to adopt a more conciliatory approach and perhaps comply with UN demands on weapons inspections. On this view, the ongoing demonstration of the strength of US military power in Afghanistan could also impact on Iraqi thinking.

On the other hand, Saddam Hussein has endured direct military action in the past, for instance in December 1998, and has made some political capital out of this in the Arab world. Baghdad may conclude that the current lack of international support for US military action against Iraq may restrict Washington’s options and prevent it from mounting a concerted operation that could potentially threaten the regime’s survival.

2. Targeting al-Qaeda in other states

Aside from the debate over Iraq, there has been discussion of other possible military objectives, such as striking suspected al-Qaeda infrastructure in states like Somalia. It is feared that the gains made in disrupting al-Qaeda operations in Afghanistan could be lost if the organisation is able to strengthen its position in other states.

Analysts believe such operations could take the form of limited air strikes and small-scale insertions of special forces, rather than the broader conventional conflict witnessed in Afghanistan. In evidence to the Defence Select Committee on 28 November 2001, Defence Secretary Geoff Hoon declared:

We are well aware that al-Qaeda has tentacles in a considerable number of jurisdictions including this one [Afghanistan]. The response may well depend on the most appropriate way of dealing with that threat. [...] In a state that has very little control within its own borders, certainly a degree of invasive military response may be appropriate.⁹²

The US military has relatively recent experience of the difficulties involved in operating in Somalia, gained during its involvement in the abortive UN mission of 1993-4. What began as an operation to secure the safe passage of humanitarian aid evolved into offensive combat operations against the recalcitrant Somali warlord, General Mohammad Farah Aideed. During one particular operation in Mogadishu, US special forces became

⁹¹ *Guardian*, 27 November 2001

⁹² *Financial Times*, 29 November 2001

involved in a firefight as they attempted to rescue the crews of US helicopters that had been shot down. 18 US Rangers were killed and some of the bodies were dragged through the streets by angry Somalis. It is widely suspected that the attacks on US forces were conceived by Mohammed Atef, the chief military strategist in al-Qaeda, who was killed in a US airstrike in mid-November 2001.⁹³

At that time, US forces in Somalia were technically part of a UN peacekeeping force, and it is most unlikely that a US administration would attempt an intervention in Somalia on similar terms again. Were any action to be contemplated in respect of al-Qaeda in Somalia, it would require more robust force levels, rules of engagement and tactics.

Somalia remains in a state of conflict and anarchy, with rival warlords controlling large parts of the country and the transitional government lacking any real authority. Defense Secretary Donald Rumsfeld declared on 27 November that Somalia had harboured, and continued to harbour, al-Qaeda,⁹⁴ and there were reports on 10 December that US military officials had visited opposition warlords to identify potential terrorist targets in the south and west of the country. However, the US government has sought to downplay speculation of imminent military action in Somalia or any other state outside Afghanistan. UN officials say they found no credible evidence to link Somalia to terrorist camps, although the absence of any firm centralised authority would offer ideal conditions for groups like al-Qaeda.

Some commentators have suggested that al-Qaeda operations in Yemen could be targeted by US special forces, although any such action would probably be at the invitation of the Yemeni government. Yemeni officials have been co-operating with US law-enforcement officials in the investigation into the bombing of the US destroyer, USS Cole, in Aden harbour in October 2000.

The Sudanese government, which in the past offered sanctuary for al-Qaeda and Mr bin Laden, has since distanced itself from militant Islam. It has offered intelligence-sharing and broader co-operation with the USA in combating terrorism. US investigators have been working with the Sudanese since late 2000 in seeking to gather intelligence on al-Qaeda operations.

Other states in the region have pledged assistance to the US-led effort to isolate and destroy al-Qaeda and other global terrorist threats. Jordan and Egypt have imposed tighter restrictions in the aftermath of 11 September, detaining alleged Islamist militants and increasing security. The Jordanian government, which suspended parliament in June 2001, has clamped down on Palestinian groups such as Hamas and Islamic Jihad. The Egyptian government, which has fought a long and bitter campaign with Islamist militant groups over the past decade, has arrested over one hundred alleged militants from the

⁹³ See for example, *Guardian*, 17 November 2001

⁹⁴ *Washington Post*, 27 November 2001

Gama'a Islamiya. The strict clampdown imposed by Egyptian authorities during the 1990s forced many militants abroad: key figures within the top echelons of al-Qaeda, including Mr Al-Zawahri and the recently deceased Mr Atef, are originally from the extremist Egyptian Islamic Jihad organisation.⁹⁵

The US has stepped up financial and military assistance to the Philippines, which is engaged in conflict with militant Islamist groups. Washington is to send \$92.3 million of military equipment and some military advisors to assist with the government's campaign against the Abu Sayyaf group, which is believed to have close ties with al-Qaeda.

Some states, including Lebanon and Syria, have resisted US attempts to designate groups like Hizbollah as terrorist organisations, arguing that these groups are engaged in legitimate resistance to foreign occupation. At a summit of the Organisation of the Islamic Conference in Doha on 10 October, member states insisted that Palestinian and Lebanese groups fighting Israel should not be designated terrorist organisations. On 4 December the US government announced it was freezing the assets of organisations linked to the militant Palestinian group Hamas, following a wave of suicide bombings in Israel. The organisations affected included one of the main US-based Islamic charities, the Holy Land Foundation for Relief and Development.⁹⁶

C. The UN Counter-Terrorism Committee

The UN has established a mechanism to consider national efforts to combat terrorism. In its Resolution 1373 of 28 September 2001 the Security Council decided on a range of legally binding measures which states must take against terrorism. The Resolution outlawed support and recruitment for terrorism, harbouring of terrorists and financing of terrorism, and it obliged states to suppress these activities, as well as obliging them to cooperate (for instance through intelligence sharing and certain restrictions on movement) in efforts to suppress terrorism. A Committee was established to oversee compliance with the Resolution, and all states were asked to report to the Committee within 90 days on their activities to this end.

