PANEL 2: BUILDING THE INSTITUTIONS OF THE NATION†

Moderator: Dean Thomas P. Lauth*
Panelists: Louis Aucoin**
           Karl F. Inderfurth***
           Howard J. Wiarda****

Dean Lauth: You are going to hear first this afternoon from Professor Louis Aucoin, currently a faculty member at the Fletcher School of Diplomacy. He has taught at Boston University School of Law. Professor Aucoin has a distinguished record of publications. His most recent publication, The French Constitution, an annotated guide of the French Constitution of 1958, was published in 2003. In addition, he has published a variety of scholarly works and articles; I will mention a few of the titles: "Judicial Independence in France," "Haiti’s Constitutional Crisis,"2 and "Judicial Review in France."3 He served for three years as a program officer in the Rule of Law Program at the United States Institute of Peace. He was a Supreme Court Fellow at the United States Supreme Court, as part of the United States Supreme Court Judicial Fellows Program. We are very happy to have him as a part of this program.

The second speaker that you will hear is Karl Inderfurth. He is the Professor of the Practice of International Affairs and Director of the Interna-

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tional Affairs Program at George Washington University's Elliott School of International Affairs. He served as Assistant Secretary of State for South Asian Affairs, Special Representative of the President and the Secretary of State for Global Humanitarian Demining, and U.S. Representative for Special Political Affairs to the United Nations, with ambassadorial rank. He has worked as a national security correspondent and later as a Moscow correspondent for ABC News, and received an Emmy award in 1983. He has also served on the staffs of the Senate Intelligence and Foreign Relations committees, and the National Security Council. Along with our colleague Loch Johnson, he is the author of *Fateful Decisions: Inside the National Security Council*, published this year. Additionally, in November 2002 and in May 2003, playing the role of the President, he appeared in the BBC docudrama *The Situation Room.*

Professor Inderfurth holds an M.A. from Princeton and a B.A. from the University of North Carolina at Chapel Hill. He will be our second presenter.

The third member of the panel is my colleague Howard Wiarda. Professor Wiarda is the Dean Rusk Professor of International Affairs and head of the Department of International Affairs at the University of Georgia. He spent much of his career as a professor of political science and comparative labor relations and was the Horowitz Professor of Iberian and Latin American Studies at the University of Massachusetts Amherst. He is currently a Senior Scholar at the Woodrow Wilson International Center for Scholars and a Senior Associate at the Center for Strategic International Studies in Washington, D.C. Professor Wiarda is a scholar of Latin American politics and has written widely on that subject. His textbooks on foreign policy and comparative politics in developing nations, as well as other scholarly writings, are rather extensively read, cited, and quoted. He has been a consultant and advisor to several presidents. He has held a number of grants and if I were to read you the list of his publications, I would exhaust the time allotted for this program. Professor Wiarda holds M.A. and Ph.D. degrees from the University of Florida and he joined the University of Georgia faculty this past fall as Head of the Department of International Affairs.

These are three very distinguished and accomplished individuals to address the subject of building the institutions of nations; we will begin with Professor Aucoin.

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5 *The Situation Room* (BBC Four television broadcast, May 12, 2003).
Louis Aucoin: Thank you very much for the kind introduction. I have been asked to talk about constitution-making in emerging democracies. The reason is that I have been spearheading a major project at the United States Institute of Peace for the last three years. I was, as our moderator has indicated, a program officer at the United States Institute of Peace prior to taking an academic position at the Fletcher School this year.

This constitution-making study has been extremely interesting for me. We titled it "Constitution-Making, Peacebuilding, and National Reconciliation" because we wanted to look at the process, as opposed to the substance, of constitution-making. We have found that there is a great deal of research and writing around the world about the substantive features of constitutions, and also the comparative point of view, but very little focus on the process itself, although we have found over the course of conducting this study that there is increased interest in this topic. I think we can think of its relevance in the context of Afghanistan and Iraq.

I also have had a considerable amount of experience serving as an advisor to constitution-making processes. The first time I did that was in 1993 in Cambodia. When I look back on that experience, I wish I had known then what I have since learned about constitution-making. Scott Carlson and I have compared thoughts a lot on this; he did a marvelous job as an advisor in Albania and I think we share a similar philosophy. I have also been involved in the constitution-making process in East Timor. I was also involved in another aspect of the process in East Timor; I was Head of Judicial Affairs for the United Nations in the very beginning of the United Nations mission in East Timor in 2000. I have been thinking about that throughout the course of the panels today. Most recently, I was heavily involved in the Rwandan constitution-making process.

I want to share with you some of the lessons learned and give you a bit of information that we have been able to gain in doing this case study of eighteen countries, most of which are post-conflict countries who have undergone constitution-making processes in the last twenty-five years.

The first observation to share is that there has been an evolution in constitution-making. In order to give you a feel for the kind of evolution I am referring to, I would first point out that, unfortunately, there has been a tremendous information gap; the current information has not caught up in contemporary parlance. There is this myth that still exists about what used to

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happen in the post-colonial period, particularly the African post-colonial period. Colonial powers like the United Kingdom would, as they were passing the torch to independent countries, simply summon the new leaders to London and tell them what their constitution was going to be. This is referred to as the “Lancaster Model”7 of constitution-making and the idea was that people believed that the former colonies were incapable of doing something like writing a constitution.

