



THE ROLE OF LAW IN A MODERN AFGHANISTAN

December 16-17, 2002
Palazzo Falconieri
Via Giulia 1
Rome, Italy

Roundtable Objectives

Afghanistan, an Islamic nation with a rich legal history, is in the process of ending decades of conflict and has entered a new period of reconstruction. Central to this reconstruction effort is the program of legal and judicial reform on which to build sustainable democratic institutions and restore and maintain trust in the rule of law. In anticipation of the enactment of a new constitution and holding of elections, the Bonn Agreement establishes a temporary legal framework consisting generally of the Constitution of 1964, with some exceptions, and all existing laws and regulations to the extent not inconsistent with the Bonn Agreement, the Constitution of 1964 or international legal obligations to which Afghanistan is a party. The Bonn Agreement further specifies that the Afghanistan Interim Administration, with the assistance of the United Nations, should establish a Judicial Commission charged with rebuilding the domestic justice system in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions.

The challenges the Judicial Commission now confronts -- establishing pluralistic democracy, an independent judiciary, and constitutional order within a Muslim society -- have been facing Islamic policy-makers for over a century. To support the work of the Judicial Commission, this roundtable is intended to present the research and informed opinions of scholars and other experts from the Muslim and non-Muslim world on the best means of reconciling and achieving these diverse goals.

PROGRAM

Monday December 16, 2002

- 08.30-09.00 OPENING OF THE ROUNDTABLE
- **Mr. William T. Loris**, Director-General of the International Development Law Organization (IDLO)
 - **Mr. Bahauddin Baha**, Chairman of the Judicial Reform Commission
 - **Mr. Almaj Mawlawy Fazal Al Hadi Shinwari**, Chief Justice
 - **Mr. Sayed Youssif Halim**, designated representative of Mr. Abdul Rahim Karimi, Minister of Justice of Afghanistan
 - **Mr. Abdul Mahmoud Daqeeq**, Chief Public Prosecutor
- FIRST SESSION: THE NORMATIVE POWER OF THE STATE IN ISLAMIC COUNTRIES
- 09.00-11.00 **Panel One: Interaction Between State Law and Sharia**
- **Moderator: Mr. Néjib Bousedra**, Director of Programs, IDLO
 - **Rapporteur: Mr. Ali El Sadek Osman**, Director of the National Center for Judicial Studies, Cairo, Egypt

 - **Panelist: Mr. Mohamed Hashim Kamali**, Professor of Islamic Law, International Islamic University, Kuala Lumpur, Malaysia
Islam in the Constitutions of Afghanistan: Problems and Prospects
 - **Panelist: Mr. Yadh Ben Achour**, Professor of Public Law, Faculty of Legal, Political and Economic Sciences of Tunis, Tunisia
Coexistence or Contradiction Between State Law and Islamic Law
 - **Panelist: Mr. Mohamed Ibrahim Khalil**, Professor; Former Minister of Foreign Affairs and Minister of Justice of Sudan; Consultant in Development, Governance and Institution Building, Silver Spring, Maryland, USA
The Legal System in a Present-day Muslim State: Exegetical Methodology and Challenge the of Modernity
 - **Panelist: Mr. Frank E. Vogel**, Director, Islamic Legal Studies Program, Professor of Islamic Legal Studies, Harvard Law School, USA
Outline Analysis of Models of Constitutional Provisions Dealing with Islamic Law
- Questions, answers and discussion
- 11.00-11.30 Coffee break

11.30-13.30

Panel Two: *Ijtihad*, the Path to Renovation

- **Moderator: Mr. Néjib Boussedra**, Director of Programs, IDLO
- **Rapporteur: Mr. Bashir Ghazialam**, Managing Partner, Ghazialam & Porto Attorneys at Law, San Diego, USA
- **Panelist: Mr. Abdul Aziz Ali Ahmad**, Dean of the Sharia Faculty, University of Kabul
Ijtihad in the Hanafi Madhab
- **Panelist: Mr. Awad El Mor**, Former President of the Constitutional Court of Egypt
The Role of Ijtihad in Modernizing Islamic Jurisprudence in Line with Constitutional Values
- **Panelist: Ms. Farida Bennani**, Professor of Islamic Law, Faculty of Law, Marrakech, Morocco
The Nature of the Legal Regime Applicable to the Statute of Muslim Women