The Counter-Terrorism Committee consists of all 15 members of the Security Council. It is chaired by the British Permanent Representative to the UN, Sir Jeremy Greenstock, and his Vice-Chairs currently come from Colombia, Mauritius and Russia.

⁹⁵ Egyptian Islamic Jihad was responsible for the assassination of Egyptian President Anwar Sadat in 1981.

⁹⁶ *The Straits Times*, 6 December 2001

Sir Jeremy gave an account of the Committee:

the Counter-Terrorism Committee is concerned with the medium to long-term end of the fight against terrorism and is there to implement the intention of Resolution 1373 to establish the broadest possible legislative and executive defence against terrorism in every territory of members of the United Nations.

It is *not* the primary purpose of the Counter-Terrorism Committee to get into the politics of what is happening in the short-term. It is *not* the intention of the Counter-Terrorism Committee to try and solve problems that are for the General Assembly. Or to try and define terrorism, or otherwise solve some of the sensitive political issues that are directly, or indirectly attached to the fight against terrorism.

We are there to help the world system to upgrade its capability, to deny space, money, support, haven to terrorism, and to establish a network of information-sharing and co-operative executive action, including with the international institutions such as Interpol, the Financial Action Task Force, the work which ICAO does on Aviation Terrorism etc.⁹⁷

The Committee agreed a Work Programme for its first 90 days.⁹⁸ It summarised its tasks as follows:

The Committee will:

By 31 October 2001:

- Set up procedures for the provision of expertise in areas relevant to the Committee's work (see para. 2 below);
- Distribute guidelines to States on the reporting requirement in paragraph 6 of the resolution (para. 3);

By 30 November 2001:

- Publish a list of contact points (para. 1);
- In cooperation with the Secretariat, establish a pool of expertise in areas relevant to the Committee's work (para. 2);

By 27 December 2001:

- Receive initial reports from all States and begin the process of analysing them (para. 3);
- Begin to identify and promulgate best practice and to research ways of assisting States where appropriate (para. 4).⁹⁹

⁹⁷ Press conference, 19 October 2001, at <http://www.un.org/Docs/sc/committees/1373/19octsum.htm>.

⁹⁸ Annexed to letter from Chairman of the Counter-Terrorism Committee addressed to the President of the Security Council, S/2001/986, 19 October 2001.

⁹⁹ S/2001/986, 19 October 2001.

Paragraph 6 of Resolution 1373 called upon all states to submit reports to the Committee within 90 days on steps they have taken to implement the Resolution. On 26 October 2001 the Committee circulated a guidance note for the submission of these reports.¹⁰⁰ It gave the following advice:

in compiling their reports, States should aim to demonstrate concisely and clearly, by reference to the provisions of resolution 1373 (2001), the legislative and executive (ie administrative or non-legislative) measures in place or contemplated to give effect to the resolution, and the other efforts they are making in the areas covered by the resolution.

States may also identify areas in which they require guidance or assistance in implementing the Resolution, and the Committee will “explore the capacity of States and international organisations to offer such assistance.” There is provision in the case of unwillingness to comply:

the Committee may seek further information or clarification from States as necessary on the content of the reports. The Committee may draw to the attention of the Security Council any cases of States which, in the Committee’s view, need to enhance their efforts to implement fully resolution 1373 (2001).

The guidance note presented a series of questions to which states were invited to respond, and these asked what measures had been taken in respect of each operative paragraph or sub-paragraph of Resolution 1373. All states are supposed to respond with at least an initial report by 27 December 2001. Examples of reports submitted so far are available on the UN website: as at 10 December 2001 only four were posted there.¹⁰¹

Sir Jeremy addressed the question of those states which might remain obdurate to the Committee’s efforts:

there will be a handful of member states at the UN who won’t be thrilled at the thought of being asked to implement 1373 in its entirety. Or who will try and duck some of the realities of that resolution. Well, we’ll come to those in due course. The [Counter-Terrorism Committee] is not a law-enforcement mechanism. Nor is it even a political instrument for bearing down on those who are politically less willing. It’s a monitoring and analytical Committee, which will report facts to the Security Council, and then discussions and debate can continue into the Security Council.¹⁰²

¹⁰⁰ *Guidance for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 (2001) of 28 September 2001*, 26 October 2001, at <http://www.un.org/Docs/sc/committees/1373>.

¹⁰¹ See <http://www.un.org/Docs/sc/committees/1373> and click on ‘Reports.’

¹⁰² Press conference, 19 October 2001, at <http://www.un.org/Docs/sc/committees/1373/19octsum.htm>.

He resisted the idea that the Committee should produce a list of states which were under suspicion, but instead laid emphasis on its ability to refer matters to the Security Council:

we don't think that 1373 needs to define who we are talking about. It's up to governments to be clear who they're talking about. And, if later on, what the Committee decides by consensus is terrorism is being ignored by a particular government, then we will take it up.¹⁰³

Insofar as the Security Council works on the basis of information received from the Committee, it will have an evidential basis therein for moves it might wish to make.

The role of the Committee, its work and structure, are to be reviewed by the Security Council after six months (March 2002), and it could be given additional tasks at that point.

On 12 November 2001 the Security Council adopted its Resolution 1377, in which it welcomed the efforts of the Committee and gave it specific tasks in relation to providing assistance to states. This would involve co-operation with international, regional and sub-regional organisations to explore the promotion of best practice in areas covered by Resolution 1373, including the preparation of model laws, the availability of existing assistance programmes in technical, financial, regulatory, legislative or other areas, and “the promotion of possible synergies between these assistance programmes.”

