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78

Security Sector Reform in Afghanistan: the EU's contribution

Eva Gross



European Union Institute for Security Studies

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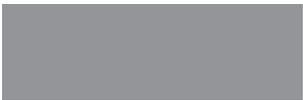


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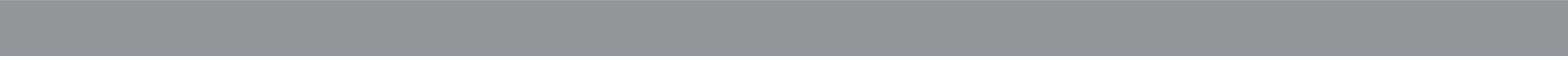
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Summary

The EU engages in aspects of Security Sector Reform (SSR) through EUPOL Afghanistan, the police mission launched in 2007, and through the European Commission's contributions to justice reform in the country. Based on an analysis of past efforts at police reform by the EU and other European and international actors, this *Occasional Paper* identifies a set of internal and external coordination challenges that hamper mission success.

Internally, institutional constraints have meant that the coordination of EU instruments has been difficult to achieve. Member States, meanwhile, have until recently focused primarily on bilateral contributions to police and justice reform in the case of Germany and Italy, respectively, or on their military contributions to the International Security Assistance Force (ISAF). Externally, the resource gap and differing philosophies underlying police reform on the part of the US (the biggest contributor to police reform) and the EU have meant that coordination has been lacking, and existing coordination bodies unable to fulfil their tasks.

Limited resources deployed in pursuit of police reform exacerbate these difficulties as inadequate commitments of political, material and personnel resources all too often translate into a loss of political influence at the strategic level.

The paper therefore argues that only by improving coordination and by increasing resources and efforts at formulating and implementing joint strategies will the EU and its Member States have a positive impact on SSR in Afghanistan. Given the deteriorating conditions in the country, the upcoming presidential elections, and a renewed focus on Afghanistan on the part of the US administration, the EU and its Member States would do well to step up their efforts and their commitment to reforming Afghanistan's police and justice system.

Introduction

The international community has been engaged in the reconstruction of Afghanistan since the fall of the Taliban in 2001. Following the election of an Afghan government in 2004, individual countries and international institutions forged a new partnership – the Afghanistan Compact – at the London Conference in 2006 to follow up on the Bonn process. The Afghanistan Compact seeks ‘to continue in the spirit of the Bonn, Tokyo and Berlin conferences, to work toward a stable and prosperous Afghanistan, with good governance and human rights protection for all under the rule of law’.¹ Based on the Afghanistan Compact, the EU has outlined its current approach to Afghanistan, which includes formalised bilateral cooperation and commitments. In June 2007 the EU stepped up its commitment with the launch of a police mission, EUPOL Afghanistan, which complements the work of the EU Special Representative, the EC Delegation in Kabul, and that of individual EU Member States active in the International Security Assistance Force (ISAF).

It is widely acknowledged that the security situation in Afghanistan is deteriorating and that the fragmentation and lack of overall strategy in the approach of the national and international actors engaged in the country have put the success of international efforts at reconstructing Afghanistan at risk. Much has been said about the need to define a common strategy, to step up military commitments, and to increase international coordination.² It has equally been noted that, in addition to providing security, strengthening governance has to be a key priority for international engagement in Afghanistan.³ In this context, this paper focuses on efforts to promote ‘good governance under the rule of law’ and on the actual and the potential contributions that the EU can make to meet this specific objective of the Afghanistan Compact.

The paper analyses the evolution and the impact of EU Security Sector Reform (SSR) policies in Afghanistan in the area of police and justice re-

1. ‘Building on Success: The London Conference on Afghanistan’, The Afghanistan Compact, London, 31 January – 1 February 2006. See: http://www.nato.int/isaf/docu/epub/pdf/afghanistan_compact.pdf.

2. See International Crisis Group, ‘Afghanistan: The Need for International Resolve’, *Asia Report* no. 145, 6 February 2008.

3. Paddy Ashdown, ‘A strategy to save Afghanistan’, *Financial Times*, 13 February 2008, p. 9.

form. It shows that the EU has at its disposal instruments that, if properly applied, can make a positive contribution to strengthening governance and the rule of law in Afghanistan but argues that the future success of EU efforts hinges not only on the extent and quality but also on the coordination of material and political commitments. While the particular Afghan context entails considerable challenges for the successful implementation of SSR policies, the fragmentation of international but also European efforts and a lack of strategic unity or vision have considerably complicated matters. The magnitude of the challenge of state and institution-building in Afghanistan also means that the international community – and, therefore, the EU – has to prepare for a long-term commitment to state-building in Afghanistan.

1. The EU and Security Sector Reform: the emergence of a policy field

State failure and the resulting humanitarian emergencies have since the end of the Cold War become a key concern for the international community. The conflicts in the 1990s, particularly Bosnia and Somalia, signalled a shift in the nature of war away from interstate war and towards the blurring of boundaries between ‘traditional’ interstate war, internecine conflicts, organised crime, terrorist activities and large-scale violations of human rights.⁴ The attacks of 11 September 2001 and the war on terror have since reinforced the conceptual connection between weak or failed states and security as well as international terrorism – and have moved preventing state-failure and (re-)building failed or failing states to the top of the agenda for international crisis management policies. Unsurprisingly, the 2003 European Security Strategy (ESS) lists state failure as one of the key threats facing Europe.

SSR – the emergence of a concept

The main challenges in rebuilding state structures in the context of failed states include restoring legitimacy and control of the use of force to public authorities as well as establishing the rule of law. A functioning security and justice sector is a key measure for stability. In this context, Security Sector Reform (SSR) has become a key concept for improving governance in post-conflict countries. Importantly, SSR constitutes a holistic approach in that it focuses not only on integrating defence, police, intelligence and judicial reform, but also on a normative commitment to the consolidation of democracy and to the promotion of human rights and of principles of good governance – including accountability and transparency.⁵ Key SSR activities thus include reforming security institutions, strengthening control mechanisms, and restructuring the security sector. According to OECD guidelines – which the EU has adopted – the security sector can be defined to include, among other factors:

4. Mary Kaldor, *New and Old Wars* (Cambridge: Polity Press, 2006).

5. Heiner Hänggi and Fred Tanner, ‘Promoting security sector governance in the EU’s neighbourhood’, *Chaillot Paper* no. 80 (Paris: EU Institute for Security Studies, July 2005), p. 17.

- the core security actors: the armed forces, police, intelligence and security services, and border guards;
- security management and oversight bodies: the Executive, ministries of defence, internal and foreign affairs;
- justice and law enforcement: judiciary; justice ministers; prisons; criminal investigation and prosecution services; customary and traditional justice systems;
- non-statutory forces, including: liberation and guerrilla armies; private security companies; political party militias.⁶

The EU and SSR

Given the broad range of political and economic instruments at the EU's disposal, the EU is in an advantageous position to implement SSR activities through policy instruments located both in the first and the second pillar. Technically, SSR is not a new activity for the EU, as the Commission has been involved in aspects of SSR through its development and its accession policies.⁷ The conceptualisation of an EU SSR concept has had a long gestation period in spite of the fact that the EU has increasingly engaged in SSR-type activities both through ESDP and Community policies.⁸ Eventually, the Council and the Commission did formulate separate yet inherently compatible concepts based on their respective policy activities. Clearly, SSR plays an important part in serving the EU's strategic aims and objectives: the European Security Strategy (ESS) states that 'as we increase capabilities in different areas, we should think in terms of a wider spectrum of missions. This might include joint disarmament operations, support for third countries in combating terrorism and security sector reform. The last of these would be part of a broader institution building'.⁹

6. For the complete list, see Council of the European Union, 'EU Concept for ESDP support to Security Sector Reform (SSR)', Council Doc. 12566/4/05, Brussels, 13 October 2005.

