

**THE MISSING PRIORITY:
POST-CONFLICT SECURITY AND THE RULE OF LAW**

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ABOUT THE PROJECT

This report, *The Missing Priority: Post-Conflict Security and the Rule of Law*, is the product of a working group of ten students in Master's Degree programs at the Woodrow Wilson School of Public and International Affairs at Princeton University. Throughout the fall of 2003, the working group engaged in a weekly seminar to discuss issues related to the topic of organized crime and security in post-conflict environments, specifically Bosnia and Herzegovina, Kosovo, Afghanistan, and Iraq. That research is the subject of this report.

In support of this project, the working group drew upon primary sources, including interviews with policymakers in Washington, DC, and New York City, and numerous field interviews in Sarajevo, Bosnia; Pristina and Vushtrri, Kosovo; Skopje, Macedonia; and Kabul, Afghanistan from 25 October through 1 November 2003. This report incorporates information gleaned from dozens of sources, including government ministry officials, representatives from UN agencies, representatives of international NGOs and donor organizations, American diplomatic, military and intelligence sources, and civilian analysts. For more information on the sources used in this paper, please see Annex II.

Based on findings from both field interviews and extensive secondary source research, this report provides a broad analysis of the threat to post-conflict security posed by organized crime, as well as four country-specific case studies. The views expressed are exclusively those of the members of the working group and are not necessarily shared by the individuals or organizations consulted.

The working group was directed by Robert Perito, lecturer at Princeton University and Special Advisor to the Rule of Law program at the United States Institute for Peace in Washington, DC. The Woodrow Wilson School of Public and International Affairs at Princeton University provided generous financial support for research and travel.

This report was prepared at the request of Clint Williamson, Director of Transnational Crime in the Office of Counterterrorism at the National Security Council in Washington, DC. The final report has been reviewed and approved by the National Security Council staff.

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EXECUTIVE SUMMARY

Post-conflict societies increasingly pose a risk to U.S. national security. U.S. efforts to provide public order and establish the rule of law in Bosnia, Kosovo, Afghanistan, and Iraq have met with mixed results, enabling entrenchment of criminal elites and international terrorist networks.

This report examines four post-conflict stability missions: Bosnia, Kosovo, Afghanistan, and Iraq, and argues that five major gaps in post-conflict security policies and programs have prevented the establishment of public order and the rule of law:

- Inability to rapidly address immediate post-conflict civil order requirements;
- Failure to provide for courts, correctional facilities, and border security;
- Inadequate effort to develop local capacity;
- Lack of political will to confront criminal elites; and
- Weak international capacity to establish and enforce the rule of law.

Public disorder, crime, and violence are endemic in immediate post-conflict environments. Without a proper international response, criminal elites are able to entrench themselves, undermining the development of institutions and leading to weak states, criminalized political systems, and regional instability. This kind of environment, where criminal and terrorist networks flourish, poses a serious threat to U.S. national security.

To fill these gaps we recommend implementation of the following policies and programs to enable the U.S. to establish public order and the rule of law in post-conflict environments:

- Establish a rapidly deployable federal public order and rule of law capacity;
- Coordinate civilian law enforcement and military operations more closely;
- Prioritize police, judicial, and correctional reforms and development of border control capacity;
- Refocus post-conflict programs on building indigenous capacity;
- Recognize organized criminal activity as a key obstacle to post-conflict stability and demonstrate the political will to challenge criminal groups; and
- Use U.S. leadership, assets and expertise to strengthen international law enforcement capacity and capacity to establish the rule of law.

Political and economic reform and democratization cannot take hold without public confidence in the ability of a government to enforce its laws and protect its citizens. The establishment of public order and the rule of law is the missing priority in establishing post-conflict security and initiating reconstruction. To successfully bring stability, democracy, and the free market to post-conflict environments, the U.S. must increase its attention to and capacity for providing public order and developing the rule of law. Without this capacity, post-conflict societies will continue to fall prey to insecurity, organized criminal activity, and international terrorism, posing a grave risk to U.S. security.

INTRODUCTION

The United States faces an unprecedented foreign policy and national security dilemma. The U.S. is both the most powerful nation in history and a nation facing immediate threats to its security. Globally, the U.S. is confronted by international terrorism based upon intolerant ideologies, willingness of adherents to die for their cause, and determination to use weapons of mass destruction. It is also endangered by a set of transnational threats arising from organized criminal activity, including trafficking in narcotics, weapons, persons, and nuclear, biological and chemical materials. These threats cannot be removed exclusively through the use of military force or traditional diplomacy, particularly as they are often generated by non-state entities and occur in post-conflict societies.

The September 11, 2001, terrorist attacks ended the debate about the degree to which post-conflict societies threaten U.S. security. Afghanistan provided a breeding ground for political and religious extremism as well as a safe haven for terrorist training. The defeat of the Taliban and scattering of Al Qaeda caused only a brief pause in the export of narcotics by regional warlords. In the Balkans, organized crime challenged the U.S.-led peace process and terrorist cells threatened American installations. In Iraq, illicit trafficking by Saddam's security services in oil and consumer goods has resumed following the end of full-scale hostilities and has financed a violent insurgency. After the overthrow of the authoritarian regimes in these countries, the security services, organized criminal groups, and political extremists joined forces to continue their illicit activities for profit and to thwart post-conflict reconstruction.

This study focuses on transnational threats to U.S. security in post-conflict environments. It examines the nexus between organized criminal activity, international terrorism, post-conflict stability operations, and U.S. national security. The litmus test for whether a post-conflict society is important to U.S. national security is the commitment of U.S. ground troops to support reconstruction efforts. This study deals with four areas—Bosnia, Kosovo, Iraq and Afghanistan—where the U.S. has deployed ground forces and where American national security interests are challenged by terrorism and organized crime. In all of these cases, the United States has devoted significant financial and manpower resources to reconstruction and development, democratization, and combating violent insurgencies. Fighting organized criminal activity and establishing the rule of law have not received equal attention.

Public disorder, crime, and violence are endemic in immediate post-conflict environments. Organized criminal activity often fills the vacuum of authority left by a failed or toppled regime, hindering institutional development and preventing the establishment of public order and the rule of law. Criminal activity undermines governmental institutions, creating weak states dominated by criminal interests and causing regional instability. This environment provides fertile ground for the growth of international terrorism, since the absence of capable law enforcement provides immunity from detection and criminal groups supply ready networks for mobilizing human and financial resources. As our case studies illustrate, the United States has yet to succeed in addressing this challenge.

This paper argues that organized criminal activity in post-conflict environments poses a serious threat to U.S. national security. Addressing this threat effectively requires prioritizing establishment of public order and the rule of law in the immediate post-conflict period. The paper begins by outlining the causes and impacts of organized criminal activity in post-conflict settings. It then evaluates international responses to this challenge in Bosnia-Herzegovina, Kosovo, Afghanistan, and Iraq and provides recommendations for combating the threat of organized criminal activity in future post-conflict situations.¹

¹ For definitions of key terms used throughout this document, please refer to Annex I.

DEVELOPMENT OF THE PROBLEM

In each of the four cases considered in this report – Bosnia-Herzegovina, Kosovo, Afghanistan, and Iraq – the immediate post-conflict period was characterized by public disorder and growing criminality and violence. This led to the entrenchment of organized criminal activity within the society. This section outlines factors that have contributed to the vulnerability of these societies to post-conflict organized criminal activity.

Factors Contributing to Post-Conflict Criminality

Government as Criminal Enterprise

Prior to military intervention, the authoritarian regimes in Afghanistan, Iraq and the former Yugoslavia transformed their governments into criminal enterprises, using revenues from trafficking, smuggling, and other illicit activities to maintain power. In the cases of Slobodan Milosevic and Saddam Hussein, state resources and criminal activities were also used to amass personal wealth. These criminalized governments lacked accountability and maintained their support bases through extensive patronage systems.

As conflict developed, proceeds from organized criminal activity financed the military efforts of resistance forces and/or the regime in power. Saddam Hussein's Ba'athist elite used sanctions-busting smuggling to generate revenue, while the Taliban bought weapons and paid militias with profits from narcotics trafficking. The Kosovo Liberation Army (KLA) financed its operations through well-organized smuggling and trafficking networks, and Milosevic, Tudjman, and Izetbegovic used profits from illicit activities to support their war efforts.

Shadow Economies

In each country, command economies created unmet demand that enabled lucrative shadow economies to flourish. As these underground markets grew, organized criminal networks emerged, creating sophisticated smuggling routes and transnational criminal enterprises. For elites, shadow economies provided the most lucrative economic opportunities; for other members of society they offered the only viable economic option.

Legitimate market systems were weakened in the years leading up to conflict, particularly as states deteriorated and the international community imposed sanctions. When formal economies collapsed, shadow economies became dominant and pre-existing smuggling and trafficking networks flourished.

Authoritarian Rule

Authoritarian regimes in all four countries maintained order and control through force, intimidation, and patronage systems, rather than by establishing a social contract with the population. Police and security services were used to control rather than serve the population. They participated in illicit activities and benefited from widespread corruption.

As armed conflict escalated, the ruling criminalized regime exerted increasing control over political and social institutions, repressing alternative leadership structures. In each case, a

culture of fear and intimidation overshadowed legitimate state authority, obstructed civil society development, and prevented establishment of the rule of law.

Factionalism

In each of the four cases, ethnic conflict created an environment in which citizens were loyal to subgroups rather than to the state. These divided loyalties enabled ethnic or religious groups to gain control of state assets and amass illicit wealth. These elites then manipulated the formal economic and public sectors and used group loyalties to facilitate criminal activity and obstruct justice.

In Bosnia, Kosovo, Afghanistan, and Iraq, the legacies of criminalized governments, command economies, and ethnic, religious, and tribal fragmentation created societal vulnerability to organized criminal activity. During armed conflict, this vulnerability was compounded by the collapse of institutions, the absence of the rule of law, and the illicit war economy. These factors enabled criminal activity to thrive in the midst of conflict and set the stage for the rise of organized criminal activity in the post-conflict environment.

Immediate Post-Conflict Trends

A common feature of post-conflict societies is the collapse of government authority and institutions and an accompanying growth in criminality and violence. In each of these cases, the international military intervention force was reluctant to step in to maintain public order. The clearest illustration of this trend came in Iraq, where the fall of Saddam Hussein's repressive regime resulted in widespread looting, lawlessness, and an upsurge in violent crime. Bosnia, Kosovo, and Afghanistan also experienced civil disorder and revenge killings in the immediate post-conflict period. In addition, inter-ethnic factional fighting (and targeted violence against the international community in Afghanistan and Iraq) left sectors of the population, emerging political leadership, and the international community extremely vulnerable. In the immediate post-conflict environment, the failure of the international community to immediately restore public order leads to criminality and lawlessness.

In a lawless environment, informal elites in the society -- whether based on tribes, family clans, or force of arms -- move to fill the power vacuum. In doing so, these informal leaders often initiate or continue lucrative illicit activities. In Afghanistan, the removal of the Taliban created a vacuum of authority outside Kabul that allowed warlords and militia commanders to reclaim power and wealth by controlling narcotics trafficking, smuggling, and regional transport routes. In Bosnia, the vacuum was quickly filled by war criminals who retained control over the shadow economy. In Kosovo, KLA commanders, many of whom were local clan leaders, rapidly gained control over their communities in the wake of the Serb exodus, some continuing smuggling and trafficking activities while becoming members of the Kosovo Protection Corps or political parties.

In these post-conflict cases, the lack of legitimate government forces to maintain public order, secure borders, and ensure the rule of law immediately post-conflict led to a number of undesirable consequences. Alternate justice systems emerged, as actors capitalized on chaos to gain influence. In all four cases, armed groups remained mobilized, private citizens maintained control of weapons, and ex-combatants became easy recruits for criminal groups and militias.

Looting, petty and opportunistic crime and revenge killings took place in all cases to varying degrees. The leadership roles assumed by criminalized elites entrenched organized criminal activity and created a culture of impunity even as the international community undertook post-conflict reconstruction. Maintenance of public order and strong law enforcement by local and/or international institutions immediately post-conflict could have prevented this trend; however, in Bosnia, Kosovo, Afghanistan, and Iraq, the international community was either unwilling or unable to prioritize that task.

EFFECTS ON POST-CONFLICT SOCIETIES

In each of these four cases, the immediate post-conflict period was characterized by public disorder and growing criminality and violence. This section describes the short- and long-term effects of such disorder and the process by which organized criminal activity becomes entrenched in post-conflict environments. It then argues that the absence of public order and the rule of law presents a major impediment to stabilization, reconstruction, and the development of viable state institutions.

Short-term Effects

Reconstruction

In the immediate post-conflict period, disorder and insecurity slow reconstruction and raise its cost for international donors. While criminal activity may initially be disorganized and opportunistic, lack of public order quickly encourages organized groups and criminalized elites to profit from illicit opportunities and consolidate power. As these elites step into the vacuum, they create rival centers of authority with political and financial interests in continued instability.

Looting can result in extensive damage to infrastructure, buildings, government records, and economic capacity. In Bosnia, the looting and burning of Sarajevo suburbs by departing Serbs destroyed valuable urban areas that had survived the armed conflict. In Iraq, post-war looting accounted for far more destruction to critical infrastructure than did the war itself. Damage from looting raises the cost of rebuilding for international donors and delays the provision of basic services, often fueling popular resentment and unrest.

High levels of crime and violence in post-conflict environments inhibit international reconstruction efforts. Threats include petty crime; theft of vehicles, cash, and other high-value assets; and organized attacks such as those perpetrated in Iraq and Afghanistan on civilian and military staff. In some post-conflict areas, concern for the safety of equipment and personnel limits freedom of movement, preventing assessment, monitoring, and implementation of programs. Measures required to protect against these threats raise operating costs and alienate local populations. In the most extreme cases, security threats cause international organizations to limit their numerical and geographic presence in the country.

Finally, post-conflict criminality rarely limits itself to international targets. Displaced populations or minorities are often singled out for attacks or intimidation, especially in the Balkans, where many fear returning to their homes. In some areas of Iraq and Afghanistan, fear of petty crime, rape, and murder has prevented travel to work or school. Without effective law enforcement, people have been forced to rely on local militias or enforcers to provide protection, often through violent and illegal means and in exchange for money or promises of loyalty. This pervasive insecurity severely constrains reconstruction and economic activity.