I have just written an article in the *Georgetown Journal of International Affairs* called “The Role of Constitution Making Experts: Myth and Reality.”8 I tried to bring out this evolution because things have changed rather dramatically. What happened is that the people who ended up having to live under the Lancaster Model constitutions ended up being victims of autocratic systems that were often similar to the old colonial systems. Frequently, the populations in those countries attributed the autocratic and abusive nature to the way in which the whole system had been born and resented these constitutions. Thus, I think it is true that throughout the developing world there is real suspicion of experts coming in who might be attempting to impose a constitution on a new nation. However, as recently as last spring I saw an article in the *New York Times* which was still propagating this old Lancaster Model and assuming that American experts like Scott Carlson and myself were actually running around the world writing people’s constitutions for them, with them having little say whatsoever.9 But nothing could be further from the truth. As a matter of fact, what we have noticed is that there is a new emerging model of constitution-making which some are referring to as a new “demo-

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Democratic constitutionalism," which places a great deal of emphasis on public participation in the constitution-making process.

I want to preface my remarks by immediately pointing out that there is no monolithic way to go about a constitution-making process and there are significant differences between one country engaging in this process and any other. Nonetheless, I think it is undeniable that there is this modern trend. Countries look to each other and have been influenced by this new model of a public participatory process which has emerged. There is also the notion which you find in some of the most recent literature, including some of my own, that the process of constitution-making is actually as important as the substance itself. I hear this being said on many occasions and see it being written.

Why? I think it is because people who have lived under these autocratic and dictatorial regimes in post-conflict countries are increasingly demanding that they have a say in shaping their charter so that they can have a sense of ownership in it. In some people, I find, this concept evokes a certain amount of discomfort, because whether we adhere to this Lancaster Model, or whatever, we still always associate, particularly Americans, a constitution as being written by the elite of our country.

I do not mean to indicate, by describing this new model, that the elite have been jettisoned from the process—far from it. We certainly need elites in the constitution-making process. What I want to put before you is a quote from a colleague of mine who is actually on the working group of this study that we have been conducting. Professor Vivien Hart, Professor of Political Science at the University of Sussex in London, uses quite a lovely metaphor; she talks about this new model as a “conversation” between the elite of the society and the population at large. That is the purpose of this participatory model.

I think there is a need for balance between what we sometimes refer to in discussing constitution-making as “elite pact-making,” which does have to

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10 “Democratic constitutionalism holds that constitutional law, fundamental law, is still political and should be democratically self-given, and people should give themselves their own fundamental law, even their own constitutional law, and that peoples can differ even on matters of fundamental rights.” Jed Rubenfeld, Debate: Is International Law a Threat to Democracy? (Feb. 27, 2004) (debate with Anne-Marie Slaughter at the Council of Foreign Relations), at http://www.cfr.org/pub6829/annemarie_slaughter_jed_rubenfeld/debate_is_international_law_a_threat_to_democracy.php.

happen, and the participation of the population. The right balance between these has to be achieved in every case.

There are advantages to both aspects of the process. The elite pact-making brings technical expertise and can create power-sharing amongst leaders of divergent and often opposing ethnic and political groups in the society. This kind of process is almost always necessary in the initial phase of the constitution-making process in a post-conflict country. For example, this was the way it was done in South Africa, which, by the way, is a bit of a paradigm of this model. In South Africa, there was an interim constitution, which is also typical of this model. Usually, when the interim constitutions are hammered out, the public has not yet been involved in a participatory way. This practice is an elite pact-making exercise designed to create peace and stability while the rest of the process goes forward.

We can already think of how this might play out in Iraq, because we are at the very beginning of this process. I certainly have lots of questions about how things will happen. The participatory aspects have the benefit of offering legitimacy to the constitution-making process and leave people with a sense of ownership. We cannot prove this with any sort of hard data, but we can show it anecdotally. South Africa, again, is a good example. I have been told that just about every household in South Africa has a copy of the Constitution and feels very proud of it because the people feel that they were involved in the process. One figure quoted in connection with the South African constitution-making process is that they had over two million submissions during the course of the process directly from the population as to what they thought should be included in the Constitution.12

What I would like to do as I am describing this model is to give you a thumbnail sketch of some of the typical features of constitution-making processes that include this participatory feature and that are typical of this new democratic constitution-making to which I am referring. As I mentioned, one aspect, one staple of this, is an interim constitution. The interim constitution does not necessarily have to be called a constitution; it takes different forms in different countries. For example, in the transitional situations, not post-conflict, but the transitional situations of Hungary and Poland, this was done through a series of constitutional amendments. In other cases, similar purposes can be established by a peace agreement that calls for a constitution-making process.

One of the things that I think you find typical about the process at this stage is that there is a focus on values and principles. Using the South African example again: in the creation of the interim constitution in South Africa, all of the various elites representing all of the various factions in the society came to an agreement on thirty-two principles on which they could achieve consensus and decided that those principles should govern and guide the rest of the constitution-making process.

In other situations, these interim arrangements, whether a formal constitution, or amendments to the constitution, or in some cases, like for example, Spain, just a series of constitutional laws, provide some detail as to the process that will unfold, so as to avoid conflict.

Another feature that I think is a very desirable feature, again one that was present in the South African case, is giving a judicial institution the jurisdiction to decide disputes that might arise throughout the course of the process. In South Africa, this was done with the Constitutional Court. This also happened in Hungary and Poland as well. Of course, this may not be possible in every case because in order to be able to do this, you have to do it in a country that has a sufficient tradition of the judiciary and power of the judiciary. But if that is the case, I think it is a very desirable feature because it offers potential for conflict resolution and conflict management.

