Little Steps Forward: Some Remarks on the Rome Conference on the Rule of Law in Afghanistan

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On 2-3 July 2007, a conference co-chaired by Afghanistan, Italy and the United Nations focused on the strengthening of the rule of law and justice in Afghanistan.

As to the background: the Bonn Agreement of 2001¹ was successfully concluded in December 2005 with the opening of Afghanistan’s bicameral National Assembly. During this four-year implementation phase promising developments seemed to be prevailing in Afghanistan as such. The GDP per capita increased significantly. Millions of children were enrolled in school for the first time in their lives. The prevalence of menacing diseases such as tuberculosis was considerably reduced.

Since 2006 the situation has changed dramatically.

The implementation of the Afghanistan Compact, a new five-year blueprint for cooperation between the international community and the government of Afghanistan, was launched at the London Conference in

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¹ The Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions (Bonn Agreement) of 5 December 2001 aimed at the creation of the Islamic Republic of Afghanistan. This process ended after the Loya Jirga’s acceptance of the country’s new constitution and the subsequent establishment of state institutions in 2005. The presentation of this report was unfortunately taken from the agenda of the Rome conference.

2006. Still, since its adoption, Afghanistan seems to be more deeply mired in difficulty than ever, since the fall of the Taliban.

Confronted with increasing insurgency, terrorist attacks and general crime, the government has turned out to be weak and barely capable to develop and implement sustainable policies. Apart from this the international community’s support in the rebuilding of the Afghan state did not have the expected impact, and quite a few failures have occurred.

Under the Bonn Agreement of 2001, G8 countries had been assigned lead nation responsibility for particular sectors. However, this strategy did not sufficiently foster change. The Afghan National Army, for example, which is mainly supported by the United States of America and France, and the police trained by Germany have proven to be unable to counter the guerilla war strategies of a militant opposition. The United Kingdom, as the lead nation for Afghanistan’s counter-narcotics programs, was faced with a record harvest of opium in 2006. A total of 6,700 tons was produced last year, enough for the fabrication of about 670 tons of heroin, or 90 per cent of the world’s supply of the drug. Only the Disarmament, Demobilization, and Reintegration (DDR) initiative, part of the Japanese-led Afghan New Beginnings Program, seems to have been more successful. Although the true size of the militia forces remains unknown and some 200 warlords still control wide parts of the country, the UNDP reports that some 50,000 of the warlords’ followers have been reintegrated into society so far.

Concerning the rule of law sector, one has to state, however, that here the lead nation, in this case, Italy, has not met expectations either. The Afghanistan Human Development Report of June 2007 suggests that more than 80 per cent of disputes are still settled outside the state courts. The majority of legal professionals has no access to up-to-date legal sources. Legal norms must be described as a patchwork rather than a system. The discrepancy between Islamic and secular provisions

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