D. Mechanisms for trying suspects

As the campaign in Afghanistan nears its aim of creating an insecure environment for terrorists, the prospect has become immediate that members of al-Qaeda, and possibly Mr bin Laden himself, might be captured. There has been debate as to what might happen in this event. Mr bin Laden is already subject to indictment by a federal court in the USA, and some argue that he should be tried there. However, Mr Bush has created the opportunity to try suspects in military tribunals.

1. US military tribunals

An Executive Order of 13 November 2001 provides that:

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

¹⁰³ Press conference, 19 October 2001, at <http://www.un.org/Docs/sc/committees/1373/19octsum.htm>

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.¹⁰⁴

These tribunals will have jurisdiction over non-US citizens in respect of whom the President has determined that

- (1) there is reason to believe that such individual, at the relevant times,
 - (i) is or was a member of the organization known as al Qaida;
 - (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
 - (iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and
- (2) it is in the interest of the United States that such individual be subject to this order.¹⁰⁵

The USA used military tribunals, or ‘commissions’ as they are also known, during the War of Independence, the Mexican War, the Civil War and during and after World War II. For instance, while the International Military Tribunals at Nuremberg and Tokyo tried senior German and Japanese war criminals, the huge majority of those suspected of war crimes were tried in national military tribunals by the Allied power in whose hands they fell, and of course this included the USA.

The Executive Order of 13 November 2001 provides a broad outline of the powers envisaged for the new military commissions, and the detailed arrangements are left to the Secretary of Defense:

Sec. 4. Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.

(a) Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.

¹⁰⁴ President Bush, Executive Order 13 November 2001, at <http://www.whitehouse.gov>

¹⁰⁵ *ibid.*, Section 2 (a)

(b) As a military function and in light of the findings in section 1, including subsection (f) thereof, the Secretary of Defense shall issue such orders and regulations, including orders for the appointment of one or more military commissions, as may be necessary to carry out subsection (a) of this section.

(c) Orders and regulations issued under subsection (b) of this section shall include, but not be limited to, rules for the conduct of the proceedings of military commissions, including pretrial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys, which shall at a minimum provide for -

- (1) military commissions to sit at any time and any place, consistent with such guidance regarding time and place as the Secretary of Defense may provide;
- (2) a full and fair trial, with the military commission sitting as the triers of both fact and law;
- (3) admission of such evidence as would, in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person;
- (4) in a manner consistent with the protection of information classified or classifiable under [Executive Order 12958](#) of April 17, 1995, as amended, or any [successor Executive Order](#), protected by statute or rule from unauthorized disclosure, or otherwise protected by law, (A) the handling of, admission into evidence of, and access to materials and information, and (B) the conduct, closure of, and access to proceedings;
- (5) conduct of the prosecution by one or more attorneys designated by the Secretary of Defense and conduct of the defense by attorneys for the individual subject to this order;
- (6) conviction only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present;
- (7) sentencing only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present; and
- (8) submission of the record of the trial, including any conviction or sentence, for review and final decision by me or by the Secretary of Defense if so designated by me for that purpose.¹⁰⁶

¹⁰⁶ President Bush, Executive Order 13 November 2001, at <http://www.whitehouse.gov>

There are also protections for defendants, under Section 3, including that they be

- (b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;
- (c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;
- (d) allowed the free exercise of religion consistent with the requirements of such detention.

The decision to authorise military commissions has proved controversial, provoking debate among legal experts in the USA. Some question the need for commissions, given the Government's success in convicting terrorists in civilian courts in the past,¹⁰⁷ while others argue that the avoidance of normal process will send the wrong signal to those sceptical of the USA. Senator Patrick Leahy gave the following reaction:

when we're talking about largely setting aside our criminal justice system for something like this, we end up looking to the people we have asked to be our allies more and more like some of the things that we are fighting against.¹⁰⁸

There has been special concern over the prospect of sentences being passed on a majority verdict after proceedings held in secret, and that this could include the death sentence.

The administration has defended its approach, arguing that the military commissions will protect jurors, judges and court officials, will protect the security of intelligence which might be cited in evidence, and can take place swiftly, and locally to the areas in which fighting has taken place and where evidence may be easily to hand. They have also stressed that the commissions will not enjoy automatic jurisdiction, but will try cases sent to them by the President when he considers it is 'in the interests of the United States' so to do. They will not necessarily meet *in camera*, although proceedings may be closed on order of the Secretary of Defense in order to protect classified information. According to the Counsel to the President, Alberto Gonzales, "trials before military commissions will be as open as possible, consistent with the urgent needs of national security."¹⁰⁹ The Counsel also stated that those brought before the commissions will have the right to challenge the lawfulness of the jurisdiction of the commission by means of a *habeas corpus* proceeding in a federal court.

¹⁰⁷ See e.g. 'The US Has the Right Courts for a bin Laden Trial,' H Koh, *International Herald Tribune*, 1-2 December 2001

¹⁰⁸ 'Establishment of military tribunals is debated in US,' S Kaufman, *Washington File*, 28 November 2001

¹⁰⁹ 'Martial justice, full and fair,' A Gonzales, *Washington File*, 3 December 2001

Critics argue that the turn towards military justice shows a lack of confidence in civilian courts. Morton Halperin, an official in the Clinton administration, claimed that “the administration has made no case that the US court system is not functioning and capable of dealing with criminal acts.”¹¹⁰

The administration has been keen to situate the commissions within an historical context and to argue that it is not unusual for such a mechanism to be used in time of war. For instance, in 1942 a military commission was used to convict and execute eight German agents who entered Long Island by submarine, shed their uniforms to pose as civilians and conspired to sabotage with explosives US mainland military facilities.