The other feature which tends to be very typical is the existence of a constitutional commission. One thing that might come to mind right away, because we have been so focused on Iraq these days, is how this constitutional commission is selected. The interesting thing to note in terms of our study is that the selection process has been something that, in our experience, in all other cases, has never given rise to any sort of dispute or controversy whatsoever. Typically, these commissions are appointed by an interim executive or the existing executive. The reason why that has not created controversy is because, according to this model, these commissions are decided as part of this elite pact-making that occurs in the early part of the constitution-making process, in which everyone agrees that a commission will be appointed that is as broadly representative of the society as can be possible. So, all of the various ethnic groups, all of the various religious groups, women—everyone—will be included on this commission. The commission can play different roles in different places. Typically what it does in this participatory model is that in this first stage, the commission itself is responsible for conducting a massive program of civic education, which is then followed by a program of popular consultation. This process is particularly necessary in societies where there is a high degree of illiteracy.
Let me make an aside, a point I have to make rather strongly: One lesson we have clearly learned in this study is that, contrary to what people have said in the past, these kinds of participatory processes are entirely possible even when you have a society that might have as much as ninety-five percent illiteracy. I remember in former days when leaders of countries would say to me, “We can’t do that kind of thing in my country because people are not educated.” But we have definitely learned how to do it, and people have told me, in fact some of the elites in the society have told me, that this process is amazing.

I will take just a minute to tell you an anecdote that I find quite illustrative. When I was working with the Rwandans—the Rwandan Commission—I participated in and helped organize a major international conference which was held at the beginning of their process. They had decided that they would go with the participatory process, but then, at this conference, some members of the Commission said to me that they thought that they would end up being a one-party system because they were not ready for multi-party rule. Also, they wanted seats in Parliament reserved for the military because they felt the military had saved them from the genocide. Of course I was not very encouraged by what I was hearing at that stage of the process. But a year later, I was invited to come back and be an advisor when the Commission was actually putting together the draft, after they had consulted their population. They had changed completely. I never dared to remind them of what their earlier views were. Now they were telling me, “We want to be a multi-party democracy,” and had reserved twenty-four seats in Parliament for women. I said, “How did you come up with that?” and they said, “Well, this is what our people want.” They actually went out and, for six months, lived in the villages amongst their people and consulted with the population. They said, “This has been a life-transforming experience for us, to actually live with our people and learn how they really think.” I never have forgotten that. In terms of this balance I was telling you about earlier, between the elite pact-making and the participation, another potential benefit is that participation can actually have a transformative effect on the elite itself.

The final role after popular consultation is for the commission to put together a draft. I have to put a bit of emphasis here, too. One very unhealthy thing that I have seen in a few different constitution-making processes is when

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the drafts come from very powerful individuals or parties early on in the process. This happened in East Timor. I saw this in Cambodia.

In Cambodia, for example, Prince Sihanouk, who is now the King, commissioned a French law professor to write the constitution. There was a drafting committee that was appointed and his son, Prince Ranariddh, came into the proceedings at one point and said, “Here’s the Constitution.” It was drafted by the French law professor. I had been working with a few others and we had been providing the drafting committee with all kinds of comparative information about constitutions elsewhere. They responded by saying that they would take this document into consideration with all the others and, of course, the Prince was furious. The problem with that anecdote is that forever more, there was no discussion of issues. The whole question was whether or not a particular provision or suggestion was consistent with the King’s draft.

The same thing happened in East Timor, where the dominant FRETILIN Party came forward at first with a draft. Then the rest of the process was about whether anything anybody proposed agreed or disagreed with the FRETILIN Party’s political approach on an issue. This is why using a commission can diffuse this problem. People can give drafts to the commission; there is no problem with that. Drafts can come from any angle of the society. Memoranda can come from civil society. Then, the commission itself, based upon all that it has learned and everything that has been submitted, puts together a proposed draft. That focuses much more on the issues than on the politics of who is proposing a particular draft.

The next stage, typically, is bringing the whole thing before a constituent assembly. This step adds more legitimacy to the process, because the constituent assembly will be elected. Now there is a significant question of resources here, because not every post-conflict or developing country will have the resources to elect an assembly specifically for the purpose of debating and finalizing a constitution. It has been done by parliaments and there is nothing wrong with that. Very typically, constitutional assemblies in transitional situations will also act as an interim parliament; that is also another solution to this problem. But at least now you have legitimately elected representatives who will be debating and ruling on every one of the provisions that has been proposed to them by the commission. Of course, new provisions can come in at that time. As I said, it adds yet another level of legitimacy to the process.

Another thing that happens sometimes at the end of the process: countries, particularly those that seem to be influenced by the French constitutional tradition, tend to have a referendum so that the final document will be submitted to the people for a final vote, which is what happened in Rwanda,
for example. The referendum is another tool to increase the legitimacy of the constitution. I think one of the reasons why, particularly in post-conflict countries, there is so much emphasis on this idea of legitimacy is that the hope is that along with the legitimacy will also come stability. If someone attempted to then rule with autocratic means and attempted to jettison the constitution, it would be very hard for that dictator or autocrat to do so, given the legitimacy and the sense of ownership that the people have in the constitution. That, at least, is the idea.

I wanted to mention one other point: that this is not the only way to go about the constitution-making process. I should mention that there are some cultural elements here as well. Our working group has some experts from the former Soviet Bloc countries and they are very suspicious of public participation in any process. I think part of the reason why is that public participation was used during the Communist era; people were trotted out to say, “Oh yes, I’m a private citizen and I’m very much in favor of this, etc.” So they are just really afraid that the public participation process can be used as window dressing. There is a real danger of that, but with more time I could tell you how these dangers can be avoided by a very well-organized program of participation that includes a real synthesis of the results of the popular consultation that then makes its way into a final draft.

