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## Two Sides of the Same Coin: The Link Between Illicit Opium Production and Security in Afghanistan

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## Two Sides of the Same Coin: The Link Between Illicit Opium Production and Security in Afghanistan

Elizabeth Peterson \*

Since 2001, the United States and its allies have invested billions of dollars in rebuilding a democratic Afghanistan.<sup>1</sup> Their efforts have been stymied by the increased production of opium. In 2006, 165,000 hectares of land in Afghanistan were used to cultivate opium poppy.<sup>2</sup> Afghanistan's total potential opium production in 2006 alone was 6100 metric tons,<sup>3</sup> 92% of the global supply of illicit opium.<sup>4</sup>

The opium situation has been particularly bad in Afghanistan's southern provinces.<sup>5</sup> A district chief in the Helmand province<sup>6</sup> explained: "Of course we're growing poppy this year. The government, the foreigners—they promised us help if we stopped. But where is it?"<sup>7</sup> A smuggler from Kandahar<sup>8</sup> said: "Whatever I am,

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1. CIA, *The World Fact Book: Afghanistan* (May 7, 2007), <http://www.cia.gov/cia/publications/factbook/index.html> (last visited May 7, 2007) (the international community has pledged over \$24 billion to Afghanistan since 2002).

2. UNITED NATIONS OFFICE ON DRUGS AND CRIME, *AFGHANISTAN OPIUM WINTER RAPID ASSESSMENT SURVEY 8* (Feb. 2007), available at [http://www.unodc.org/pdf/research/2007\\_ORAS.pdf](http://www.unodc.org/pdf/research/2007_ORAS.pdf) [hereinafter UNODC FEBRUARY 2007 SURVEY].

3. UNITED NATIONS OFFICE ON DRUGS AND CRIME, *AFGHANISTAN: OPIUM SURVEY 2006 6* (Oct. 2006), available at [http://www.unodc.org/pdf/research/AFG05%20\\_full\\_web\\_2006.pdf](http://www.unodc.org/pdf/research/AFG05%20_full_web_2006.pdf) [hereinafter UNODC OCTOBER 2006 SURVEY].

4. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 6; Antonio Maria Costa, *Preface to UNODC OCTOBER 2006 SURVEY*, *supra* note 3, at iii (Afghanistan has "the dubious distinction of having nearly a monopoly of the world heroin market.").

5. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 8 (cultivation in the five southern provinces—Hilmand, Kandahar, Uruzgan, Zabul, and Day kundi—increased by 121% between 2005 and 2006, from 46,147 hectares to 101,900 hectares).

6. 42% of Afghanistan's 2006 opium crop was produced in Hilmand. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 40.

7. Andrew North, *Losing the War on Afghan Drugs*, BBC NEWS, May 18, 2005, [http://news.bbc.co.uk/2/hi/south\\_asia/4493596.stm](http://news.bbc.co.uk/2/hi/south_asia/4493596.stm).

8. Kandahar yielded approximately 7.5% of the Afghan opium crop in 2006. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 40.

I am not killing people, I am not looting people, I am not doing any other kind of illegal job . . . I belong to a family who live within the limits of Islam.”<sup>9</sup> At the same time, people in communities that have not grown opium poppies have become quite frustrated. In Asad Khyal, a village leader lamented: “We never grew poppies, we never courted the Taliban, we lived by the law and our minds and lives were burnt by the war. Still, the international community just keeps giving money to poppy growers and criminals to win them over.”<sup>10</sup> The situation was described very succinctly, and rather pessimistically, by a farmer in Helmand: “We don’t have law. This is a warlord kingdom.”<sup>11</sup>

The opium situation in Afghanistan is bleak, but it is not completely hopeless. Some progress is being made in the war against drugs in Afghanistan, but this progress is fragile. This Note will set out why Afghanistan is susceptible to the proliferation of narcotics, how this vulnerability affects Afghanistan and the rest of the world, and what the United States can do to help the Afghan Government eradicate opium production within its borders.

Part I of this Note will provide a brief overview of major events in the last century of Afghan history in an attempt to explain why Afghanistan is prone to conflict and widespread illegal activity. Part II will describe the current shape of opium production in Afghanistan and how this affects other states. Part III will discuss efforts that the Afghan Government and the international community have made to curb opium production. Part IV will analyze some of the current tools available to eradicate opium production. This Note will conclude that the United States can assist Afghanistan effectively in its fight to eliminate opium production.

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9. Tom Coghlan, *Meeting an Afghan Drugs Smuggler*, BBC NEWS, May 18, 2005, [http://news.bbc.co.uk/2/hi/south\\_asia/4522957.stm](http://news.bbc.co.uk/2/hi/south_asia/4522957.stm).

10. Soutik Biswas, *Afghan Village Mirrors National Plight*, BBC NEWS, Sept. 13, 2005, [http://news.bbc.co.uk/2/hi/south\\_asia/4244454.stm](http://news.bbc.co.uk/2/hi/south_asia/4244454.stm). For a further discussion of the extreme poverty in Afghanistan, see *infra* note 59.

11. David Rohde, *Losing “Little America”: Afghanistan, 5 Years Later*, N.Y. TIMES, Sept. 5, 2006, at A1, available at 2006 WLNR 15336511.

## I. AN OVERVIEW OF THE LAST HUNDRED YEARS OF AFGHAN HISTORY

Afghanistan is located at “the crossroads of Asia”<sup>12</sup> and was occupied by one foreign power after another after the rise of Zoroastrianism in the seventh century BCE.<sup>13</sup> Afghanistan became a fully independent state in 1919 and Amir Amanullah became its king.<sup>14</sup> Afghanistan adopted its first liberal constitution under King Zahir in 1964.<sup>15</sup> King Zahir’s cousin, Sardar Mohammad Daoud, seized power in a military coup in 1973, and was killed in a subsequent coup by the communist People’s Democratic Party of Afghanistan (PDPA) on April 27, 1978.<sup>16</sup>

The PDPA “brutally imposed a Marxist-style ‘reform’ program, which ran counter to deeply rooted Afghan traditions.”<sup>17</sup> A revolt began in eastern Afghanistan during the summer of 1978 and spread across the country.<sup>18</sup> The PDPA responded by “inviting” the Soviets

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12. NIKLAS L.P. SWANSTRÖM & SVANTE E. CORNELL, A STRATEGIC CONFLICT ANALYSIS OF AFGHANISTAN 1 (2005), available at <http://www.silkroadstudies.org/new/docs/publications/2005/050820AFGHAN.pdf>.

13. LARRY P. GOODSON, AFGHANISTAN’S ENDLESS WAR: STATE FAILURE, REGIONAL POLITICS, AND THE RISE OF THE TALIBAN 24 (2001). In the late nineteenth and early twentieth centuries, Afghanistan served as a buffer between the British and Russian Empires in what has come to be known as the “Great Game.” *Id.* at 32. The “Great Game” was taken from RUDYARD KIPLING, *KIM* (1919). GOODSON, *supra* note 13, at 27.

14. GOODSON, *supra* note 13, at 36. King Amanullah introduced a number of secularizing reforms in the 1920s. U.S. DEPARTMENT OF STATE, BACKGROUND NOTE: AFGHANISTAN (Dec. 2005), <http://www.state.gov/r/pa/ei/bgn/5380.htm> [hereinafter STATE DEP’T, BACKGROUND NOTE]. These reforms included the “abolition of the traditional Muslim veil for women and the opening of a number of co-educational schools.” *Id.*

King Amanullah abdicated in 1929, and was eventually replaced by Nadir Khan, who ruled until 1933. *Id.* Prince Nadir was succeeded by his son, Zahir Shah, who ruled from 1933 until 1973. *Id.*

15. U.N. DEVELOPMENT PROGRAMME, SECURITY WITH A HUMAN FACE: CHALLENGES AND RESPONSIBILITIES, NATIONAL HUMAN DEVELOPMENT REPORTS 94 (2005), available at <http://www.undp.org/dpa/nhdr/af-files/afnhdr2004-complete.pdf> [hereinafter UNDP, SECURITY WITH A HUMAN FACE]. This constitution was used as the basis for the Bonn Agreement of Dec. 5, 2001. *See infra* note 48.

16. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 15, at 94.

17. STATE DEP’T, BACKGROUND NOTE, *supra* note 14 (“Decrees forcing changes in marriage customs and pushing through an ill-conceived land reform were particularly misunderstood by virtually all Afghans. . . [and] thousands of members of the traditional elite, the religious establishment, and the intelligentsia were imprisoned, tortured, or murdered.”). *See also* GOODSON, *supra* note 13, at 55–56.

18. GOODSON, *supra* note 13, at 56–57.

to Afghanistan in 1979.<sup>19</sup> The Soviets invaded Afghanistan on December 25, 1979, and occupied until February 1989.<sup>20</sup>

The Soviets faced an “increasingly strong Mujahideen resistance in response to the invasion.”<sup>21</sup> This resistance movement grew because the invasion served as a rallying point for Islamic extremists in the 1980s.<sup>22</sup> The resistance movement also received “substantial international assistance.”<sup>23</sup>

Ultimately, the Soviet invasion inflicted tremendous damage on Afghan society: at least one million Afghans were killed<sup>24</sup> and millions became refugees.<sup>25</sup> The social structure was altered as well, as

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19. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 94. *See also* GOODSON, *supra* note 13, at 58.

20. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95. For a detailed account of the Soviet occupation, *see, e.g.*, GOODSON, *supra* note 13, at 55–69.

21. SWANSTRÖM & CORNELL, *supra* note 12, at 2. *See also* AHMED RASHID, TALIBAN 208 (2001) (“The Afghan Mujaheddin contributed to the demise of the Soviet Union, the Soviet empire and even communism itself.”).

22. NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., 9/11 COMM’N REPORT 55 (2004), available at <http://www.9-11commission.gov/report/911Report.pdf> [hereinafter 9/11 COMM’N REPORT] (“Young Muslims from around the world flocked to Afghanistan to join as volunteers in what was seen as a ‘holy war’—*jihad*—against an invader. The largest numbers came from the Middle East. Some were Saudis, and among them was Usama Bin Ladin.”). *See also infra* note 36.

23. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95. One report says the United States gave \$3 billion in “military and economic assistance to Afghans and the resistance movement.” STATE DEP’T, BACKGROUND NOTE, *supra* note 14. Another source indicates that the United States spent between four and five billion dollars in Afghanistan between 1980 and 1992. RASHID, *supra* note 21, at 18. Additionally, “US funds were matched by Saudi Arabia and together with support from other European and Islamic countries, the Mujaheddin received a total of over US\$10 billion. Most of this aid was in the form of lethal modern weaponry given to a simple agricultural people who used it with devastating results.” *Id.* (footnote omitted).