Mr Gonzales made the following case:

the order covers only foreign enemy war criminals; it does not cover United States citizens or even enemy soldiers abiding by the laws of war. Under the order, the President will refer to military commissions only non-citizens who are members or active supporters of Al Qaeda or other international terrorist organizations targeting the United States. The President must determine that it would be in the interests of the United States that these people be tried by military commission, and they must be chargeable with offenses against the international laws of war, like targeting civilians or hiding in civilian populations and refusing to bear arms openly. Enemy war criminals are not entitled to the same procedural protections as people who violate our domestic laws.¹¹¹

Mr Bush argued that

non-US citizens who plan and/or commit mass murder are more than criminal suspects. They are unlawful combatants who seek to destroy our country and our way of life.¹¹²

Vice-President Dick Cheney said that international terrorist suspects “don’t deserve the same guarantees and safeguards that would be used for an American citizen going through the normal judicial process,” and Attorney-General John Ashcroft said that “it’s important to understand that we are at war now.”¹¹³ Legal officers have intimated that the prospect of submission to a military tribunal might encourage suspects to cooperate in yielding information, since the opportunities for procedural manipulation in their favour would be less than in civilian courts.¹¹⁴

¹¹⁰ ‘US defends military tribunal plan,’ *International Herald Tribune*, 16 November 2001

¹¹¹ ‘Martial justice, full and fair,’ A Gonzales, *Washington File*, 3 December 2001

¹¹² *Los Angeles Times*, 30 November 2001

¹¹³ ‘US defends military tribunal plan,’ *International Herald Tribune*, 16 November 2001

¹¹⁴ *International Herald Tribune*, 16 November 2001

An underlying feature of the move is that it casts the terrorists as war criminals.¹¹⁵ This is a significant move, and one consistent with the USA's long-held opinion that acts of terrorism constitute a basis for self-defensive military action. Two opinion pieces reproduced in the *International Herald Tribune* reflected alternative positions on this move. Professor Anne-Marie Slaughter argued that the use of military commissions would

dignify terrorists as soldiers in Islam's war against America. This is exactly the wrong message to send. Qaida members are international outlaws, like pirates, slave traders or torturers.¹¹⁶

She also argued that the commissions "will prove disastrous - to the war against terrorism, to the US Constitution and to the rule of law," because the presentation of evidence in secret would "fortify bin Laden's propaganda" and "military executions of convicted terrorists after such trials will create a new generation of martyrs."

In contrast, William Barr and Andrew McBride argued that

the President's decision to provide for military tribunals is well grounded in constitutional law, historical precedent and common sense. ...

Qaida members are clearly subject to the laws of war. They have carried out unprovoked surprise attacks out of uniform with the clear intent to target unarmed civilians. Their status under international law is that of 'unlawful belligerents', and centuries of precedent support trying them before military tribunals.¹¹⁷

One of the first people who may face trial by a military tribunal is Ahmed Omar Rahman, a prominent figure in al-Qaeda, who has been captured by the Northern Alliance in Afghanistan.

2. International tribunal

An alternative to national military commissions or civilian courts might be an international tribunal, along the lines of those used for former Yugoslavia or Rwanda. No existing international court has jurisdiction in these cases, and even when the International Criminal Court has been established it will have jurisdiction neither over acts of terrorism nor retrospectively.

¹¹⁵ A useful discussion of the issues, written before the President made his Order, is given in *Trying terrorists as war criminals*, J Elsea, Congressional Research Service Report for Congress, RS21056, 29 October 2001.

¹¹⁶ *International Herald Tribune*, 19 November 2001

¹¹⁷ *ibid.*

Mr Bradshaw gave the British Government's view on the idea of establishing a new tribunal to try terrorists:

international criminal courts are not a substitute for national jurisdictions. Their function is to prosecute perpetrators of crimes for which a relevant national jurisdiction is unable or unwilling to take action. That does not apply in the case of the 11 September attacks. Setting up a new international court or tribunal to try terrorism would cause great delay, not least since there is no internationally-agreed definition of terrorism.¹¹⁸

Ms Slaughter argued that an international tribunal would command greater confidence abroad, and that Muslim states such as Pakistan would find it easier to extradite suspects to such a tribunal. She felt that it could also send a signal of international solidarity against terrorism.

By contrast, Professor Harold Hongju Koh argued that "building new tribunals from scratch is slow and expensive and requires arduous negotiations." He drew the opposite conclusion on confidence in an international tribunal:

geopolitical concerns in this case would predominate and the impartiality of the tribunal would inevitably be questioned by some in the Muslim world. These tribunals are preferable only when there is no functioning court that could fairly and efficiently try the case, as was the situation in the former Yugoslavia and in Rwanda.¹¹⁹

3. Extradition and the death penalty

The UK does not normally extradite suspects to jurisdictions which might impose the death penalty. It is not clear what impact this might have if British forces were to capture Mr bin Laden or other al-Qaeda members. According to the *Los Angeles Times*, Christopher Meyer, the British Ambassador to the USA, said that

there is a common [European Union] policy against the death penalty, so I think any attempt to extradite to the United States somebody who might get the death penalty would cause some problems, and we'd have to work this through.¹²⁰

According to a BBC report on 11 December 2001, the UK "has reassured Washington that if its troops capture bin Laden, he will be handed over immediately."¹²¹ A paraphrase of comments by Mr Hoon on the *Breakfast with Frost* programme on 9 December 2001 suggested that he had said that Mr bin Laden would be handed over to the USA if

¹¹⁸ HC Deb 5 December 2001, c313w

¹¹⁹ 'The US Has the Right Courts for a bin Laden Trial,' H Koh, *International Herald Tribune*, 1-2 December 2001.

¹²⁰ *Los Angeles Times*, 30 November 2001. Parenthesis in original.