As a result, there is another model that has emerged in the Eastern Bloc countries, which has worked quite well for them. They refer to it as the “Round Table Model,” which has some similar features in terms of the fact that the round table of elites is highly representative of all the various political factions in the society and they come together to try to achieve consensus. They build off of existing legalities, so they try to use processes that are legal under the current regime and then they start going about making amendments to their constitution. In Hungary, for example, they did not even consciously admit that they were really starting down the road of a new constitution. It started with amendments that provided for procedures for future amendments to the point where, about eleven years later, they finally admitted that they had a totally new constitution. But that was good for Hungary because it avoided massive disruption, it avoided conflict, and it was democratic in the sense that everybody was represented—but it was not participatory.

In terms of using the participatory model as a sham, I have one more example, Zimbabwe, where Robert Mugabe tried to use the participatory

14 For further discussion of the “Round Table Model,” see THE ROUNDTABLE TALKS AND THE BREAKDOWN OF COMMUNISM (Jon Elster ed., 1996).
process in a sham way in the year 2000 to amend the Zimbabwean Constitution to give him more power. He was aware of this being a model in other parts of the world. His amendment was submitted to the people for referendum in the last analysis and that referendum was rejected, so the sham process was corrected by the popular referendum in Zimbabwe.

There is so much I could tell you about this and I am sorry that I have run out of time, but please feel free to ask me questions about the topic and about any of its potential applications in Afghanistan and Iraq. Thank you.

Dean Lauth: Thank you, Professor Aucoin. Professor Inderfurth?

Karl Inderfurth: Thank you, Dean Lauth. I would like to begin by expressing my appreciation to the organizers of the conference. Clete Johnson has received accolades from all of the panelists and speakers and I would like to add my name to that list. I would also like to thank Professor Loch Johnson, a friend and colleague of more years than we will admit to in this court of law. We have worked together, most recently on a book on the National Security Council,\(^5\) which we trust all of you will purchase after this lecture is over! I also would like to express great appreciation to Leena Johnson. Loch and Leena have invited me to stay with them while I am here and it is great to see them again. It is very good to be here at the University of Georgia.

I attend a lot of conferences and seminar discussions about Afghanistan, which I know a fair amount about, as well as discussions about Iraq. I therefore want to pay my tribute to the first panel. I thought that was one of the best discussions that I have heard on the rule of law and I thought their presentations were excellent. There was a question about who was the James Madison of Afghanistan, or who is writing the constitution. I have thought about that and there is a name that I will give you: Qadir Amiryar. I do not know if anyone here knows Qadir Amiryar, but he is an Afghan-American who is at George Washington University, on the faculty. He took part in the writing of the 1964 Afghan Constitution. With the removal of the Taliban in 2001, he and others went back to their homeland and he has been working on a constitutional commission. The point there is that people have returned home to help out. It is quite noble of them. We have also helped. George Washington University, through the law school, with Dean Michael Young, has sent current law textbooks to Kabul University and the Law School. Of course, the Taliban did not have much use for law books, so we have tried to rebuild that

\(^{15}\) See supra note 4.
library. So it is a bit of a plug to all of you here that may have influence on your institutions to, in large and small ways, help out with the rebuilding of Afghanistan.

This panel is on the building of the institutions of the nation and my title at George Washington is Professor of the Practice of International Affairs. Building on my own government experience, I will talk more about the practice and the experience of institution-building in Afghanistan, and then talk about the implications of this for Iraq.

I think that many of you Time magazine readers saw, about a month ago, the cover, "Afghanistan: The Other War." It is important, as we pay attention to what is happening today in Iraq, to recognize that the "other war" is taking place in Afghanistan. Of course, we do have the overriding "war on terrorism," so I guess we have a three-front war in that respect. But as many of you probably saw in this week's New York Times, there was an article, "Already Stretched Afghan Leaders Face New Threat." It called attention to the situation in Afghanistan where there has been serious fighting in two provinces. The government in Kabul has dispatched the Afghan National Army to these provinces to try to prevent further violence.

The point of this is that, unfortunately, but not surprisingly, over two years since the Taliban was removed from power by the United States military and the coalition, and as Afghanistan is now preparing for both presidential and parliamentary elections in September, that security remains a major concern in that country and the authority of the transitional government of President Hamid Karzai is still being challenged. This is a fact of life in Afghanistan. Further, there are continuing signs of some resurgence in the Taliban. Mullah Omar, the leader of the Taliban, is still at large. As we also know, so is Osama bin Ladin.

What does all this mean? In Washington, one of the think tanks is the Center for Strategic and International Studies (CSIS). One of their policy briefs the other day was labeled "Afghanistan's Unrelenting Challenges." I think that sums up the current situation in Afghanistan.

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16 Tim McGirk & Michael Ware, Remember Afghanistan? Tied Down in Iraq, the U.S. is Still Struggling to Pacify the Country, Root Out the Taliban and Snare Bin Ladin. Inside the Other War, TIME, Mar. 8, 2004, at 46.
How does the Bush Administration view these challenges and how does it see the current situation in Afghanistan? Now, I am not a member of the Bush Administration, but I would like to report on what the U.S. Ambassador, Zalmay Khalilzad, said. He was in Washington a few days ago and did a very in-depth briefing of the situation in Afghanistan. I would like to call attention to some of the things which he said, especially as they relate to the issue of institution-building in Afghanistan.19

My remarks will go beyond rule of law or the constitution. I want to talk about political institutions more generally and also security institutions, which are going to be crucial to Afghanistan if it is going to see itself through the current situation. Ambassador Khalilzad said that what he has been most encouraged about is the progress that is being made in Afghanistan on the political track. I want to quote what he has to say about this. It is very interesting. He said,