Alfred W. McCoy described U.S. involvement in Afghanistan during the Soviet occupation as “covert warfare” and “a desperate response to a crisis that threatened the U.S. position in a strategic theater that arched from Saudi Arabia to India.” ALFRED W. MCCOY, THE POLITICS OF HEROIN: CIA COMPLICITY IN THE GLOBAL DRUG TRADE 472 (2d rev. ed. 2003). For further discussion of this point, *see id.* at 470–78.

24. STATE DEP’T, BACKGROUND NOTE, *supra* note 14. Another report indicates that 1.5 to 2 million Afghans were killed, with an equal number maimed or wounded. SWANSTRÖM & CORNELL, *supra* note 12, at 2.

25. The UNDP reported that three million Afghans fled to refugee camps in Pakistan and two million went to Iran. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95. Another report estimates that six million Afghans became refugees, and several million more “were forced into internal displacement.” SWANSTRÖM & CORNELL, *supra* note 12, at 2.

the radical Mujahideen gained power.<sup>26</sup> The Soviet invasion also devastated Afghanistan's infrastructure.<sup>27</sup>

The Soviet occupation was followed by a period of high intensity civil war, lasting approximately from 1989 to 1992.<sup>28</sup> The Afghan state had seriously disintegrated by the early 1990s.<sup>29</sup> This gave way to the rise of the Taliban regime in the mid-1990s.<sup>30</sup>

The Taliban was comprised of former Afghan refugees who were indoctrinated with very conservative values in *madrassas* in Pakistan.<sup>31</sup> The Taliban "enjoyed the financial and military support of Pakistan's Inter-Services Intelligence Agency, and were also welcomed by the majority of the Afghan population, which was traumatized by the behaviour of local Mujahideen fighters."<sup>32</sup> The Taliban imposed a strict interpretation of the *Sharia* law which adversely "affected the lives of urban women and girls who had to wear the all enveloping *chaddari*, and who were forbidden to attend schools or university, to work, or to leave their homes without a male relative."<sup>33</sup> The Taliban also "committed serious atrocities against minority populations, particularly the Shi'a Hazara ethnic group, and killed noncombatants in several well-documented instances."<sup>34</sup>

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26. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95 ("Authority increasingly came from local Mujahideen militia commanders, whose newly acquired wealth and power was bolstered by an aid-arms industry."). The Mujahideen "fell into increasingly vicious in-fighting in the early 1990s, effectively leading to the collapse of the Afghan state, which was capitalized upon by the emergent Taliban movement to grab power in the mid-1990s. . . ." SWANSTRÖM & CORNELL, *supra* note 12, at 2.

27. SWANSTRÖM & CORNELL, *supra* note 12, at 2.

28. GOODSON, *supra* note 13, at 70–73.

29. SWANSTRÖM & CORNELL, *supra* note 12, at 3 (Afghanistan was "conquered successively by various armed factions that exercised little or no responsible control even over the use of force or law and order, let alone any economic and social functions of the state.").

30. GOODSON, *supra* note 13, at 73–81. The Taliban took control of Kabul in 1996. *See generally* RASHID, *supra* note 21, at 17–54 (describing the rise of the Taliban regime in great detail); UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95; STATE DEP'T, BACKGROUND NOTE, *supra* note 14.

31. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95; RASHID, *supra* note 21, at 23.

32. UNDP, SECURITY WITH A HUMAN FACE, *supra* note 16, at 95.

33. *Id.* at 96. For more information about women's lives under the Taliban, *see, e.g.*, RASHID, *supra* note 21, at 105–16.

34. STATE DEP'T, BACKGROUND NOTE, *supra* note 14. The Hazara people are the largest Shia Muslim group in Afghanistan, they live in the center of the country, and comprise approximately ten percent of the Afghan population. GOODSON, *supra* note 13, at 16. In 1998,

The Taliban had very close ties with the terrorist organization Al Qaeda from 1996 until 2001.<sup>35</sup> Al Qaeda's leader, Osama Bin Ladin, had a close relationship with Taliban leader Mullah Omar.<sup>36</sup> The Taliban supported Al Qaeda by allowing its members to "travel freely within the country, enter and exit it without visas or any immigration procedures, purchase and import vehicles and weapons, and enjoy the use of official Afghan Ministry of Defense license plates."<sup>37</sup> In effect, the Taliban provided Al Qaeda "a sanctuary in which to train and indoctrinate fighters and terrorists, import weapons, forge ties with other jihad groups and leaders, and plot and staff terrorist schemes."<sup>38</sup> Al Qaeda set up camps in Afghanistan which trained 10,000 to 20,000 fighters.<sup>39</sup>

Al Qaeda was responsible for the bombing of the U.S. embassies in Nairobi and Dar Es Salaam on August 7, 1998<sup>40</sup> and the attacks on the United States on September 11, 2001, in which almost 3000 people were killed.<sup>41</sup> The U.N. was very wary of the Taliban's connection to Al Qaeda prior to 2001,<sup>42</sup> and it condemned the attacks of September 11, 2001.<sup>43</sup>

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"the Taliban increased their pressure on the Hazara population by restricting the supply of food aid to the starving people of central Afghanistan." *Id.* at 79.

Rashid explains the consequences of the Taliban's actions: "The civil war . . . divided Islamic sects and ethnic groups in a way that before was unimaginable to ordinary Afghans. . . . [T]he Taliban massacres of Hazaras and Uzbeks in 1998 ha[d] no precedent in Afghan history and perhaps ha[ve] irreparably damaged the fabric of the country's national and religious soul. The Taliban's deliberate anti-Shia programme has denigrated Islam and the unity of the country as minority groups tried to flee the country en masse." RASHID, *supra* note 21, at 83.

35. 9/11 COMM'N REPORT, *supra* note 22, at 63–67.

36. *Id.* at 66. For more information about Mullah Omar, see RASHID, *supra* note 21, at 131–40.

37. 9/11 COMM'N REPORT, *supra* note 22, at 66.

38. *Id.*

39. *Id.* at 67.

40. STATE DEP'T, BACKGROUND NOTE, *supra* note 14. These attacks killed 220 people and "made Bin Laden a household name in the Muslim world and the West." RASHID, *supra* note 21, at 134.

41. For a detailed account of the attacks, see generally 9/11 COMM'N REPORT, *supra* note 22.

42. The Security Council expressed its disapproval of the Taliban in a number of resolutions. See, e.g., S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999) (indicted Osama bin Laden as a terrorist and called upon states to sanction the Taliban); S.C. Res. 1333, U.N. Doc. S/RES/1333 (Dec. 19, 2000) (noting that the Taliban benefited from the sale of opium and called upon states to freeze funds related to the Taliban).

43. S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sept. 12, 2001). The U.N. noted the link

The United States and its allies reacted swiftly to the September 11 attacks. They commenced a military campaign against Afghanistan on October 7, 2001.<sup>44</sup> The U.N. established the International Security Assistance Force (ISAF) on December 21, 2001.<sup>45</sup> The U.N. also established the U.N. Assistance Mission in Afghanistan (UNAMA),<sup>46</sup> whose mandates have emphasized the link

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between terrorism and narcotics. See S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001) (listed anti-terrorism measures that should be taken by the international community). Also, the Security Council Note[ed] with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials. And in this regard, the Security Council emphasize[d] the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security. S.C. Res. 1368 ¶4, U.N. Doc. S/RES/1368 (Sept. 12, 2001). The U.N. also condemned the Taliban. S.C. Res. 1378, U.N. Doc. S/RES/1378 (Nov. 14, 2001) (condemns the Taliban and “[e]xpresses 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 respect Afghanistan’s international obligations, including by cooperating fully in international efforts to combat terrorism and illicit drug trafficking within and from Afghanistan” S.C. Res. 1378, *supra* at ¶ 1).

44. This campaign, Operation Enduring Freedom, was a response to “the Taliban’s repeated refusal to expel bin Laden and his group and end its support for international terrorism. . . . [And it] target[ed] terrorist facilities and various Taliban military and political assets within Afghanistan. Under pressure from U.S. military and anti-Taliban forces, the Taliban disintegrated rapidly, and Kabul fell on November 13, 2001.” STATE DEP’T, BACKGROUND NOTE, *supra* note 14.

45. S.C. Res. 1386, U.N. Doc. S/RES/1386 (Dec. 20, 2001) (established ISAF with a six month mandate). ISAF is managed by NATO. For more information about ISAF, see International Security Assistance Force (ISAF) Homepage, <http://www.nato.int/isaf/> (last visited Mar. 23, 2007). The Security Council has extended ISAF’s mandate. S.C. Res. 1413, U.N. Doc. S/RES/1413 (May 23, 2002); S.C. Res. 1444, U.N. Doc. S/RES/1444 (Nov. 27, 2002); S.C. Res. 1510, U.N. Doc. S/RES/1510 (Oct. 13, 2003); S.C. Res. 1563, U.N. Doc. S/RES/1563 (Sept. 17, 2004); S.C. Res. 1623, U.N. Doc. S/RES/1623 (Sept. 13, 2005); S.C. Res. 1659, U.N. Doc. S/RES/1659 (Feb. 15, 2006); S.C. Res. 1707, U.N. Doc. S/RES/1707 (Sept. 12, 2006). See also Sheryl Gay Stolberg, *Pressing Allies, President Warns of Afghan Battle*, N.Y. TIMES, Feb. 16, 2007, at A1. Currently, NATO has about 35,000 troops in Afghanistan, about 13,000 of them American. The United States has 9000 more troops in Afghanistan operating outside the NATO mission, handling tasks like specialized counterterrorism work and helping to train Afghan forces. Gen. David J. Richards of Britain, the outgoing NATO commander in Afghanistan, said [in July 2006] that NATO was 4000 to 5000 troops short. *Id.* See also *The Army in Afghanistan: A Thin Green Line*, ECONOMIST, Aug. 19, 2006, at 50 (A “central weakness” in the overall mission is that “[t]he NATO force has no reserves to reinforce troops in the most violent bits of its beat—despite its military chiefs having requested around 1,000 well-equipped troops to carry out this crucial role.”).

46. S.C. Res. 1401, U.N. Doc. S/RES/1401 (Mar. 28, 2002) (established the U.N. Assistance Mission in Afghanistan (UNAMA) with a twelve month mandate). For more



between eradicating illicit narcotics production and democratic development.<sup>47</sup>

The Afghan people have also tried to establish a new government. On December 5, 2001, representatives from various Afghan tribes signed the Bonn Agreement, which set up an interim government and called for both an Emergency Loya Jirga and a Constitutional Loya Jirga.<sup>48</sup> The U.N. Security Council endorsed the Bonn Agreement.<sup>49</sup>

Afghanistan has also reached agreements with its neighbors to “defeat terrorism, extremism, and narco-trafficking”<sup>50</sup> and foster economic cooperation.<sup>51</sup> Pursuant to the Bonn Agreement, the Afghan Interim Authority was created, and it drafted and ratified a constitution on January 3, 2004.<sup>52</sup> Hamid Karzai was elected in the

information, *see* The United Nations Assistance Mission in Afghanistan, <http://www.unama-afg.org/>.