Governing Authority

Disorder and insecurity rapidly weaken the legitimacy and effectiveness of the international presence and national governing authority, empowering groups who oppose them. High expectations for an intervention force to quickly improve the situation and allow the resumption

of normal life are not fully realized, and reconciliation between opposing groups is slowed. In Bosnia, post-conflict violence ensured the continued separation of ethnic groups, undercutting attempts to promote reconciliation and strengthening extremist ethnic elites. Similarly, in Kosovo, widespread inter-ethnic violence immediately after the deployment of peacekeepers led to the flight of many ethnic Serbs and minorities. Continued ethnic tension undermines a central objective of the intervention force – to protect minorities and promote reconciliation.

In societies emerging from tight authoritarian control, the sudden transition from strict order to freedom and disorder traumatizes the population and undermines popular faith in the capacity of the new governing authority. In Afghanistan, regional power holders exploited the security vacuum to consolidate their own control, feeding perception of the central government's ineffectiveness and irrelevance. Crime and insecurity in post-war Iraq have fueled resentment toward the Coalition Provisional Authority, weakening the Coalition's already shaky legitimacy and building support for violent resistance.

In each case, restoring public order has been perceived by the local population and outside observers as a central aspect of post-conflict stability. However, peacekeeping forces rarely view public order as central to their own mission and have focused instead on more traditional military tasks. Criminalized elites have exploited this weakness, pursuing criminal activities and violence to further their economic and political agendas. In all cases, widespread lawlessness in the immediate post-conflict period has made it difficult to implement reconstruction, pursue political development, promote national reconciliation and achieve the trust of the population. Failure in these areas weakens the legitimacy of the new governing authority and undermines the objectives of the stabilization mission.

Longer-Term Effects

Political Development

The initial post-conflict vacuum of authority provides the opportunity for existing criminalized elites to expand their activities and informal power in society. In some cases these informal power holders use their power and profits to undermine the legitimate government; in other cases, they eventually become part of the legitimate government through their associations with corrupt politicians. The intersection of criminal elites and the democratization process thus entrenches criminal interests in the political system. Post-conflict reconstruction efforts have prioritized democratization by rapidly electing local and national leaders. However, democratization without respect to the rule of law enables criminalized elites to legitimize their power through elections.

As described, various actors inevitably emerge to fill the post-conflict power vacuum, claiming authority based on traditional allegiances, such as tribe, ethnicity, or religion. Many of these actors are already entrenched in criminal activities, including the wartime ethnic elites in Bosnia, some KLA leaders and organized crime heads in Kosovo, militia commanders with ties to the drug trade in Afghanistan, and various tribal and ethnic leaders involved in oil smuggling in Iraq. For emerging elites, existing criminal networks provide opportunities to acquire revenue independently from the central governing authority. The combination of poorly controlled borders and pre-existing smuggling networks create abundant opportunities for lucrative illicit

trade. Weak response from the central governing authority emboldens them and allows their criminal activities, as well as their independent authority, to become entrenched.

Several features of the post-conflict environment enable this convergence of political authority and organized criminal activity. Where legal frameworks are weak, the line between licit and illicit activities is blurred, allowing political elites to pursue criminal activities semi-legitimately. Weak law enforcement capacity prevents the government from taking on powerful criminal groups. Meanwhile, groups that refrain from criminal acts are unable to compete politically with elites that utilize violence and illicit funding. Criminal elites come to dominate the political landscape.

The political entrenchment of criminalized elites undermines the development of an effective, democratic state. Elected criminal leaders have strong incentives to maintain the weakness of the state in order to consolidate their hold on power and expand their illicit activities. Once criminal organizations become entrenched, a culture of impunity develops, further undermining efforts to establish the rule of law. Meanwhile, criminal elites with narrow ethnic, religious, or tribal ties exploit social divisions to create a loyal base of support, complicating the task of post-conflict reconciliation. The resulting combination of criminality, intimidation, corruption, and lack of transparency poses a grave threat to democratic development.

For example, in Bosnia and Kosovo, criminalized elites have legitimized themselves through elections. This has allowed them to bolster their influence while pursuing criminal activities with impunity and enriching themselves through corruption; thus they preserve the state but use it to serve their personal interests. Every major political party in Kosovo is connected to organized crime, some more directly than others.

In Afghanistan, President Hamid Karzai is one of the only political leaders who is not dependent on the drug trade. Afghanistan's regional power holders, financed by drugs and smuggling, have successfully resisted the central government's attempts to extend its authority throughout the country, challenging the notion of Afghanistan as a functioning state. Elites excluded from the new political process often use criminal networks to fund insurgency, interethnic violence, and other means of destabilizing the governing authority. Unable to collect legitimate tax revenue due to public disorder and lack of economic activity, the government authority cannot compete with well-funded criminal elites in providing services to the population.

In Iraq, political power is contested and opportunities for smuggling abound. Numerous tribal, ethnic and religious groups have begun to build up power bases and assert regional authority. Former regime loyalists have exploited the vacuum of authority to directly challenge the Coalition Provisional Authority (CPA) through violence and insurgency. Pre-existing criminal networks have been activated, organized criminal activity is growing rapidly, and the CPA has insufficient capacity to impose order. The conditions in Iraq are therefore ripe for dominance by criminal elites, either through elections or outside them.

Economic Development

Failure to quickly establish the rule of law in post-conflict environments constrains long-term economic development as organized criminal activity deprives the government of essential revenue, discourages investment, and stifles legitimate business opportunities.

Government Revenue: Smuggling deprives the international or national authority of much needed revenue. In these countries, where capacity to collect taxes is limited and the economy is weak, customs duties are one of the few available sources of revenue. However, the absence of effective border control or the means to enforce customs regulations has prevented governing authorities from collecting these revenues.

In Kosovo, where customs revenue constituted 85% of the local government budget in 2002, informal networks sap this potential revenue through corruption and illicit smuggling, leaving the country dependent on outside assistance. In Bosnia, it is estimated that criminal activity has usurped 50% of rightful government revenues. In Afghanistan, military forces controlled by provincial governors and other local power holders control border crossings, collecting revenues for their own purposes and depriving the central government of these potential resources. In Iraq, 3 million barrels of oil are smuggled each day, sapping government oil revenues. As long as the post-conflict authorities are unable to control borders, they will continue to lose revenue to smuggling and corruption.

Investment: The absence of the rule of law also discourages outside investment that is crucial for economic development and growth. Private investment funds local economic initiatives, creates development opportunities, and reduces the financial burden on international donors. However, investors are easily deterred by violence, high crime rates, and official corruption, which add risk and increase costs. Even after the establishment of peace and security in Bosnia and Kosovo, the absence of contract enforcement, a weak legal system, and concerns about corruption continue to discourage foreign investors from providing the capital necessary to expand the economy, develop infrastructure, and create jobs.

Business Activity: The development of organized criminal enterprises and the absence of the rule of law also stifles legitimate business opportunities and hinders long-term economic growth. In addition to smuggling, networks of criminal elites pursue other types of lucrative criminal activities that hurt local business, such as protection rackets, organized theft, and extortion. In Kosovo, local organized crime leaders use intimidation to control local businesses. In Afghanistan, opium producers provide loans to farmers and demand the debts be repaid in poppy.

The same obstacles that stifle legitimate business favor the expansion of organized criminal activity, further sapping government revenue and legitimate business opportunities. Where legal frameworks and law enforcement are weak, the use of force or intimidation becomes a necessary ingredient for successful entrepreneurship. In each of the four case studies, ordinary businessmen are unable to compete with organized criminal groups for economic opportunities. In Bosnia, criminalized and nationalist elites have dominated the economy, while in Kosovo certain former officials of the KLA and their international smuggling networks have remained powerful. In Afghanistan, the local power holders with access to opium and smuggling revenue

control most economic activity. In Iraq, Ba'athists and businessmen allied to the former regime have the most resources, are connected to smuggling and criminal networks, and possess means of coercion. They are therefore best placed to acquire privatized assets, control trade, and dominate the economy.

Unstable post-conflict societies with weak institutions provide an ideal environment for the expansion of criminal activity at the expense of legitimate economic activity. In Afghanistan, poppy cultivation has spread from 18 provinces in 1999 to 28 of 32 provinces in 2003². Revenues from opium have been estimated to constitute as much as half of Afghan GDP, calling into question whether it can ever be eliminated. Kosovo has become a major route for smuggling heroin from Afghanistan into Western Europe. Bosnia has emerged as a haven for money laundering due to its weakly regulated banking sector. Iraq's extensive criminal networks, strategic location, and weak legal frameworks present ripe conditions for the growth of illicit activity at the expense of legitimate economic development.

Institutions

The growth of organized criminal activity weakens state institutions, creating a vicious cycle that impedes the development of the rule of law. Groups entrenched in criminality and dependent on its revenues have great incentives to prevent the rule of law from taking hold. Police stations and courts are the most frequent targets of violence, and in societies awash in arms, the government has no monopoly on the use of force. The effectiveness of the police, judiciary, and border authorities is further undermined by corruption and intimidation facilitated by low salaries, limited government revenue, and the presence of officials with ties to criminal elites in all sectors. Weak judicial systems and inadequate investigative capacity limit the ability of the government to confront these challenges without significant outside assistance.

The post-conflict environment provides an opportunity to institute the rule of law as the basis for a legitimate and effective state. However, unless this opportunity is seized immediately following the arrival of the intervention force, criminal elites will become politically and economically entrenched, preventing the development of state institutions and creating a culture of impunity.

² UNODC Opium Survey, October 2003

THREATS TO U.S. SECURITY

In post-conflict environments, the absence of public order and the rule of law impedes political and economic development and disables state institutions. These outcomes have far-reaching effects. The absence of public order and the rule of law in post-conflict societies poses a direct threat to U.S. security by undermining internal and regional stability, strengthening international organized criminal networks, and providing a safe haven and breeding ground for international terrorist networks.

Local and Regional Instability

Weak government institutions in post-conflict environments can negatively impact local and regional stability, particularly if capacity to maintain order and resolve disputes is inadequate. In the post-conflict environment, powerful groups are likely to exploit the vacuum of authority to challenge the state's monopoly on the legitimate use of force and export violence to neighboring states.

Given the proliferation of weapons in each case, criminal groups have the capacity to violently contest state authority. Heavily armed local militias and regional power-holders in Afghanistan, for example, are deeply involved in trafficking narcotics, weapons, and goods. In the Balkans, extreme nationalist groups such as the notorious Zemun Clan and the Albanian National Army (AKSH) pose similar threats. Without effective and legitimate coercive state capacity, challenges to state authority can lead to insecurity, turmoil, civil war, and humanitarian disaster. Spillover effects can destabilize nearby countries, as occurred in the Balkans when remnants of the KLA supported a violent insurgency in Macedonia to expand their influence and preserve smuggling across borders.

A post-conflict society with ethnic, religious, or tribal cleavages also invites undesirable interventions from neighboring countries. In Iraq and Afghanistan, Iran has attempted to gain influence over prominent clerics and power-holders. Turkey's pursuit of its interests in Iraq could destabilize a delicate ethnic balance and fuel further conflict and instability. Likewise, Serbia and Croatia have asserted their interests in Bosnia and Kosovo, threatening implementation of the peace accords. In these cases, clashing interests could rekindle ethnic conflict or fuel the rise of dogmatic, reactionary regimes. The deterioration of any of these states would undermine U.S. interests in the region and constitute a major blow to U.S. credibility in the international community.

International Organized Crime

Post-conflict environments without the rule of law provide ideal bases for international organized criminal networks. Bosnia and Kosovo are already major trafficking routes for drugs, weapons, and other smuggled goods, and Bosnia is known as a haven for money laundering. The U.S. and Europe have experienced an influx of violent Albanian organized crime groups that appear in European and U.S. cities with ethnic Albanian diaspora populations from Kosovo. Afghanistan is the primary narcotics supplier for Europe. In Iraq, the absence of the rule of law and porous borders suggest that international crime networks will continue to profit from illicit activities,

such as the smuggling of oil and artifacts, which will likely increase and become more diversified.

The ability of organized crime groups to function with impunity within countries and across porous borders facilitates their criminal activities internationally. Their cross-border activities not only threaten neighboring states and international stability, but spread criminality, drug addiction, and violence to countries around the globe. Interdicting trafficking and fighting organized criminal activity is a serious drain on U.S. and other government resources, and yields only mixed results. Preventing organized criminal groups from entrenching themselves in these environments is likely more effective than trying to thwart their activities abroad. The international presence in post-conflict environments presents a unique opportunity to do so.

International Terrorism

The absence of the rule of law and the accompanying entrenchment of organized criminal activity facilitate the growth of international terrorism. Post-conflict societies do not have adequate intelligence and law enforcement capabilities to identify, track, and apprehend terrorists. Those capabilities that exist tend to be corrupted, allowing terrorist groups to buy government influence and impunity. International terrorist groups also exploit criminal networks to move arms, money, and people across borders. Porous borders, numerous established smuggling networks, and weak banking systems with limited controls provide environments that allow terrorist networks to infiltrate post-conflict societies.

The most prominent example is Afghanistan, where Al Qaeda elements continue to operate and challenge U.S. stability operations. In Iraq, analysts suspect some level of international terrorist involvement in suicide bombings targeting the international presence. In Bosnia, SFOR troops disrupted several Al Qaeda cells in 2001. Regional terrorist groups such as AKSH in Kosovo also pose a danger to U.S. security, as there is a possibility that they may network with international terrorist groups in future.

Finally, if the U.S. and the international community are unable to provide the rule of law and public order, local populations may become disillusioned and dissatisfied. Resentment may make populations susceptible to radicalization and facilitate the spread of Islamic fundamentalist doctrine and terrorist recruiting efforts. This trend has occurred in Afghanistan, to some extent, and has potential to develop in Iraq.