After the fall of the Taliban regime we did not seek to govern Afghanistan. Instead we supported the process to set up an Afghan government through the consultative process began at the Bonn Conference at the end of 2001. We sought to reopen the political space that would allow the nation’s moderate tradition to reassert itself and that would encourage restoration of national unity. This would then open the way for Afghan leaders to build a new legitimate political order through a process of consensus.20

The Afghans have their own unique way to develop consensus, which I will talk about in a moment. But all of those statements about reopening political space and allowing Afghan leaders to take the lead has been the Afghan experience; I want to underscore it for you. He went on to say, “Initially we needed to proceed very cautiously [in Afghanistan]. The fragility of the political situation required a step-by-step process.”21

Having said this, he then focused on what he called the “turning point” in this process. It took place in December and January with the convening of the constitutional Loya Jirga, or Grand Counsel. This is the Afghan way of

20 Id. at 5.
21 Id.
seeking consensus. He calls the constitution that emerged after a sometimes heated three-week experience "the most enlightened constitution in the Islamic world." He goes on to state that

It establishes a strong presidency but also creates checks and balances by establishing a parliament that cannot be dismissed by the executive. It enshrines individual rights, including a provision to abide by the U.N. Declaration of Human Rights. It gives women equality before the law. It also requires that twenty-five percent of the parliament, the lower house, be composed of women delegates. It recognizes the need of the ethnic minority communities through provisions to give legal status to their languages. It provides for an independent commission on human rights and elections at all levels.

That is quite an accomplishment. Granted, it will have to be put into practice and that will be the test of Afghanistan in the future. And granted, it is not a perfect document, but as I wrote in an op-ed at the time, neither was the U.S. Constitution when it was approved in 1789. We had a number of things, including issues like slavery and women's rights that had to be worked on over time. I should mention here, by the way, since we are talking about constitutions for a moment, that Ambassador Khalilzad likes to say that he jokes with Afghan leaders that the authors of the new Afghan constitution should cite the authors of the new Iraqi constitution for copyright violations. The fact is there are a number of provisions in the Iraqi constitution that suspiciously resemble the Afghan constitution.

Later, I want to return to this question of comparing and contrasting the Afghan and Iraqi experiences. But let me first address the effort to build up Afghan security institutions.

Ambassador Khalilzad said that the security challenges being faced by Afghanistan in the near term and long term come from three sources. I have mentioned two of them already: the continuing terrorist threat and problems of the warlords and lawlessness. The third source resides at the nexus of

\(^{22}\) Id.

\(^{23}\) Id. at 5-6.

\(^{24}\) Id. at 7.

\(^{25}\) Id.
these two: the rapidly growing illegal drug trade in Afghanistan. The long-term solution to these challenges is the development of Afghan security institutions. That means building up the Afghan National Army, the ANA. It is also crucial in this regard to continue the reforms within the Ministry of Defense in Afghanistan to increase ethnic and political balance, something that was decidedly imbalanced immediately after 9/11, when the government was formed. The Afghan police force, which Germany has the lead for—we heard that earlier—has made improvements and also needs further work. There is also the need for the demobilization of the private militias of the warlords, those that are not part of the Afghan National Army force. These security institutions require further help and assistance from the international community.

I should also mention another encouraging note: somewhat belatedly, Afghanistan is beginning to get greater financial assistance from the international community. Recently there was a conference in Berlin to focus on international reconstruction and development. President Karzai has repeatedly asked the international community for a long-term commitment for reconstruction and development. His government requested $28 billion for the next seven years, about $4 billion per year, at the Berlin conference, which was a follow-on to the Tokyo conference that took place soon after the Bonn Accord. At that conference, about $4 billion was obligated. With the Berlin conference, $8.2 billion for three years was pledged, which averages a little over $2.7 billion per year. This is still well short of the funds and commitment requested by Karzai, but it is a bigger step in the right direction for financial assistance. But even with that better, bigger step, there are those who say we

26 Id.
27 Id. at 8.
28 Id. at 9.
30 Khalilzad Address, supra note 19, at 8.
31 See id. at 9.
can and should do more in Afghanistan, especially when one compares this effort with the U.S. effort we are presently conducting in Iraq. The United States will spend a little over $2 billion in Afghanistan over the next year which is truly a drop in the bucket compared to the billions we are spending in Iraq. Also, in terms of security, there are about 13,000 U.S. troops in Afghanistan. We have already heard earlier that there are about 5000 international troops in Afghanistan as part of the ISAF force.\(^3\) That is compared with 130,000 troops in Iraq, with that number almost now certainly going up. That is the current situation on institution-building.

Let me now turn to the question of Afghanistan and Iraq and try to pull together some lessons from our recent experience in Afghanistan and apply them to the situation in Iraq. I would argue that the U.S. intervention in Afghanistan after 9/11 was done the right way and every effort should be made to follow this model as best we can, even at this stage, in Iraq. For reasons I will discuss, initially we certainly did not do that when the Iraq war began. It was mentioned that I worked at the National Security Council. My boss at that time was Zbigniew Brzezinski. He said recently that what is striking today is the contrast between how we are doing in Iraq and how we are doing in Afghanistan. He said in neither case are we yet in a position to say what the ultimate outcome will be, but in one, we are making visible progress (Afghanistan) and in the other (Iraq) we are encountering very visible and increasing difficulties.