7. European Commission, Communication from the Commission to the Council and the European Parliament, 'A Concept for European Community Support for Security Sector Reform', COM(2006) 253 final, Brussels, 24 May 2006.

8. David Law and Oksana Myshlovska, 'The Evolution of the Concepts of Security Sector Reform and Security Sector Governance: the EU Perspective', in David Spence and Philipp Fluri (eds.), *The European Union and Security Sector Reform* (London: John Harper Publishing, 2008).

9. *A Secure Europe in a Better World: European Security Strategy*, Brussels, 12 December 2003.

EU action in the field of SSR is to be defined in terms of political dialogue and close consultation with the partner government. Guidelines for ESDP action in support of SSR thus include an emphasis on local ownership; benchmarks for measuring progress; and a holistic, tailored and coordinated approach. Relevant areas of activity for ESDP as they relate to SSR include reforming the defence and police sectors and providing support in strengthening justice/rule of law elements in SSR.¹⁰ EU interventions in Afghanistan have incorporated many of the insights of the SSR concept papers, including the need for a comprehensive and coherent approach to both police and justice sector reform. The specific context of Afghanistan, however, highlights the limitations in implementing SSR in a setting where state legitimacy is violently challenged and organised crime and corruption thrive. Unlike other areas where the EU has engaged in SSR activities, Afghanistan presents a case where large-scale military operations take place alongside state- and institution-building efforts on the part of the international community – and where the inherent contradiction between military operations in the context of the war against terror and institution-building efforts have tended to undermine the effectiveness of SSR.

10. Ibid.

2. Locating SSR and EUPOL Afghanistan in a broader strategic context

The implementation of SSR policies in Afghanistan faces obstacles not just on account of the specific local context in which EU policies operate. EUPOL Afghanistan is also operating in a highly fragmented international environment. The decision to adopt a ‘light footprint’ approach¹¹ towards Afghanistan’s post-conflict reconstruction has increasingly come to haunt the international community in the light of resurgent violence, overall lack of economic and political progress, and fragmentation of individual efforts – and has put the overall success of international intervention at risk.

A fragmented international presence

Afghanistan remains a key arena in the US-led war against terror, has become the theatre of NATO’s largest military operation, and poses a major challenge for international actors concerned with post-conflict reconstruction but also with economic development. Policies adopted in Afghanistan have also highlighted differences between individual EU Member States over the application of EU and national instruments in an evolving geostrategic environment and under US political and military leadership. This puts the coherence of international efforts to the test – and has so far prevented the formulation and eventual implementation of a coherent overall strategy towards Afghanistan.¹²

Views also diverge across the Atlantic over the nature of the international intervention in Afghanistan. Whereas the US conceives of its engagement in Afghanistan as part of the war on terror, Europeans have tended to portray their military engagement as peace-building and post-conflict reconstruction – and are facing domestic constraints in raising troop levels in part because of the increase of violence in Afghanistan. The difference

11. The ‘light footprint’ approach, rather than sending a large number of international troops and a heavy-handed presence of other international actors engaging in post-conflict reconstruction, entailed a quick devolution to Afghan ownership.

12. See Center for the Study of the Presidency, *Afghanistan Study Group Report: Revitalizing our Efforts, Rethinking our Strategies*, Washington D.C., 30 January 2008.

in view does not just apply to the overall approach towards Afghanistan but also impacts on SSR policies. While the EU proceeds on the basis of a civilian rule-of-law approach, the US has tended to adopt a military approach to police training, conceptualises police tasks differently from the civilian policing model advocated by the EU, and consequently sets different priorities when it comes to providing police training. The resource gap between the US and the EU in military, political and economic terms in turn makes it more difficult for the EU to assert its political weight.¹³

In Afghanistan, the ESDP mission therefore operates in a crowded, albeit fragmented, international environment, and in a situation of ongoing and partly escalating conflict. The EU thus faces the challenge of improving the internal and external coordination of SSR policies. With EUPOL Afghanistan, the EU intends to contribute to the formulation of the strategic direction in which SSR efforts in Afghanistan are placed. The extent to which the EU will be able to do so depends on the resources committed and the political weight behind the EU's efforts, both as far as EU institutions and individual national capitals are concerned.

Increasing political visibility, impact and coherence is made more challenging on account of the fact there has been no clear *de facto* international lead under which international and European efforts are subsumed. Fragmentation of international assistance in Afghanistan's reconstruction has also affected the UN. Although the UN Assistance Mission to Afghanistan (UNAMA), tasked with taking the lead in overseeing the implementation of the Bonn agreement, was given a coordinating role on paper, it was in practice unable to fulfil that role.¹⁴ The 2008 appointment of Kai Eide as United Nations (UN) Special Representative, and a renewed focus on the coordinating role of the UN seemed to signal a move to address the lack of coordination among international actors in Afghanistan. Limited resources, and resulting limited visibility, however, mean that the

13. As of January 2009, while the combined European contributions account for just over half of ISAF's approximate 55,100 troops, US contributions alone amount to roughly 23,220 (International Security Assistance Force, NATO, 2009. Available at: http://www.nato.int/isaf/docu/epub/pdf/placemat_archive/isaf_placemat_090112.pdf). The US has been the largest single country donor to Afghanistan; and has committed \$6 billion to police reform since 2002, which far surpasses the EU's financial commitment to this policy area. See United States Government Accountability Office (GAO), 'AFGHANISTAN SECURITY: US Efforts to Develop Capable Afghan Police Forces Face Challenges and Need a Coordinated, Detailed Plan to Help Ensure Accountability', 18 June 2008. Available at: <http://www.gao.gov/new.items/d08883t.pdf>.

14. International Crisis Group, 'Afghanistan: The Need for International Resolve', *Asia Report* no. 145, 6 February 2008.

UN remains some way from assuming the overall coordination mandate assigned to it.¹⁵

With respect to the rule of law, however, UNAMA can play an important monitoring role as well as applying international political leverage and direction in the judiciary reform process. Its mandate includes monitoring the administration of justice and the rule of law, and UNAMA has a well-established infrastructure at provincial and district level. The UN can also assume a central role in coordinating the implementation of the Afghan National Development Strategy (ANDS) and in ensuring linkages between technical assistance and an overarching political vision and/or strategy. Lastly, the UN has a prominent position in the Joint Coordination and Monitoring Board (JCMB), which is to oversee the implementation of the Afghanistan Compact, including reform of the rule of law.¹⁶

15. Interview, Member State official, December 2008.

16. UNAMA co-chairs the JCMB (together with an Afghan representative).

3. Afghan realities: local challenges for Security Sector Reform

Conditions on the ground do not make SSR an easy task. Prior to the fall of the Taliban, Afghanistan was one of the world's worst humanitarian emergencies: a quarter-century of civil war had left an estimated one million people dead; over six million people were displaced, many as refugees in neighbouring Pakistan and Iran;¹⁷ the country was one of the most heavily mined in the world; and per capita GDP was on a par with Somalia and Eritrea, estimated at 140-180 dollars (USD).¹⁸ By 2004 the picture had improved somewhat, although not by much: per capita GDP had risen to around \$290; Afghanistan ranked 173rd out of 178 nations in the Human Development Index; and life expectancy of 44.5 years was at least 20 years less than in Afghanistan's neighbours.¹⁹ Of a population estimated at 29 million, 70% live on less than \$2 per day and illiteracy rates are 57% (for men) and 86% (for women), respectively. Given enduring instability, reaching out to the vast rural population – only 20% of the population lives in cities – is challenging. Lastly, Afghanistan's economy is recovering from decades of conflict. Despite some progress – real GDP growth exceeded 7% in 2007 – Afghanistan remains extremely poor and much of the population continues to suffer from shortages of clean water, electricity, and medical care.