47. The UNAMA homepage is <http://www.unama-afg.org/>. *See, e.g.*, S.C. Res. 1471, U.N. Doc. S/RES/1471 (Mar. 28, 2003) (extended the UNAMA mandate and included countering narcotics as one of the mission’s goals); S.C. Res. 1536, ¶ 8, U.N. Doc. S/RES/1536 (Mar. 26, 2004) ([T]ackling the drugs trade cannot be separated from creating a strong economy and a secure environment in Afghanistan and cannot be achieved without increased cooperation among neighbouring states and countries along trafficking routes to strengthen anti-narcotic controls to curb the drug flow.”); S.C. Res. 1589, U.N. Doc. S/RES/1589 (Mar. 24, 2005) (acknowledged the Afghan government’s efforts to implement its national drug control strategy, encouraged international cooperation in countering narcotics trafficking in Afghanistan, and “welcome[d] in this context the signing on 1 April 2004 of the Berlin Declaration on Counter-Narcotics within the framework of the Kabul Declaration on Good-neighbourly Relations of 22 December 2002 . . . .”); S.C. Res. 1662, U.N. Doc. S/RES/1662 (Mar. 23, 2006).

48. Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Dec. 5, 2001), *available at* [http://www.unama-afg.org/docs/\\_nonUN%20Docs/\\_Internation-Conferences&Forums/Bonn-Talks/bonn.htm](http://www.unama-afg.org/docs/_nonUN%20Docs/_Internation-Conferences&Forums/Bonn-Talks/bonn.htm) [hereinafter Bonn Agreement].

49. S.C. Res. 1383, U.N. Doc. S/RES/1383 (Dec. 6, 2001).

50. Kabul Declaration on Good Neighbourly Relations (Dec. 22, 2002), *available at* <http://www.fco.gov.uk/Files/kfile/Kabul%20Declaration%20on%20Good%20Neighbourly%20Relation%202002.pdf>.

51. Kabul Declaration on Regional Economic Cooperation (Dec. 5, 2005), *available at* <http://www.fco.gov.uk/Files/kfile/RECC%20Dec%2005%20Kabul%20Declaration.pdf>.

52. Hamid Karzai was Chairman of the interim Afghan government, which “held power for approximately 6 months while preparing for a nationwide ‘Loya Jirga’ (Grand Council) in mid-June 2002 that decided on the structure of a Transitional Authority. The Transitional Authority, headed by President Hamid Karzai, renamed the government as the Transitional Islamic State of Afghanistan (TISA).” STATE DEP’T, BACKGROUND NOTE, *supra* note 14.

TISA drafted the Afghan Constitution. *See* AFG. CONST., *available at* [http://www.unama-afg.org/docs/\\_nonUN%20Docs/\\_Loya-Jirga/CLJ/Translation%20of%20the%20Constitution%20May%2030.doc](http://www.unama-afg.org/docs/_nonUN%20Docs/_Loya-Jirga/CLJ/Translation%20of%20the%20Constitution%20May%2030.doc), which was approved by a Constitutional Loya Jirga on January 4, 2004. STATE DEP’T, BACKGROUND NOTE, *supra* note 14.

first national democratic election on October 9, 2004.<sup>53</sup> Parliamentary elections were held on September 18, 2005.<sup>54</sup>

In spite of these achievements, Afghanistan is still a long way away from domestic tranquility.<sup>55</sup> Warlords still wield a great deal of power throughout the countryside,<sup>56</sup> Taliban insurgents continue to threaten the new state,<sup>57</sup> political corruption is prevalent,<sup>58</sup> poverty is

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53. STATE DEP'T, BACKGROUND NOTE, *supra* note 14. More than 8 million Afghans voted, 41% of whom were women. Hamid Karzai was announced as the official winner on November 3 and inaugurated on December 7 for a five-year term as Afghanistan's first democratically elected president. On December 23, 2004, President Karzai announced new cabinet appointments, naming three women as ministers. *Id.*

54. An election was held on September 18, 2005 for the "Wolesi Jirga" (lower house) of Afghanistan's new bicameral National Assembly and for the country's 34 provincial councils. Turnout for the election was about 53% of the 12.5 million registered voters. The Afghan constitution provides for indirect election of the National Assembly's "Meshrano Jirga" (upper house) by the provincial councils and by reserved presidential appointments. The first democratically elected National Assembly since 1969 was inaugurated on December 19, 2005. *Id.*

55. Swanström and Cornell commend the democratic development in Afghanistan: "A genuine process of political change that is inclusive of the population and encourages participation is emerging. . . . Afghanistan has not seen a relapse to war, and war-weariness among the population may indeed be an important factor of stability in the country." SWANSTRÖM & CORNELL, *supra* note 12, at 3. All is not well, however, as low intensity conflicts between the government and "Taliban remnants" remain quite frequent. *Id.*

56. See, e.g., DEEPA OLLAPALY, U.S. INSTITUTE OF PEACE, UNFINISHED BUSINESS IN AFGHANISTAN: WARLORDISM, RECONSTRUCTION, AND ETHNIC HARMONY (Apr. 2003), available at <http://www.usip.org/pubs/specialreports/sr105.pdf>. Low intensity fighting has also threatened stability. *Afghanistan: It's Rough Up North*, ECONOMIST, Sept. 2, 2006, at 41 ("The feuding in the north has exasperated the government, which feels threatened by the mayhem in the south, and is increasingly composed of Pushtuns, the biggest group.").

57. Carlotta Gall, *NATO Mounts Largest Attack on Taliban in the South*, N.Y. TIMES, Mar. 7, 2007, at A8 ("Waziristan, in Pakistan's tribal areas, has since 2001 become a base for Taliban and foreign fighters who have been accused of training and sending insurgents and suicide bombers into Afghanistan."). See also *U.S. to Press NATO for Help in Afghanistan*, N.Y. TIMES, Feb. 8, 2007, at A6 (Afghanistan's "lawless border regions with Pakistan are the major breeding ground for international terrorism. . . . About 4,000 people were killed in the insurgency last year, and American officials say suicide attacks have increased fourfold since 2005."); *Afghanistan: In Meltdown*, ECONOMIST, Sept. 9, 2006, at 14.

58. One smuggler told the BBC "there was little to fear while so many officials within the government and police were profiting from the drugs trade." Coghlan, *supra* note 9. See also Transparency International, Corruption Perceptions Index 2005, [http://www.transparency.org/policy\\_and\\_research/surveys\\_indices/cpi/2005](http://www.transparency.org/policy_and_research/surveys_indices/cpi/2005) (last visited Mar. 21, 2007) [hereinafter CPI 2005] (Afghanistan ranked 117 on the CPI 2005). Afghanistan was not included in the Corruption Perceptions Index of 2006. Transparency International, Corruption Perceptions Index 2006, [http://www.transparency.org/policy\\_and\\_research/surveys\\_indices/cpi/2006](http://www.transparency.org/policy_and_research/surveys_indices/cpi/2006) (last visited Mar. 21, 2007) [hereinafter CPI 2006].

rampant across the country,<sup>59</sup> and the country's infrastructure remains in disarray.<sup>60</sup> Further, millions of landmines have rendered large tracts of Afghanistan deadly.<sup>61</sup>

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Afghanistan's anti-corruption chief, Izzatullah Wasifi, was arrested in Las Vegas in 1987 for selling twenty-three ounces of heroin that had a street value of \$2 million. *Afghan Anticorruption Chief Sold Heroin in Las Vegas in '87*, N.Y. TIMES, Mar. 10, 2007, at A6. Wasifi served three years and eight months in prison. *Id.* However, in Wasifi's defense, opium production dropped by 25% in the Farah province during his fourteen-month term as governor there. *Id.* Additionally, Afghan anti-narcotics officials say "there is no evidence to prove that Mr. Wasifi is involved in Afghanistan's heroin trade." *Id.*

59. The GDP per capita was \$800 in 2004. CIA, *The World Fact Book: Afghanistan*, *supra* note 1. By contrast, the GDP per capita in the United States was \$43,500 in 2006. CIA, *The World Fact Book: United States* (Mar. 15, 2007), <https://www.cia.gov/cia/publications/factbook/geos/us.html> (last visited Mar. 23, 2007).

60. Rohde, *supra* note 11 ("When officials arrived in Kabul in late 2001, they were shocked by the country's decrepit state. They had to build headquarters from scratch . . . and contend with the lack of skilled Afghan workers. For remote areas like Hilmand, it meant what assistance was available flowed in slowly.").

Transportation networks that were destroyed during the Soviet invasion and the years of strife that followed are slowly being built up again. The United States helped Afghanistan build a highway connecting Kabul and Kandahar in the 1960's. STATE DEP'T, BACKGROUND NOTE, *supra* note 14. "More than 35% of the country's population lives within 50 kilometers of this highway, called, appropriately, modern Afghanistan's lifeline" *Id.* This highway was largely destroyed after 1979, and by 2001, "[l]ittle could move along the lifeline that had provided so many Afghans with their means of livelihood and their access to healthcare, education, markets, and places of worship." *Id.*

President Hamid Karzai is committed to restoring the highway, which will spur economic development. *Id.* Moreover, "[t]he restored highway is a visually impressive achievement whose symbolic importance should not be underestimated." *Id.* The United States and Japan recently finished reconstructing the highway between Kabul and Kandahar, and will soon expand the road to Herat. *Id.* The Asian Development Bank is rebuilding another road between Kandahar and Spin Boldak, which is on the Pakistani border. *Id.*

Afghanistan does not have any functioning railways. *Id.* However, its national airline, Ariana, has domestic and international flights, and Kam Air, a private carrier, has domestic flights. *Id.*

The U.S. government also plans to spend millions of dollars repairing the Kajaki Dam in Hilmand. Gall, *supra* note 57. This dam "supplies electricity and irrigation to much of the southern region. Progress has been delayed because Taliban attacks have prevented engineers from working there or transporting equipment to the dam." *Id.*

61. SWANSTRÖM & CORNELL, *supra* note 12, at 2; STATE DEP'T, BACKGROUND NOTE, *supra* note 14 ("Afghanistan is one of the most heavily mined countries in the world; mine-related injuries number up to 100 per month, and an estimated 200,000 Afghans have been disabled by landmine/unexploded ordinances (UXO) accidents.").