There are several reasons why Afghanistan is more promising, beginning with, and most importantly, the strong support of the international community for our military action there in the immediate aftermath of 9/11. The UN Security Council was behind it; the world was behind it. Moreover, this set the tone for what has followed, which has been a multilateral effort to bring stability to the country and to begin the task of rebuilding and reconstruction. That multilateral effort has included the international peacekeeping force, ISAF, which arrived in Kabul in early 2002 and now is led by NATO. It includes the overall political direction of the international effort there being led by a special representative of the UN Secretary General, Kofi Annan. Until just a few weeks ago, there was Lakhdar Brahimi, who has now been asked to try to help out the situation in Iraq. The multilateral effort includes the international donors’ conferences I mentioned: in Tokyo and, most recently, in Berlin. Thus, there has been a multilateral, international dimension to Afghanistan.

\(^{35}\) See Panel 1, supra note 29, at 138.
Another important contrast with Iraq is the role the Afghans have played in determining their political future after the U.S. invasion took place to remove the Taliban. The Bonn conference brought Afghans from inside and outside the country together to set out a roadmap for their political future. With assistance from many countries, including the United States, the delegates produced the Bonn Accord, which then established the interim government, called for a loyajirga to choose a transitional leadership, and then moved toward a new constitutional arrangement. The next step, and the Afghans are clearly doing their part to stick to this roadmap, will be the presidential and parliamentary elections that were scheduled for June, but because of both logistical and some security concerns, they have been postponed until September. The point is that the Afghans continued to work to implement the plan that they agreed to in Bonn. There was, in short, a clear understanding of what they set out to do, and a strong commitment to follow through.

Contrast this agreement and approach by the Afghans to the political situation in Iraq. The Economist said in an editorial this week, regarding the challenge of Iraq, that “Over the past year, Paul Bremer, Iraq’s American administrator, has changed his plan so many times that Iraqis themselves, let alone spectators from afar, can be forgiven for being confused about what the Americans are currently proposing. This lack of clarity is one of the many failures of the occupation so far.”

There are reasons for this lack of clarity and certainly the situation has been in many ways more difficult. But contrast that with the focus that Afghanistan has had continually since 9/11 and since the U.S. military action there.

Another contrast that deserves comment is how the Afghans themselves view the American involvement in their country. Simply stated, they do not see the U.S. military as an occupying force. Even though there have been some low points, including U.S. bombs that have hit civilians and not their intended targets, there is strong support in Afghanistan for the U.S. military, and those forces that have been sent there by the rest of the international community, meaning ISAF. Remember that Afghans have a long history of resisting and repelling foreign invaders and occupiers. Ask the British and the Soviets about that. But the Afghans do not see us in that light today and that is in sharp contrast with what we see in Iraq.

36 Id.
A final contrast between the situations in Afghanistan and Iraq relates to the
domestic political environment. Unlike Iraq, there is a broad, national
consensus with strong bipartisan support for the U.S. involvement in
Afghanistan. People understand why we went there right after 9/11: it was to
get bin Ladin and Al-Qaeda and to get rid of the Taliban regime which had
provided them safe haven. We are clearly there to ensure that these terrorist
elements never come back to threaten us or the international community again.
The American people see the Afghans trying to do their part, to build these
new democratic, pluralistic institutions. All of this stands, unfortunately, in
sharp contrast to the way that the Bush Administration took the country to war
in Iraq, what we have since learned about Iraq's weapons of mass destruction
or lack thereof, and the lack of ties to Al-Qaeda and other terrorists that were
thought to be involved in 9/11.

Let me conclude by leaving you with a couple of thoughts on this question
of how long the U.S. commitment to Afghanistan will be required. First, we
cannot repeat the history of our past involvement in Afghanistan. By that I
mean we cannot repeat the mistake of abandoning Afghanistan, which is what
we and the international community did after the Soviets were defeated and
left in February of 1989. As Ambassador Khalilzad said, "Even if we capture
Usama bin Laden, and the other terrorist leaders, we will stay the
course."\footnote{Khalilzad Address, supra note 19, at 5.}

How long must we stay that course is the question. How long will the U.S.
commitment in Afghanistan be required? Of course, nobody can answer that
question; there are too many variables there to take into account. But it is very
clear from what we do know: We will need to stay in Afghanistan for a long
time and it is going to be a dangerous place. I have heard others say that there
is no shortcut out of Afghanistan. But I think it is fair to say that we have to
recognize that, for at least the next five or more years, U.S. forces will be
trying to maintain a level of order and peace behind which Afghanistan can
gradually do what this panel is about: to build the institutions of a nation,
including those relating to the political and security areas. There was an
The \textit{Times} said, and this is a quote I will finish with,

\begin{quote}
America took on the challenges of Afghanistan because the breakdown of governmental authority over nearly a quarter-
century of civil war had opened the country to international
\end{quote}
terrorists. Until that authority is effectively re-established by a
government that meets the needs and aspirations of Afghans of
both genders, America’s work will not be completed.  

I for one certainly agree with that assessment; I hope that you do too. I will
end there so we can go on to our third panelist.

Dean Lauth: Thank you very much, Professor Inderfurth. Professor Wiarda?

Howard Wiarda: Let me also thank the organizers of this conference who have
done a marvelous job: Dan Bodansky, Clete Johnson, and the other students,
faculty, and administrators. Thank you, Tom Lauth for that nice introduction.