Given five years of international isolation and decades of conflict preceding Taliban rule, the tasks facing international actors engaged in post-conflict reconstruction were (and to a large extent remain) daunting. Although the task of building formal state institutions has been accomplished, imbuing the institutions and their political leaders with legitimacy remains one of the central challenges facing reconstruction.

17. UN High Commissioner for Refugees (UNHCR), 'Afghan Refugee Statistics', 2005. Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=421316072>.

18. European Commission, Country Strategy Paper (CSP), 'Islamic Republic of Afghanistan 2003-2006', 11 February 2003.

19. European Commission, Country Strategy Paper (CSP), 'Islamic Republic of Afghanistan 2007-2013', p. 9.

Rebuilding the Afghan state: structures and legitimacy

Following the fall of the Taliban the UN-sponsored Bonn Conference in 2001 established a process for political reconstruction that envisaged the adoption of a new constitution and a presidential election in 2004, and National Assembly elections in 2005. On 7 December 2004, Hamid Karzai became the first democratically elected President of Afghanistan. The National Assembly was inaugurated on 19 December 2005.

The state structures and administrative divisions of the Islamic Republic of Afghanistan reflect the uneasy coexistence of centralised state structures and Afghan ethnic/regional/historical decentralised realities. The seat of the government is in Kabul, and Afghanistan is divided into 34 administrative provinces (*velayat*). The executive branch includes the President and two Vice-Presidents. President Hamid Karzai is both the chief of state and the head of government and presides over a cabinet of 25 ministers that are appointed by the President and approved by the National Assembly. The President and two Vice-Presidents are elected by direct vote for a five-year term (eligible for a second term); the next presidential elections are due to be held in August 2009.

Despite international efforts towards state and institution building, the Afghan state is not self-sustaining and 93% of the budget is financed through external sources.²⁰ Lack of economic progress coupled with continued insecurity has resulted in a loss of support for the government among the general population but also in urban areas where economic activity is located. The existence of regional power centres, and struggles for asserting authority between President Karzai and 'warlords', as well as selected alliances between regional 'warlords' and the resurgent Taliban, have undermined government authority.²¹ This is largely due to the fact that the new national authorities, rather than sidelining regional powerholders, have accommodated them instead – driven in part by US interest in maintaining security and stability in the country and in part by the reliance of the US on local military leaders in conducting military operations as part of Operation Enduring Freedom (OEF). While excluding regional

20. Citha Maas, *Afghanistan: Staatsaufbau ohne Staat*, SWP Studie, Berlin, February 2007.

21. Warlords are regionally based military leaders who, thanks to the military assets at their disposal, the support of clientelist networks, outside support and/or involvement in the narcotics trade, play a political role in Afghanistan.

strongmen would have created a different set of challenges for rebuilding the Afghan state, prioritising stability over accountability, human rights and transitional justice has raised questions over legitimacy – and has not prevented challenges to the government’s rule.²²

Two significant and specific problems arise from the intersection of warlordism and government offices. Not only does this undermine the legitimacy of the state in the eyes of the public, it also undermines the viability of the state because once in power, warlords have used their positions in government to establish strongholds in sectors of public administration and the security forces. Current political realities reflect these two concerns. Although some vetting of political offices has increasingly taken place as a result of international pressure in 2004, the inclusion of warlords in the electoral process in the 2005 parliamentary elections resulted in a sharp drop in voter turnout and has increased public disillusionment with the government process.²³ In addition, and this is of particular concern when it comes to counternarcotics, warlords who are involved in the narcotics trade pose a key problem whenever they simultaneously function as state representatives. The blurring between state authority and criminal activity poses a significant challenge to efforts to suppress the narcotics trade and fighting corruption, which is endemic to governance structures, including the police and justice sector. Rather than hiring on merit, high-level posts are often awarded through a bidding process, as these positions bring with them large bribes to supplement monthly salaries for police and Ministry of the Interior (MOI) staff.

22. See Fatima Ayub and Sari Kouvo, ‘Afghanistan: intervention and the war on terror’, *International Affairs*, vol. 84, no. 4, July 2008, pp. 641-58.

23. Cyrus Hodes and Mark Sedra, ‘The Search for Security in Post-Taliban Afghanistan’, *Adelphi Paper* 391 (London: The International Institute for Strategic Studies, 2007).

4. The EU in Afghanistan: the record to date

The EU is active in Afghanistan by means of a number of instruments – the EC Delegation, the office of the EU Special Representative (EUSR), and since June 2007 also through a civilian crisis management mission (EUPOL Afghanistan²⁴). The importance that the EU attaches to Afghanistan is reflected in the EU-Afghanistan Joint Declaration that was concluded following the completion of the political transition process set out in the Bonn Agreement. The Joint Declaration commits the EU to formalised bilateral cooperation and commitments, and involves annual meetings at the ministerial level.²⁵ Key priorities for Afghanistan’s transition process identified in the Joint Declaration include ‘consolidating a democratic political system, establishing responsible and accountable government institutions, strengthening the rule of law, and safeguarding human rights (including the rights of women) and the development of civil society’.²⁶ With respect to governance, the EU and its Member States commit themselves to support the development of a national police and border police force as well as that of the justice sector to ensure a strong framework for the establishment of the rule of law in Afghanistan.

The EU has been a key, although not always a recognised, visible, or unitary actor in Afghanistan.²⁷ Between 2002 and 2006 the EU (European Community (EC) budget and Member States) contributed 3.7 billion euro in aid to Afghanistan, of which 1.1 billion euro came out of the EC budget – making it the second largest donor to Afghanistan after the US. Apart from humanitarian aid, Community programmes initially focused on building up infrastructure and on establishing government institutions and public services. Priority sectors for Commission’s work during the 2007-2013 period are rural development, governance, and health, and the budget for bilateral development cooperation for 2007-10 is 610 mil-

24. Council Joint Action 2007/369/CFSP of 30 May 2007, *Official Journal* L 139 of 31 May 2007.

25. Council of the European Union, ‘EU-Afghanistan Joint Declaration. Committing to a new EU-Afghan Partnership’, Council Doc. 14519/05 (Presse 299), Strasbourg, 16 November 2005.

26. *Ibid.*, page 2.

27. See Klaus Peter Klaiber, ‘The European Union in Afghanistan: Lessons learned’, *European Foreign Affairs Review*, vol. 12, no. 1, 2007, pp. 7-11.

lion euro.²⁸ Strengthening the rule of law and structures of government at the provincial and the district level in particular has become an increasing priority in programming for the Commission, with some 200 million euro devoted to the rule of law for the 2007-13 period.²⁹ Additional funds, including humanitarian aid but also support for projects aimed at strengthening the rule of law and transitional justice have been made available through the European Commission Humanitarian Aid Office (ECHO) as well as the Instrument for Stability (IfS).³⁰

The EU has also appointed an EU Special Representative (EUSR) to Afghanistan. The focus of the position has changed since its creation in 2001. Initially it was to give the EU a voice in a US-dominated political field and help the coordination and reinforcement of individual Member States contributions. The position has since developed into an information and coordination role that fulfils two important functions. Liaising with Afghan stakeholders and regular reporting on Afghanistan to the Political and Security Committee (PSC) provides Brussels with up-to-date information and increases the EU's political visibility on the ground. Secondly, an emphasis on coordination of EU actors and instruments improves coherence among EU instruments.³¹ The current EUSR, Ettore Sequi, has been in office since 2008.