Ineffective institutions, entrenched criminality, and a vacuum of authority undermine local and regional stability, and provide the ideal environment for international organized crime networks and international terrorist groups to operate worldwide. These groups spread violence and terror within post-conflict environments and abroad, threatening U.S. personnel, challenging U.S. credibility, and affecting U.S. homeland security. By not prioritizing the rapid establishment of the rule of law in post-conflict environments, the U.S. fails to seize a major opportunity to combat international organized crime and international terrorism. Attacking these groups at their bases and eliminating the conditions that allow them to flourish would go a long way toward enhancing U.S. security and protecting U.S. interests.

RESPONSES

The absence of public order and the rule of law in post-conflict societies enables the entrenchment of organized criminal activity, which poses a direct threat to U.S. security. This section evaluates international efforts to establish the rule of law and combat international criminal activity. It argues that while the international community has achieved some success in this area, it has yet to devote the attention and resources necessary to address this problem effectively.

Organized criminal groups continue to scar the political and economic landscape of Bosnia and Kosovo, even after years of active international presence. In Afghanistan, the central government is unable to exercise power effectively throughout the country. Violent insurgency and widespread criminality continue to hamper reconstruction efforts in Iraq. The inability of the international community to successfully establish the rule of law and combat organized criminal activity in post-conflict environments has two primary causes. The first is the failure of policymakers to recognize the importance of building the rule of law and prioritize it accordingly. The second is the lack of capacity within the international community for establishing public order and the rule of law in post-conflict situations.

International Military Presence

The size and capacity of military intervention forces has varied across the four cases studied. In Bosnia and Kosovo, NATO-led forces arrived to enforce peace under UN authority and have not since engaged in active hostilities. In Afghanistan and Iraq, however, U.S.-led Coalitions overthrew the Taliban and Ba'athist regimes and have faced persistent insurgencies mounted by former regime loyalists.

Despite this variation, in all four cases public disorder and delayed deployment of civilian personnel forced the military to assume responsibilities outside the purview of a strict military mandate. Troops were utilized to maintain public order, reconstruct critical infrastructure, perform law enforcement duties, and even act in local governance capacities. There was a mismatch between these tasks and those the military is trained and equipped to perform. The military mandate was narrow, institutional culture did not value non-military tasks, and forces were ill-trained to play the “preserve and protect” role of law enforcement officers. The result was a failure to deal effectively with the inevitable breakdown in public order.

These missions provide several lessons for the use of troops to maintain public order. While the mandate of SFOR in Bosnia did not include public order or law enforcement tasks, KFOR in Kosovo was authorized to make arrests and perform law and order functions. This lesson was not applied in Iraq, and the failure to provide public order resulted in widespread looting and crime. In Afghanistan, troops do not seize drugs found while searching for illegal weapons, because drug interdiction is outside their mandate. In all cases except Afghanistan, international police were not fully deployed for months, and troops were inadequately prepared for the nontraditional duties they were asked to perform. Inadequate intelligence sharing and communication lapses continue to plague civil-military coordination on law enforcement.

Considering the public disorder prevalent in the immediate post-conflict environment, and the fact that military personnel are often the only ‘boots on the ground’ in that period, it seems likely that the military will continue to have responsibility for the provision of public order in the crucial first days of the post-conflict period. Past cases suggest that discharging that responsibility effectively would require broadening the military mandate in the post-conflict period to include public order functions, providing troops with training in public order tasks, and legitimizing these new tasks within military culture.

International Political/Administrative Role

The international community continues to play a major role in the affairs of each of the four regions under study. Although details vary, the international community has found it difficult to balance the competing demands of establishing public order and the rule of law, instituting local civil administration, and introducing democratic institutions. Utilizing local capacity by reforming existing institutions like the police, judiciary, and civil service is desirable, but local capacity is often unavailable or underutilized due to fears of “contamination” by the former regime or ethnic enmity. Elections are held to identify legitimate leaders and establish representative institutions, but often serve to legitimize criminalized elites in the absence of effective rule of law.

Policing

In post-conflict environments, the international community faces the dual challenge of restoring public order in the short-term and providing effective law enforcement in the long-term. Interim international police were employed until a local force could be trained and stood up. For example, in Bosnia, the UN International Police Task Force (UNIPTF) was deployed to monitor the local police. In Kosovo, UN CIVPOL has executive authority and functions in parallel with the Kosovo Police Service. In Afghanistan and Iraq, no international police have been deployed, creating a law enforcement gap while local forces are trained. CIVPOL, when given executive authority, can play an important role in filling the security gap before the deployment of a trained and professional local police force. However, there are problems with differences in training, language, professionalism, and susceptibility to corruption of a police force drawn from dozens of different countries with different cultures and legal systems.

Local police training in stability operations is generally brief and focuses on preparing large numbers of police officers for street-level patrol. This eventually succeeds in filling the immediate need for patrol officers, but fails to provide the advanced capacities needed for an effective police force, such as management skills and investigative, intelligence, and forensic units. In Kosovo, where advanced police functions are performed by internationals, Kosovars are largely excluded for fear that they are subject to influence by organized criminal groups. While this may be the case, failure to transfer capacity to local police forces and low local salaries leave local police subject to influence and intimidation. Both insurgent and criminal groups have targeted violence at police in Afghanistan, Kosovo, and Iraq.

In all case cases, police trainers face the challenge of instituting a major cultural shift in establishing a police force that serves and protects the public rather than the government. In most cases the international community has shown considerable commitment to addressing these challenges and developing well-trained police forces. However, the international community has

yet to address the gap in initial civilian police capacity and the failure to build advanced law enforcement capabilities.

Legal and Judicial Reform

In Bosnia, Kosovo, and Afghanistan, legal and judicial reform were not prioritized in the early stages of post-conflict reconstruction. In these cases, local capacity was absent and international community efforts focused on political and security concerns. However, there are some indications that this lesson has been learned in Iraq, where establishment of a Central Criminal Court has built local capacity and enabled prosecutions to begin early in the post-conflict period.

In Bosnia, local judges and prosecutors are now functioning independently with the support of the international community. Major organized crime cases are tried by a team of international and local judges in a new State Criminal Court, with plans to phase international judges out over time. In Kosovo, international prosecutors and judges are still responsible for war crimes and other serious cases. Controversial cases are not passed to the local judiciary due to the sensitive nature of such cases and fear of retaliatory violence. This prevents capacity-building and commitment among local judges. In Afghanistan, the capacity of the local judiciary is extremely poor and reforms to remedy this problem have been extremely slow. However, in Iraq, the CPA has moved quickly to institute programs to develop the local judiciary, reform laws, and establish a Central Criminal Court staffed by Iraqi judges.

The international community has recently made efforts to remove corrupt officials from power. Bosnia-Herzegovina has enacted a policy of “cleansing” the judiciary. Some three hundred judges were removed last year in a major purge. The Iraqi judiciary is also undergoing a vetting process to promote a corruption-free judicial system. A “Judicial Review Committee,” patterned on Kosovo’s “Council of Judges,” has been established in Iraq to review judicial appointments and monitor performance.

The international community has made some progress reforming legal codes, beginning in all cases with modification of existing codes. While new criminal legislation on organized crime, trafficking in persons, and money laundering has been or will soon be promulgated in Bosnia and Kosovo, this process only began well into the post-conflict period. Capacity-building for special investigative methods and witness protection have also been slow to develop, hindering investigation and prosecution of serious offenses.

Success against entrenched criminal elites through the judicial system remains a distant hope in these cases. Local judiciaries suffer from corruption and are subject to intimidation by local power holders and criminal elites. Important witness protection programs are still lacking. Prosecution of high-profile individuals for offenses other than war crimes remains rare or nonexistent. Prosecutors fear the instability that such controversial prosecutions might engender, thereby strengthening the culture of impunity. Although recent efforts have been made in Bosnia and Afghanistan to remove such criminal elites from power, the international community has yet to illustrate convincingly that criminal activity among political elites will not be tolerated. In Iraq, the Central Criminal Court’s recent conviction of a CPA-hired official on corruption charges is encouraging, but capacity to investigate and prosecute crimes remains far below what is necessary.

Prisons System

Police, courts, and prisons have been described as the three-legged stool of law enforcement. However, corrections facilities have never been prominent on the reconstruction agenda, and donors hesitate to provide resources for corrections. As a result, Afghanistan has no functioning prisons. In Kosovo, prisons were built after significant delay. In Iraq, there are plans to rebuild the prison system, and some prisons have been renovated. However, they are staffed by U.S. military personnel with no corrections training.

Border Security

In all cases, porous borders have posed a major threat to effective law enforcement, facilitating trafficking of humans and drugs, allowing movement of terrorists, and preventing customs collection. In Bosnia and Kosovo, border police have been established, with the continuing active participation of the international community. Effective management of borders in these cases has proved difficult due to corruption, ineffective law enforcement, legal complications, and a tradition of free movement of persons and goods across certain boundaries. In Afghanistan and Iraq, the international community has delegated control of the borders to local and regional power holders, many of whom are involved in organized criminal activity, while the military performs minimal inspections. In Iraq, a consolidated border and customs service is being developed under the Ministry of Interior, but is not yet functional.

Overall, the low priority placed on the rule of law and lack of international will and capacity has impeded efforts to establish the rule of law and combat organized criminal activity in post-conflict environments. Progress has been made in each case, but emphasis should be placed on timely response, long-term capacity-building for local institutions, and addressing often overlooked aspects such as prisons and borders.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

In Bosnia, Kosovo, and Afghanistan, organized criminal activity has emerged as one of the greatest threats to U.S. security. This trend appears to be developing in Iraq. In current and future operations, the U.S. must emphasize the missing priority: establishing public order and the rule of law.

The four case studies underline five major gaps in U.S. post-conflict response:

1. *Lack of a rapid response capacity to provide post-conflict civil order and insufficient coordination of law and order forces.*

Narrow military mandates excluding public order functions, combined with an inability to quickly deploy civilian stability forces, have enabled lawlessness and criminality to take hold in the immediate post-conflict period. This failure to provide order has undermined subsequent reconstruction efforts. Coordination of civilian and military units has been insufficient, and has created a major obstacle to stability by failing to quell civil disorder immediately post-conflict. Each of the four cases has revealed insufficient coordination of rule of law efforts among the U.S., its allies, international agencies, and local authorities. Within the U.S., the dispersion of rule of law capacities throughout different agencies has led to inefficiency and a lack of strategic coordination.

2. *Inadequate focus on establishing border security, specialized civilian police functions, courts and correctional facilities.*

Law and order efforts have focused on deploying and training civilian police who provide a tangible law enforcement presence. However, rule of law rests on a three-legged stool of police, courts, and prisons, and cannot function effectively unless the international community provides adequate resources for a full complement of capacities.

Border security, specialized police functions, courts, and correctional facilities are all necessary components of rule of law efforts. In each of the four cases, the international community has shown insufficient effort and capacity to provide these functions.

3. *Not enough emphasis placed on building local institutions and capacity.*

While it is necessary for internationals to perform law and order functions at the start of peace operations, there must be simultaneous and reinforcing efforts to rebuild local capacity. Unless capacity building is prioritized, and responsibility shifted to locals, law and order will depart with the international community. There have been insufficient resources devoted to capacity building. Specifically, too much focus has been placed on training individuals and too little on building institutions.

4. *Insufficient recognition of organized crime as a principal driver of post-conflict instability, and insufficient political will to confront criminal elites.*

The U.S. has underestimated the threats posed by organized criminal groups and the impact of their ties to international cartels and terrorist networks. This has led to short-term decisions to accommodate criminalized elites for short-term objectives that compromised longer-term goals.

5. *Weak international capacities.*

International capacities are relevant to all peace and stability missions since broad international involvement enhances legitimacy and can bring needed skills and personnel resources from diverse backgrounds and experiences. International capacities for rule of law—both within the UN and among U.S. allies—need further development and reform.

Recommendations

The U.S. must improve its ability to quickly establish law and order while simultaneously building local capacity. Failure to establish law and order in the early stages of an intervention has negative impacts on all aspects of reconstruction. On the other hand, investments in law and order can have a powerful multiplier effect in promoting stability, democracy, and economic development. These efforts must be supported by firm political will and adequate resources if they are to prevent criminal groups and elites from becoming entrenched in the illicit economy and acting as powerful spoilers.

In order to address these gaps the U.S. should take the following steps:

1. *Establish a federal government capacity to implement post-conflict law and order operations.*

The recurring problems of post-conflict environments require that the U.S. develop a rapid response capacity that can provide necessary public order and rule of law functions immediately post-conflict without the delays that have occurred in the past. Current U.S. post-conflict law and order capacities are located in several disparate agencies. To respond quickly and effectively to changing post-conflict scenarios, these functions must be brought together under a single agency that would coordinate the efforts of federal civilian agencies.

2. *Improve coordination between military and civilian units.*

In the initial stage of peace and stability operations, military forces are often the only ones present to provide public order until constabulary forces or civilian police can be deployed. Although this paper recommends a rapid response to provide public order and rule of law immediately, military forces still retain a crucial role in post-conflict scenarios and provide the security backstop for civilian law and order forces.

Military and civilian law and order forces should establish a communications and coordination structure. That structure should identify and work to close security gaps where they exist. Improving intelligence sharing between military and civilian law enforcement is critical. A

model of intelligence sharing has worked well recently in Kosovo, and there is an urgent need for this capability in Iraq and Afghanistan.

In building the rule of law, U.S. military capacities are inadequately utilized and small changes in the performance of duties can dramatically assist civilian law enforcement. If Operation Enduring Freedom (OEF) forces in Afghanistan, for example, seized drugs in stopped vehicles or shared intelligence with police, it would have a major impact on fighting the narcotics trade.

3. *Prioritize law enforcement functions that have received insufficient attention in previous stability operations: border control, criminal investigators, courts and prisons.*

Border control

In post-conflict situations, one of the most urgent needs is controlling borders. Without adequate border control, organized criminal groups can smuggle goods and people with impunity, and terrorists can enter and leave at will. Porous borders undermine government revenue collection, commerce, law enforcement efforts, and counter-terrorism efforts. There is a need to develop a readily deployable civilian force of immigration and customs officers, supported by border police, to control checkpoints. This international force is needed to patrol national boundaries and simultaneously develop local capacity.

Special civilian police functions

While patrol officers (i.e. street cops) play an important role in providing post-conflict order, experience has shown that the international community must provide police with a broad range of special expertise: investigation, search and seizure, witness protection, forensics, etc.