## II. AFGHAN OPIUM PRODUCTION TODAY

### A. *The Prevalence of Opium Production Within Afghanistan*

Afghanistan produced 92% of the global supply of illicit opium in 2006.<sup>62</sup> Consequently, Afghan heroin kills approximately 100,000 people worldwide each year.<sup>63</sup> Opium poppy has been cultivated in Afghanistan for centuries, but this massive volume is a modern phenomenon.<sup>64</sup> The expansion of Afghanistan's opium production has been attributed to increases in poppy cultivation and the growth of domestic heroin processing.<sup>65</sup> Until approximately ten years ago, "Afghanistan mainly produced raw opium or morphine base, which was refined into heroin in Pakistan, southeastern Turkey, or the Balkans. Today, the overwhelming majority of heroin processing takes place inside Afghanistan."<sup>66</sup>

The expansion of opium production was largely ignored by the United States during the cold war.<sup>67</sup> After the Soviet withdrawal from Afghanistan, the United States began to pressure Pakistan to cut opium production.<sup>68</sup> Meanwhile, the Taliban encouraged opium production in Afghanistan to generate revenue.<sup>69</sup> The Taliban

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62. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 6. See *supra* notes 2–4 and accompanying text.

63. UNODC, THE OPIUM SITUATION IN AFGHANISTAN 7 (Aug. 29, 2005), available at [http://www.unodc.org/pdf/afghanistan\\_2005/opium-afghanistan\\_2005-08-26.pdf](http://www.unodc.org/pdf/afghanistan_2005/opium-afghanistan_2005-08-26.pdf) [hereinafter UNODC, OPIUM SITUATION IN AUGUST 2005].

64. Svante E. Cornell, *Stemming the Contagion: Regional Efforts to Curb Afghan Heroin's Impact*, 6 GEO. J. INT'L AFF. 23 (2005) (Iran and Pakistan used to be the world's primary opium producers, but hardly any opium is produced in those countries today.); RASHID, *supra* note 21, at 120 ("Pakistan had become a major opium producer during the 1980s producing around 800 metric tonnes a year or 70 per cent of the world's supply of heroin until 1989.").

65. Cornell, *supra* note 64.

66. *Id.* at 24.

67. RASHID, *supra* note 21, at 121 ("The heroin pipeline in the 1980s could not have operated without the knowledge, if not connivance, of officials at the highest level of the [U.S.] army, the government and the CIA. Everyone chose to ignore it for the larger task was to defeat the Soviet Union."). For a detailed account of U.S. policy toward Afghan opium produced in the 1970s and 1980s, see MCCOY, *supra* note 23, at 461–66, 470–78.

68. RASHID, *supra* note 21, at 122 ("Over the following decade (1989–99) some US\$100 million dollars of Western aid to combat narcotics was made available to Pakistan. Poppy cultivation was drastically reduced from a high of 800 tons in 1997 and two tons by 1999.").

69. RASHID, *supra* note 21, at 118. Rashid explains:

ultimately tried to use their control over Afghanistan's opium production as a bargaining chip with the UN.<sup>70</sup> In 2001, the Taliban's ban on opium production was largely successful.<sup>71</sup> Since 2001, however, opium production has been on the rise in Afghanistan.<sup>72</sup>

In 2006, 165,000 hectares of land in Afghanistan were used to cultivate opium poppy.<sup>73</sup> This is a 59% increase from 2005, when 104,000 hectares were cultivated.<sup>74</sup> The UNODC attributes much of the increase in Afghan cultivation to large-scale opium production in southern Afghanistan.<sup>75</sup> Specifically, 42% of the opium cultivated in Afghanistan in 2006 came from the Helmand province.<sup>76</sup> The total

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When [the Taliban] first captured Kandahar they had declared they would eliminate all drugs and US diplomats were encouraged enough by the announcement to make immediate contact with the Taliban. However, within a few months the Taliban realized that they needed the income from poppies and would anger farmers by banning it. They began to collect an Islamic tax called *zakat* on all dealers moving opium. According to the Koran, Muslims should give 2.5 per cent of their disposable income as *zakat* to the poor, but the Taliban had no religious qualms in collecting 20 per cent of the value of a truckload of opium as *zakat*.

*Id. See also id.* at 117–27; MCCOY, *supra* note 23, at 508. To raise revenues estimated at \$20 to \$25 million in 1997, the Taliban collected a 5 to 10% tax in kind on all opium harvested, a share that they then sold to laboratories; a flat tax of about \$70 per kilogram on heroin refiners; and a transport tax of \$250 on every kilogram exported. *Id.* (footnote omitted). Interestingly, during this time, the Taliban enforced its ban on hashish because, according to the regime's anti-drug leader, hashish "is consumed by Afghans, Muslims. . . . Opium is permissible because it is consumed by *kafirs* [unbelievers] in the West and not by Muslims or Afghans." *Id.*

70. MCCOY, *supra* note 23, at 509; RASHID, *supra* note 21, at 123–24.

71. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 3, 6 (the 2001 opium crop was 8000 hectares, and amounted to 185 metric tons).

72. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 3, 6 (lists annual opium production in terms from hectares and tons from 1994 to 2006). The only exception to this trend occurred in 2005. *Id.*

73. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 8.

74. *Id.* The increase of opium cultivation in Afghanistan caused the global level of opium cultivation to increase by 33% to 201,900 hectares. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 3.

75. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 8 (compares increases in levels of opium cultivation by province and region). *See supra* note 6; *see also* UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 26–45 (provides data about opium cultivation in each province).

76. *Id.* Farmers in Hilmand cultivated 69,324 hectares of opium in 2006. *Id.* This constitutes a 162% increase in production over 2005, when 26,500 hectares were cultivated in the province. *Id.* at 8. There was no eradication reported, the security situation was "poor," the dry opium price was 144 USD per kilogram. *Id.* All of the villages in Helmand surveyed by the UNODC reported opium poppy cultivation, *id.* at 41, and the UNODC projected that opium cultivation would increase in the 2006–2007 season. *Id.* at 40. For additional information about the situation Hilmand, *see, e.g.*, Rohde, *supra* note 11 ("Helmand's descent symbolizes how

potential opium production in 2006 was 6100 metric tons.<sup>77</sup> The large volume of opium cultivation has been attributed to factors such as the high sale price of opium poppy and the need to alleviate poverty.<sup>78</sup>

Opium prices dropped slightly in 2006, but remained high.<sup>79</sup> The 2006 prices were lower than opium prices in the period between 2001 and 2003, but three times higher than the prices between 1994 and 2000.<sup>80</sup> At the same time, the farm-gate value of the 2006 opium harvest increased by 34% to \$755 million.<sup>81</sup> The estimated value of Afghanistan's potential 2006 opium harvest reached approximately \$3.1 billion, a 15% increase over 2005.<sup>82</sup> The total amount of money

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Afghanistan has evolved since the initial victory over the Taliban into one of the most troubled fronts in the fight against terrorism.”).

77. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 6. This reflects a 49% increase from 2005, when 4100 metric tons of opium was produced. *Id.* at 6. “This is the highest production level ever recorded in Afghanistan. As a consequence, global opium production has also reached its highest point since 1990, at 6,629 metric tons.” *Id.* at 6. Overall opium production in Afghanistan is expected to increase in 2007. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 6.

78. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 8–9 (The five most common reasons for cultivating opium poppy in Afghanistan in 2006 were the high sale price of opium (26.2%), poverty alleviation and the need to provide basic food and shelter (20.5%), lack of land (14.3%), the high cost of financing a family wedding (14.1%), and the absence of aid from the government or other sources (12.9%).). The UNODC also found that farmers in 32% of opium-growing villages received cash advances from drug traffickers. *Id.* at 9. Further, “[i]ntelligence reports indicate that Taliban militants are offering protection to Afghan drug traffickers in return for money to finance the insurgency . . . .” David S. Cloud, *Rumsfeld, in Tajikistan, Urges Tough Stand Against Taliban*, N.Y. TIMES, July 11, 2006, at A10. By contrast, the most frequently cited reasons for not cultivating opium were a belief that opium cultivation is against Islam (24%), respect for decisions made by village elders (20%), observance of the poppy cultivation ban (18%), and fear of eradication (16%). UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 13.

79. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 8. In 2006, the weighted average fresh opium price was \$94 per kilogram, and the dry opium price was \$125 per kilogram. *Id.* The weighted average price was 8% lower than in 2005, and dry opium prices decreased by 9%. *Id.* There were significant regional differences in farm-gate prices. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 90 (compares price of dry opium in each region of Afghanistan). The 2005 price of Afghan opium was \$102 per kilogram. UNODC, 2007 SURVEY, *supra* note 2, at 6.

80. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 8.

81. *Id.* (“Since the Afghan GDP increased by 29%, the proportion of the farm-gate value of opium remained stable at 11% of [the] GDP.”).

82. *Id.* (“The increase was . . . less than the increase in production (49%)—reflecting falling opium and heroin prices in neighboring countries as Afghan drug exports increased.”).

generated by opium was the equivalent of 46% of Afghanistan's licit GDP (\$6.7 billion in 2005–2006), and 32% of the total economy.<sup>83</sup>

In 2006, 448,000 families were involved in opium poppy cultivation in Afghanistan.<sup>84</sup> The income level for households that produced opium was 36% greater than that of households that did not produce opium.<sup>85</sup> The average opium-producing family cultivated 0.37 hectares of opium poppy, and generated approximately \$4625 per hectare.<sup>86</sup> This figure is nine times greater than what a family could have earned by raising wheat.<sup>87</sup>

Drug addiction is a nationwide problem in Afghanistan. There are nearly one million drug users in the country, including 19,000 intravenous drug users.<sup>88</sup> Not coincidentally, as more people in Afghanistan have become drug users, HIV/AIDS has spread at alarming rates.<sup>89</sup>

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83. *Id.* at 9 (“Given the strong growth of licit GDP, the overall size of the illicit opium industry in Afghanistan[] declined . . . from 61% of licit GDP in 2004 to 52% in 2005 and 46% of licit GDP in 2006.”). This money “is fueling government corruption, financing warlords—some pro-government and some pro-Taliban—and adding to a dangerous disillusionment with President Hamid Karzai’s government.” *Wrong Model for Afghanistan*, N.Y. TIMES, Feb. 4, 2007, § 4, at 15.

84. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 68. This reflects an increase of 45% from 2005, when 309,000 families were involved in opium production. *Id.* Approximately three million people, or 12.6% of the total population, were involved in opium production in 2006 (up from 11% in 2005). *Id.* Sixteen percent of the rural population was involved in opium production in 2006. *Id.*

85. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 78 (opium producers’ average income was \$2747 in 2006, and non-opium producers’ average income was \$1754). Opium-producing households in the southern provinces had higher incomes than households in any other region. *Id.*

86. *Id.* at 91–92.

87. *Id.* (“While in 2003 a hectare under poppy cultivation would bring a farmer 27 times more in gross income than a hectare under wheat production, the respective ration declined to 12 in 2004, 10 in 2005 and 9 in 2006.”).