EU Member States

Apart from their substantial military contributions to ISAF, individual EU Member States have also contributed to the reconstruction of Afghanistan by assuming coordinating roles (lead nation status) in a number of areas of SSR: justice sector reform (Italy); counter-narcotic efforts (United Kingdom); and reforming national police and border police forces (Germany).³² Whereas the tasks of police and justice sector reform have been 'Europeanised' with EUPOL Afghanistan working on reforming the

28. European Commission, 'Multiannual Indicative Programme 2007-10: Islamic Republic of Afghanistan', Brussels, October 2007.

29. European Commission, Country Strategy Paper, 'Islamic Republic of Afghanistan 2007-13'.

30. See European Commission, 'State of Play at 30 June 2008: Major Milestones towards reconstruction and peace building in Afghanistan'. Available at: http://ec.europa.eu/europeaid/where/asia/documents/state_of_play_afghanistan_june_2008_en.pdf.

31. Giovanni Grevi, 'Pioneering foreign policy: the EU Special Representatives', *Chaillot Paper* no. 106 (Paris: EU Institute for Security Studies, October 2007), pp. 71-78.

32. The US took the lead in army reform; and Japan the lead in disarmament.

police and the European Commission in cooperation with Italy taking on justice reform, the UK is the G8 lead on counter-narcotic programmes.³³ While Member States have recognised the need for increasing coordination within the EU and the opportunity the EU provides in subsuming individual efforts and improving coherence of international and European efforts, there remains a degree of fragmentation between national and European undertakings, as well as between the military and the civilian dimension of crisis management.

33. ISAF also supports counter-narcotics activities by the Afghan government. See: <http://www.nato.int/isaf/index.html>.

5. The challenge of police reform

When it comes to reforming the police and justice sectors current problems and challenges in large part stem from the fact that the international community did not grasp the centrality of the comprehensive reform of both sectors to the (re)building of the Afghan state. Police reform initially suffered neglect in favour of focusing first on providing security through ISAF and second on reforming the Afghan national army. Fundamentally, however, the rule of law lies at the heart of any government's legitimacy, and reforming the police, but also the justice sector, has become a key task in Afghanistan's reconstruction and institution building. The state of Afghanistan's police and justice sector, however, make this a formidable task.

The state of the Afghan police

A national civilian police force did not exist in Afghanistan prior to international involvement: rather, the police was organised as a quasi-military force and was regarded as a coercive instrument of the state rather than a national civilian police force. As a result the Afghan public was – and to a large extent remains – distrustful of state security organs.³⁴ Of the estimated 50,000 men working as police at the start of international reconstruction and reform efforts, most were untrained, ill-equipped, illiterate, and owing their allegiance to local warlords and militia commanders rather than to the central government.³⁵ Low police salaries coupled with the sometimes considerable risk involved in the position furthered corruption. The Bonn Agreement provided for the creation of an Interior Ministry responsible for police and corrections. The Ministry of the Interior (MoI) plays a key role in implementing reform in both political (such as hiring practices) and technical (such as training) aspects, but faces internal problems of corruption.

The dual challenge facing the international community in 2002, therefore, was not only to establish structures and training procedures but also to quickly train a large number of police officers. The initial goal of Af-

34. International Crisis Group, 'Reforming Afghanistan's Police', *Asia Report* no.138, 30 August 2007.

35. *Ibid.*

ghan police reform efforts was to replace conscripts with volunteers, and to ameliorate the ethnic imbalance within the MoI and law enforcement organisations. Currently, an Afghan police force of 82,000 has been authorised, with the Afghan National Police (ANP) currently totalling about 75,000.³⁶

Police reform: the actors involved

The main actors involved in police reform have been the US and Germany, with the contribution of the latter now subsumed under EUPOL. The EU Commission as well as a number of other states also contribute to police reform. While the UN was given a coordination role, in practice the different police reform efforts were largely conducted autonomously from one another, without fruitful attempts at donor coordination. Whereas the Commission mainly paid into Law and Order Trust Fund (LOTFA)³⁷ and funded smaller Member-State-run programmes in individual Provincial Reconstruction Teams (PRTs), the differences between the German and the US approach have revealed not just a serious gap in terms of the amount of funds made available to undertake police reform but also two different visions on the role of the ANP and the strategy that needs to be put in place to achieve this role. Harmonising and coordinating individual efforts for maximising operational as well as political impact has become a key task for the EU.

Germany

Germany was the key partner nation in charge of coordinating the reform of the ANP from early 2002 until the launch of EUPOL Afghanistan in 2007. The German Police Project Office (GPPO), staffed with 40 German police officers, took on the task of advising the ANP on reform efforts and of coordinating the international partner contributions. Assistance was provided in the form of advice on police structure, training and equipment. Since 2002, Germany has made available up to 12 million euro per

36. NATO, 'Progress in Afghanistan: Bucharest Summit 2-4 April 2008', Brussels, 2008.

37. LOTFA pays for police-related costs, including police salaries; procurement/operations/maintenance of non-lethal police equipment; rehabilitation, reconstruction, operations and maintenance of police facilities; gender mainstreaming; and institutional development. See UNDP, 'Law and Order Trust Fund for Afghanistan (LOTFA) Phase V', December 2008. Accessible at: http://www.undp.org.af/WhoWeAre/UNDPinAfghanistan/Projects/sbgs/prj_lotfa.html.

year for the reconstruction of the police force.³⁸ Key projects included the restructuring of the ANP, including matching salaries to that of the Afghan National Army (ANA) and instituting a more efficient leadership structure; restructuring the tasks and organisation for uniformed police; fighting crime and terrorism; border police; fighting narcotics; and increasing female participation.³⁹

The GPPO carried out these tasks in Kabul and in the field offices Mazar-e Sharif, Kunduz and Feyzabad. In Kabul, Germany built the Police Academy, which has been operational since August 2002, and organised the training programme in order to centralise training of police officers from across the country. German efforts have focused on long-term training by offering three-year and nine-month courses in order to build up the backbone of the police force with the aim of creating a multiplier effect. In addition, the German approach focused on the reform of the Ministry of the Interior.

However, the German approach was not as effective as it could have been. The long-term approach to training and the focus on ‘training the trainers’ did not do justice to the need for basic training of larger numbers of police in the ANP.⁴⁰ Fundamentally, the GPPO approach was too thorough, and scarce resources and insufficient numbers of staff – also in comparison to the resources dedicated to police reform by the US – meant that German efforts at police reform simply did not possess the political weight to coordinate other international efforts.

The US

The US became increasingly involved in police reform as of 2003, motivated by the realisation that training the Afghan National Army (ANA) without concurrent police reform would be counterproductive to the overall aim of establishing security – but also on account of the state of the Afghan National Police (ANP). The US approach has focused on rapid training rather than fostering long-term institutional change. Under the Combined Security Transition Command Afghanistan (CSTC-A) Focused

38. In 2008 funds were increased to 36 million euro. See Federal Foreign Office, ‘Funding for police assistance in Afghanistan tripled’, Berlin, 18 November 2007.

39. Auswärtiges Amt/Bundesministerium des Innern, *Polizeiliche Aufbauhilfe in Afghanistan*, December 2005.

40. Interview, Member State official, April 2008. See also International Crisis Group, ‘Reforming Afghanistan’s Police’, *Asia Report* no. 138, 30 August 2007.