Courts

Without qualified and well-paid judges and attorneys the justice system cannot function. In each of the four post-conflict areas, courts were a serious bottleneck. Prioritizing the establishment of adequate facilities, professional judges, and qualified attorneys would yield great benefits. When there is no immediate local capacity, the U.S. should consider supplying international judges and prosecutors, as in Bosnia and Kosovo, to fill the gap and work to simultaneously build local capacity.

Correctional facilities

While international donors are generally reluctant to provide detention centers, prisons, and correctional personnel, the absence of an effective penal system undermines all rule of law efforts. The escape or release of prisoners due to inadequate facilities undermines police capacity and morale; human rights abuses in prisons contravene justice and undermine government legitimacy. The international community must begin to allocate sufficient resources to rebuild or refurbish secure and humane facilities, and to train detention officers skilled at sorting and monitoring prisoners.

4. *Focus on building local capacity: build strong local institutions, implement training, and reconstruct physical infrastructure.*

There is an important distinction to be made between providing an international operational capacity for short-term stability and building medium and long-term indigenous capacity. While it is necessary for internationals to provide missing law and order functions at the start of stability operations, there must be simultaneous and reinforcing efforts to rebuild local capacity. Unless capacity building is prioritized, and responsibility shifted to locals, law and order will depart with the international community. Training is not sufficient; institutions must be built and strengthened, and when necessary vital physical infrastructure must be reconstructed. In all cases, a rigorous vetting system and intolerance for corruption are also vital to building strong institutions.

5. *Recognize organized crime as a primary obstacle to stability and demonstrate the political will to stand in the way of criminal groups.*

The U.S. must have the political will to confront local elites with criminal ties and demonstrate to the broader society that criminality among leaders will not be tolerated. The U.S. has underestimated the threat posed by organized criminal groups and their impacts on stability in post-conflict environments and global security. In protecting U.S. interests and post-conflict stability missions, a better approach is to immediately break the links between organized criminal activity and local political, economic, and traditional leaders. There is a need to demonstrate that no one can operate criminal enterprises with impunity and to arrest and prosecute those who do. This strategy will not only weaken organized criminal networks and prevent them from entering the developing political structure, but it will also contribute to a culture of respect for the rule of law.

6. *Strengthen international capacities.*

By taking the lead in developing its own post-conflict response capacity, the U.S. can encourage others to bolster their capabilities. The U.S. must lead by example and encourage our allies to share the burden.

Strengthen CIVPOL

The U.S. would benefit from a stronger UN civilian policing (CIVPOL) capacity. UN CIVPOL currently lacks the ability to deploy quickly and perform certain functions. The U.S. should look for practical means to improve UN capabilities, including the provision of resources to the UN Civilian Police Division in the UN Department of Peacekeeping Operations.

Synchronize with Europe

The U.S. should coordinate joint training and doctrine with EU rapid reaction forces so that U.S. forces can operate effectively with their European counterparts. The Europeans can offer great expertise in developing a U.S. constabulary force or public order capacity.

ANNEX I: TERMINOLOGY

Rule of Law: A system in which the laws are public knowledge, clear in meaning, and apply equally to everyone. Judges are impartial and not subject to political influence or manipulation. The government seeks to be law-abiding and its officials accept that the law will be applied to their own conduct.³

*Transnational Crime, Trans-border (Cross-border)*⁴: Transnational crime occurs when an illegal act a) is committed in more than one state; or b) is committed in one state, while substantial parts of its preparation, planning, or direction takes place in another state; or c) is committed by organized criminal groups that are engaged in criminal activities in more than one state; or d) has substantial effects on another state.

Organized Criminal Activity: A profit-making scheme carried out by a structured group of three or more people who collaborate for a period of time to commit one or more serious crimes/offences to obtain, directly or indirectly, a financial or other material benefit.⁵

³This definition is a condensed version of that provided by Thomas Carothers in *The Rule of Law Revival*. Thomas Carothers. Reprinted by permission of Foreign Affairs, c.1998 Vol. 77, No. 2 1998, <http://www.ceip.org/people/carrule.html>.

⁴ United Nations Convention Against Transnational Crime. 2000 Article 3b. <http://www.globalmarch.org/child-trafficking/legislation/united-nations-convention-against-transnational-organized-crime.pdf>

⁵ UN General Assembly Resolution: Crime Prevention and Criminal Justice. November 2, 2000. Annex I, Article 2.

ANNEX II: SOURCES

The following list includes the institutions and ministries providing interviews and information that contributed to this report. All interviews were conducted on a not for attribution basis. Therefore, the individuals interviewed and their responses will remain confidential. The opinions expressed in this report do not necessarily reflect the opinions of any one institution.

Bosnia and Herzegovina

- Bosnian Federation Intelligence Ministry
- Coordination Team for the Prevention of Major and Organized Crime
- Customs and Border Service Ministry
- Ministry of Justice Legal Department
- Ministry of Security
- European Union Police Mission, EUPM Headquarters
 - Program Development Office
 - Major and Organized Crime Unit
 - Office of the Chief of Police Mission
 - Press Office
- International Crisis Group
- Media Center Sarajevo
- Office of the High Representative (OHR)
 - HR Strategy Team
 - Anti-Crime and Corruption Unit
 - Sarajevo Regional Office
- Organization for Security and Cooperation in Europe
 - Human Rights Department
- State Criminal Court of Bosnia-Herzegovina
- SFOR, Camp Butmir
 - Plans and Operations
 - Public Information Office
- U.S. Embassy, Sarajevo
 - Political and Economic Offices
- Department of Justice Office of Overseas Prosecutorial Development Assistance
 - Training (OPDAT)
- Department of Justice International Criminal Investigative Training Assistance
 - Programs Office (ICITAP)

Kosovo

- Office of the Prime Minister
- UNMIK Office of the SRSG
- UNMIK Police Department
 - Office of the Police Commissioner
 - Kosovo Police Service

- Kosovo Organized Crime Bureau
- Central Criminal Investigation Unit
- Trafficking in Persons Investigation Unit
- Information Office
- UNMIK Department of Justice
 - Office of the Director
 - Criminal Division
 - Special Investigation and Operations Unit
 - International Prosecutors Office
- UNMIK Customs Service, Enforcement Division
- OSCE
 - Kosovo Police Service School
 - Department of Human Rights and Rule of Law
- U.S. Embassy
 - Political Section
 - Bureau for International Narcotics and Law Enforcement Affairs
 - Department of Justice, Criminal Division
- International Crisis Group
- International Organization for Migration-Counter-Trafficking Project
- Alliance for the Future of Kosova (AAK)
- U.S. Department of State, DC
 - Office of South Central Europe, Kosovo Desk
 - Bureau of International Narcotics and Law Enforcement
 - Office to Monitor and Combat Trafficking in Persons
- Vital Voices
- U.S. Department of Justice, Macedonia
 - Criminal Division, Office of Overseas Prosecutorial Development Assistance and Training
- OSCE Spillover Monitor Mission to Skopje
 - Political/Reporting Section
 - Rule of Law Section
- Transparency International, Macedonia

Afghanistan

- Afghanistan Ministry of Interior
- Afghanistan Ministry of Justice
- Afghanistan Attorney General's Office
- Afghanistan National Security Council
 - Office of International Affairs
 - Office of Domestic Affairs
 - Afghanistan Counter Narcotics Directorate
- Afghanistan Judicial Reform Commission
- U.S. Embassy, Kabul
 - Bureau of International Narcotics and Law Enforcement Affairs

- U.S. Drug Enforcement Administration
- U.S. Agency for International Development
 - Afghanistan Mission
 - Office of Conflict Management and Mitigation
- Coalition Joint Civil-Military Operations Task Force (CJCMOTF)
- British Embassy, Kabul
- Italian Embassy, Kabul
- German Police Training Unit
- United Nations Assistance Mission to Afghanistan
- United Nations Office on Drugs and Crime
- Afghanistan Research and Evaluation Unit
- The Asia Foundation
- The Stimson Center

Iraq

- National Security Council, Counterterrorism Directorate
- U.S. Department of State
 - Bureau of International Narcotics and Law Enforcement
 - Bureau of Near Eastern Affairs
 - Bureau of Global Affairs
- Department of Justice, ICITAP
- USAID Iraq Task Force
- U.S. Department of the Treasury
- Coalition Provisional Authority
- U.S. Army
 - 101st Airborne
 - 173rd Airborne
- Central Intelligence Agency
- The World Bank
- Center for Strategic and International Studies, Transnational Threats Initiative
- United States Institute of Peace
- National Defense University
- American University, Transnational Crime and Corruption Center
- *The Guardian*
- *The Washington Post*
- *The Boston Globe*
- U.S.-Iraq Business Council
- National Democratic Institute
- International Crisis Group
- Human Rights Watch

ANNEX III: BOSNIA AND HERZEGOVINA CASE STUDY⁶

The 1995 Dayton Accords prescribed many layers of government. The role of the federal government was limited to foreign affairs, interpretation of the Constitution, and to a largely symbolic rotating presidency. Key government functions (including defense, intelligence, and customs) lay with the two main entities – the Federation of Bosnia and Herzegovina and the Republic of Srpska. The Federation was further sub-divided into ten Cantons, responsible for most municipal functions including policing. The Accords created the Office of High Representative (OHR) to represent the will of the international community and to guarantee the implementation of the peace settlement. OHR was given full authority over all government actions in Bosnia and Herzegovina (BiH). After eight years and many representative elections, OHR remains the most powerful political force in BiH and the ultimate authority in the country.

Throughout the post conflict period, organized crime has dominated the post-war political and economic landscape of Bosnia and Herzegovina, reaching into all levels of government and business. Initial local and international responses to post-conflict instability did not adequately address the challenge of establishing rule of law and allowed organized criminal activity to proliferate. Until recently, when OHR and the Bosnian government initiated a number of institutional reforms, the absence of meaningful state-level capacity inhibited effective governance to address organized crime in BiH.

Origins of Organized Criminal Activity

The origins of organized criminal activity in BiH date back to the Communist era under President Marshal Tito. Even as the Yugoslav economy thrived with average annual growth rates around 6% prior to 1980, a patronage system developed whereby the state condoned and facilitated black market activities. Individuals' ability to purchase influence among party leaders through bribes, blackmail, and other forms of coercion preempted meritorious service and uniform application of rule of law. As a result, the smuggling of goods, weapons, and drugs through the Balkans was commonplace.

Under President Slobodan Milosevic, Yugoslavia became a criminalized state. According to testimony heard before the International Criminal Tribunal for the former Yugoslavia at the Hague, the State Security Service (DB) was involved in heroin trafficking, political assassinations, and economic crimes. The war in BiH intensified organized criminal activities and saw the development of new groups associated with each of the warring factions. These groups used profits from illicit arms deals and dry goods smuggling to support the war effort and to line their own pockets. With money as a primary motivation, war profiteering evolved in the post-war period into trafficking in drugs, weapons, and humans through Bosnia to destinations in Western Europe and to the U.S.

Post-Conflict Organized Criminal Activity

In BiH today organized criminal groups operate in all areas of the country, sectors of the economy, and levels of government. Organized crime syndicates come from all three ethnic groups, Bosniaks, Croats, and Serbs. Cooperation across ethnic lines is common. War criminals,

⁶ Prepared by Zubair Bhatti, Jessica Lovejoy, and Derek Politzer

like Radovan Karadzic, continue to play an important role in organized crime in Bosnia. The highest concentrations of organized criminal activity are along the Inter-Entity Borderline and in South East Bosnia. Criminal groups are generally small, locally or regionally-based and engage principally in smuggling oil, cigarettes, alcohol, CDs, DVDs, and other dry goods; money laundering; auto theft; and tax evasion schemes. Transnational trafficking in drug, weapons, and persons also continues. Approximately 50% of Bosnia's economy is black-market based.

The influence and pervasiveness of organized crime in Bosnian society today is encouraged by the country's Communist legacy, close linkages between national parties and organized crime, and a pervading culture of corruption and impunity. Many laws from the Communist era remain on the books, ironically creating incentives for criminal activity by choking the private sector at its roots. A burdensome and inefficient tax system and complex and conflicting regulations at different levels of government (municipal, cantonal, entity, state) stifle business. Organized crime groups have moved phantom companies between the entities to thwart law enforcement efforts. Nationalist efforts to "stack" boards of private and public companies have had a similar impact.

All three parties in the tripartite presidency, the Bosniak SDA (Party of Democratic Action), the Croat HDZ (Croatian National Union), and the Serb SDS (Serb Democratic Party) are connected to organized crime. Emblematic of these ties to organized crime, an HDZ (Croatian National Union) criminal conglomerate in Mostar controlled banks, insurance companies, cafes, a car phone company, and a private security company. The group defrauded the government of considerable sums of money in tax evasion schemes. SFOR and the OHR disrupted the network only after this group tried to declare an independent Croatian entity. As further evidence, the Croatian president, Dragan Covic, is under investigation for involvement in criminal activity, with 13 charges pending. The former Serb president, Mirko Sarovic, resigned earlier this year in light of allegations of involvement in the Orao arms to Iraq scandal. A culture of impunity pervades life in Bosnia. Criminals often use nationalist mantra to defend themselves against prosecution and protect their personal interests.

Threats to U.S. and International Security

Bosnia has offered a permissive environment for the development of international terrorism. SFOR disrupted several Al Qaeda cells in 2001, thwarting planned attacks against American and NATO interests in Bosnia. A number of charities linked to Al Qaeda have been shut down, though others continue to operate. Money laundering constitutes an "enormous problem" in Bosnia, according to one U.S. Embassy official, opening the door to possible terrorist financing and serious transnational criminal activity. Although some high profile cases have attracted international attention, evidence relating to the presence of international terrorists in Bosnia is largely anecdotal and does not indicate a growing threat.

The country is awash in war-era weapons. SFOR has also uncovered modern weapons systems, like the SA-7, in Bosnia. An unspecified number of weapons exit the country each year.

Heroin trafficking is a problem in Bosnia, but routes through Kosovo and Albania are more active. About 30% of the drugs trafficked through Bosnia end up in Western Europe, while an increasing proportion now remains in the Balkans. Trafficking of women for prostitution has

subsided somewhat since 600 police raids shut 124 brothels across BiH in the 1997-2002 period. Alien smuggling is a serious issue authorities are beginning to address.