¹²¹ BBC News website at <http://news.bbc.co.uk>, 11 December 2001.

captured, “with certain agreements, given the US policy of using the death penalty.” He was also quoted directly as saying, “but what is important, given the appalling horror that this man perpetrated in the United States on 11 September, is that he faces justice in [the] US.”¹²²

Lord Rooker expressed the general position thus:

The Extradition Act 1989 provides that extradition may be refused if the fugitive stands accused or convicted of an offence for which he could be or has been sentenced to death. This discretion must be interpreted in the light of the wording of the Sixth Protocol to the European Convention on Human Rights which outlaws the application of the death penalty and to which the United Kingdom is a signatory. This Government will therefore refuse to extradite persons to any jurisdiction where the offence for which they could be or have been tried carries the death penalty, unless sufficient assurances are provided by a requesting state that the death penalty will not be imposed or, if imposed, will not be carried out.

On the rare occasions where the death penalty has been an issue in an extradition case we have always been able to obtain sufficient assurances.¹²³

Protocol 6 of the *European Convention on Human Rights* has been ratified by 39 states, including all EU Member States.¹²⁴

There have been developments in case law in this area concerning Article 3 of the European Convention, which states that “no-one shall be subjected to torture or to inhuman or degrading treatment or punishment”. In the Court of Human Rights ruling in the case of *Soering v United Kingdom*¹²⁵ the Court considered that

having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant’s extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3. A further consideration of relevance is that in the

¹²² BBC News website at <http://news.bbc.co.uk>, 9 December 2001.

¹²³ HL Deb 28 November 2001, c40w.

¹²⁴ Treaty Series 114, entered into force 1 March 1985. The UK was the last EU Member State to ratify the Protocol on 1 June 1999.

¹²⁵ Application No. 00014038/88, judgment 7 July 1989, published in series A No. 161, and at: <http://hudoc.echr.coe.int/hudoc>. The applicant, Jens Soering, was a German national detained in prison in England pending extradition to the US under section 11 of the *Extradition Act 1870* to face charges of murder in March 1985 in the Commonwealth of Virginia. A request for appeal was rejected, and on 3 August 1988 the Secretary of State signed a warrant ordering Mr Soering’s surrender to the US authorities. Mr Soering’s application with the European Commission of Human Rights was lodged on 8 July 1988. He maintained that in the circumstances and, in particular, having regard to the “death row phenomenon” he would thereby be subjected to inhuman and degrading treatment and punishment contrary to Article 3 of the Convention.

particular instance the legitimate purpose of extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration. Accordingly, the Secretary of State's decision to extradite the applicant to the United States would, if implemented, give rise to a breach of Article 3.¹²⁶

The Court held unanimously that “in the event of the Secretary of State's decision to extradite the applicant to the United States of America being implemented, there would be a violation of Article 3.”

This has been upheld in several subsequent cases

where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country.¹²⁷

In addition, Article 19 of the *European Charter of Fundamental Rights* ‘proclaimed’ by the European Council in Nice in December 2000 upholds “protection in the event of removal, expulsion or extradition.” Paragraph 2 refers to the principle of *non-refoulement* (prohibition on forced return) based on the case law of the European Court of Human Rights relating to Article 3 including the *Soering* judgment. The Charter is not legally binding, but does represent a political commitment.

¹²⁶ *Soering*, para. 105

¹²⁷ *Chahal v. UK*, Application number 00022414/93, 15 November 1996, at: <http://hudoc.echr.coe.int/hudoc>. See also: *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, p. 28, paras. 69-70, and *Vilvarajah and Others v. UK*, judgment, p. 34, para. 103.

Appendix 1 – Text of the Bonn Agreement

AGREEMENT ON PROVISIONAL ARRANGEMENTS IN AFGHANISTAN PENDING THE RE-ESTABLISHMENT OF PERMANENT GOVERNMENT INSTITUTIONS

The participants in the UN Talks on Afghanistan,

In the presence of the Special Representative of the Secretary-General for Afghanistan,

Determined to end the tragic conflict in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights in the country,

Reaffirming the independence, national sovereignty and territorial integrity of Afghanistan,

Acknowledging the right of the people of Afghanistan to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism and social justice,

Expressing their appreciation to the Afghan mujahidin who, over the years, have defended the independence, territorial integrity and national unity of the country and have played a major role in the struggle against terrorism and oppression, and whose sacrifice has now made them both heroes of jihad and champions of peace, stability and reconstruction of their beloved homeland, Afghanistan,

Aware that the unstable situation in Afghanistan requires the implementation of emergency interim arrangements and expressing their deep appreciation to His Excellency Professor Burhanuddin Rabbani for his readiness to transfer power to an interim authority which is to be established pursuant to this agreement,

Recognizing the need to ensure broad representation in these interim arrangements of all segments of the Afghan population, including groups that have not been adequately represented at the UN Talks on Afghanistan,

Noting that these interim arrangements are intended as a first step toward the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government, and are not intended to remain in place beyond the specified period of time,

Recognizing that some time may be required for a new Afghan security force to be fully constituted and functional and that therefore other security provisions detailed in Annex I to this agreement must meanwhile be put in place,

Considering that the United Nations, as the internationally recognized impartial institution, has a particularly important role to play, detailed in Annex II to this agreement, in the period prior to the establishment of permanent institutions in Afghanistan,

Have agreed as follows:

THE INTERIM AUTHORITY

I. General provisions

- 1) An Interim Authority shall be established upon the official transfer of power on 22 December 2001.
- 2) The Interim Authority shall consist of an Interim Administration presided over by a Chairman, a Special Independent Commission for the Convening of the Emergency Loya Jirga, and a Supreme Court of Afghanistan, as well as such other courts as may be established by the Interim Administration. The composition, functions and governing procedures for the Interim Administration and the Special Independent Commission are set forth in this agreement.
- 3) Upon the official transfer of power, the Interim Authority shall be the repository of Afghan sovereignty, with immediate effect. As such, it shall, throughout the interim period, represent Afghanistan in its external relations and shall occupy the seat of Afghanistan at the United Nations and in its specialized agencies, as well as in other international institutions and conferences.
- 4) An Emergency Loya Jirga shall be convened within six months of the establishment of the Interim Authority. The Emergency Loya Jirga will be opened by His Majesty Mohammed Zaher, the former King of Afghanistan. The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to lead Afghanistan until such time as a fully representative government can be elected through free and fair elections to be held no later than two years from the date of the convening of the Emergency Loya Jirga.
- 5) The Interim Authority shall cease to exist once the Transitional Authority has been established by the Emergency Loya Jirga.
- 6) A Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, in order to adopt a new constitution for Afghanistan. In order to assist the Constitutional Loya Jirga prepare the proposed Constitution, the Transitional Administration shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.