88. Carlotta Gall, *A New Sorrow for Afghanistan: AIDS Has Joined a Growing List*, N.Y. TIMES, Mar. 19, 2007, at A1.

89. *Id.* (“The few surveys that exist suggest that Afghanistan has a low prevalence of H.I.V.—only 69 recorded cases, and just three deaths. . . . The World Health Organization has estimated that 1,000 to 2,000 Afghans are infected, but [a World Bank consultant on HIV/AIDS] said even that was ‘not even close to reality.’”).

Geography and migration make Afghanistan particularly susceptible [to the HIV/AIDS epidemic]. It is surrounded by countries with the fastest-growing incidence of AIDS in the world—Russia, China and India. Other neighbors, Pakistan and Iran, have high levels of drug addiction and a growing number of H.I.V. infections, as does Central Asia to the north . . . AIDS can easily cross borders, carried by migrants or refugees

### *B. Implications for Regional and Global Security*

The proliferation of opium production in Afghanistan has wide-reaching implications for regional and global security. There is a well-established link between narcotics and terrorism.<sup>90</sup> In the abstract, the connection seems quite logical, as the U.S. State Department explained:

Drug traffickers benefit from terrorists' military skills, weapons supply, and access to clandestine organizations. Terrorists gain a source of revenue and expertise in illicit transfer and laundering of money for their operations. Like traffickers and other organized crime groups, they make use of those countries and jurisdictions where banking regulations are weak. Both groups corrupt officials who can provide fraudulent documents, such as passports and customs papers.<sup>91</sup>

Afghanistan is all too familiar with the link between drug trafficking and terrorism, as evinced by the September 11, 2001 attacks on the United States.<sup>92</sup>

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who pick up drug habits or have sex with infected people in those countries and return home. Rates of drug addiction are rising in Afghanistan, with its booming opium and heroin trade.

*Id.* To make matters even worse, "only 30 percent of blood used in transfusions in hospitals is screened for H.I.V." *Id.* See also Andrew North, *UN Gives Afghanistan Aids Warning*, BBC NEWS, Dec. 1, 2005, <http://news.bbc.co.uk/2/hi/health/4487738.stm>.

90. See, e.g., Tamara Makarenko, *The Crime-Terror Continuum: Tracing the Interplay Between Transnational Organised Crime and Terrorism*, 6.1 GLOBAL CRIME 129 (Feb. 2004); Melvyn Levitsky, *Transnational Criminal Networks and International Security*, 30 SYRACUSE J. INT'L L. & COM. 227 (2003); Donnie Marshall, *Narco-Terrorism: The New Discovery of an Old Connection*, 35 CORNELL INT'L L.J. 599 (2002).

91. U.S. DEPARTMENT OF STATE, THE NEXUS BETWEEN DRUG TRAFFICKING AND TERRORISM (Apr. 10, 2002), <http://www.state.gov/p/inl/rls/fs/9242.htm>. This link was illustrated by the March 11, 2004 attacks on Madrid, which were financed in part by the drug trade. LORENZO VIDINO, AL QAEDA IN EUROPE: THE NEW BATTLEGROUND OF INTERNATIONAL JIHAD 94 (2006) (citing Sebastian Rotella, *Jihad's Unlikely Alliance*, L.A. TIMES, May 23, 2004) ("According to Spanish authorities, the two hundred twenty pounds of dynamite that the terrorists used in the attacks were acquired in exchange for sixty-six pounds of hashish."). The financier of the Madrid operation, Jamal Ahmidan, "flew to the island of Mallorca shortly before March 11 to arrange the sale of hashish and Ecstasy, planning to use the profits for additional attacks." *Id.* at 324–25 (citing Rotella, *supra*).

92. *Supra* notes 35–43 and accompanying text. However, the exact link between the 9/11 attacks on the United States and Afghan opium production is difficult to ascertain with any



The drug problem in Afghanistan affects the security of all of Central Asia.<sup>93</sup> The Afghan opium trade is wreaking devastating effects on the region.<sup>94</sup> Specifically, heroin use is on the rise in Central Asia.<sup>95</sup> Rates of HIV infection are also increasing across the region.<sup>96</sup> Drugs that are transited through the area pose challenges to local law enforcement as organized criminal groups form and become more sophisticated.<sup>97</sup> Government corruption is also becoming more widespread—even at high levels.<sup>98</sup> The profitability of the drug trade

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precision: “The 9/11 plotters eventually spent somewhere between \$400,000 and \$500,000 to plan and conduct their attack.” 9/11 COMM’N REPORT, *supra* note 22, at 169. “To date, the U.S. government has not been able to determine the origin of the money used for the 9/11 attacks.” *Id.* at 172. “Al Qaeda appears to have relied on a core group of financial facilitators who raised money from a variety of donors and other fund-raisers, primarily in the Gulf countries and particularly in Saudi Arabia.” *Id.* at 170. “It does not appear that any government other than the Taliban financially supported al Qaeda before 9/11.” *Id.* at 171. “While the drug trade was a source of income for the Taliban, it did not serve the same purpose for al Qaeda, and there is no reliable evidence that Bin Ladin was involved in or made his money through drug trafficking.” *Id.*

93. *See, e.g.*, KAIRAT OSMONALIEV, DEVELOPING COUNTER-NARCOTICS POLICY IN CENTRAL ASIA: LEGAL AND POLITICAL DIMENSIONS (Jan. 2005); Niklas Swanström, *Multilateralism and Narcotics Control in Central Asia*, CEF QUARTERLY (Feb. 2005); S. Frederick Starr, *A Partnership for Central Asia*, 84.4 FOREIGN AFF. 164 (July 1, 2005). The label “Central Asia” generally refers to Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

94. OSMONALIEV, *supra* note 93, at 12–25.

95. *Id.* at 15. Between 1990 and 2002, there was an eighteen-fold increase in drug addiction in Central Asia. *Id.* Hashish used to be the “drug of choice” among addicts, but “now opium and heroin addiction is becoming endemic, facilitated by the inflow of cheap opium and heroin from Afghanistan.” *Id.*

96. *Id.* at 16 (“70% of HIV infections across Central Asia have been contracted through drug injection (the figure in Kazakhstan and Kyrgyzstan is ca. 82%).”).

97. *Id.* at 17–21. *See also* UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 93 (“[A]round 53% of the Afghan opiates leave . . . Afghanistan via Iran, 32% via Pakistan and 15% via Central Asian countries.”); *Tajikistan’s Presidential Election: Mountain Rigger*, ECONOMIST, Nov. 11, 2006, at 50 (“Organised crime is flourishing [in Tajikistan] thanks to in influx of heroin from Afghanistan.”).

98. CPI 2006 ranked the five Central Asian states: Kazakhstan received a score of 111; Kyrgyzstan, 142; Tajikistan, 142; Turkmenistan, 142; and Uzbekistan 151. CPI 2006, *supra* note 58. *See also* OSMONALIEV, *supra* note 93, at 22. Osmonaliev described a couple of high profile cases: “in early 2004, an officer serving as Department Head of Tajikistan’s DCA in the Zaravshan valley (Tajikistan) was arrested with 30 kg of heroin[]” and “[t]he Tajik ambassador to Kazakhstan was twice caught transporting drugs, including 62 kg of heroin, and shortly after his expulsion the Tajik trade representative in Kazakhstan was caught with 24 kg of heroin.” *Id.* There have also been documented cases of corrupt officials in Uzbekistan, Kazakhstan, and Turkmenistan. *Id.* at 22–23.

is what makes it attractive to petty criminals and high-ranking government officials alike.<sup>99</sup>

### III. EFFORTS TO CURB OPIUM PRODUCTION IN AFGHANISTAN

#### *A. State-Building in Afghanistan*

Creating a legitimate government, while perhaps the best way to curb trafficking, has been the biggest challenge for Afghanistan and its international allies.<sup>100</sup> Ideally, a state should have a monopoly on the use of force within its territory<sup>101</sup> and it should provide basic services for its constituents.<sup>102</sup> When a government fails to do these things, the public is bound to lose confidence and may revolt.<sup>103</sup> In Afghanistan, the state and NATO forces have largely been unable to provide security or services to the Afghan people.<sup>104</sup> Additionally, NATO forces have not always paid close enough attention to Afghan cultural norms or sensitivities.<sup>105</sup>

99. OSMONALIEV, *supra* note 93, at 23.

100. See e.g., *Reluctant Nation Building: Promoting the Rule of Law in Post-Taliban Afghanistan*, 17 CONN. J. INT'L L. 461 (2002).

101. Stuart Eizenstat, John Edward Porter & Jeremy Weinstein, *Rebuilding Weak States*, 84.1 FOREIGN AFF. 134 (Jan. 1, 2005).

102. *Id.*

103. *Id.*

104. *Afghanistan: Taking on the Taliban*, ECONOMIST, Sept. 9, 2006, at 44 (“The absence of enough foreign troops to provide more than a modicum of security in its stead is another [reason that Taliban guerillas have held onto power in parts of Afghanistan]: before 8,000 NATO troops took charge of securing the four southern provinces on July 31st, America had one infantry battalion there. Afghanistan’s opium production, in which the Taliban have a stake, is surging too.”).

105. *Id.* (“Pushtun tribes who feel passed over for government patronage, including the Noorzai and Achakzai, have hired out fighters to the Taliban in Panjwayi. Virtually all Afghans are angered by America’s often heavy-handed tactics.”); *Pushtunwali: Honour Among Them*, ECONOMIST, Dec. 23, 2006, at 37.

The search tactics of American troops in Afghanistan, five years after they invaded the country, tend to offend on all counts. By forcing entry into the mud-fortress home of a Pushtun, with its lofty buttresses and loopholes, they dishonour his property. By stomping through its female quarters, they dishonour his women. Worse, the search may end with the householder handcuffed and dragged off before his neighbours: his person disgraced. . . . His honour besmirched—and here’s the problem for the Americans—a Pushtun is obliged to have his revenge, or badal.

*Id.*

A government that wishes to establish its legitimacy must “protect the basic rights and freedoms of its people, enforce the rule of law, and allow broad-based participation in the political process.”<sup>106</sup> One article offers four lessons for “aiding, developing, and stabilizing failed or weak states”:

First, money cannot buy effective governance. . . . Transparency—in a developing government’s decision-making, its allocation of budgetary funds, and its administration of the rule of law—must also be promoted. . . . [Second,] Washington cannot simply avoid or wish away dealing with local elites, for ultimately their actions, not those of the United States, will strengthen or undermine institutions. . . . Third, in using short-term measures to resolve complex crises, the United States must be careful not to inadvertently exacerbate the situation or create new problems altogether. . . . Finally, U.S. policymakers must be candid about the long-term nature of the state-building enterprise.<sup>107</sup>

The new government of Afghanistan has been making efforts to establish its legitimacy.<sup>108</sup> This is a task that will require Afghans to take initiative, while also working with other states.<sup>109</sup> Unfortunately, not all members of the Afghan government have been on board with fighting corruption.<sup>110</sup> While many of these efforts are noble, some

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106. Eizenstat, Porter & Weinstein, *supra* note 101, at 136.