The International Response

The first two High Representatives focused on two immediate tasks – keeping the warring groups apart and facilitating the safe return and rehabilitation of some one million refugees and displaced persons. The third high representative unseated corrupt local officials, but the effort to fight organized crime was not given high priority. Sir Paddy Ashdown, the current High Representative, has tried to rectify this costly mistake since taking office in May 2002. OHR has actively sought to strengthen rule of law and has begun to pursue prominent criminal organizations. Currently, OHR is investigating a dozen leading groups. It has also removed a number of corrupt officials that were seen to be colluding actively with organized criminals.

Fortunately, OHR has also recognized that reforms have to be institutionalized for any long term impact. Several major initiatives have been undertaken. First, the much distrusted and corrupted judiciary is being cleansed. All judges were relieved of their duties in 2002 and required to re-apply for judicial positions, with applications vetted through the Independent Judicial Commission (IJC). Some 300 of these were not taken back on grounds of corruption. Second, state level institutions are being created to plug the gaping holes left in the crime-fighting abilities of the state by the Dayton Accord. These include the creation of a unified state border service, state intelligence service, state information and protection services, and state criminal courts. Third, a new criminal code has been introduced to modernize and unify the criminal administration in the country. New anti-money laundering and anti-organized crime laws are also being drafted.

These reforms have begun to construct the hitherto absent institutional infrastructure for fighting organized crime. The two-year old State Border Service is not fully operational, but has made a promising start. The new Criminal Code has been operationalized. In October this year, the new State Criminal Court, with original jurisdiction in trying organized crime cases, heard its first drug-smuggling case.

This spate of reforms does not mean that organized crime will be eliminated in BiH any time soon. Appropriate laws are slowly being put in place, but inhibiting factors such as low police salaries, poor training in new laws, antiquated attitudes toward law enforcement, and continued political interference within the bureaucracy will take much longer to change. Nepotism and exchanging favors, seen as corruption in the West, are a part of routine public life. Rule of law, as understood in the West, will take decades to take root in the soil. Nationalist feelings are strong and organized crime figures hide easily behind ethnic rhetoric. For many it is as yet difficult to distinguish between war heroes, war criminals, and organized criminals. Inter-jurisdictional coordination within BiH as well as cooperation with neighboring states, such as Serbia and Montenegro, will be hard to achieve.

A significant challenge is the building of local ownership of reforms. Though the legislative reforms are adopted by the constitutional structures such as entity and state parliaments and the Council of Ministers created by Dayton, pockets of political opposition to these reforms remain. It is difficult to ascribe this opposition to any particular factor. The possible erosion of entity

powers, the nationalist rhetoric, and influence of organized crime groups all contribute to resistance of OHR-induced reforms. Such opposition, though presently subdued in the face of the powerful mandate of OHR, casts doubt on the long-term sustainability of reforms. The population is aware of the menace of corruption and organized crime, but the strong nationalist character of electoral politics ensures that such concerns are not reflected in the voting choices, especially in the rural areas.

The most important component of the international presence in Bosnia is the multinational Stabilization Force (SFOR). In tackling organized crime specifically, SFOR has been the primary collector of intelligence in the absence of state-level intelligence services. SFOR also conducts routine weapons inspections (weapons collections and seizures) as part of its Operation Harvest initiated in 1998. The project, according to SFOR sources, has made a “significant dent” in reducing the number of illegal arms in BiH. SFOR has also conducted crackdowns on organized criminal groups and terrorist cells, and retains the capacity to deal with instances of massive civil disorder that could overwhelm local authorities.

Besides SFOR, the international community has helped construct other administrative, social, and economic institutions of the country. The Organization for Security and Cooperation in Europe has coordinated the vital task of return and rehabilitation of refugees and has monitored elections. In the field of rule of law, these efforts have traditionally focused on training and technical advice but are moving toward trial monitoring.

Police advisors have replaced police monitors and trainers. In January 2003, the United Nations International Police Task Force (IPTF) was replaced by the European Union Police Mission (EUPM) which aims to upgrade the Bosnian police to EU standards through strategic guidance provided to middle-managers. Although the IPTF’s mandate was quite limited, the UN was empowered to decertify obstructionist police officers. The EUPM does not have such authority and its efforts are limited to offering advice in order to develop a transparent and democratic model for Bosnia policing. The transition between the two missions was not well coordinated. Documentation compiled by IPTF on crime statistics and program evaluation was not transferred to the incoming EUPM. Criticisms of the EUPM point to its overly bureaucratic structure, a passive interpretation of an already weak mandate, and imprecise objectives.

Through the Department of Justice’s Office of Overseas Prosecutorial Development Assistance Training (OPDAT) and the International Criminal Investigative Training Assistance Programs, the U.S. has also actively supported the reconstruction of judiciary, police and customs in the country by providing technical advice and training.

Conclusions

Although organized crime has a significant destabilizing influence in Bosnia, it is unlikely to trigger a collapse of state institutions. The prospects of eventual European Union membership and future participation in NATO’s Partnership for Peace Program provide incentives for maintaining stability and pursuing reform, thereby bolstering nascent state institutions. However, the bureaucracy in BiH, though not as corrupt as the political parties, is still highly influenced by organized crime groups.

Engagement of U.S. and other leading international players in Bosnian re-construction have had a number of benefits. Security has been guaranteed. Most political parties are still staunchly nationalist but they advance their agendas within the confines of the framework created by the Dayton Accords. Many observers say that peace in Bosnia is irreversible now. Administrative institutions to further the important cause of good governance are being put in place. A large bulk of the six billion dollars of money spent in Bosnia by the international community has sustained the local economy through difficult times, although these efforts have been undermined by organized crime.

There have also been several major shortcomings. There is a culture of dependency among local citizens and political elites. Bosnia's political leaders have avoided the political consequences of difficult reform decisions by accusing OHR of forcing their hands. In the sphere of legal reform, precious time was lost in arguing over whether the new criminal code was going to have common law or continental character. Legal infrastructure still continues to suffer from the inevitable incoherence introduced by the wide diversity of the backgrounds of the initial set of legal reformers.

Recommendations

The strong presence of organized criminal elements in Bosnian political and economic life and the resistance shown by some political factions against judicial reform indicate that the international community must continue its efforts to improve rule of law institutions throughout the country. Current efforts to establish rule of law are promising, if late in coming. Continued work in areas of border security; police, judicial, and education reform; and further institutional restructuring in all agencies of the government are likely to improve public confidence. Such improvements will be crucial to BiH's success in containing organized crime in the future. Recognizing that BiH's political and economic development is a long-term commitment, sustained U.S. involvement is essential. In the short term the U.S. should take the following actions to promote the rule of law in BiH.

- Support High Representative Paddy Ashdown's bold campaign against criminal political elites and organized criminal activity but realize that increasing Bosnia's domestic capacity is the only sustainable solution in the long-run.
- Continue the provision of U.S. DOJ Treasury and State Department technical assistance and training for law enforcement agencies in BiH. Prioritize intelligence, border control, policing, judiciary, and economic reform.
- Speed up the consolidation of entity-level intelligence services and the vetting of all intelligence applications to facilitate intelligence sharing between SFOR and the Bosnian government. The intelligence agency must be transparent and accountable to civilian authorities.
- Work with Bosnian authorities to operationalize the unified border service, and encourage its increased cooperation with all neighboring countries.

- Ensure continuing efforts to cleanse and strengthen the Bosnian police services, recognizing that law enforcement reform is the only way to break the cycle of impunity.
- Continue to support and offer assistance to the State Criminal Court established two years ago. This Court must have the support of law enforcement and the Ministry of the Interior to protect witnesses and shield judges from physical intimidation. The Court's first trial with initial proceedings last month will set an important precedent. Over the next several years, changing the composition of the judges on the court from majority international to majority Bosnian will become necessary.
- Maintain economic aid programs; however, structural reforms are equally important to ensure foreign aid is promoting sustainable development. Privatization programs must not allow state companies controlled by criminal political elites to fall into the hands of organized crime.
- Work closely with European and other international partners in BiH to coordinate bilateral and multilateral assistance programs, streamlining operations, reducing duplication, and facilitating difficult transitions from international to domestic programs. Local ownership of programming is now a priority.
- Maintain the incentive of future participation in NATO's Partnership for Peace program, making politically sensitive defense reforms in BiH more palatable. Encourage European capitals to use a similar approach with regard to European integration to speed up domestic political, economic, and human rights reform.

ANNEX IV: KOSOVO CASE STUDY⁷

The political oppression of the Milosevic regime sent thousands of young Kosovar Albanians to search for employment abroad, yet the Albanian diaspora remained loyal to their family ties and communities of origin. The regional wars of the 1990s, which led to the disintegration of Yugoslavia, forced many illegal trade routes through Kosovo. As Milosevic's alienation of Albanians escalated, they began to boycott the Serb-dominated markets and view support for the Albanian underground economy as a patriotic duty. In 1999, Milosevic launched a full-scale ethnic cleansing initiative in Kosovo. The resulting refugee crisis dramatically expanded the global network of ethnic Albanians.

Origins of Organized Criminal Activity

Smuggling, trafficking, and other forms of trans-national criminal activity in Kosovo are part of a broader geographic pattern and long historic tradition in the region. For years, many factors encouraged local populations to engage in smuggling and other illegal trade throughout the Balkans. These factors included frequent wars, displaced populations, porous borders, corrupt state leadership, poor law enforcement, high unemployment, and a weak economy. The long history of embargoes placed on Yugoslavia also created lucrative informal markets for licit and illicit goods. Other historical traditions also strengthened nationalism, laying the groundwork for pervasive corruption. In the absence of state leadership, which looked out for the interests of the Albanian population, traditional Albanian family clans, which had long served as the primary unit of social organization evolved to become leaders in geographic spheres of influence throughout the Kosovo. As needed, these leaders also facilitated economic activity for the Albanian businesses.

As the ethnic tensions rose throughout the mid-late 1990s, organized criminal activity played a crucial role in the rise and arming of the Kosovo Liberation Army (KLA). Before the 1999 conflict, Kosovars smuggled arms for the KLA into Kosovo through Albania and Macedonia. In each region, the local community leaders who represented the dominant clan typically became the local KLA commander in charge. As a result, many local clan leaders became community war heroes, often obtaining arms and raising funds for KLA through trafficking.

Post-Conflict Organized Criminal Activity

Though the KLA demobilized after 1999, organized criminal activity continued to flourish. In the chaotic interval between Serb and UNMIK rule, community clan leaders (many of whom were KLA war heroes) returned to fill the leadership vacuum in local communities. In this period of lawlessness following the war, many of these Kosovar leaders built their fortunes through trafficking, and the Albanian diaspora throughout Europe and the U.S. provided a broad network for this criminal activity. When profitable, ethnic Albanians collaborated with other ethnic groups to manage trafficking in the region, thereby forging the lucrative trafficking and criminal networks that are still present throughout Kosovo. Although officials claim that some trade has been rerouted to nearby countries due to the presence of CIVPOL and KFOR, much of the trade links still operate within Kosovo.

⁷ Prepared by Jennifer Bulkeley, Courtenay Dunn, and Angela Stene

Organized Criminal Activities

Alien trafficking.

Kosovo is both a transit point and a destination for trafficked persons, although some—mostly minors—are trafficked from within Kosovo itself. Most trafficked persons are brought from Eastern Europe through a variety of illegal means. The international presence in Kosovo has created a market for prostitution of trafficked women, but steps have been taken to curb the problem. New regulations to combat trafficking and a series of successful prosecutions have led to a notable decline, yet the problem of light criminal sentences (less than five years) for trafficking persists.

Weapons

Thousands of weapons, particularly AK47s and grenades, were trafficked into Kosovo before the 1999 conflict, while some continue to be trafficked back to Macedonia and Serbia. Recent weapons amnesty collection programs have failed. Most weapons remain in private hands.

Narcotics

Heroin originating in Central Asia and destined for Western Europe is widely trafficked by Albanian organized crime through Kosovo, although some traffickers prefer to take advantage of more corruptible civil servants and infrequent security checkpoints in nearby countries. UNMIK police recently intercepted 18 kilos of heroin, valued at \$920,000, but investigators say that is only the tip of the iceberg, and that the volumes of drugs trafficked to Western Europe through Kosovo are large.

Money Laundering

Money laundering and extortion are also prevalent, yet there is not much information on the magnitude of the crimes. Much of the laundered money comes from the Albanian diaspora in Western Europe and is funneled into legitimate businesses, such as construction materials and gas stations, throughout Kosovo.

Smuggling

As UNMIK law enforcement capabilities have increased, some organized criminals have turned to smuggling activities for which the goods are not illegal or the legal penalties are low. Huge quantities of cigarettes enter Kosovo legally, but are later smuggled out of the country through the porous Serbian boundary. Fifty percent of Kosovo's oil is smuggled into the province through canalized routes from Montenegro. To facilitate the transfer, documents are either falsified or customs officials are bribed. Many actors of these smuggling activities operate within closely-knit networks, and profits from oil and cigarette are often used to fund other criminal activities.

Threats to U.S. Security and International Security

Since the conflict, concerns about stability and security in Kosovo have focused on future political status, ethnic violence, extremist political organizations, and energy deficiencies. Increasingly, leaders among the judiciary, police force, and provisional self-government have come to view organized criminal activity as one of the greatest threats to stability and security in Kosovo.

Criminal networks in Kosovo are wealthier and more organized than they were four years ago, and organized criminal activity represents a huge loss of revenue to Kosovar authorities. Organized criminal activity continues to deter foreign investment and erode legitimate business through intimidation and extortion. Criminal elites have infiltrated Kosovo's political system and the leaders of the three major political parties have varying levels of alleged connections to organized crime. Former SRSG Michael Steiner admitted that he hesitated to transfer the justice, security, and law enforcement competencies to Kosovo Provisional Institutions of Self Government (PISG) because of rampant corruption. However, no arrests by UNMIK or Kosovar officials have been made. Nevertheless, the integrity of local institutions will be put to the test as the duties and responsibilities of governance are returned to local actors in 2006. With this transfer, the material stakes in politics will be much more compelling for organized criminals and violence may escalate as battles for political terrain ensue.