II. Legal framework and judicial system

- 1) The following legal framework shall be applicable on an interim basis until the adoption of the new Constitution referred to above:
 - i) The Constitution of 1964, a/ to the extent that its provisions are not inconsistent with those contained in this agreement, and b/ with the exception of those provisions relating to the monarchy and to the executive and legislative bodies provided in the Constitution; and
 - ii) existing laws and regulations, to the extent that they are not inconsistent with this agreement or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the Interim Authority shall have the power to repeal or amend those laws and regulations.

2) The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration. The Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.

III. Interim Administration

A. *Composition*

1) The Interim Administration shall be composed of a Chairman, five Vice Chairmen and 24 other members. Each member, except the Chairman, may head a department of the Interim Administration.

2) The participants in the UN Talks on Afghanistan have invited His Majesty Mohammed Zaher, the former King of Afghanistan, to chair the Interim Administration. His Majesty has indicated that he would prefer that a suitable candidate acceptable to the participants be selected as the Chair of the Interim Administration.

3) The Chairman, the Vice Chairmen and other members of the Interim Administration have been selected by the participants in the UN Talks on Afghanistan, as listed in Annex IV to this agreement. The selection has been made on the basis of professional competence and personal integrity from lists submitted by the participants in the UN Talks, with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.

4) No person serving as a member of the Interim Administration may simultaneously hold membership of the Special Independent Commission for the Convening of the Emergency Loya Jirga.

B. *Procedures*

1) The Chairman of the Interim Administration, or in his/her absence one of the Vice Chairmen, shall call and chair meetings and propose the agenda for these meetings.

2) The Interim Administration shall endeavour to reach its decisions by consensus. In order for any decision to be taken, at least 22 members must be in attendance. If a vote becomes necessary, decisions shall be taken by a majority of the members present and voting, unless otherwise stipulated in this agreement. The Chairman shall cast the deciding vote in the event that the members are divided equally.

C. *Functions*

1) The Interim Administration shall be entrusted with the day-to-day conduct of the affairs of state, and shall have the right to issue decrees for the peace, order and good government of Afghanistan.

2) The Chairman of the Interim Administration or, in his/her absence, one of the Vice Chairmen, shall represent the Interim Administration as appropriate.

3) Those members responsible for the administration of individual departments shall also be responsible for implementing the policies of the Interim Administration within their areas of responsibility.

4) Upon the official transfer of power, the Interim Administration shall have full jurisdiction over the printing and delivery of the national currency and special drawing rights from international financial institutions. The Interim Administration shall establish, with the assistance of the United Nations, a Central Bank of Afghanistan that will regulate the money supply of the country through transparent and accountable procedures.

5) The Interim Administration shall establish, with the assistance of the United Nations, an independent Civil Service Commission to provide the Interim Authority and the future Transitional Authority with shortlists of candidates for key posts in the administrative departments, as well as those of governors and uluswals, in order to ensure their competence and integrity.

6) The Interim Administration shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions. The Interim Administration may, with the assistance of the United Nations, also establish any other commissions to review matters not covered in this agreement.

7) The members of the Interim Administration shall abide by a Code of Conduct elaborated in accordance with international standards.

8) Failure by a member of the Interim Administration to abide by the provisions of the Code of Conduct shall lead to his/her suspension from that body. The decision to suspend a member shall be taken by a two-thirds majority of the membership of the Interim Administration on the proposal of its Chairman or any of its Vice Chairmen.

9) The functions and powers of members of the Interim Administration will be further elaborated, as appropriate, with the assistance of the United Nations.

IV. The Special Independent Commission for the Convening of the Emergency Loya Jirga

1) The Special Independent Commission for the Convening of the Emergency Loya Jirga shall be established within one month of the establishment of the Interim Authority. The Special Independent Commission will consist of twenty-one members, a number of whom should have expertise in constitutional or customary law. The members will be selected from lists of candidates submitted by participants in the UN Talks on Afghanistan as well as Afghan professional and civil society groups. The United Nations will assist with the establishment and functioning of the commission and of a substantial secretariat.

2) The Special Independent Commission will have the final authority for determining the procedures for and the number of people who will participate in the Emergency Loya Jirga. The Special Independent Commission will draft rules and procedures specifying (i) criteria for allocation of seats to the settled and nomadic population residing in the country; (ii) criteria for allocation of seats to the Afghan refugees living in Iran, Pakistan, and elsewhere, and Afghans from the diaspora; (iii) criteria for inclusion of civil society organizations and prominent individuals, including Islamic scholars, intellectuals, and traders, both within the country and in

the diaspora. The Special Independent Commission will ensure that due attention is paid to the representation in the Emergency Loya Jirga of a significant number of women as well as all other segments of the Afghan population.

3) The Special Independent Commission will publish and disseminate the rules and procedures for the convening of the Emergency Loya Jirga at least ten weeks before the Emergency Loya Jirga convenes, together with the date for its commencement and its suggested location and duration.

4) The Special Independent Commission will adopt and implement procedures for monitoring the process of nomination of individuals to the Emergency Loya Jirga to ensure that the process of indirect election or selection is transparent and fair. To pre-empt conflict over nominations, the Special Independent Commission will specify mechanisms for filing of grievances and rules for arbitration of disputes.