District Development (FDD) programme, district police are trained at a Regional Training Centre over a period of eight weeks⁴¹; gains are monitored through Police Mentor Teams (PMTs), and some of the training is subcontracted through a private contractor, DynCorp. The US approach reflects a military mindset, with most of the trainers current and former military staff – and is under the command of the Department of Defence Military Command (CENTCOM).⁴²

The German and US concepts of police training differed fundamentally. Whereas the German vision focused on the police as a civilian law and order force, the US regarded police as a security force that also could play a counter-insurgency role.⁴³ Training efforts under German and American leadership therefore not only partially overlapped but also contradicted one another on account of their different approaches to policing, and this prevented the elaboration of a workable division of labour.

EUPOL Afghanistan

The fragmentation of national efforts in police reform, the difficulty for the EU as a whole to muster political weight in the context of SSR (and in Afghanistan as a whole) but also transatlantic disputes over burden sharing in Afghanistan's reconstruction effort led to an increasing discussion over the EU's involvement in Afghanistan and the possibility of launching an ESDP operation. The option of an ESDP operation, which had been discussed for a while,⁴⁴ was decided upon during the German Presidency during the first half of 2007. The mission was prepared in the second half of 2006, with a Joint EU Assessment Mission report presented to the Political and Security Committee (PSC) on 13 October 2006. Based on the recommendations contained therein, namely to 'consider contributing

41. NATO, 'Progress in Afghanistan: Bucharest Summit 2-4 April 2008', op. cit. in note 35. However, the short, eight-week training cycles have been found to be insufficient for sustained training and rely on additional European/EUPOL training. Interview, 2 July 2008.

42. Interview with US official, December 2008.

43. Andrew Wilder, *Cops or Robbers? The Struggle to Reform the Afghan National Police*, Issue Paper Series, Afghanistan Research and Evaluation Unit (AREU), July 2007. This position was also reflected in interviews with US officials who emphasised that the security aspect should be dealt with first in police reform, ahead of 'soft aspects' addressed by EUPOL. (December 2008).

44. Member States differed in their position on the value added of an ESDP operation, which delayed the onset of EUPOL Afghanistan: whereas the UK, among others, argued in favour of an ESDP operation with a view to the EU's added value for a comprehensive approach but also in response to transatlantic pressures over burden-sharing, France objected to the launch of an ESDP mission in Afghanistan. Germany was internally split on this idea, with the Ministry of the Interior, who 'owned' GPPO, reluctant to give it up and with the Federal Foreign Office in favour of the mission. Interview with Member State official, April 2008.

further to support the police sector through a police mission⁴⁵, a fact-finding mission was sent to Afghanistan between 27 November 2006 and 14 December 2006. On 12 February 2007, the Council approved the Crisis Management Concept (CMC) for an EU police mission.

EUPOL Afghanistan, the ESDP operation launched in June 2007, is embedded in the overall EU commitment to Afghanistan that includes political guidance provided by the EUSR and the reconstruction effort managed by the European Commission delegation in Kabul. The objectives of the mission are to ‘significantly contribute to the establishment under Afghan ownership of suitable and effective civilian policing arrangements, which will ensure appropriate interaction with the wider criminal justice system (...) the Mission will support the reform process towards a trusted and efficient police service, which works in accordance with international standards, within the framework of the rule of law and respects human rights’.⁴⁶

The tasks set for the mission include:

- working on strategy development, while placing an emphasis on work towards a joint overall strategy of the international community in police reform;
- supporting the Government of Afghanistan in coherently implementing their strategy;
- improving cohesion and coordination among international actors; and
- supporting linkages between the police and the wider rule of law.

EUPOL Afghanistan is a non-executive mission that carries out its tasks through monitoring, mentoring, advising and training. It aims to coordinate and to advise on projects implemented by Member States and third countries in areas related to the Mission and in support of its objective. The mission’s duration is a minimum of 3 years, with a six-monthly review of its size and scope.

45. Council Joint Action 2007/369/CFSP of 30 May 2007 on establishment of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN) OJ L 139/33.

46. *Ibid.*

While EUPOL Afghanistan was designed on the basis of German efforts through GPPO, its philosophy is different. Rather than mainly a training mission, it is also meant to contribute to the formulation of an overall strategy, particularly in the Ministry of the Interior. The intention is to mentor staff in the MoI, the Deputy Minister, and regional chiefs of police in constructing and coordinating policies. This approach of mentoring commanders and upper-ranking officials complements that of the US training approach, which aims to put boots on the ground rather than to provide long-term, structural training. The main advantage of EUPOL over GPPO is also that it now subsumes EU Member States as well as third states active in police reform in one mission.⁴⁷ This improves coordination among different national efforts through increased exchange of information on police reform activities and more targeted programme design in accordance with EUPOL's overall mission targets.

The mission did get off to a difficult start, and problems experienced in other ESDP civilian crisis management operations came to affect EUPOL Afghanistan as well, but were compounded by the security situation on the ground, frequent changes in the position of EUPOL Head of Mission and by inter-institutional disputes between the EU and NATO. Specifically, these problems included procurement, staffing, administration, and security concerns prohibiting the running of the operation. Security guidelines were very strict, and the appropriate material not in place (particularly armoured vehicles as well as computers and IT equipment).⁴⁸ This delayed the mission, as staff could not leave base camp without the equipment in place.

EUPOL Afghanistan currently consists of just under 200 international police, law enforcement and justice experts – a number that falls significantly short of the 400 personnel currently authorised – and is headed by Police Commissioner Kai Vittrup. EUPOL staff have or are to be deployed at central, regional and provincial levels: in Kabul (50%), in the five regional commands⁴⁹ and in the provinces through Provincial Reconstruction

47. This refers specifically to Canada, New Zealand, Norway and Croatia.

48. Interview with Member State official, April 2008.

49. These are Mazar-e-Sharif (lead nation: Germany); Bagram (lead nation: US); Kandahar (lead nation: UK); Herat (lead nation: Italy); Kabul (lead nation: Italy). See ISAF-Regional Command Structure, http://www.nato.int/isaf/structure/regional_command/index.html.

Teams (50%).⁵⁰ Deployment through PRTs was slowed down by the need – in the absence of a formal EU-NATO/ISAF agreement on the provision of security for EUPOL staff – to draw up bilateral technical agreements with the respective lead nations of individual PRTs. Agreements have been concluded with EU Member State-led PRTs. Agreements with US-led and Turkey-led PRTs, however, are unlikely to be concluded – which limits the geographical reach of EUPOL Afghanistan.

As could be expected, the slow start, lengthy build-up phase, inter-institutional issues between NATO and the EU, as well as the procurement and staffing problems listed above, have negatively affected the first stages of the mission – both in terms of the EU's position *vis-à-vis* other international actors and its impact on police reform in Afghanistan.

Achieving EUPOL's tasks: challenges ahead

Fundamentally, the challenges facing EUPOL in fulfilling its tasks fall into two broad categories. First, the internal and external coordination of police reform efforts, mainly with a view to giving EUPOL, and related EU instruments, enough weight in order to achieve the political impact to which the mission aspires. Second, the interaction and cooperation with Afghan stakeholders and the broader difficulties associated with implementing strategies in an unstable political context make reforming the police a challenging undertaking. The political tasks of the mandate, including strategy development, but also the specific tasks of advising and policing, require that mission staff should include appropriate police experts and personnel with broader political experience of the Afghan context – and in sufficient numbers – a balance that is yet to be achieved. Staffing the mission has been challenging not just with a view to the hostile external environment in which mission personnel are placed but also given the demands on Member State resources from other civilian crisis missions, such as EULEX Kosovo.⁵¹

50. As of January 2009, EUPOL's mission strength was 188 international staff of which 120 were deployed at EUPOL HQ in Kabul; 64 in the regions; and 4 providing support within the Mission Support Element in Brussels. *EUPOL-Serving Afghanistan*, Online Bi-weekly Newsletter, 29 January 2009. Available at: http://www.consilium.eu.int/uedocs/cmsUpload/EUPOL_Serving_Afghanistan.pdf.