Terrorism

Although militant Saudis and Wahabis are working to recruit young Kosovar Albanians, their efforts to penetrate Albanian society have been thwarted by Kosovars' moderate Islamic traditions, affinity for Western culture, and continued feelings of gratitude to the United States. Nevertheless, this situation may reverse itself over time if the sluggish economy and 55-79% unemployment rates fail to improve.

Use of terrorist tactics by extremist nationalist groups to extort money for 'political gain' has increased, however. In 2002-2003, two terrorist attempts attributed to AKSH, an ethnic extremist group, were thwarted in Serb dominated areas of Northern Kosovo. A number of other grenades and small arms attacks have been perpetrated against police, courts, and public buildings in the past year. Investigators believe these attempts are orchestrated to increase local extortion capacity and nationalist sentiment through a show of strength and power.

International Stability

After the war, the dispersion of the Albanian diaspora created new trafficking routes for Albanian organized crime, particularly in Western Europe. In the United States, the FBI recently named the Albanian mafia the most violent of the organized crime groups and established a special investigative unit for Albanian crime networks. Some speculate that OECD countries will experience an expansion of Albanian criminal networks if there are no effective efforts to stifle organized crime in Kosovo. The global security ramifications are clear as Albanians trade increasingly sophisticated weapon systems with the highest bidder on the market.

The International Response

KFOR and UNMIK Administration

UNMIK did not establish a fully functional post-war administrative presence until nine months after the fighting had ended. Thus, despite KFOR's work to maintain security, the lack of political and legal institutions led to egregious gaps in public order. Borders and boundaries between neighboring countries were left open and an environment of lawlessness characterized by looting, retribution and street crime prevailed.

Before UN CIVPOL units could arrive in Kosovo, KFOR was tasked with policing and investigation activities to preserve public order and provide security. Primarily trained for

combat, KFOR troops lacked the training and capacity necessary to prevent looting and civil disorder. Similarly, crucial evidence of major war crimes trials was lost or incorrectly collected. Despite these initial short-comings, KFOR troops and the UNMIK Police managed to restore public order and effective law enforcement once CIVPOL became fully operational. Today, most residents of Kosovo claim to feel “reassured” by the security provided by the international presence.

Substantial progress has been made in building lasting Kosovar institutions, such as a police force, and lasting tools for fighting criminality, such as a new criminal code, specific regulations, and expansion of special investigative and surveillance techniques. KFOR effectively filled many key law enforcement functions before UNMIK was fully established on the ground, and subsequent collaboration between KFOR and UNMIK, such as intelligence sharing, has been innovative and successful. Nevertheless, UNMIK has been reluctant to build local capacity to investigate and prosecute organized crime.

Within UNMIK, the Counter Terrorism Task Force (CTTF), Central Criminal Investigation Unit (CCIU), the Trafficking in Persons Unit (TPiU), the Financial Investigation Unit (FIU), and the Kosovo Organized Crime Bureau (KOCB) have been formed to address law enforcement priorities. The Sensitive Information and Operations Unit (SIOU) in the Kosovo Department of Justice Criminal Division liaises with CIVPOL and KFOR to investigate prominent cases for prosecution. The recent introduction of new investigative technology and methods to collect evidence that will be admissible in court has been crucial to effective investigation.

The Kosovo Police Service (KPS)

In 2000, the Kosovo Police Service (KPS) and training school were founded. The objective of the school was to train a new, democratic police service comprised of 6,000 Serbian and Albanian officers by 2004. Basic competencies have already been transferred from CIVPOL to KPS, and six KPS police stations throughout Kosovo are now officially independent from UNMIK. KPS and CIVPOL continue to function as parallel police forces in Kosovo. However, organized crime investigations continue to be carried out without significant input from the local KPS, due to claims about the danger of local police investigating organized crime in a very closely knit society.

To date, KPS has thousands of patrol officers on the streets, yet the service lacks experts in specific fields, such as organized crime, counterterrorism, or high-tech surveillance. Some in Kosovo fear that, by failing to build capacity and integrate KPS officers into the investigative process, UNMIK is missing the opportunity to enable Kosovo to continue fighting organized crime after UN withdrawal. There are also complaints about the training, language skills, and corruption among some CIVPOL street officers. This is compounded by the very short rotations of CIVPOL officers (often 6-9 months) which impedes their ability to work effectively.

Finally, although the training program has been recognized as one of the greatest successes in the Kosovo peace process, UN officials expressed concern that the KPS program fails to prepare Kosovar officers for impartial law enforcement. The KPS training program is brief out of necessity (12 weeks in the classroom and 15 weeks field training), but short preparation periods,

gaps in the vetting process, and low pay (230 Euro per month) arguably make officers more susceptible to corruption.

Judiciary

International judicial experts did not arrive in Kosovo until early 2000, by which time local criminals had already exploited the legal vacuum to operate with impunity. The international community had not yet determined which laws would apply in Kosovo, and the legal codes that emerged did not include basic investigative tools for prosecution (such as anonymous witnessing, immunity for testimony, and electronic surveillance). As a result, international jurists were forced to delay investigations in order to draft the laws necessary to conduct them. Once regulations were promulgated, procuring the investigative equipment took an additional year and further delayed investigations.

International investigations reveal that efforts to promote rule of law are hindered due to the lack of resources. As of October 2003, only 13 international prosecutors and 17 international judges were responsible for leading investigations and conduct trials for the sensitive areas of organized crime, war crimes, murder, terrorism, and corruption.

Other challenges to the local legal system include a poorly paid and over-taxed local judiciary, lack of witness protection programming, and capacity and collaboration gaps between local and international prosecutors and judges. In the long-term, the stark division between internationals and local authorities raises serious concerns about the failure of the international community to cultivate local capacity.

Political Will and Organized Criminal Activity

During the first four years of administration, UNMIK was unprepared to make progress in combating high-profile criminal networks. This inaction enabled the link between politics and criminality in Kosovo to expand in the wake of conflict. Some experts claim that UNMIK has hesitated to arrest high-level Kosovar leaders with links to organized crime for fear that it would prompt destabilizing protests and violence within society. However, one could interpret this as UNMIK missing its opportunity to prevent crime from taking root in new political institutions.

With recent changes in UNMIK's leadership, the political will to fight organized criminal groups, and train local officials is materializing. International investigators, prosecutors, and judges, who are more insulated from violence and intimidation than locals, are increasingly investigating and prosecuting prominent criminals.

Recommendations

Kosovo's status as a "ward" of the United Nations and international community has prevented the territory from establishing the international relationships that are essential to deal with organized crime. For example, extradition agreements, international witness protection programs, transnational police cooperation, and intelligence sharing are essential to fight international organized crime networks like those between Kosovo, Western Europe, and the U.S. Until Kosovo's status is resolved, the province will continue to be excluded from intelligence-sharing alliances such as Interpol and the South European Cooperation Initiative

(SECI). Although organized crime is on the European Union's Stability Pact agenda, Kosovo must remain an outside observer until it is named an independent state.

While Kosovo's unresolved final status prevents a number of required actions, there are steps that can be taken in the short-term by UNMIK to make current efforts to deal with organized crime more effective.

- Increase criminal sentences for trafficking in persons. To date, the criminal sentence for trafficking in persons is only 1-5 years. Sentences of this duration do not reflect the egregious nature of the crime committed, and send the wrong message to potential traffickers.
- Increase accountability of customs and border officials. The vast amount of illegal importation of goods occurs through complicity and collaboration of customs officials. To address this problem, customs officials must be routinely monitored and accountable to inspections and tax revenues for imported goods. Criminal sentences should be handed down for officials engaged in criminal complicity in all areas including customs, police and local political leadership.
- Ensure equipment for investigation and testimony is procured and dispersed efficiently. Delays in the provision of funds for equipment procurement hinder the effectiveness of electronic surveillance and anonymous witnessing. Surveillance equipment, closed-circuit televisions for anonymous testimony, and tape recorders that enable police testimony admissibility in court must be quickly procured to facilitate investigation and prosecution.
- Prosecute both high-profile Kosovar leaders and international officials involved in organized criminal activity or corruption. This will increase accountability and help end the perceived culture of impunity around powerful officials in Kosovo.
- Help Kosovo establish a witness protection program with non-neighboring countries. Because of the strong family ties to extended families, Albanians are largely unwilling to enter witness protection programs without the inclusion of their entire families. Satisfactory compromises between EU nations, the U.S. and Canada must be achieved to facilitate prosecutions that will prevent further international expansion of criminal networks.
- Gradually transfer authority of sensitive investigation and intelligence to the local population. Though internationals are in a better position to prosecute high-profile elites, the legal and investigative capacity must be transferred through trainings and gradual inculcation of local lawyers and investigators. Though internationals plan to depart in 2006, they are just now beginning to involve nationals in their operations. Efforts to train locals must be emphasized to ensure that the skill and capacity for continuing these high-level cases withstands the departure of international expertise.

ANNEX V: AFGHANISTAN CASE STUDY⁸

The illicit economy in Afghanistan poses one of the greatest threats to stability in the region. Revenue from narcotics trafficking and the smuggling of other contraband amounts to more than half of Afghanistan's GDP. These illicit funds empower regional warlords, who act with impunity within their fiefdoms and remain 'spoilers' intent on preventing the emergence of a stable and democratic Afghanistan with a strong central government. Narcotics trafficking provided funding for Taliban and Al Qaeda's operations, and it is likely that the narcotics trade continues to fund Taliban resistance against Coalition forces and Afghan authorities. Internationally, Afghan narcotics fuel global and regional organized criminal and terrorist networks, which are a prime threat to U.S. security. The drug trade and contraband smuggling must be controlled if the Karzai government is to establish rule of law, rout the remaining Taliban, and ensure central government legitimacy and control.

Origin of Organized Criminal Activity

Afghanistan is a paradigmatic weak state. For centuries, its *de facto* rulers have been tribal leaders, militia commanders, and khans, who ruled with little intervention from the weak central bureaucracy and engaged in prohibited trade. These sub-state actors, with their extra-legal power and ties to ethnic populations across borders, provided a ready structure for illicit trade to take root. Crime, consisting largely of narcotics production and trafficking and the smuggling of licit goods, has flourished in the past two decades and is now Afghanistan's primary economic driver. While smuggling and narcotics have a long history in Afghanistan, a generation of war created conditions in which criminal groups deeply penetrated society. Opium is a traditional crop, but widespread cultivation and trade only took root in the early 1980s when a crackdown on Pakistan's opium industry drove production into Afghanistan. The strong cultural strictures against drug consumption have faded as economic desperation has increased.

Given Afghanistan's position on the Silk Road, trade has always been a central element of its economy. But since the 1950s, regional trade has becoming increasingly controlled by smugglers, and today the illegal transit of licit goods is a major component of Afghanistan's economy. It is estimated that annual tax evasion totals \$600 million—equivalent to the current central government budget. Much of this smuggling occurs under the Afghan Transit Trade (ATT), one of the world's largest smuggling rackets. According to a 1950 international agreement, goods can be transported duty free into Afghanistan from Pakistani ports. Truckers connected to the Pakistani 'transport mafia' drive sealed containers into Afghanistan, unload a few items, and return to Pakistan or continue to Central Asia and Iran where the remaining foreign goods, from textiles to electronics, are resold duty free. Along the way, a series of tribal leaders and regional influentials impose private transit taxes. These transport syndicates are enmeshed with Pakistan and Afghanistan governments and militaries, creating endemic corruption among customs officials and a domestic constituency for continued smuggling.

The arms trade, which began during the resistance to the Soviets, is also a major concern. The Pakistan Inter-Services Intelligence, the U.S., and the Soviets funneled billions of dollars into

⁸ Prepared by Carl Robichaud and Amy Paro

modern weaponry for their proxies, including portable anti-aircraft missiles, which continue to pose grave threats to civil and military aircraft.

Role in the Conflict

Smuggling, drugs, and arms all played a major role in fueling 24 years of war and the rise of the Taliban. The first organization to give financial support to the Taliban was the Pakistani transport mafia, who provided the Taliban with cash payments to free a stalled convoy and keep transit routes free of roadblocks. Once the Taliban came to power, the customs duties levied on smuggled goods from Pakistan became the Taliban's primary source of income at \$3 billion a year .

Drugs also comprised a major source of revenue for combatants, including northern warlords who supported their resistance to Soviets and later to Taliban rule with opium revenues. The Taliban did not prohibit opium production until 2001, and never banned the trade, receiving massive revenues by taxing traffic at a rate of 20%. During the year in which opium production was banned, the Taliban cashed in by selling off their large stockpiles when prices rose to unprecedented levels.

The illicit arms trade has been central to the perpetuation of war. The "kalishnikovization" of Afghanistan, combined with ancient ethnic tensions and modern power rivalries, transformed the scale and scope of Afghan warfare, allowing fatalities in the millions rather than thousands.

Post-conflict Activities

Since the early 1990s, opium has been central to power in Afghanistan, and nearly everyone with influence (with the notable exception of President Karzai) is involved in drug activities. Military, government, and police officials have all been implicated in the trade, and many drug convoys reportedly pass the border in official vehicles.

Afghan opium cultivation has skyrocketed since the early 1990s, rising from approximately 1500 to 3500 metric tons. Poppies have become an increasingly attractive crop now that war has devastated Afghan agricultural infrastructure. It is an ideally efficient crop, as it is easily transported, can be stored without spoilage, and can feed a family with only a small plot of land.

Poppy cultivation has spread from 18 provinces in 1999 to 28 of 32 provinces in 2003. This expansion is fueled in part by rural poverty and debt, but also by a class of entrepreneurial drug brokers. These brokers offer refugees and migrant farmers high interest loans that must be repaid in opium. Patterns of cultivation differ across regions: in the south, promotion is based on tribal structures, with absentee owners (many living in Pakistan) employing sharecroppers. In the north, farmers are more likely to own their own fields, but pay taxes to regional authorities for rights to grow and sell.

The networks of drug brokers and traffickers are tightly integrated with the provincial power structures; in some areas, warlords control the drug trade, while in others they draw revenue from it. Narcotics revenues fund militias and sustain periphery power bases.