5) The Emergency Loya Jirga will elect a Head of the State for the Transitional Administration and will approve proposals for the structure and key personnel of the Transitional Administration.

V. Final provisions

1) Upon the official transfer of power, all mujahidin, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces.

2) The Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.

3) The Interim Authority shall cooperate with the international community in the fight against terrorism, drugs and organized crime. It shall commit itself to respect international law and maintain peaceful and friendly relations with neighbouring countries and the rest of the international community.

4) The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga.

5) All actions taken by the Interim Authority shall be consistent with Security Council resolution 1378 (14 November 2001) and other relevant Security Council resolutions relating to Afghanistan.

6) Rules of procedure for the organs established under the Interim Authority will be elaborated as appropriate with the assistance of the United Nations.

This agreement, of which the annexes constitute an integral part, done in Bonn on this 5th day of December 2001 in the English language, shall be the authentic text, in a single copy which shall remain deposited in the archives of the United Nations. Official texts shall be provided in Dari and Pashto, and such other languages as the Special Representative of the Secretary-General may

designate. The Special Representative of the Secretary-General shall send certified copies in English, Dari and Pashto to each of the participants.

For the participants in the UN Talks on Afghanistan:

Ms. Amena Afzali
Mr. S. Hussain Anwari
Mr. Hedayat Amin Arsala
Mr. Sayed Hamed Gailani
Mr. Rahmatullah Musa Ghazi
Eng. Abdul Hakim
Mr. Houmayoun Jareer
Mr. Abbas Karimi
Mr. Mustafa Kazimi
Dr. Azizullah Ludin
Mr. Ahmad Wali Massoud
Mr. Hafizullah Asif Mohseni
Prof. Mohammad Ishaq Nadiri
Mr. Mohammad Natiqi
Mr. Yunus Qanooni
Dr. Zalmay Rassoul
Mr. H. Mirwais Sadeq
Dr. Mohammad Jalil Shams
Prof. Abdul Sattar Sirat
Mr. Humayun Tandar
Mrs. Sima Wali
General Abdul Rahim Wardak
Mr. Pacha Khan Zadran

Witnessed for the United Nations by:

Mr. Lakhdar Brahimi

Special Representative of the Secretary-General for Afghanistan

ANNEX I

INTERNATIONAL SECURITY FORCE

1. The participants in the UN Talks on Afghanistan recognize that the responsibility for providing security and law and order throughout the country resides with the Afghans themselves. To this end, they pledge their commitment to do all within their means and influence to ensure such security, including for all United Nations and other personnel of international governmental and non-governmental organizations deployed in Afghanistan.
2. With this objective in mind, the participants request the assistance of the international community in helping the new Afghan authorities in the establishment and training of new Afghan security and armed forces.
3. Conscious that some time may be required for the new Afghan security and armed forces to be fully constituted and functioning, the participants in the UN Talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations mandated force. This force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centres and other areas.

4. The participants in the UN Talks on Afghanistan pledge to withdraw all military units from Kabul and other urban centers or other areas in which the UN mandated force is deployed. It would also be desirable if such a force were to assist in the rehabilitation of Afghanistan's infrastructure.

ANNEX II

ROLE OF THE UNITED NATIONS DURING THE INTERIM PERIOD

1. The Special Representative of the Secretary-General will be responsible for all aspects of the United Nations' work in Afghanistan.
2. The Special Representative shall monitor and assist in the implementation of all aspects of this agreement.
3. The United Nations shall advise the Interim Authority in establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga in free and fair conditions. The United Nations shall pay special attention to the conduct of those bodies and administrative departments which could directly influence the convening and outcome of the Emergency Loya Jirga.
4. The Special Representative of the Secretary-General or his/her delegate may be invited to attend the meetings of the Interim Administration and the Special Independent Commission on the Convening of the Emergency Loya Jirga.
5. If for whatever reason the Interim Administration or the Special Independent Commission were actively prevented from meeting or unable to reach a decision on a matter related to the convening of the Emergency Loya Jirga, the Special Representative of the Secretary-General shall, taking into account the views expressed in the Interim Administration or in the Special Independent Commission, use his/her good offices with a view to facilitating a resolution to the impasse or a decision.
6. The United Nations shall have the right to investigate human rights violations and, where necessary, recommend corrective action. It will also be responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.

ANNEX III

REQUEST TO THE UNITED NATIONS BY THE PARTICIPANTS AT THE UN TALKS ON AFGHANISTAN

The participants in the UN Talks on Afghanistan hereby

1. Request that the United Nations and the international community take the necessary measures to guarantee the national sovereignty, territorial integrity and unity of Afghanistan as well as the non-interference by foreign countries in Afghanistan's internal affairs;
2. Urge the United Nations, the international community, particularly donor countries and multilateral institutions, to reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan, in coordination with the Interim Authority;
3. Request the United Nations to conduct as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan.
4. Urge the United Nations and the international community, in recognition of the heroic role played by the mujahidin in protecting the independence of Afghanistan and the dignity of its

people, to take the necessary measures, in coordination with the Interim Authority, to assist in the reintegration of the mujahidin into the new Afghan security and armed forces;

5. Invite the United Nations and the international community to create a fund to assist the families and other dependents of martyrs and victims of the war, as well as the war disabled;

6. Strongly urge that the United Nations, the international community and regional organizations cooperate with the Interim Authority to combat international terrorism, cultivation and trafficking of illicit drugs and provide Afghan farmers with financial, material and technical resources for alternative crop production.