51. Interview with Member State official, December 2008.

Towards coordination and a workable division of labour

Despite the difficult start of Afghan police reform efforts the increased willingness to coordinate has improved the linkages among actors, particularly coordination between the US and EUPOL. Whereas the GPPO was linked very closely to the German PRTs as well as to other EU officers in other PRTs, there was only a limited structural link with mentors deployed by the US. The EU and the US have now agreed on cooperation, and integrated project teams avoid duplication.⁵² A basic division of labour is evolving with the US focusing on short-term training of a maximum number of officers whereas the EU focuses on long-term structural change. Although the US and the EU continue to run their police training separately, and although they continue to pursue different strategies as far as training and outcome are concerned, the two approaches at present are far more complementary than they used to be in the past – rather than partially overlapping they are now, at least in principle, mutually reinforcing. US and European approaches continue to emphasise different aspects of policing, but there is greater acceptance of potential European value-added on the part of the US. This lies particularly in EUPOL expertise in civilian policing practice, which can complement the US focus on basic training and the FDD programme – a realisation helped in part by the recognition that US efforts in police reform have to date not yielded the expected results.⁵³ The resource gap between the US and the EU does not give EUPOL a strong case for assuming coordination functions or political leadership in police reform: compared to that of the United States, the scale of the EU's commitment is small. At the same time, tactical cooperation between EUPOL and CSTC-A on devising a plan for reforming the MoI and on intensifying mentor coordination to avoid duplication show that cooperation but also coordination exists between EU and US police reform elements.

Coordination efforts of all international actors concerned with police reform have become increasingly institutionalised, with an explicit aim on the part of the EU to increase its overall coordination role. Two police coordination conferences were held in Dubai in 2006 – jointly funded by the

52. Interview with EU officials, April 2008.

53. Interview with Member State official, December 2008. For a recent assessment of US contributions to police reform, see United States Government Accountability Office, 'AFGHANISTAN SECURITY. Testimony before the Subcommittee on National Security and Foreign Affairs', Committee on Oversight and Government Reform, House of Representatives, 18 June 2008.

US and GPPO – and resulted in the creation of the International Police Coordination Board (IPCB) set up to coordinate the international police reform efforts to ensure coherence among international actors, align their activities with the Afghan government's strategies towards police reform, and to ensure links with the wider rule of law. Whereas Germany chaired the first meeting in March 2007, currently the EU, through EUPOL, has assumed the main coordinating role – in close cooperation with the Afghan Minister of the Interior, who heads the IPCB Board. Following the creation of the IPCB and the stronger profile acquired by the EU therein, coordination meetings with international actors and Afghans now take place, and EUPOL prepares the agenda for IPCB meetings. The IPCB Secretariat is staffed by EU officials as well as one US official, and both EUPOL and US representatives attend IPCB meetings.

In practice, however, the IPCB to date has not lived up to its coordination function, which is a reflection of the relatively low importance assigned to the IPCB on the part of EU personnel – and as a result also the US.⁵⁴ Efforts at reforming IPCB structures are currently under discussion and focus on improving the coordination of policy efforts, and on formulating strategic goals rather than training goals and outcomes. Creating an effective coordination mechanism requires political commitment to strengthen IPCB structures. This is key for the EU, which aims to take a greater role in the coordination and strategic guidance of international police reform efforts in Afghanistan. Short of that, the IPCB, and EUPOL along with it, risks losing influence in the planning and direction of the police reform process.

Beyond the challenge of coordinating with other actors in police reform and of creating effective structures to that end, the EU also faces an internal coordination challenge. Neither EUPOL nor the EUSR can bring financial instruments to bear to induce change or implementation of policies, or to reinforce particular political messages towards Afghan stakeholders. In addition, the nature of EU financial engagements in Afghanistan means that mechanisms for imposing conditionality are limited to begin with. For instance, salaries paid through LOTFA are non-negotiable even if some adjustments in funding can be made to induce reforms and include control mechanisms for the transfer of payments but also

54. Interview, US official, December 2008.

the identification of recipients.⁵⁵ Given EUPOL's non-executive mandate, advising and implementing police reform depends on the receptivity of the Afghan government to reform efforts. However, the mission does not have the means to provide strong political or financial incentives to enhance the engagement of Afghan authorities.

Involving and addressing local stakeholders and security consumers

With respect to engaging the local Afghan structures, linking reform at the central and provincial level has been difficult, both on account of the fact that some of the provinces and regions are beyond the reach of the central Ministry of the Interior and the fact that EUPOL has not been deployed throughout the country. Given the weak governmental structures in Afghanistan, with varying reach and legitimacy depending on individual regions, working through PRTs is crucial for EUPOL to engage in police reform outside Kabul. EUPOL's difficulties in deploying through PRTs aside, this raises issues over Western credibility and legitimacy in the eyes of Afghans; but also over the interactions between EUPOL and the Afghan government.

Afghans increasingly view the ISAF mission (and Western military presence more generally) as a threat rather than a force for good⁵⁶ and do not trust Western military presence to provide security.⁵⁷ Coupled with a lack of trust in the police or justice system, this means that, in order for SSR policies to achieve a degree of local acceptance, the perceptions of the local population on the effects of international presence need to be accounted for. However, EUPOL and police reform efforts in general so far have largely disregarded civilian policing or outreach to weak groups of the population. This is in large part a function of the increasing focus on restoring security. In addition to broader issues of civil-military relations and linkages between development and security, the focus on acceptance of police reform also raises the question of the degree to which international actors can induce reforms – and to what extent they can support those reforms once they are being implemented.

55. Interview with Commission official, April 2008.

56. See Hekmat Karzai and Julian Lindley-French, 'Listening to the Afghans', *Afghanistan Times*, 19 November 2007; BBC News, 'Afghan people 'losing confidence'', 9 February 2009.

57. See Sippi Azarbaijani-Moghaddam, Mirwais Wardak, Idrees Zaman and Annabel Taylor, 'Afghan Hearts, Afghan Minds: Exploring Afghan perceptions of civil-military relations', British & Irish Agencies Afghanistan Group, June 2008.

Given the starting point of institution-building in Afghanistan, raising a cadre of capable civil servants was understood to be a long-term process. But, in addition, entrenched corruption in all aspects of rule of law, but particularly the MoI, makes persuading Afghan interlocutors to implement reforms, such as transparent hiring practices as well as payment structures and other measures designed to tackle a culture of corruption, difficult. Given its non-executive mandate, EUPOL has to rely on the ability but also the willingness of Afghans to implement reform. By the same token, it has to rely on bilateral police reform programmes to help implement those reform efforts that fall outside its mandate. The October 2008 appointment of Hanif Atmar as Minister of the Interior signalled renewed commitment to reform on the part of the Afghan government. While his appointment has uniformly been perceived as a potentially positive development for police reform, requests for greater EUPOL involvement and operational support on training but also on investigating criminal networks go beyond EUPOL's mandate (let alone current capacity in terms of personnel).⁵⁸ This in turn reinforces the need for coordination among actors engaged in police reform, including those of the Member States participating in EUPOL.