According to the Afghanistan National Security Council and other sources, the drug trade has also empowered a rising class of narco-traffickers and mid-level militia commanders. While many provincial governors and warlords have shown a willingness to integrate themselves into Afghanistan's power structure, lower-level commanders and criminal elements have a vested interest in instability. The presence of these powerful spoilers poses a fundamental threat to efforts to stabilize Afghanistan.

The rise in production of opium has been accompanied by an increase in domestic heroin production, which traditionally took place in Pakistan, Central Asia, or Turkey. Heroin production, primarily occurring in Badakshan province, substantially increases the level of profit for Afghans involved in the narcotics trade, thereby increasing their opportunities for corruption and funding of opposition elements.

Smuggling of licit goods also remains a major source of revenue outside of Kabul. This traffic is controlled along ethnic lines, and reinforces factional and regional elites.

Threats to U.S./International Security

Magnitude of the Problem

Today, three quarters of the world's opium originates in Afghanistan. The drug trade is equal to 30%, and probably closer to 60%, of Afghanistan's GDP (depending on how measured). A decentralized and criminalized economic engine of this scale makes centralized Afghan authority difficult, if not impossible. The drug trade fuels, and is fueled by, increased addiction in the region. Drug consumption in Central Asia, Pakistan, and Iran has increased dramatically in the past two decades. Afghanistan may have as many as one million opium and heroin addicts, and Pakistan and Iran have an estimated two million addicts each. At present, 80% of the opium produced in Afghanistan is consumed domestically and in the region.

Drug trafficking poses a threat to U.S. security. The Afghan government claims definitive evidence that the neo-Taliban resistance is funded by opium and heroin trafficking, and that Al Qaeda is receiving funding from the narcotics trade. While the DEA has not confirmed these claims, nearly every power holder in the country draws revenue from the opium traffic. The Taliban revival is occurring in the south and southeast regions of Afghanistan where drug trafficking is prevalent.

The drug trade in Afghanistan fuels regional instability. The future of Afghanistan as a functioning state cannot be taken for granted, as numerous spoilers would profit from the collapse of the central administration in Kabul. A failed Afghanistan would provide an ideal base of operations for a resurgent Al Qaeda. Even if the Afghan state remains viable, there is a risk that it will be hijacked by criminal interests. If the narcotics trade continues to play a central role in society, the upcoming elections could be dominated by criminals, a pattern that occurred in both Bosnia and Kosovo.

International Threat

In addition to regional repercussions, the drug trade has profound international repercussions. The drugs that flow from Afghanistan provide profits to global organized crime organizations that foment crime and instability in many regions. These networks, which are controlled by

Albanian, Turkish, and Russian mafias, pose a threat to Americans at home and U.S. forces abroad. The drug trade, for example, fuels instability and organized crime in BiH and Kosovo. Moreover, U.S. intelligence estimates have cited the possibility that narco-traffickers or mafias might one day acquire weapons of mass destruction. The ties between organized crime and terrorism are well established, and may become more closely knit in the future.

Unless organized criminality is reigned in, Afghanistan will falter. Under the worst-case scenarios, Afghanistan could cease to exist as a functioning state, leading either to renewed war or disintegration. Alternatively, the state mechanisms could be fully captured by criminal interests, creating a narco-state. In either of these cases, Afghanistan would likely again become a haven for terrorists and an exporter of instability.

Afghan Government Response

Although national and local government structures endure, local government capacity has been deeply affected by long years of instability. Civil servants went untrained and unpaid by the central government during the Mujahideen conflict and Taliban period. As a result, loyalties of sub-national officials, police and militia forces have been to regional and local power holders rather than to the central government. Since the Bonn Agreement, the central government has attempted to shift the loyalties and lines of communication to the central government hierarchy. Ongoing efforts to extend the reach of the central government have led to the dismissal of several disloyal provincial governors and corrupt police chiefs.

Government Capacity

Although some provincial, district and municipal administrative structures have remained intact throughout the years of conflict in Afghanistan, government capacity remains extremely limited at both the national and sub-national levels. In particular, national capacity for providing security and rule of law has been decimated. German and American police training programs are underway to address the urgent need for a well-trained, professional police presence in all areas of the country. In addition, the central government is focused on replacing regional militias with an internationally trained, multi-ethnic army.

Within this structure, a 70,000-member national army and 50,000-member national police force will be trained and deployed to the regions. A Counter Narcotics Directorate with strong support from the UN Office on Drugs and Crime and the British Government has been established with the Afghanistan National Security Council.

The judicial sector also lacks capacity and requires reforms. Few formal courts are functioning at the provincial and district level because of a lack of qualified judges and prosecutors, inadequate physical infrastructure, disagreement over the role of Sharia law, incongruence between formal and informal judicial systems, the blurring of civil and criminal codes, and intimidation and control of judicial outcomes by power holders. There are also bitter personality and turf struggles between the Ministry of Justice, the Attorney General's Office and the Judicial Reform Commission, and the Supreme Court.

Although President Karzai has prioritized narcotics issues, there is little capacity to stop cultivation or trafficking. In 2002, the government undertook an eradication campaign, but a

lack of central government capacity meant that the campaign was implemented by governors and their private militias, many of whom have stakes in the narcotics trade. The Counter Narcotics Directorate (CND), with British and UNODC support, plans to establish an interdiction force to work with police and the national army on eradication.

In the absence of a strong central government, a significant number of private quasi-governmental structures and facilities emerged. These structures are loyal to regional power holders, rather than government ministries and agencies. For example, prisons, border guards, social services, hospitals, and a variety of other services traditionally provided by government have been funded and managed by local and regional power holders. Over time, citizens in the provinces developed loyalties to and a reliance (genuine or coerced) on private structures. These loyalties, which are often reinforced by ethnic ties, have strong implications for the strength and reach of the central government. They amplify difficulties of collecting tax and customs revenue, and introducing new central government officials that compete with existing private forces, such as border police.

Government Successes and Failures

In the two years since the ousting of the Taliban, the government has committed to building professional national army and police forces. President Karzai and the Ministry of Interior have recently made progress in limiting the authority of regional power holders through removals of some governors and police chiefs. UN-led Disarmament, Demobilization, and Re-integration (DDR) continues as an important step in this process, but progress has been slow.

Nevertheless, several problems require greater attention from the central government. Most notably, critical civil service and judicial reform programs remain stalled. The Ministry of Justice, the Attorney General's office, the Supreme Court, and the Judicial Commission must coordinate more effectively to ensure faster and more effective progress on judicial sector reforms.

U.S./International Community Response

Coordination between the international community and the TISA is done through a consultative group process. In addition, a "lead-nation" strategy was adopted to facilitate coordination and ensure the commitment of a particular donor to a sector. Currently, the U.S. government has taken the lead for building the Afghanistan National Army, the German government is responsible for police training, the Japanese government for the DDR process, and the Italian government for judicial reform.

U.S. policy remains focused on fighting Taliban and Al Qaeda forces that remain in Afghanistan. In an effort to improve security in the provinces, extend the reach of the central government, and enhance reconstruction efforts, U.S. and coalition forces established Provincial Reconstruction Teams (PRTs). Four full teams are currently operational in Gardez, Mazar-e-Sharif (under British lead), Bamiyan (under New Zealand lead), and Kunduz. Four new teams are expected to be operational by the end of December 2003, including a commitment of German troops under an expanded ISAF mandate to establish a PRT in Herat. German ISAF troops will also take over command of the Kunduz PRT.

In addition, the U.S. has taken a lead role in building the national army and has recently established fast-track police training centers. By December 2005, the U.S. and the TISA plan to have 50,000 trained police and border police, as well as 70,000 ANA trained soldiers in the provinces.

Under the Iraq and Afghanistan supplemental, the increase of U.S. reconstruction funding for Afghanistan of approximately \$800 million in new money provides a significant boost to reconstruction efforts. The U.S. remains committed to the Bonn Agreement provision that elections are to be held in June 2004, or as close to that date as possible.

Successes and Failures

Progress is now being made in building a national army and accelerating police training. Physical infrastructure programs, such as reconstruction of the ring road and the radio connection between provinces, will also greatly enhance the reach of the central government. In contrast, critical judicial sector reforms have been seriously delayed by administrative and coordination problems. Given the importance of establishing rule of law as a means of increasing the security and central government authority, judicial reform must be prioritized.

In addition, efforts to establish greater security outside of Kabul have been late and small-scale. Although many regard the PRTs as a success, their very limited military capacity is inadequate to address security issues outside of Kabul, especially since the OEF's mandate is limited to fighting the Taliban and Al Qaeda and does not extend to protecting transport routes and providing public security. The PRTs have nevertheless provided a security blanket for initiatives by the government and NGOs (e.g., Gardez) in the countryside, but they have not yet been seriously challenged.

Recommendations

Organized criminality poses perhaps the single greatest threat to reconstruction and the war on terror in Afghanistan, and must be given priority and provided with commensurate resources. As Taliban and Al Qaeda revenue sources shrink due to frozen terrorist bank accounts and dismantled charities, the drug trade will likely become an increasingly important part of their revenue streams. Moreover, the demobilization of militias and transition to central authority envisioned by the Bonn Agreement will be hampered so long as warlords have illicit revenue sources to fund their armies. Unless these revenue sources are controlled, the democratic process could collapse, and Afghanistan could become a narco-state or terrorist haven.

Establishing the rule of law—through judicial sector reform, a robust DDR program, and specialized police forces such as counter-narcotics and border police—must be prioritized, and there must be stronger strategic coordination between the war on terror and the war on drugs, which are mutually reinforcing rather than mutually exclusive.

- *Accelerate judicial reform and law enforcement training*

While the German and U.S. police training programs are progressing, judicial reform is stalled. There are no functioning courts and prisons in Afghanistan. Qualified and well-paid judges and attorneys, and specialists in investigation, search and seizure, witness protection, forensics are required to fight the entrenched crime networks that have

developed in Afghanistan. More money and attention must be allocated to these overlooked capacities. Attention and resources must also be directed to the reform and reconstruction of prisons.

- *Prioritize alternative livelihood programs and support eradication*

Drugs will remain a driver of instability and terror unless a comprehensive program involving law enforcement, eradication and alternative livelihoods is implemented. Left without options, indebted farmers will continue to grow opium regardless of the risks. Every effort must be made to focus reconstruction programs on development of off-farm livelihoods and extension of rural credit. Creative thinking and innovative programs are needed, as is substantial funding.

Simultaneously, a serious public information campaign is needed to inform the public of rising addiction rates and the long-term social and economic costs of a narco-economy.

The current eradication program, while limited and unverifiable, is a useful first step in imposing risks on farmers and traffickers. A comprehensive eradication program, however, is not feasible at this time. The Afghan government does not have sufficient logistical capacity and the risks of having outsiders perform eradication are too high. Comprehensive eradication cannot be undertaken until greater political and economic stability is achieved, infrastructure improved, and law enforcement bolstered.

- *Support targeted interdiction at depots, warehouses, and heroin labs*

While large scale eradication is not possible, it is possible to target narcotics processing and storage facilities. Destroying these centers would change the risk calculus for smugglers and eliminate an important part of the trafficking chain. As the national army and police develop, Coalition forces should support the Afghan authorities to destroy depots and labs.

- *Include OEF and ISAF in drug control*

As a minimum first step, Coalition forces should share unclassified narcotics-related intelligence with Afghanistan Counter Narcotics Directorate and the national police. In addition, OEF, and ISAF troops should seize opium or heroin discovered in the routine conduct of their duties.

- *Strengthen Border Security*

Establishing a central government presence at the border could impede the drug trade, garner greater revenues from smuggled goods, and help restrict the flow of terrorists and arms into Afghanistan. Border police are currently in training, but they will need the full backing of Afghan and international authorities to gain control of border points from militias.

- *Expand ISAF*

The U.S. should encourage NATO members to commit troops to an expanded ISAF. The success of ISAF in Kabul has demonstrated that a limited force backed by the implicit threat of air power can maintain stability and provide effective support to the central government.

ANNEX VI: IRAQ CASE STUDY⁹

Saddam Hussein's regime maintained power in Iraq through violent, repressive control and a system of rewards and punishments based on extensive state-sanctioned smuggling networks. With the disintegration of this system of control, crime and disorder have flourished while the informal smuggling and criminal networks have endured. The resulting disorder and violence threaten to undermine reconstruction efforts while fueling resentment and violent resistance. Although the Coalition Provisional Authority is working to establish public order, the difficulty of quickly building Iraqi infrastructure and the lack of sufficient qualified personnel for providing order in the interim have allowed violence and disorder to flourish, particularly in Baghdad and the Ba'athist Triangle.

Saddam Hussein's Regime as a Criminal Enterprise

The regime of Saddam Hussein in Iraq rivaled the Soviet Union under Stalin in its strict authoritarian control over nearly every facet of Iraqi life. Fear, violence and systems of reward and punishment dominated Iraqi interactions with the state. Functioning outside the bounds of rule of law, security services and military courts fostered a culture of denouncement to ensure the regime's total control. The national police and judicial system languished in corruption and irrelevance.

While the Sunni minority prospered under their co-religionist's rule, Saddam actively repressed the Shi'a majority and Turkomen and Marsh Arab minorities. The Kurds, a primary target of Saddam's during the pre-1991 period, gained de facto autonomy following the first Gulf War. Saddam's base of power in the rest of the country stemmed from a patronage system radiating out from his immediate family to his clan, his hometown of Tikrit, and to officials in the Ba'ath Party. No viable political or social opposition existed. The regime destroyed alternative leadership structures and civic and social institutions, promoting a culture of violence and intimidation that it monopolized.

Saddam's family, members of the Ba'athist elite, and the Iraqi security and elite military services controlled and profited from virtually all commercial and criminal activity, whether through corrupt contracting procedures for oil exporting, construction, and other industries, fees levied on transport companies operating within Iraq, or through direct and indirect control of smuggling of oil and consumer goods, cigarettes and alcohol. The UN Oil-for-Food program was itself used as a political and economic tool in handing out contracts to certain countries over others and taking kickbacks whenever possible.