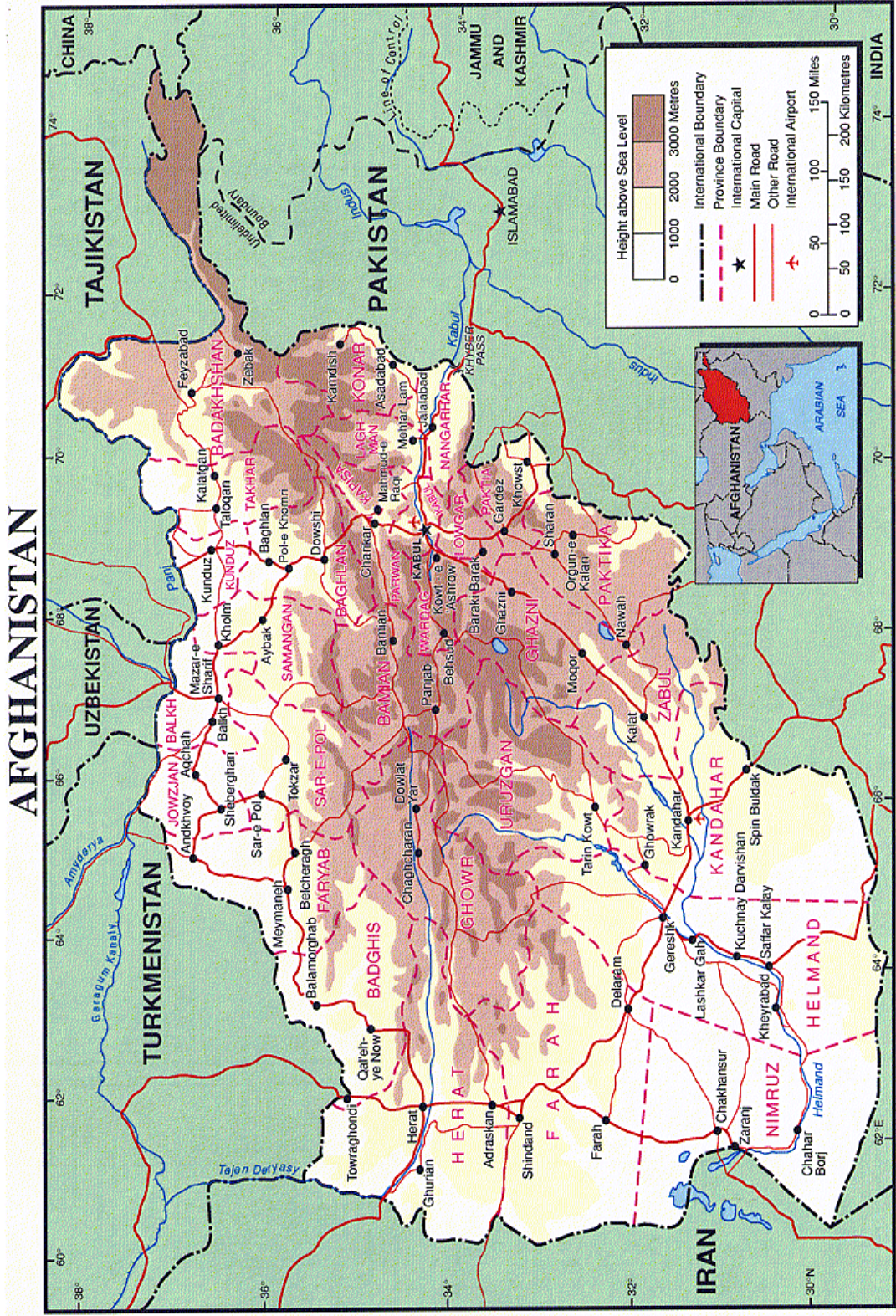
ANNEX IV

COMPOSITION OF THE INTERIM ADMINISTRATION

Chairman:	Hamid Karzai
Vice Chairmen:	
Vice-Chair & Women's Affairs:	Dr. Sima Samar
Vice-Chair & Defence:	Muhammad Qassem Fahim
Vice-Chair & Planning:	Haji Muhammad Mohaqqeq
Vice-Chair & Water and Electricity:	Shaker Kargar
Vice-Chair & Finance:	Hedayat Amin Arsala
Members:	
Department of Foreign Affairs:	Dr. Abdullah Abdullah
Department of the Interior:	Muhammad Yunus Qanooni
Department of Commerce:	Seyyed Mustafa Kazemi
Department of Mines & Industries:	Muhammad Alem Razm
Department of Small Industries:	Aref Noorzai
Department of Information & Culture:	Dr. Raheen Makhdoom
Department of Communication:	Ing. Abdul Rahim
Department of Labour & Social Affairs:	Mir Wais Sadeq
Department of Hajj & Auqaf:	Mohammad Hanif Hanif Balkhi
Department of Martyrs & Disabled:	Abdullah Wardak
Department of Education:	Abdul Rassoul Amin
Department of Higher Education:	Dr. Sharif Faez
Department of Public Health:	Dr. Suhaila Seddiqi
Department of Public Works:	Abdul Khaliq Fazal
Department of Rural Development:	Abdul Malik Anwar
Department of Urban Development:	Haji Abdul Qadir
Department of Reconstruction:	Amin Farhang
Department of Transport:	Sultan Hamid Sultan
Department for the Return of Refugees:	Enayatullah Nazeri
Department of Agriculture:	Seyyed Hussein Anwari
Department of Irrigation:	Haji Mangal Hussein
Department of Justice:	Abdul Rahim Karimi
Department of Air Transport & Tourism:	Abdul Rahman
Department of Border Affairs:	Amanullah Zadran

Source: UN web site at <http://www.uno.de/frieden/afghanistan/talks/agreement.htm>

Appendix 2 – Map of Afghanistan



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 Users should note that this map has been designed for briefing purposes only and it should not be used for determining the precise location of places or features. This map should not be considered an authority on the delineation of international boundaries nor on the spelling of place and feature names. Maps produced by the Defence Geographic and Imagery Intelligence Agency (DGI) are not to be taken as necessarily representing the views of the UK government on boundaries or political status. © Crown copyright 2000
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