Questions, answers and discussion

13.30-14.30

Lunch break

SECOND SESSION: THE COMPATIBILITY BETWEEN ISLAMIC LAW AND THE PRINCIPLES OF INTERNATIONAL LAW

14.30-16.30

Panel Three: Islam and Human Rights

- **Moderator: Mr. Nadjib Djanbaz**, IDLO Representative in Afghanistan
- **Rapporteur: Mr. Hamid Sharif**, Assistant General Counsel, Asian Development Bank
- **Panelist: Ms. Nadia Barnoussi**, Professor of Constitutional Law, National School of Administration of Morocco
Protection of Women's Rights in the Constitution
- **Panelist: Mr. Martin Lau**, Chair of the Department of Law, Lecturer in Law, School of Oriental and African Studies (SOAS), London, UK
Islam and Human Rights: a Comparative Perspective
- **Panelist: Mr. Khaled Abou El Fadl**, Professor, The Omar and Azmeralda Alfi Distinguished Fellow in Islamic Law, UCLA School of Law
The Human Rights Commitment in Modern Islam
- **Panelist: Ms. Hangama Anwari**, Member of the Afghan Independent Human Rights Commission; Lawyer, UN-Habitat officer

Questions, answers and discussion

Tuesday December 17, 2002

THIRD SESSION: RATIONALE FOR JUDICIAL REFORM

08.30-10.30

Panel Four: Fundamental Principles of Administration of Justice

- **Moderator: Mr. Gilles Blanchi**, Deputy Director-General, IDLO
- **Rapporteur: Mr. Martin Lau**, Chair of the Department of Law, Lecturer in Law, School of Oriental and African Studies (SOAS), London, UK
- **Panelist: Mr. Almaj Fazal Ahmed Shirinagna Manawi**, First Deputy, Supreme Court, Kabul
Independence of the Judiciary in Afghanistan
- **Panelist: Mr. Fadhel Moussa**, Professor of Law, Faculty of Legal, Political and Economic Sciences of Tunis, Tunisia
The Concept of Fair Trial
- **Panelist: Mr. Dato' Param Cumaraswamy**, United Nations Special Rapporteur on the Independence of Judges and Lawyers
The Role of the Judiciary within the Administration of Justice in a Democracy
- **Panelist: Ms. Asma Jehangir**, United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
Impunity and the Direction of Administration of Justice

Questions, answers and discussion

10.30-11.00

Coffee break

11.00-13.00

Panel Five: Experiments of a Modern Judiciary in Islamic Societies

- **Moderator: Mr. Gilles Blanchi**, Deputy Director-General, IDLO
- **Rapporteur: Mr. Afzal Rashid**, IDLO Representative in Afghanistan
- **Panelist: Mr. Adel Abdellatif**, Regional Programme Coordinator, Programme on Governance in the Arab Region (POGAR), United Nations Development Programme (UNDP)
Integrity of the Judiciary: The International Norms
- **Panelist: Mr. Ali El Sadek Osman**, Director of the National Center for Judicial Studies, Cairo, Egypt
Reforming the Judicial System: Some Examples From the Arab States
- **Panelist: Mr. Hamid Sharif**, Assistant General Counsel, Asian Development Bank
The Asian Development Bank and the Legal Reform Technical Assistance in Pakistan
- **Panelist: Mr. Ali Wardak**, Lecturer in Criminology; Director, Black and Asian Offenders Project, Center for Criminology, University of Glamorgan, UK
Tradition, Religion and the Establishment of a Modern Justice System in Post-War Afghanistan

Questions, answers and discussion

13.00-14.00 Lunch break

FOURTH SESSION: THE PROPOSAL FOR JUDICIAL REFORM IN AFGHANISTAN

14.00-16.00 **Panel Six: Assistance and Monitoring of the Judicial Reform Commission by the United Nations**

- **Moderator: Mr. William Loris**, Director-General IDLO
- **Rapporteur: Mr. Quadir A. Amiryar**, Member of the Judicial Reform Commission

- **Panelist: Mr. Yousif El Fatih**, Law Advisor of the United Nations Secretary General Special Representative for Afghanistan
Objectives of the Judicial Reform Commission and Working Methodologies
- **Panelist: Mr. Sayed Youssif Halim**, Director of Legal Affairs, Ministry of Justice, Afghanistan
Role of the Ministry of Justice and Collaboration with the Judicial Reform Commission in the Judicial Reform in Afghanistan
- **Panelist: Mr. Bahauddin Baha**, Chairman of the Judicial Reform Commission
The Challenges of Judicial Reform in Afghanistan

Questions, answers and discussion

16.00-16.30 Coffee break

16.30-17.30 Presentation and discussion of recommendations

17.30 Closing ceremony

LIST OF PARTICIPANTS

Afghan Authorities and Experts

Mr. Almaj Mawlawy Fazal Al Hadi Shinwari

Chief Justice
Supreme Court
Kabul, Afghanistan

Mr. Wahid A. Monawar

Deputy Minister of Foreign Affairs
Kabul, Afghanistan

Mr. Almaj Fazal Ahmed Shirinagna Manawi

First Deputy
Supreme Court
Kabul, Afghanistan

Mr. Abdul Mahmood Daqeeq

Chief Public Prosecutor
Kabul, Afghanistan

Mr. Sayed Yousuf Halim

Head of Legislative Division
Ministry of Justice
Kabul, Afghanistan

Mr. Bahauddin Baha

Chairman of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Habibullah Ghalib