107. *Id.* at 138–39.

108. *Supra* notes 48–54 (discussing the new Afghan Constitution, new parliament, and presidential elections).

109. *Afghanistan: In Meltdown*, *supra* note 57. NATO alone cannot tame southern Afghanistan, which may take decades. That is really a job for the Afghans, starting with an effort by Mr. Karzai to co-opt the rebellious southern tribes. Pakistan, a suspicious neighbor, which, at least until recently, ignored the Talibs on its turn, needs to do a lot more too. *Id.*

110. *See, e.g.*, Rohde, *supra* note 11 (In 2003, the government of Helmand, Sher Muhammad Akhund, “confiscated 200 shops owned by a local minority group . . . . Outside the city, the governor doled out parcels of land to his relatives and tribe . . . . At the same time, reports began to circulate in Kabul that Mr. Akhund was promoting the growth of poppy . . .”).

mistakes have been made.<sup>111</sup> For example, efforts to establish a new Afghan police force have not been successful.<sup>112</sup>

### *B. Domestic Counter-Narcotics Strategies*

Crop eradication has been a key component of the Afghan Government's efforts to curb opium poppy cultivation.<sup>113</sup> Government efforts have resulted in the eradication of about 13,051 hectares of opium poppy fields.<sup>114</sup> Overall, eradication efforts eliminated approximately 10% of Afghanistan's 2006 opium crop.<sup>115</sup> Also, eradication has discouraged farmers from planting opium.<sup>116</sup>

There are, however, some major downsides to crop eradication: "[e]radicated fields leave families in economic distress, trigger humanitarian disaster, and increase the temptation to join the insurgency."<sup>117</sup> Eradication must occur alongside alternative livelihood programs in order to be effective.<sup>118</sup> Furthermore,

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111. Eizenstat, Porter & Weinstein, *supra* note 101, at 139 ("Arms given to the mujahideen to fight the Soviets were used against American soldiers in the Afghan war following the September 11, 2001, terrorist attacks.").

112. Rohde, *supra* note 11 ("[I]n 2002 and 2003, Germany, the country responsible for police training, dispatched only 40 advisers [to Afghanistan]."). See also James Glanz & David Rohde, *U.S. Report Finds Dismal Training of Afghan Police*, N.Y. TIMES, Dec. 4, 2006, at A1, available at 2006 WLNR 20883470. ("[T]he American-trained police force in Afghanistan is largely incapable of carrying out routine law enforcement work, and . . . managers of the \$1.1 billion training program cannot say how many officers are actually on duty or where thousands of trucks and other equipment issued to police units have gone.").

113. See UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 52–65. In 2006, a total of approximately 15,300 hectares of opium poppy fields were eradicated. *Id.* at 52.

114. *Id.* ("Nearly 80% of the 2006 eradication took place in four provinces: Hilmand (24%), Kandahar (22%), Balkh (18%), and Sari Pul (15%).").

115. *Id.* at 52 (In 2005, eradication efforts reached just 5% of the opium cultivation area).

116. *Id.* at 55 ("The majority of the farmers (82%) who did not have any fields eradicated[] reported that they intended to cultivate opium poppy in 2007, while only 44% of the farmers who had (part of) their fields eradicated in 2006 were planning to continue."). Eradication has also been detrimental to affected farmers: "When asked about the impact of eradication, 24% of the farmers reported that they were not able to pay back their loan and 21% said that they could not feed the family. *Id.*

117. UNODC, OPIUM SITUATION IN AUGUST 2005, *supra* note 63, at 4.

118. *Id.* The correlation between the decline in opium production and alternative livelihood funding cannot be overstated in "the 3 provinces where [2005]'s decline in cultivation was most striking (Nangarhar –96%, Badakshan –53%), or where cultivation remained stable (Hilmand –10%), are the same 3 provinces that received the largest contributions for alternative development (Nangarhar \$70.1 million, Badakshan US \$47.3 million and Hilmand US \$55.7 million)." *Id.*

eradication is not necessarily the solution because farmers are the “weakest link in the drug chain,” as they generally end up with just three or four percent of the revenue generated by the illicit drug trade.<sup>119</sup> Other problems with eradication efforts include poor security for eradication teams and deal-making between eradication teams and farmers.<sup>120</sup>

Establishing legitimate sources of income and credit is of the utmost importance in the fight against drugs. Hernando de Soto describes the need to create legitimate livelihoods through legal reforms: “Property . . . provides a legal alternative to drug trafficking. As long as the farmers remain illegal landowners, short-term cash crops, like coca and opium poppies, remain their only alternative.”<sup>121</sup> He explains:

For small farmers in some areas of the developing world, money advanced by drug traffickers is practically the only credit available, and because their property arrangements appear in no official system, law enforcement cannot even find them, never mind work out an enforceable crop-substitution agreement. This lack of legal protection also means that growers of drug crops have to band together to defend their assets or call on traffickers to defend them. Without a formal property system that includes such landowners, controlling growers of drug crops, chasing drug traffickers, and identifying polluters of the environment becomes virtually impossible.<sup>122</sup>

Creating legal alternatives to drug trafficking in Afghanistan will require continued domestic reform and international outreach efforts

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119. *Id.* at 5.

120. UNODC OCTOBER 2006 SURVEY, *supra* note 3, at 64. In 2007, it appears likely that many farmers will cultivate opium poppy in marginal, rain-fed land in addition to the cultivation on the more productive, irrigated fields. If eradication teams visit their village, farmers can negotiate with the teams to eradicate the opium poppy in the rain-fed areas while leaving opium poppy in the irrigated fields alone. The farmer would suffer little economic loss from having these fields eradicated, and eradication teams would be able to report extensive eradication. Therefore, more emphasis needs to be placed on the level of standing opium poppy remaining after eradication as a measure of success, when assessing the effectiveness of Governor-led eradication programs. *Id.*

121. HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 197 (2000).

122. *Id.* at 197–98.

directed towards farmers. Without outside assistance, many farmers have little choice but to turn to or stay with opium production.<sup>123</sup> Alternative livelihood programs are crucial because seventy percent of the Afghan population is dependent on agriculture.<sup>124</sup> UNODC village surveys have identified three key areas for assistance: “(1) training in agricultural techniques and practices, (2) improved irrigation systems; and (3) agricultural credit schemes. Already, microfinance ventures have been successful among farmers in Afghanistan.”<sup>125</sup>

The UNODC reported that the Government of Afghanistan is prosecuting traffickers.<sup>126</sup> Also, the Government is confronting corruption in Kabul and in the provinces, and it “has created a Ministry of Counter-Narcotics and appointed a Deputy Minister of

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123. Poverty forces large numbers of Afghans to serve warlords and rely on them and not on themselves or the state for survival and protection. Poverty, the lack of an ability to affect one's life, and insecurity for the future forces numerous Afghans to cultivate opium. Poverty and underemployment also fuel resentment that helps Islamic radicalism conquer new ground. The struggle against poverty is hence the crucial element in Afghanistan's future and to that a monumental task. SWANSTRÖM & CORNELL, *supra* note 12, at 9. *See also Wrong Model for Afghanistan*, *supra* note 83 (“Most of the American aid sent to Kabul since 2001 has gone into security programs and short-term relief and reconstruction, not the long-term development on which lasting security depends. This has left Afghan farmers prey to drug traffickers who often supply the only credit available, with repayment expected in opium poppies. And with no visible help coming from Kabul or Washington toward alleviating crushing poverty, people in Afghanistan's southern provinces are beginning to look favorably toward a resurgent Taliban.”).

124. USAID, Asia and the Near East—Countries—Afghanistan, [http://www.usaid.gov/locations/asia\\_near\\_east/countries/afghanistan/](http://www.usaid.gov/locations/asia_near_east/countries/afghanistan/) (last visited May 11, 2007).

125. *See The Hidden Wealth of the Poor: A Survey of Microfinance*, ECONOMIST, Nov. 5, 2005, at 6 (microfinance ventures in Afghanistan have provided farmers with an alternative to poppy production, much to the chagrin of many drug lords). *See also* MUHAMMAD YUNUS, BANKER TO THE POOR: MICRO-LENDING AND THE BATTLE AGAINST WORLD POVERTY (1997) (describes the rise and success of the Grameen Bank, a microfinance institution, in Bangladesh).

126. UNITED NATIONS OFFICE ON DRUGS AND CRIME, SUMMARY FINDINGS OF OPIUM TRENDS IN AFGHANISTAN, 2005 6 (Sept. 12, 2005), *available at* [http://www.unodc.org/pdf/afghanistan\\_2005/annex\\_opium-afghanistan-2005-09-09.pdf](http://www.unodc.org/pdf/afghanistan_2005/annex_opium-afghanistan-2005-09-09.pdf) [hereinafter UNODC, SEPTEMBER 2005 SUMMARY] (“The Afghan Counter Narcotics Criminal Justice Task Force has fast-tracked 92 drug cases, most of them already sent to prosecutors. The Government has also assisted and provided evidence in support of foreign indictments of Afghan traffickers”). For a specific example, *see Afghan Smuggler Arrested*, N.Y. TIMES, Mar. 12, 2007, at A6 (Afghanistan arrested a man at the central post office in Kabul who tried to mail eight pounds of heroin to London.).

Interior, charged with drug interdiction.”<sup>127</sup> The Afghan Government is also planning to disarm and reintegrate militias, extradite major drug traffickers, and fund alternative livelihood programs.<sup>128</sup> The government’s efforts will be supported by the Law and Order Trust Fund for Afghanistan.<sup>129</sup>

### *C. U.S. Efforts to Eliminate Opium Production in Afghanistan*

The United States has been very active in Afghanistan since 2001. The United States and Afghanistan are parties to a number of multilateral and bilateral counter-narcotics agreements, including the Single Convention on Narcotic Drugs, 1961,<sup>130</sup> the Convention on Psychotropic Substances,<sup>131</sup> and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.<sup>132</sup>

The United States has traditionally withheld aid from illicit drug producing and drug-transit countries.<sup>133</sup> However, the President is allowed to suspend this ban on aid when “a country has cooperated fully with the United States”<sup>134</sup> or if “the vital national interests of the United States require . . .”<sup>135</sup> assistance. Pursuant to this power,

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127. UNODC, SEPTEMBER 2005 SUMMARY, *supra* note 126, at 6.