Linking police and justice reform

The Commission contributes to the reform of police and justice, providing the backbone of the financial contribution. The EC has given some 135 million euro to LOTFA since 2002⁵⁹; and has allocated more than 10 million euro to the Provincial Reconstruction Teams (PRTs) to support a range of European projects in different parts of the country. Since 2006, the Commission has also become more involved in justice reform. EUPOL and Commission programmes are now institutionally linked up, with the Commission continuing its contributions to LOTFA⁶⁰ and to reforming the Judiciary, and EUPOL placing mentors in the justice sector.

58. Interview with Member State official, December 2008.

59. This makes the Commission the biggest donor to LOTFA.

60. Of the 200 million euro committed to rule of law sector during the 2007-13 funding period, 40-50% of that amount is dedicated to LOTFA.

6. The challenge of justice reform

Whereas police reform has not received the attention it should have early on, the lack of focus, resources and coordination is exacerbated in the area of justice sector reform. A key flaw in the international strategy towards reforming the Afghan police until very recently was the lack of attention paid to reforming the justice sector. The Afghan judicial reform strategy 'Justice for All' of October 2005 accordingly recognised that 'while significant progress had been made in equipping military and law enforcement units, almost nothing has been accomplished to provide resources for the justice system'.⁶¹ Compared to the police sector, the justice sector is even more underdeveloped. Problems include lack of trust in the system, gaps in outreach to parts of the population and inadequate training of personnel. The effective reform of the security sector needs to conceive of police and justice sectors as essentially interlinked, since police reform would be likely to fail without a working judicial sector.

The state of Afghanistan's justice sector

As for the relevant institutions that make up the Afghan judiciary, the constitution establishes a nine-member Stera Mahkama or Supreme Court⁶² and subordinate High Courts and Appeals Courts. A separate Afghan Independent Human Rights Commission established by the Bonn Agreement is charged with investigating human rights abuses and war crimes. The Ministry of Justice is responsible for the oversight of the prison service, the legislative department and the coordination with the interim Afghanistan National Development Strategy (i-ANDS) process. The Supreme Court is the constitutional court of appeal and has responsibility for the administration of the courts system and the judiciary, and encompasses about 1,500 judges. The Attorney General's Office, which has the authority over the investigations of crimes, includes some 2,500 public prosecutors.

Afghanistan's legal system is based on mixed civil and Sharia law and has not accepted compulsory International Criminal Court (ICC) jurisdiction.

61. Afghan judicial reform strategy.

62. Judges are appointed for 10-year terms by the president with approval of the Wolesi Jirga.

The primary source of law is the 2004 Constitution, but in areas that are not governed by constitutional law the court will apply statutory laws with Islamic law applied where neither law covers the dispute in question. Customary law is a legitimate source of law where neither Islamic nor statutory law pertains to an issue. In practice, however, judges may not have access to legal texts, may not have been trained properly, and simply apply their version of Sharia law to many disputes.⁶³ In addition to a mixed legal system that was re-established after Taliban rule,⁶⁴ the absence of an ethos of judiciary independence in particular impacts on institution-building. None of the judicial institutions at present have the resources to deliver an effective system of justice. In addition, staff are inadequately trained,⁶⁵ have no career structure, and work in conditions of personal danger.

Justice reform: actors and issues

The reform of the judiciary to date has been undertaken by a number of actors. In accordance with the Afghan Compact, the JCMB monitors progress. UNAMA equally has a monitoring function on the administration of justice and the rule of law. Apart from Italy, which took the lead on justice reform, and the European Commission, which has recently increased its overall commitment to lead European efforts at justice reform, other key actors include the US through the State Department/Justice Sector Support Programme (JSSP), USAID and CFC-A (Combined Forces Command – Afghanistan), and Canada (which mainly focuses on commercial law) – as well as individual/small national programmes and efforts. Italy, the US, UNDP and the German Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) provide technical assistance to the justice sector institutions by placing advisors in relevant bodies.

Italy

Italy served as lead nation for justice reform. The Italian Justice Office (IJO), which consisted of 4-5 Kabul-based staff, began operating in 2003. It assisted institutional reform by providing technical assistance through

63. See J. Alexander Thier, *Reestablishing the Judicial System in Afghanistan*, CDDRL Working Papers, no. 19, Stanford University, 1 September 2004.

64. The Taliban used a separate system of archaic Islamic justice.

65. According to the JMCA, 'currently 80 percent of prosecutors in provinces are without university qualifications, and forty percent of judges have not completed Stage training before assuming judicial appointments'. JMCA VII Status Update, Annex Two, January 2008.

placing advisors within the Ministry of Justice, the Supreme Court and the Attorney General's Office. IJO activities included legislative reform; justice institutions rehabilitation; training courses; construction and rehabilitation of infrastructure; and providing equipment. Between 2003 and 2006, 1,200 judges, prosecutors and other legal staff were trained and a number of multilateral projects concluded, including capacity building and prison system reform. Through an EC/Italy funded 'Access to Justice' Programme at District level the IJO has also actively worked with traditional dispute resolutions mechanisms, given that the majority of Afghans use a traditional rather than the formal justice system.

The 2006 London Conference pushed for greater EU involvement, and the Commission has since taken the lead in the field of justice reform, while continuing to cooperate with Italy. The push towards greater EU involvement in large part derived from the fact that Italian efforts on justice reform were deemed insufficient. A justice team consisting of 4-5 staff was simply too small to effect justice reform. A second factor pushing for greater commitment to justice reform on the part of the Commission was the increasing realisation that the neglect of justice reform undermined efforts at police reform: even in cases where the police did manage to make arrests, the percentages of cases brought to trial, or of trials resulting in convictions, was minute. Subsuming justice reform under the EU roof would have the advantage of increasing coordination between the reform efforts of the police and justice sectors, even if the two are housed under separate pillars.

Reform efforts to date: the state of play

A personalised system of power, where authority rests with individual power holders rather than the state, undermines efforts to reform state institutions in the justice sector. There is little interest in the rule of law on the part of such groups who are at times actively undermining the reform process – a dynamic visible in particular in the appointment system of senior officials. Consequently, the systems for the appointment of judges and prosecutors are ineffective and lack mechanisms of accountability. As in the police sector, there is widespread corruption and no effective mechanisms for its prosecution. In addition, the politicisation of the judiciary, as well as the failure to ensure a safe environment for courts, personnel, victims and witnesses undermine the capacity of the legal sys-

tem to act independently and/or impartially – and produce at best a low level of public trust in the justice institutions.

Most of the ongoing projects pursued by individual international actors beginning with the Bonn Process were not linked, nor were these actors aware of what other projects were running. As in the case of police reform, this has resulted in some overlap of efforts. Although the coordination of efforts has increased, the December 2006 Afghanistan Rule of Law Coordination Meeting in Dubai concluded that the overall approach to justice reform remained fragmented and *ad hoc*.⁶⁶ The July 2007 Rome Conference was to reaffirm political commitment to the reform of the justice sector, and donors agreed to finalise a Justice Sector Strategy as well as to support high priority, short-term projects for the individual justice institution – these include strengthening institutional capacity; legal aid; and implementation capacity.⁶⁷

With funds so far devoted to building infrastructure and to providing training, capacity building and institutional reform is thus moving into focus. Some reform has been taking place, with the Ministry of Justice drafting a law on salaries that raises the salary of judges so as to minimise asymmetries between the pay scales of the ANP and those of the judiciary. Other necessary institutional reforms include institutional reorganisation, establishing minimum standards of education and experience, and eradicating corruption.⁶⁸

The role of the Commission

The Commission has been involved in justice reform since the 2006 London Conference tasked the EU with justice reform. Coordination efforts further increased with the Rome Conference in July 2007, which started mechanisms of pooling resources and adjusting funding mechanisms. In

66. Afghanistan Rule of Law Coordination Meeting, 4-5 December, Dubai, 2006. Available at: http://www.rolafghanistan.esteri.it/NR/rdonlyres/319E9E4A-A7D1-4719-AD75-F1EC7ADE85A3/0/SOCDubaiMeeting_Final_DUBAIGIUSTIZIA.pdf.