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Wasiq Faizul Rahman

Member of the Judicial Reform Commission
Kabul, Afghanistan

Ms. Najjiba Hussaini

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Quadir A. Amiryar

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Habib Ahmed Zikria

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Ata Mohd. Nursai

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Abdul Ahad Ashrati

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Mawlawi Mohammad Qasim

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mrs. Mehro Hamid

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Habibul Rahman Ghani

Member of the Judicial Reform Commission
Kabul, Afghanistan

Mr. Ali Ahmed Fakoor

Member of the Afghan Independent Human
Rights Commission
Kabul, Afghanistan

Ms. Hangama Anwari

Member of the Afghan Independent Human
Rights Commission
Lawyer, United Nations Human Settlements
Program (UN-HABITAT)
Kabul, Afghanistan

Ms. Abdul Aziz Ali Ahmad

Dean
Faculty of Sharia, University of Kabul
Kabul, Afghanistan

Mr. Zellurrahman

Deputy Dean
Faculty of Law and Political Science, University
of Kabul
Kabul, Afghanistan

Mr. Mohamed Gul Ateeqi

Professor of Law
Faculty of Law and Political Science, University
of Kabul
Kabul, Afghanistan

Mr. Ghulam Mohuddin Dareez

Former Dean
Faculty of Law and Political Science, University
of Kabul
American Open University
VA, USA

Ms. Anisa Rassooli

Senior Judge
Head of Children Court
Kabul, Afghanistan

Mr. Mohamad Hashim Kamali

Professor of Islamic Law
International Islamic University
Kuala Lumpur, Malaysia

Mr. Amin Tarzi

Regional Analyst, Afghanistan-Iraq
Radio Free Europe-Radio Liberty
Prague, Czech Republic

Mr. Ali Wardak

Senior Lecturer in Criminology
Director, Black and Asian Offenders Project
University of Glamorgan
School of Humanities & Social Sciences
UK

Mr. Mustapha Zaher

Ambassador
Embassy of Afghanistan
Rome, Italy

Mr. Mohammed Nadir

Counsellor
Embassy of Afghanistan
Rome, Italy

United Nations

Mr. Yousif El Fatih

Law Advisor of the United Nations Secretary
General Special Representative for Afghanistan
United Nations Assistance Mission to Afghanistan
(UNAMA)
Kabul, Afghanistan

Mr. Hasan Mahmood Zaved

Rule of Law Officer
Office of the United Nations Special
Representative of the Secretary General for
Afghanistan
United Nations Assistance Mission to Afghanistan
(UNAMA)
Kabul, Afghanistan

Ms. Emilia Mugnai

Programme Officer
Governance Unit
United Nations Development Program (UNDP)
Kabul, Afghanistan

Ms. Najia Zawari

Program Officer
United Nations Development Fund for Women
(UNIFEM)
Kabul, Afghanistan

Mr. Michael O'Flaherty

Senior Project Officer for Child Protection
United Nations Children's Fund (UNICEF)
Kabul, Afghanistan

Mr. Jean-Paul Laborde

Senior Crime Prevention Officer
United Nations Office on Drug Control and Crime
Prevention (ODCCP)
Vienna, Austria

International Experts

Mr. Adel Abdellatif

Regional Programme Coordinator
Programme on Governance in the Arab Region
(POGAR)
United Nations Development Programme
(UNDP)
Beirut, Lebanon

Mr. Yadh Ben Achour

Professor of Public Law
Former Dean of the Faculty of Legal, Political and
Social Sciences
University of Tunis II
Tunis, Tunisia

Ms. Nadia Barnoussi

Professor of Constitutional Law
National School of Administration
Morocco

Mr. Dato' Param Cumaraswamy

United Nations Special Rapporteur on the
Independence of Judges and Lawyers
United Nations Commission of Human Rights
Geneva, Switzerland

Mr. Awad El Mor

Former President of the Egyptian Constitutional
Court
Cairo, Egypt

Mr. Khaled Abou El Fadl, Mrs. Abou El Fadl

Acting Professor, The Omar and Azmeralda Alfi
Distinguished Fellow in Islamic Law
UCLA School of Law
Los Angeles, CA, USA

Ms. Asma Jehangir

United Nations Special Rapporteur on
Extrajudicial, Summary or Arbitrary Executions
United Nations Commission of Human Rights
Geneva, Switzerland

Mr. Mohamed Ibrahim Khalil

Professor of Law
Former Minister of Foreign Affairs and Minister
of Justice of Sudan