I think U.S. foreign policy is in very bad trouble in both Afghanistan and
in Iraq. I think it was illusory on our part to think that either of those countries
could be quickly remade as democratic countries. I think neither the United
States nor the international agencies are very good at nation-building or even
know what they are doing in most cases. I believe that in these countries,
neither the political culture, the level of socio-economic development, the
institutional structure, nor civil society are conducive to democracy, at least in
the short term. So far as we know, no one with any sophisticated knowledge
of Iraq, the Middle East, or the difficulties of nation-building was involved in
the initial decision-making to go into Iraq. We do know that those with
expertise, the so-called “Arabists” within the State Department, were
purposely excluded from the decision-making process so the decision could be
made at presidential levels on political grounds, on ideological grounds,
without real expertise being brought to bear on this issue.

I think you will find that I am more skeptical, less hopeful, and less
optimistic than most of our speakers. I am close to the Brent Scowcroft/Colin
Powell school, which suggests that you have to pick and choose your
interventions very carefully, and pick those that have some possibilities for
success, as compared with failures, because failure is politically devastating,
not only to the administration in power but also to the United States in general.
It is clear that we cannot do interventions or nation-building often. It is too
expensive. The public does not support it. I think we all understand that the
United States cannot be either the world’s policeman or fireman.

I also worry, as a social scientist and one who has written extensively about
cultural affairs, that, for the most part, we know little about the countries in

40 Id.
which we get involved. We often do not speak their languages; we do not understand how their societies and their political systems operate. It is exceedingly risky on our part to get involved in societies about which we know so little. It damages them as well as us.

Let me run through the way social scientists might approach this kind of issue and the way that social science might then enlighten foreign policy decisions in this regard. I will look at just five aspects, although there are a number of other features to examine. It is a complex situation and in the short time we have this will have to be a quite general presentation.

The first thing you look at is the level of socio-economic development. In Iraq and Afghanistan, levels of socio-economic development are low and general standards of living in the present circumstances of chaos, violence, and near-war are also rapidly falling. Afghanistan has a per-capita income of about three or four hundred dollars per person per year.\(^4\) Iraq is close to the $2,000 per person per year rank.\(^2\) Both countries have fairly weak middle classes, so the first thing you should think about is to what degree is it possible, in such poor countries as these, and particularly in Afghanistan, to build a functioning democracy of the sort that all of us, myself included, would prefer. Thus, the first variable that you have to take into account is the level of socio-economic development and the degree to which that level is conducive to the building of the institutions for democracy.

The second thing to examine is political culture. Historically, neither Afghanistan nor Iraq has had any experience whatsoever with democratic rule. Neither the Koran nor the Sharia support notions of modern participatory, democratic rule. In contrast, there is ample justification for authoritarian, strong government, top-down, theocratic kind of rule. However, these sources of Islamic belief and law do support forms of consultation, which one could build on to develop democracy. But clearly that will take a long time as it did in our own country.

Third, one looks at institutions. Virtually all institutions in Iraq were destroyed by Saddam Hussein, particularly those institutions that might have served as foundations of future democracy. Whether one is talking about the

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\(^4\) The World Bank estimates that the per-capita gross national income for Afghanistan for 2003 was $765 or less (the "low income" category). World Bank World Development Indicators Data Query, at http://devdata.worldbank.org/data-query (last visited Nov. 10, 2004).

\(^2\) The World Bank estimates that the per-capita gross national income for Iraq for 2003 was between $766 and $3035 (the "lower middle income" category). World Bank World Development Indicators Data Query, at http://devdata.worldbank.org/data-query (last visited Nov. 10, 2004).
judicial system, the courts, parliamentary tradition, local government, or some
degree of participation, almost all were destroyed by the dictatorship or in the
course of the ongoing war. First of all, they were quite weak to begin with,
and secondly, they were destroyed by some thirty years of dictatorship and
now conflict. Therefore, you do not have the institutional base for a more
participatory, democratic system.

Fourth, civil society in both countries is incredibly weak. After much
experience, neither we nor the military really know how to create civil society
in other people’s countries. Neither we, nor the National Endowment for
Democracy, nor the Republican or Democratic International Affairs Institutes
of the two political parties in Washington, nor the Europeans, nor the UN
really know how to create political parties, trade unions, or peasant associa-
tions in other countries.

We rarely understand the givens of these societies. We all understand, deep
in our hearts, that democratic institutions and civil society have to be
indigenous if they are to succeed. They cannot be imposed from the outside
and particularly not by occupiers—it just does not work that way.

One might add a further complication, worth further discussion: it may be
that in the Iraqi or Afghan situation, the kind of civil society that we will get
is not the kind of civil society that we, as pluralist democrats, would like to
see. We may see Islamic fundamentalism come to power as the result of civil
society development, as opposed to a happy democratic, pluralist, socially just
society.

In addition, Iraq and Afghanistan are divided, tribal, ethnic societies. Both,
particularly Iraq, are artificial creations, created by departing colonial powers,
without a sense of nationhood of the sort with which nation building can go
forward.

Finally, let me emphasize one point: the weak leadership in both countries.
The number of people that one can turn to as possible presidential candidates
or cabinet officials in both countries is exceedingly thin. Leadership is crucial,
particularly in societies that lack the infrastructure of civil society. In this
country, civil society is so powerful that, frankly, we could get along without
a government in Washington for a fairly long period of time because the
country pretty much runs itself. But this is not so in Afghanistan or in Iraq.
Central institutions, that actually are effective in delivering real goods and
services, must be in place in the absence of local or regional grass-roots society
in these countries to help implement all of these demands and programs.

All of these factors (I have listed five) tend to be negatively correlated with
the possibilities for democracy, in both Iraq and Afghanistan. We all
understand that correlation does not imply causation, but when you add a number of factors, when you take several variables and run a multiplier on the odds of success, and when you do the kind of analysis that social scientists do, you come up with a ratio that suggests that successful achievement of democracy, in either Afghanistan or Iraq, is about at the level of your possibilities of winning the state lottery.