Iraq's command economy concentrated wealth in the hands of the Ba'athist elite while destroying the middle class and forcing the remainder of the population into dependence on the Iraqi government. The government distributed food and provided access to goods, trade, and other benefits to offset low salaries and high unemployment. Artificially low prices, driven by the government-controlled oil market, created incentives for smuggling oil and consumer goods

⁹ Prepared by Louis-Alexandre Berg and Molly Montgomery

out of Iraq, while the black market's status as the only free market provided a profit motive for smuggling into Iraq.

During the sanctions period smuggling was a primary means of generating outside revenue and was legitimized by the regime under its surveillance and control. Sanctions-busting occurred on a large scale, as low-priced oil, fuel, food, and sheep were smuggled from Iraq to Turkey, Jordan, Syria and Iran, while goods were smuggled into Iraq to fuel the thriving black market and outfit the regime's weapons programs. While the Ba'athist elite profited most from sanctions-busting, excluded groups such as the Kurds and Shi'a tribes relied on smuggling and money-laundering as a source of revenue, partnering with members of the regime who enabled and often supported smuggling in exchange for a share of the profits. Sanctions thus facilitated the development of extensive trading networks and smuggling routes that have continued to function in the post-Saddam era.

Public Disorder in Post-Saddam Iraq

Threats to Public Order

The defeat of Saddam Hussein's regime of tight control created a political and security vacuum. This vacuum has fueled chaos, disorder, and insecurity – an ideal environment for the development of criminal activity, both organized and opportunistic. Making matters worse, in his last months in power Saddam introduced armed and criminal elements into the population by issuing a blanket amnesty for all Iraqi prisoners – releasing more than 100,000 hardened criminals – and opening weapons caches to the general population.

Not surprisingly, post-Saddam Iraq has been plagued by criminality, smuggling, and violence. The first manifestation of criminality was widespread looting of government buildings and infrastructure immediately following the toppling of the regime. Emboldened by the absence of a Coalition response, increasingly organized groups, ranging from bands of criminals to tribally based groups and former regime networks, went so far as to utilize cranes and other heavy equipment to disassemble buildings and infrastructure. Copper wire, which fetches high prices in neighboring countries, was a particular target, while government ministries, universities, hospitals, and other public buildings were razed, down to the toilet fixtures. Looting of art and antiquities from museums and archeological sites was carried out by insiders with suspected ties to international art-smuggling rings.

In the months since Saddam's fall, petty and violent crime has skyrocketed, particularly in Baghdad and other urban areas. Prevalent street crimes include car jacking, car theft, burglary, armed robbery, kidnapping for ransom, rape, and extortion. These crimes are often committed by bands of criminals or opportunistic individuals motivated by poverty and unemployment. Given the high concentration of crime in majority Sunni areas, allies of the former regime with established security and intelligence networks may also be profiting from these activities. Violence among Iraqis has also grown, with large numbers of rape and murder cases reported¹⁰. Low-intensity inter-tribal or inter-ethnic violence and revenge killings have occurred, often against members of the former regime. In many areas, local enforcers in tribal or religious groups have supported vigilante killings as part of efforts to establish order in the vacuum.

¹⁰ In May-September, 2003 suspicious deaths increased roughly twenty-fold according to figures from the Baghdad Central Morgue.

Without an effective police or judiciary, land, business, and commercial disputes are often resolved through violence.

The free flow of goods and people across Iraq's borders is a potential large-scale problem. Very little of this traffic can formally be called smuggling, as there is little or no formal border control in most areas, and the Coalition Provisional Authority has declared a customs holiday for Iraq until 1 January, 2004. After that date, the entrenchment of smuggling networks will likely impair planned attempts by the CPA to generate revenue through customs duties¹¹. Oil and fuel continue to flow out of Iraq in large quantities, as artificially low prices in Iraq can mean profits of up to 500% when sold in neighboring countries. Much of this oil is illegally tapped from pipelines; it is estimated that 3 million barrels of diesel are sold illegally per day, causing a severe drain on government revenue.

Smuggling routes are being used for several other types of illicit goods. Traffic in looted goods to neighboring countries (especially copper wire) was prevalent in the first weeks of occupation but has since slowed. Large numbers of stolen and legitimate used cars are trafficked into and out of Iraq. Alcohol, cigarettes, and all types of consumer goods are flooding Iraqi borders to satisfy unmet demand from the sanctions period. Small arms and light weapons flow in both directions. Human smuggling, particularly of extremists across the Syrian border, is rumored to have become a lucrative trade facilitated by Ansar-al-Islam, Kurdish parties and local tribes. Little narco-trafficking has been reported thus far, although the major opium trade from Afghanistan through Baluchistan and Iran indicates potential for trafficking through Iraq. With easy access across porous and mostly unpatrolled borders, individual opportunists and criminal groups have joined the groups involved in smuggling under Saddam's regime, including organized tribal, ethnic, and religious groups, Sunni Islamists, and groups of regime loyalists.

Violence has become a major source of insecurity in many areas of post-Saddam Iraq, directed at Coalition and international targets and Iraqis with increased frequency and organization. Violence against occupation authorities has included highly organized guerrilla-style insurgency against Coalition forces, coordinated bombings of Coalition, Iraqi government, and international targets, and assassination of Coalition and cooperating Iraqi personnel. These attacks have purportedly been carried out by mercenaries bankrolled by regime loyalists using pre-existing networks and capabilities, and/or Islamic extremists with outside training and resources. Some of the violence can also be attributed to Iraqis carrying out revenge killings against Coalition forces in response to insulting behavior or the death of family or tribe members at the hands of Coalition troops.

Magnitude of the Problem

Public disorder and insecurity have hindered progress toward reconstruction and development of a stable Iraqi state. The Coalition is in a race to improve Iraqi quality of life before resistance groups gain widespread support. CPA staffing is insufficient to carry out necessary reconstruction tasks, both due to the Coalition's inability to provide security and the reluctance of Iraqis to cooperate with Coalition efforts due to security concerns. Coalition civilian personnel are unable to move freely outside a small, protected area in Baghdad, and many NGOs

¹¹ The CPA plans to begin collecting a 5% "Reconstruction Levy" on all goods, except humanitarian goods, imported into Iraq from 1 January 2004.

and IOs with expertise in reconstruction have downsized or withdrawn their personnel. Violence and looting have delayed and raised the cost of rebuilding destroyed and damaged facilities. Economic development is being held hostage to the security problem, as few outside investors are willing to start new ventures or expand existing ones. The lack of outside investment will leave the field open for former Ba'athists to use their existing resources to acquire privatized assets and gain control of the economy.

Public disorder has also traumatized the Iraqi people, undermining predictability in their daily lives and thwarting progress toward reconstruction and development. In the areas hardest hit by violence and criminality, such as Baghdad and the so-called Sunni triangle north of Baghdad, citizens are afraid to venture out of their homes to work, go to school, or socialize, for fear of violence and crime in the streets. Along with soaring unemployment and delays in the provision of basic services caused largely by infrastructure damage from looting, insecurity has fueled resentment against Coalition forces and undermined the occupation's shaky legitimacy. The CPA's decision to disband the regular Iraqi army and to dismiss all senior members of the Ba'ath Party without a systematic vetting process added nearly 500,000 men to the ranks of those who see little future for themselves in a new Iraq.

Threats to U.S. and International Security

Iraqi resentment over disorder and insecurity is a major factor in fueling the current resistance, and in building support for local leaders who are seeking to fill the power vacuum. The most immediate threat to U.S. security is the rising toll of American military casualties and the withdrawal of the UN and foreign aid workers as a result of attacks by the resistance. A greater threat however, is a weak or failed state in Iraq resulting from a hasty Coalition exit, shortcuts in the reconstruction process, or the emergence of strong local actors who assert control either politically or economically. Such a state could become a haven for terrorists, or could come under fundamentalist Islamist rule. On the other hand, the longer the occupation persists in trying to control an increasingly violent resistance, the more anger and resentment against the U.S. will rise in the Arab world and beyond, providing a selling point for terrorist recruitment.

A weak or failed state or fundamentalist regime could create regional instability due to tensions between ethnic and religious groups with ties to neighboring states. The Turks and Iranians would be encouraged to intervene to impose their interests, resulting in a potentially violent confrontation. Short of this scenario, a weak or failed state would provide a breeding ground for global terrorism and transnational criminal activity based on pre-existing smuggling routes and networks.

The Coalition Response

The Military

Following the end of major hostilities, the primary tasks of Coalition forces have been searching for high-ranking regime officials and weapons of mass destruction and conducting counterinsurgency operations. However, as the only Coalition presence on the ground throughout Iraq, the military has taken on a much broader array of responsibilities. It has filled interim capacity gaps – especially in law enforcement and public order – and taken part in building local institutions by training local police, reconstructing infrastructure, and even taking on local political and economic development projects. These activities, many begun before the

Coalition had even established a civilian presence on the ground, have been funded through the Commander's Emergency Response Fund (CERF) controlled by local commanders.

ORHA/CPA

The Office of Reconstruction and Humanitarian Affairs (ORHA) was the first civilian presence on the ground, responsible for initial stabilization, setting up the coalition bureaucracy and handing out initial reconstruction contracts. However, its effectiveness was hindered from the start by its late arrival in Iraq – two weeks after the cessation of hostilities – and its inability to overcome security and logistical constraints. After barely two months, it was replaced by the Coalition Provisional Authority (CPA).

The CPA is intended to coordinate the numerous and varied reconstruction tasks through a highly centralized administration and direct control over the Iraqi bureaucracy. It was set up within the Department of Defense, ostensibly to facilitate coordination with the military. Senior advisors were assigned to each ministry to reorganize, build capacity, and oversee the provision of services. The CPA also directly implements reconstruction projects, provides interim services, and political and economic development activities, either by gathering expertise from other U.S. government agencies or awarding contracts to private companies and NGOs.

Challenges

The CPA has faced two overarching challenges, the lag between interim service provision and long-term capacity building, and a shortfall of adequate and appropriate personnel. Given the delay in establishing a civilian presence responsible for public order and the lack of military involvement in these roles initially, public disorder was allowed to spiral out of control from the beginning of the occupation, with the Coalition struggling to contain it. Meanwhile, the CPA has been constrained by insufficient personnel in executing its broad mandate to coordinate with agencies, implement activities, and build institutional capacity in the Iraqi bureaucracy, while also filling the interim capacity gap. The Iraqi bureaucracy's capability to contribute has been decimated, especially in the law enforcement and military sectors, by the disbanding of the Iraqi army, the large-scale de-Ba'athification of the bureaucracy, and the difficulty of recruiting Iraqis due to security concerns.

Successes and Failures

The main priorities for establishing rule of law and improving public order, in addition to military counter-insurgency, are to shore up the police, justice sector, prisons, border patrol, and civil and economic legal frameworks.

The Coalition Military has taken the lead in many of these areas. It has deployed some 4,000 Military Police to patrol jointly with Iraqis; conducted initial three-week training for police; rebuilt court structures and hired judges; taken over prisons; patrolled borders and worked with local tribes to set up local border patrols; and set up local governing councils.

The CPA has provided senior advisors to enable Iraqi ministries to function; establish an in-depth police training program in Jordan; recruit 1500 CIVPOL to mentor newly-trained Iraqi police; re-institute judges and prosecutors; establish a Central Criminal Court to hear major cases and Judicial Review Committee to monitor the judiciary; create a centralized customs and border

control unit in the Ministry of the Interior; rebuild police stations, courts, prisons and border stations; begin planning legal and economic reforms; and oversee political transition through local councils and the national Interim Governing Council.

The fact that many of these initiatives began only months after the establishment of the CPA reflects the lack of adequate planning and capabilities for immediate deployment. This late arrival has allowed disorder and violence to take root in many areas while local forces are only beginning to be trained and organized to carry out essential law and order functions according to international human rights standards. Moreover, the CPA's apparent concern with exit strategy and force protection has undermined perceptions among Iraqis of its staying power and ability to succeed.

The U.S. has managed to gain limited international cooperation in the form of troops, trainers and logistics. However, continuing security problems and political tensions with key U.S. allies and neighboring countries have reduced the expected outpouring of international personnel, logistics, resources, and border cooperation below what was expected and is needed.

Recommendations

- Strengthen Rule of Law institutions, including the police, prisons, judiciary and border control. Although infrastructure and training are essential early on, the CPA should move quickly to develop command structures, internal policies and procedures, and monitoring and disciplinary mechanisms, empowering Iraqis to make key decisions. A systematic vetting process for all agencies, modeled along the successful Judicial Review Committee, is essential to reduce corruption and improve effectiveness in the long term. Officials removed under the blanket de-Baathification should be allowed to apply to be reinstated, subject to the same transparent process.
- Develop law enforcement capability to fight organized crime. Enhanced police capacity is crucial to restoring order and rule of law. More than simply training, this will require:
 - Strengthened police capacity in key areas, such as investigations, intelligence, forensics and counter-terrorism. These functions should be concentrated at the national level with capability spread through the country. Special support should be given to the Central Criminal Court to improve its effectiveness.
 - Deployment of CIVPOL with executive authority to mentor and fill the shortfall of trained police officers initially. CIVPOL officers with the power to act will bolster the credibility and effectiveness of the local police force while new officers are trained.
 - Intelligence sharing between the Coalition and Iraqi military and police forces to empower Iraqis to carry out law enforcement functions.
- Prioritize border patrol, by moving quickly to develop and train the national border authority already established within the ministry of interior. Local tribal and militia members who are currently patrolling the border should be recruited, trained and spread

around the country to diminish incentives for corruption in their home territory and fill capacity gaps along the borders.

- Develop key legal frameworks, including commercial and licensing regulations, banking laws and mechanisms for resolving property disputes systematically and efficiently. Robust legal frameworks are crucial to encourage the development of legitimate enterprise, attract investment, and avoid loopholes that can be exploited by criminal or terrorist networks
- Focus on realistic rather than high-tech solutions. Many of the technology-intensive solutions proposed by the CPA will be difficult to implement under local conditions and unlikely to succeed if the officials using them are corrupt or poorly trained. Focusing on building human and institutional capacity will produce more bang for the buck in building long-term capacity.
- Hold leaders accountable for smuggling, corruption and other illegal activities through systematic vetting, investigation and trials at the Central Criminal Court. While the Coalition needs to cultivate good relationships with local leaders, it should also send the message early on that serious violations will not be tolerated, and will be handled transparently through the institutions of rule of law.