Consultant in Development, Governance and
Institution Building
Silver Spring, MD, USA

Mr. Antonio M. La Pergola

Court of Justice of the European Communities
Luxembourg
President of the Venice Commission, Italy

Mr. Martin Lau

Lecturer in Law
Chair of the Department of Law
Faculty of Law and Social Sciences
School of Oriental and African Studies (SOAS)
London, UK

Mr. Fadhel Moussa

Professor of Law
Faculté des Sciences Juridiques, Politiques et
Sociales de Tunis
Tunis, Tunisia

Mr. Barnett R. Rubin

Director of Studies and Senior Fellow
Center on International Cooperation
New York University
NY, USA

Mr. Ali El Sadek Osman

Counselor
National Center for Judicial Studies
Cairo, Egypt

Mr. Hamid Sharif

Assistant General Counsel
Asian Development Bank
Manila, Philippines

Mr. Giorgio Vercellin

Professor of History of the Institutions of the Near
and Middle East
Dipartimento Studi Eurasiatici, Ca' Cappello
University of Ca' Foscari
Venice, Italy

Mr. Frank E. Vogel

Professor of Islamic Legal Studies
Director, Islamic Legal Studies Program
Harvard Law School
Cambridge, MA, USA

Additional Participants

Mr. Mahmood Akhondy

Judge
Islamic Republic of Iran

Mr. Louis Aucoin

Rule of Law Program Officer
United States Institute of Peace (USIP)
Washington D.C., USA

Mr. Matthias Behnke

Assistant to the Special Rapporteur on
Extrajudicial, Summary or Arbitrary executions
United Nations Human Rights Commission
Geneva, Switzerland

Mr. Domenico Giorgi

Italian Ambassador
Embassy of Italy
Kabul, Afghanistan

Mr. Ali Gholampour

Third Secretary
Embassy of the Islamic Republic of Iran
Rome, Italy

Ms. Michele Greenstein

United States State Department
Washington D.C., USA

Mr. Robert Hager

Attorney
Washington DC, USA
EGAP
Kabul, Afghanistan

Mr. Yoshitaka Hoshino

First Secretary
Embassy of Japan
Rome, Italy

Mr. Eric Jensen

Senior Advisor for Law Programs
The Asia Foundation
San Francisco, CA, USA

Ms. Annette Kaiser

Afghanistan Reconstruction Task Force

Federal Ministry for Economic Cooperation and
Development
Bonn, Germany

Mr. Giampaolo Leccisi

Deputy Head of Legislative Office
Ministry of Justice
Rome, Italy

Ms. Enrica Lomazzi

Development Cooperation Department
Ministry of Foreign Affairs
Rome, Italy

Ms. Naz Modirzadeh

Program Associate
Harvard Program on Humanitarian Policy and
Conflict Research
Harvard University
Cambridge, MA, USA

Mr. Giovanni Melillo

Substitute National Prosecutor for Antimafia
National Direction for Antimafia
Rome, Italy

Ms. Peggy Ochandarena

USAID Democracy Fellow
Committee on International Judicial Relations
Washington D.C., USA

Mr. Giancarlo Paris

Studio Legale Paris
Rome, Italy

Mr. Gioacchino Polimeni

Counselor
Permanent Mission of Italy to the International
Organizations
Vienna, Austria

Ms. Natalie Rea

Executive Director
The International Legal Foundation
New York, USA

Mr. Mohammad Reza Zandy

Judge
Islamic Republic of Iran

International Development Law Organization
(IDLO)

Mr. William T. Loris
Director-General
IDLO

Mr. Gilles Blanchi
Deputy Director-General
IDLO

Mr. Pasquale Ferraro
Deputy Director-General
IDLO

Mr. Nejjib Boussedra
Director of Programs
IDLO

Mr. Nadjib Djanbaz
IDLO Resident Representative in Afghanistan
IDLO Office Kabul

Mr. Bashir Ghazialam
IDLO Deputy Resident Representative in
Afghanistan
IDLO Office Kabul

Mr. Afzal Rashid
Acting Resident Representative &
Civil Society Consultant
IDLO Office Kabul

Mr. Riccardo Shedid
Administrative Officer
IDLO Office Kabul

Other IDLO Staff members:

Andrea De Maio
Researcher for Programs and Projects

Amna Guellali
Legal Assistant

Clare Fitzpatrick
External Relations Officer

Interpreters

Mr. Amr Elguindi
Interpreter

Mr. Mohaimen Arya
Interpreter

Mr. Jawed Ludin
Interpreter

Mr. Tanin Bashir
Interpreter

Mr. Fethi Al Salti
Interpreter

Mrs. Radhia Ben Hassine-Zribi
Interpreter