67. Islamic Republic of Afghanistan Ministry of Justice, National Justice Programme, Rome Conference Follow-Up, January 2008. Available at: <http://www.moj.af/?lang=en>.

68. The JMCB Secretariat accordingly notes that 'the review and reform of oversight procedures relating to corruption, lack of due process and miscarriage of justice is proceeding slowly'; and that while 'a Commission of Legal Services has been established for the assessment of legal processes and a review of judges' salaries has been completed (...) the pay and grading reforms will need to be supported down the line'. JMCB VII Status Update, January 2008.

preparation for an EC Justice programme a judiciary expert team was set up in 2007 – financed by the Instrument for Stability (IfS) – to support programme definition, management reform, and suggesting different models of legal aid for the Ministry of Justice (MoJ).⁶⁹ Additional areas of inquiry for the Commission are pay reform, equitable, merit-based recruitment, qualifications for appointment, promotions and transfer, a reform of court practices and the introduction of a professional code of ethics, including benchmarks that would allow measurements of improvement, such as the number of cases brought to court.⁷⁰ While the Commission implements its own programmes, it also has a clear mandate to coordinate activities with Member States.⁷¹

The Afghanistan programme adopted by the Commission, which will grow into a new justice programme until 2010, focuses its contributions on four areas. In addition to providing technical assistance, the Commission supports the multilateral Afghanistan Reconstruction Trust Fund (ARTF) justice project, the LOTFA for the salaries of the personnel of the Central Prison Department of the Ministry of Justice, and the UNDP ‘access to Justice at district level’ project.⁷² The Commission focuses on managing its own projects with a limited coordination function concerning Member States’ projects and activities. Linkages between EUPOL and the Commission have been put in place. A Commission representative sits in on the IPCB, EUPOL staff includes justice and rule-of-law advisors, and working relations between the two are quite good, with regular exchanges taking place – both in the form of monthly meetings between EUPOL, the Commission and the EUSR as well as more informal exchanges.⁷³ In addition to EUPOL, close coordination is also sought with other donors in the justice sector, although the Commission has not assumed a coordination function among international actors in the same way as EUPOL was mandated to do.

69. ‘State of Play as of 30 June 2008. Major Milestones towards reconstruction and peace building in Afghanistan’, *op. cit.* in note 30.

70. Whereas former EUSR Vendrell pushed for establishing a quota of trials vs. arrests as a benchmark of efficiency, he was not successful in the benchmarks’ implementation. However, raising the number of trials should be seen as a step in the right direction, as simply entering the trial phase is an achievement. Interview, Member State official, April 2008.

71. Interview, Commission official, December 2008.

72. See European Commission, Press Release, ‘EU and Afghan Institutions joint efforts on justice reform in Afghanistan’, 27 November 2008.

73. Interview with EUPOL staff, and EC official, December 2008.

Conclusion

The EU has made significant progress in increasing its overall political and operational role among international actors operating in Afghanistan. By subsuming individual Member States' police reform efforts under EUPOL Afghanistan, the EU is in a better position to coordinate and to target its policies. This is also important with a view to coordination with the US, who continues to outspend the EU collectively on police reform. With justice reform now overseen by the Commission (and receiving more overall attention), the linkages between the two sectors – police and justice – can be more effectively addressed.

While, however, EU engagement in SSR has become more holistic and better targeted since the September 2006 rule-of-law fact-finding mission, it suffers from a severe shortage in staff and other resources, and this puts the success of EU policies in Afghanistan at risk. Given the military, political and economic challenges facing Afghanistan – and the security implications this has for the EU but also the larger international community – the EU must urgently improve its performance in Afghanistan. In order to maximise its impact and to achieve its mission objectives, however, the EU must improve its approach to overall policy coordination and implementation with a view to shaping a comprehensive international strategy towards SSR in Afghanistan.

Improving coordination and mission effectiveness requires:

1. Providing EUPOL with sufficient personnel, endowed with the necessary professional qualifications and undergoing targeted training.

EUPOL operates at mission strength far below its current authorisation limit. This underlines the difficulties facing the mission in attracting sufficient and appropriately trained personnel, as many of the advertised positions fail to attract applications from suitable staff. Member States therefore should increase their commitments both in terms of making available personnel in sufficient numbers but also with the appropriate skills.

2. Increasing Member State political and financial support for EUPOL Afghanistan.

Member States should increase their political as well as their financial support for the mission. This is important not only with a view to improving overall mission performance but also with respect to increasing EUPOL's (and, by extension, the EU's) political weight among other international actors engaged in police reform. Improving coordination among actors, and effective work on strategy development, requires support not just from Brussels institutions but also from Member States – without it, EUPOL will encounter difficulties in meeting its objectives.

3. Reforming and strengthening the work of the IPCB to provide a forum for coordination.

An emphasis on coordination is vital in ensuring that EUPOL can fulfil its task of working on strategy development and improving cohesion and coordination among international actors. The creation of the IPCB represents an important step in the right direction. Within the IPCB, the EU and its Member States should emphasise coordination of policy efforts and the formulation of strategic goals, and push for reform in order for the Board to fulfil these tasks.

4. Coordinating EU instruments in the pursuit of joint positions in order to strengthen the EU's profile *vis-à-vis* other international actors, including the US.

The internal coordination of EU instruments must receive ongoing attention. A strengthened EUPOL mission and functioning external coordination mechanisms will allow the EU to strengthen its profile in police reform as well as broader aspects of SSR. But the effective coordination of EU instruments is a necessary precondition for the EU to effectively pursue its political objectives *vis-à-vis* other international actors, and to input the formulation of broader political strategies towards reforming Afghanistan's security sector.

Improving the overall commitment of the EU and the coordination between international actors and EU instruments is key to shaping an effective overall strategy towards SSR and post-conflict reconstruction in Afghanistan. Only by the EU and Member States acting in unison, and by developing a joint vision for SSR in Afghanistan with other interna-

tional actors and Afghan authorities, will the EU be able to fulfil the coordination role it claims for itself – and stand a chance of successfully carrying out police and justice reform in Afghanistan.

Annex

Abbreviations

ANA	Afghan National Army
ANDS	Afghan National Development Strategy
ANP	Afghan National Police
EC	(i) European Commission (ii) European Community
ESDP	European Security and Defence Policy
EUSR	EU Special Representative
FDD	Focused District Development
GDP	Gross Domestic Product
GPPO	German Police Project Office
ICJ	International Court of Justice
IFS	Instrument for Stability
IJO	Italian Justice Office
IPCB	International Police Coordination Board
ISAF	International Security Assistance Force
JCMB	Joint Coordination and Monitoring Board
LOTFA	Law and Order Trust Fund
MOI	Ministry of the Interior
NATO	North Atlantic Treaty Organisation
OECD	Organisation for Economic Cooperation and Development
PRT	Provincial Reconstruction Team
PSC	Political and Security Committee
SSR	Security Sector Reform
UN	United Nations
UNAMA	United Nations Assistance Mission to Afghanistan
UNDP	United Nations Development Programme
USD	US dollars

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