128. *Id.*

129. Press Release, UNAMA, LOTFA Received EUR 30 Million From EC; EUR 5 Million From Germany, and EUR 5 Million From the Netherlands (Dec. 11, 2006), *available at* [http://www.unama-afg.org/news/\\_pr/\\_english/UN/2006/06dec11-UNDP-LOTFA%20press%20release-Eng.pdf](http://www.unama-afg.org/news/_pr/_english/UN/2006/06dec11-UNDP-LOTFA%20press%20release-Eng.pdf)

130. Single Convention on Narcotic Drugs, 1961, As Amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, Mar. 25, 1972, *available at* [http://www.unodc.org/pdf/convention\\_1961\\_en.pdf](http://www.unodc.org/pdf/convention_1961_en.pdf) [hereinafter 1961 Convention]. *See also* “Status of Treaty Adherence [to the Single Convention on Narcotic Drugs, 1961],” Nov. 4 2005, *available at* [http://www.unodc.org/pdf/treaty\\_adherence\\_convention\\_1961.pdf](http://www.unodc.org/pdf/treaty_adherence_convention_1961.pdf).

131. Convention on Psychotropic Substances, 1971, Feb. 21, 1971, *available at* [http://www.unodc.org/pdf/convention\\_1971\\_en.pdf](http://www.unodc.org/pdf/convention_1971_en.pdf) [hereinafter 1971 Convention]. *See also* “Status of Treaty Adherence [to the Convention on Psychotropic Substances 1971],” Sept. 5, 2005, *available at* [http://www.unodc.org/pdf/treaty\\_adherence\\_convention\\_1971.pdf](http://www.unodc.org/pdf/treaty_adherence_convention_1971.pdf).

132. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Dec. 20, 1988, *available at* [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf) [hereinafter 1988 Convention]. *See also* “Status of Treaty Adherence [to the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances],” Sept. 5, 2005, *available at* [http://www.unodc.org/pdf/treaty\\_adherence\\_convention\\_1988.pdf](http://www.unodc.org/pdf/treaty_adherence_convention_1988.pdf).

133. 22 U.S.C. § 2291j (2000).

134. 22 U.S.C. § 2291j(b)(1)(A) (2000).

135. 22 U.S.C. § 2291j(b)(1)(B) (2000).

President George W. Bush cut the link between the State Department's Annual Drug Trafficking Report and foreign aid to Afghanistan.<sup>136</sup> The President recently requested \$11.8 billion for operations in Afghanistan.<sup>137</sup> He has pointed to the "remarkable progress" that has been made there since 2001.<sup>138</sup>

Afghanistan allows for narcotics traffickers to be extradited to the United States. So far, the United States has been involved in the arrests and prosecutions of two major Afghan drug traffickers: Bashir Noorzai and Baz Mohammad. Both men were identified as drug traffickers by the Foreign Narcotics Kingpin Designation Act (KDA).<sup>139</sup>

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136. Joel Brinkley, *Stopping Illicit Drugs Is Still Uphill Battle, Report Shows*, N.Y. TIMES, Mar. 5, 2005, at A4, available at WLNR 3354676.

137. George W. Bush, President Bush Discusses Progress in Afghanistan, Global War on Terror (Feb. 15, 2007), available at <http://www.whitehouse.gov/news/releases/2007/02/20070215-1.html>; Rohde, *supra* note 11 ("Between 2003 and 2004, American assistance to Afghanistan increased from \$962 million to \$2.4 billion; the Afghanistan staff of the United States aid agency doubled; and Washington dispatched an aggressive new ambassador, Zalmay Khalilzad.").

138. Stolberg, *supra* note 45 (This progress includes: "A democratically elected government with a parliament that includes 91 women; more than five million children in school as opposed to 900,000 under the Taliban; and the return home of more than 4.6 million refugees.").

139. 21 U.S.C.A. §§ 1901–1908 (2005). The KDA seeks to "deny significant foreign narcotics traffickers, their related businesses, and their operatives access to the U.S. financial system and all trade and transactions involving U.S. companies and individuals." WHITE HOUSE, FACT SHEET: OVERVIEW OF THE FOREIGN NARCOTICS KINGPIN DESIGNATION ACT (June 2, 2005), <http://www.whitehouse.gov/news/releases/2005/06/20050602-2.html>. To date, the President has designated 57 Kingpins and the Department of the Treasury has announced a total of 116 derivative designations, 34 entities and 82 individuals, pursuant to § 805(b) of the Kingpin Act. These entities and individuals are subject to the same sanctions that apply to kingpins. In addition, designated individuals and immediate family members who have knowingly benefited from the designated individuals' illicit activity will be denied visas to the United States under 8 U.S.C. § 1182(a)(2)(C). *Id.*

The Kingpin Act provides for criminal penalties of up to 10 years imprisonment for individuals and up to a \$10 million fine for entities for violations, as well as a maximum of 30 years imprisonment and/or a \$5 million fine for officers, directors or agents of entities who knowingly participate in violations. The Kingpin Act also provides for civil penalties of up to \$1 million.

*Id.* For more detailed information about the KDA, see David T. Duncan, Note, "Of Course This Will Hurt Business": Foreign Standing Under the Foreign Narcotics Kingpin Designation Act of 1999 and American's War on Drugs, 37 GEO. WASH. INT'L L. REV. 969 (2005).



Noorzai was identified as a narcotics kingpin under the KDA in June 2004,<sup>140</sup> and he is the first Afghan drug lord to be prosecuted on U.S. soil.<sup>141</sup> He is accused of being “at the centre of a multi-million dollar heroin operation which controls poppy fields, drug laboratories and a trafficking operation based in Afghanistan and Pakistan.”<sup>142</sup> He is also said to have “close links” with the Taliban and to have “used drug money to supply Islamic militants with arms and explosives.”<sup>143</sup> The Taliban, however, have denied any association with Noorzai.<sup>144</sup>

Baz Mohammad was designated as a drug trafficker under the KDA on June 2, 2005.<sup>145</sup> He was arrested by Afghan forces in January, 2005 at the request of the U.S. Drug Enforcement Administration (DEA).<sup>146</sup> On October 21, 2005 at the request of the U.S. Government, Mohammad was the first Afghan drug trafficker to be extradited from Afghanistan.<sup>147</sup> Mohammad’s indictment alleges

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140. See James Risen, *An Afghan’s Path from Ally of U.S. to Drug Suspect*, N.Y. TIMES, Feb. 2, 2007, at A1, available at 2007 WLNR 2012443.

A native of Kandahar Province, [Noorzai] was a mujahedeen commander fighting the Soviet occupation of Afghanistan in the 1980s. In 1990 . . . he agreed to help track down stinger missiles provided to the Afghan resistance by the C.I.A.; agency officials were worried about their possible use by terrorists. D.E.A. officials say that at the same time, Mr. Noorzai was a major figure in the Afghan drug trade, controlling poppy fields that supplied a significant share of the world’s heroin. He was also an early financial backer of the Taliban. Agency officials say he provided demolition materials, weapons and manpower in exchange for protection for his opium crops, heroin labs, smuggling routes and followers.

*Id.* See also Paul Anderson, *Drugs War Landmark in Afghanistan*, BBC NEWS, Apr. 26, 2005, [http://news.bbc.co.uk/2/hi/south\\_asia/4487433.stm](http://news.bbc.co.uk/2/hi/south_asia/4487433.stm).

141. The former top counter-narcotics official at the U.S. State Department first proposed putting Noorzai on the kingpin list in January 2004. Risen, *supra* note 140. “At that time . . . no Afghan heroin traffickers were on the list. . . . [T]here was resistance to placing Afghans on the list because countering the drug trade was not an administration priority”. *Id.* See also Anderson, *supra* note 140.

142. Jeremy Cooke, *US Arrests Afghan ‘Heroin Baron,’* BBC NEWS, Apr. 25, 2005, <http://news.bbc.co.uk/2/hi/americas/4483469.stm>. Additionally, “[t]he indictment says that [Noorzai] imported heroin to New York in the late 1990s and that unnamed co-conspirators also did so in 2001 and 2002.” Risen, *supra* note 140.

143. Jeremy Cooke, *supra* note 142. See also Risen, *supra* note 140.

144. *Taleban Deny ‘Heroin Baron’ Link*, BBC NEWS, Apr. 26, 2005, [http://news.bbc.co.uk/2/hi/south\\_asia/4486127.stm](http://news.bbc.co.uk/2/hi/south_asia/4486127.stm).

145. WHITE HOUSE, FACT SHEET: OVERVIEW OF THE FOREIGN NARCOTICS KINGPIN DESIGNATION ACT (June 2, 2005), *supra* note 139.

146. *Afghan ‘Drug Lord’ Handed to US*, BBC NEWS, Oct. 25, 2005, available at [http://news.bbc.co.uk/2/hi/south\\_asia/4373744.stm](http://news.bbc.co.uk/2/hi/south_asia/4373744.stm).

147. *Id.* This extradition “represents the first extradition in history from Afghanistan to the

that he: “led an international heroin-trafficking organization . . . responsible for manufacturing and distributing more than \$25 million worth of heroin in Afghanistan and Pakistan . . . [and] arranged for the heroin to be imported into the United States and other countries and sold for tens of millions of dollars.”<sup>148</sup> U.S. officials have heralded the extradition and indictment.<sup>149</sup> Mohammad pleaded guilty to the charges on July 11, 2006.<sup>150</sup>

Additionally, the U.S. State Department and the U.S. Agency for International Development have been very active in promoting “alternative livelihood” programs for Afghan farmers.<sup>151</sup>

#### IV. HOW TO COUNTER ILLICIT OPIUM PRODUCTION MORE EFFECTIVELY

President Karzai has criticized the international community for failing to provide adequate financial support in Afghanistan’s war

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United States.” Press Release, United States Attorney Southern District of New York, United States Announces Historic Extradition of Taliban-Linked Afghan Narco-Terrorist to New York (Oct. 24, 2005), *available at* <http://www.usdoj.gov/usao/nys/Press%20Releases/October%2005/Baz%20Mohammad%20Extradition%20PR.pdf> [hereinafter U.S. Att’y Press Release].

148. U.S. Att’y Press Release, *supra* note 147.

149. Michael J. Garcia, the United States Attorney for the Southern District of New York said that the extradition meant that “Afghanistan will no longer be a safe haven for narcotraffickers like Baz Mohammed.” *Id.* Karen P. Tandy, the Administrator of the DEA reiterated Garcia’s sentiment. *Id.* And, U.S. Attorney General Alberto Gonzalez issued his own statement: “This first-ever extradition from Afghanistan sends a clear message to drug lords around the world: Those who seek to destroy American lives will be brought to justice.” Press Release, Statement of Attorney General Alberto R. Gonzales on the Extradition of Baz Mohammad (Oct. 24, 2005), *available at* [http://www.usdoj.gov/opa/pr/2005/October/05\\_ag\\_562.html](http://www.usdoj.gov/opa/pr/2005/October/05_ag_562.html).