It seems to me that if the odds are that low, decisionmakers who must make calculuses about the costs of their policies, the effects of their policies, and the relationship between costs and benefits, must be very careful about committing American resources massively, as we have done in these countries, in places where the odds against our succeeding are so low. In other words, it is not sufficient to say, “Well we hope for democracy in Afghanistan and Iraq, in the long term.” There is actually a way to calculate what the odds are in countries such as these, and frankly, the odds are very low.

I think almost all of us understand, therefore, that first of all, we have to choose which countries, which failed states, we are going to get involved in. Clearly we cannot do all of them and maybe not more than one at a time. We also have to recognize, and places like Russia, the Ukraine, Belarus, and others come to mind, that nation building is really a three- or four-generation process; it is not three or four years, which is what our policy makers tend to tell us because that is the length of their political terms. So we are talking about long-term projects.

No one who has been to Russia could really conceive that Russia will build a full participatory, democratic system in less than seventy-five or one hundred years. These are difficult, drawn-out projects. It is illusory on our part to think that we can go in, spend a little time and money, and then extricate ourselves, and that democracy will suddenly flower in countries that, as I have indicated, do not have the socio-economic, the political, the cultural, the institutional, the leadership, or the civil society base to support democratic institutions. Almost all of my graduate students could have run correlations with the factors and variables that I have indicated, and come up with a much more informed policy than did the National Security Council when it was considering the possibilities of going into Iraq.

Let me end, then, perhaps having provoked you a little, by suggesting roughly seven steps. Some of this may sound politically cynical but this is how it often works. First, the military has to go in, in a place like Afghanistan or Iraq, and has to restore some degree of order as well as disarm highly armed and dangerous populations. You have to make the country more or less safe and secure so that political and civic institutions can grow in a more or less
peaceful environment. My heart goes out to the kids, eighteen-, nineteen-, or twenty-year-old American servicemen serving in Iraq, few of whom know the language or have ever been in an Islamic culture before. We cannot expect them to do the kind of sophisticated institution-building and nation-building that we are in fact calling on the armed forces to do. It just cannot be done. However, the military can restore some degree of order and that is the first step.

The second step, which may occur concurrently, is to pour in billions of dollars. That is the only way to do it. It does not matter where it goes; we just need to get the economy moving. We could drop it from helicopters and it would probably do about as much good as most USAID programs in these countries. The money provides some degree of loyalty to the regime providing those dollars. You need to get money flowing in countries that have been devastated and destroyed. If you wait for aid projects or international agency projects, you may be waiting three or four years. By that time the political circumstances may have changed. Thus, pour in the billions. The taxpayers will scream, but you can buy some time, you can buy some space, and you can buy some loyalty with those kinds of dollars.

Third, allow the civilians to come in and do their thing: civil society, nation-building, and the like. We are a missionary nation and that is what we do. We are a beacon on a hill; at least, we think we are. We will send our cadres into poor third world countries, whether they want them or not. Thus, we have to allow some space for those kinds of opportunities. I say this seriously because the civilians, just like the military, also do good—but within limited confines. They cannot create democracy; they cannot create political party systems; they cannot create unions, peasant organizations, or a pluralist civil society. Outsiders cannot do that. However, they can nudge, push, cajole, and, perhaps, do some things that get some groups started in the right direction.

Fourth, you must hold elections. It does not matter a great deal who wins. Hold elections and proclaim it a democracy, even if it is flawed. We must call it a democracy because that is what we stand for and that is what will enable the administration in power to claim success. It may be only an electoral or limited democracy, not liberal or pluralist democracy, but some democracy is better than none.

Then what you do is you hope. Remember that these are three- or four-generation projects, not three- or four-year projects. You hope that the old animosities that caused the flare-up, whether it is in Rwanda between ethnic groups, whether it is in southeast Europe, for example, between Serbs,
Albanians and others, or in Afghanistan or Iraq, will lessen. You hope that the time that you have bought and the space that has been provided by pouring in billions of dollars will give you enough time, maybe three to five years, in short-range terms, so that some of the animosities that gave rise to the violence in the first place will fade away. You forgive and forget; you hope for the best.

This is not an exceedingly broad or overly ambitious agenda, but it may be a realistic one. In other words, the hope-for-the-best agenda is about all that I can offer you, frankly, because the other alternatives are even worse. For example, we could do nothing and let chaos or worse ensue. Or we could stay there ourselves for the next sixty or seventy years, which looks to me not only very difficult but impossible from a political point of view. So you hope that by the time your military and civilian forces pull out that enough of the older animosities will have resolved themselves without flaring up again at the very moment that you pull out.

Next, you get out quickly, as fast as you can. Proclaim it a “success.” Politically, that is the only way that you can get out, even if you have been defeated or if you leave chaos in your wake, which is very likely to happen. This of course is what the debate about whether we should leave Iraq by June 30 was all about. All of us understand that none of Iraq’s problems could be solved by June 30. On the other hand, if you wait longer, you are into the U.S. electoral cycle. Since that cannot be permitted, we have to withdraw our administrator, Ambassador Bremer, by June 30, while leaving 100,000 troops behind to make sure that it does not collapse between July and November.

Finally, once you have quickly gotten out and proclaimed it a success (whether it is or not), if it then falls apart again, find someone else to blame: the local forces, the United Nations, or your political opposition. Thank you very much.

Dean Lauth: It is time for us to conclude this session. I want to thank our distinguished and provocative panel. Thank you for being here.