150. *Metro Briefing New York: Manhattan: Afghan Drug Kingpin Pleads Guilty*, N.Y. TIMES, July 12, 2006, at B7.

151. *See generally* USAID, Asia and the Near East—Countries—Afghanistan, *supra* note 124. For examples of specific initiatives, *see generally* USAID, 1 Alternative Development Update (Feb. 2007), *available at* [http://www.usaid.gov/locations/asia\\_near\\_east/afghanistan/weeklyreports/USAID\\_AD\\_Update\\_Feb\\_07.pdf](http://www.usaid.gov/locations/asia_near_east/afghanistan/weeklyreports/USAID_AD_Update_Feb_07.pdf) (contains several examples of current alternative livelihoods projects); *see also* Press Release, USAID, \$218.6 Million Contract Awarded to Bolster Afghanistan’s Public, Private Sectors (Mar. 13, 2007), *available at* <http://www.usaid.gov/press/releases/2007/pr070313.html>; Press Release, USAID, USAID Awards \$1.4 Billion Contract for Infrastructure in Afghanistan (Sept. 22, 2006), *available at* <http://www.usaid.gov/press/releases/2006/pr060922.html>. The Department of State is also involved in the “Businesses Building Businesses” initiative, which is intended to improve the Afghan business climate. *See generally* State Dep’t, Businesses Building Businesses for Afghanistan, <http://www.state.gov/e/ebb/> (last visited Mar. 23, 2007).

against drugs.<sup>152</sup> Yet, it will take more than money for Afghanistan to eradicate illicit drug production. If the United States and other nations truly wish to be instrumental in helping Afghanistan make the transition to democracy, they will have to continue to take a multi-pronged approach.<sup>153</sup> The war on Afghan opium production can be divided into three fronts: continuing state-building, reforming farmers, and punishing traffickers.

### A. Continuing State-Building

If Afghanistan is ever going to survive as a democratic nation, it will need to have a sturdy legal and political foundation.<sup>154</sup> Unfortunately, state-building in Afghanistan has been difficult because some question the new Afghan state's foundation.<sup>155</sup> In order to create legitimate legal and political systems, the new Afghan government must enact laws that reflect existing social norms.<sup>156</sup> Additionally, Afghan leaders must continue to work hard to protect

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152. Steven R. Weisman, *On Visit to U.S., Afghan Leader Defends Opium Fight*, N.Y. TIMES, May 23, 2005, at A10.

153. Eizenstat, Porter & Weinstein, *supra* note 101 ("A comprehensive state-building strategy must rely on the entire range of tools in Washington's foreign policy arsenal, including trade policy, debt relief, security assistance, and diplomacy.")

154. *See supra* notes 101–03 and accompanying text.

155. *See e.g.*, Christian Ahlund, *Major Obstacles to Building the Rule of Law in a Post-Conflict Environment*, 39 NEW ENGLAND L. REV. 39, 41 (2004) ("The Bonn Agreement reflects what could be agreed upon by the various ethnic and political forces in the country, including several powerful warlords with blood on their hands and little or no commitment to democracy and rule of law.")

156. DE Soto, *supra* note 121, at 171–81. De Soto explains:

Outside the West, extralegal social contracts prevail for a good reason: They have managed much better than formal law to build on the actual consensus between people about how their assets ought to be governed. Any attempt to create a unified property system that does not take into account the collective contracts that underpin existing property arrangements will crash into the very roots of the rights most people rely on for holding onto their assets. Efforts to reform property rights fail because officials in charge of drafting new legal rules do not realize that most of their citizens have firmly established their own rules by social contract.

*Id.* at 172. Western property laws have succeeded because they have incorporated widespread extralegal arrangements. *Id.* at 174–75. "Extralegal social contracts rely on a combination of customs, ad hoc improvisations, and rules selectively borrowed from the official legal system." *Id.* at 175–76. "[I]t is extralegal law that regulates the assets of most citizens." *Id.* at 176. Asset owners in the extralegal sector are "'law-abiding,' although the laws they abide by are not the government's." *Id.* at 179.

the basic rights and freedoms of the Afghan people.<sup>157</sup> They must also make the Afghan government transparent and incorporate local elites.<sup>158</sup> The United States can help the situation by avoiding quick-fixes to immediate issues that will ultimately lead to long-term problems.<sup>159</sup> Specifically, the United States should continue to provide the Afghan government with political<sup>160</sup> and financial support.<sup>161</sup> The United States and its allies will have to continue to use force until democracy is well entrenched in Afghanistan.<sup>162</sup> Indeed, it is in the best security interests of the United States and other states.<sup>163</sup>

### *B. Reaching Out to Farmers*

Afghan farmers need viable alternatives to opium production. This can be accomplished by improving infrastructure, providing security in Afghan villages, and by increasing opportunities for legal employment.<sup>164</sup>

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157. *See supra* note 106.

158. *See supra* note 107 and accompanying text.

159. *Id.* The CIA's decision to ignore Afghan opium production during the Cold War is an example of such a problematic policy. *See, e.g., supra* note 67 and accompanying text.

160. *See supra* note 47.

161. *See supra* note 1 and accompanying text.

162. Ahlund, *supra* note 155, at 41–44. Ahlund argues: “Any improvement in the situation would require the national government to be able to project its power and authority beyond Kabul. This will not happen until the international community provides ISAF with enough muscle to make its presence felt in the whole country.” *Id.* at 41. He said, “legitimacy and the authority of the governing structure—and its activities in building the rule of law—will, from the beginning, need to be backed up and protected by sufficient force.” *Id.* at 44. Finally, he said, “The only structure capable of providing the necessary leadership and legitimacy necessary for such an operation is the U.N., but the resources for ensuring authority and security [in Afghanistan] must come from individual states.” *Id.*

163. *See supra* Part II.B. Eizenstat, Porter and Weinstein argue that “recent U.S.-lead endeavors in Afghanistan and Iraq have demonstrated that the planning, financing, coordination, and execution of U.S. programs for rebuilding war-torn states are woefully inadequate.” Eizenstat, Porter & Weinstein, *supra* note 101, at 134. They note also that “there is a crisis of governance in a large number of weak, impoverished states, and this crisis poses a serious threat to U.S. national security.” *Id.* Today, they say, “the gravest danger to [the U.S.] lies in the weakness of other countries—the kind of weakness that has allowed opium production to skyrocket in Afghanistan, the small arms trade to flourish throughout Central Asia, and al Qaeda to exploit Somalia and Pakistan as staging grounds for attacks.” *Id.* They argue that “state building is not an act of simple charity but a smart investment in the United States’ own safety and stability.” *Id.* at 135.

164. SWANSTRÖM & CORNELL, *supra* note 12, at 9.

Continued investment in rebuilding Afghanistan's infrastructure is essential.<sup>165</sup> Afghanistan cannot survive without adequate transportation networks.<sup>166</sup> Specific efforts should include completing the highway between Kabul and Kandahar<sup>167</sup> and improving air travel.<sup>168</sup> Such efforts will result in more mobility and more opportunities for Afghan farmers, which should, in turn, reduce reliance on opium cultivation.<sup>169</sup>

The security situation needs to be improved in Afghan villages. There is a correlation between areas where security is "poor" and where opium is produced.<sup>170</sup> Thus, in the southern provinces, the United States and its allies should continue to assist the Afghan people in fighting the Taliban insurgency.<sup>171</sup> Specifically, ISAF should continue to send troops, and it should increase its forces in the most problematic parts of Afghanistan.<sup>172</sup> Additionally, the United States should continue to provide funding and training for the Afghan police force.<sup>173</sup>

The United States should help the Afghan government create opportunities for farmers to obtain legitimate employment, because the main reasons farmers decide to cultivate opium is to earn money.<sup>174</sup> Ideally, improved infrastructure and security will automatically lead to more opportunities for Afghan farmers.

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165. *See id.* ("Afghanistan's biggest problem today is the destruction of its physical infrastructure as well as of its societal makeup."). The key to long-term survival is "to resurrect Afghanistan's role as a trading nation on the crossroads of great civilizations, something that development cooperation can best contribute to through investments in infrastructure." *Id.*

166. *Id.* (Such investments are important because "[l]ack of infrastructure for communication and transportation increases parochialism, prevents travel and the exchange of ideas and goods between the provinces of Afghanistan, and hence contributes to suspicion and hostility among the diverse ethnocultural groups of the country.")

167. STATE DEP'T BACKGROUND NOTE, *supra* note 13; *supra* note 60.

168. *See supra* note 60.

169. *See supra* note 78 (listing reasons people decide whether or not to cultivate opium).

170. UNODC FEBRUARY 2007 SURVEY, *supra* note 2, at 13 ("The survey indicates that approximately 79 per cent of villages with poor security and 63 per cent of villages with very poor security are involved in poppy cultivation, as compared to only 22 per cent of villages with good security."). *See also supra* note 76.

171. *See supra* note 57.

172. *See, e.g., supra* note 158.

173. The Law and Order Trust Fund for Afghanistan, *supra* note 129, is an excellent start. Historically, however, the international community's efforts to develop the police have not been successful; *see supra* note 112.

174. *See supra* note 78.

However, the United States can bolster the availability of such opportunities by continuing to fund alternative livelihood programs.<sup>175</sup>

### *C. Defeating Drug Traffickers*

The United States also needs to place more emphasis on helping the Afghan government catch and punish drug traffickers. Specifically, the United States should continue to send troops to Afghanistan,<sup>176</sup> and it should continue to address the difficulties in developing a police force to pursue traffickers.<sup>177</sup> Additionally, the Afghan government should continue to extradite major drug traffickers to third countries.<sup>178</sup> This will reiterate the message that opium trafficking will not be tolerated in Afghanistan.<sup>179</sup> Finally, the United States must help Afghanistan write and enforce tough anti-trafficking legislation.<sup>180</sup>

## V. CONCLUSION

Effectively countering the proliferation of narcotics in Afghanistan is not an easy task by any stretch of the imagination. It is necessary, however, for Afghanistan to develop as a democratic state and for the security of nations around the world. Afghan and international actors need to focus on reforming farmers while punishing drug traffickers. Specifically, the United States must continue to help Afghanistan engage in state-building activities, reach out to farmers, and punish traffickers.

The United States should continue to support Afghanistan's efforts by providing funding and manpower. In addition to donating resources, the United States can help Afghanistan by extraditing and prosecuting Afghan drug lords. Also, states should support Afghanistan's growing legitimate economy through investment and

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175. *See supra* notes 123–24, 151 and accompanying text.

176. *See supra* note 158.

177. *See supra* notes 112 and 129.

178. *See supra* notes 139–50.

179. *See supra* note 149.

180. *See supra* notes 126–29.

trade. If Afghanistan and international actors fail to act, Afghanistan could collapse into chaos—providing a safe haven for terrorism, organized crime, and the worldwide proliferation of illicit narcotics.