

## Heuristics and Loya Jirga for the Afghan morass

*Establishing a credible government is more important than extra troops*

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***Editors note:*** The law page is concentrated today on the Afghanistan crisis resulting from the mounting insurgency and botched presidential elections. In addition to the editor's comment, three documents illustrate the conundrum created by the Afghanistan elections on August 20. In the "final" chart of the Independent Elections Commission, incumbent President Hamid Karzai is reported to have crossed the threshold of the 50 percent needed to avoid a second turn. In contrast, Peter Galbraith, former deputy head of the UN, underlines the large-scale fraud he witnessed and for which he was fired amid a grave disagreement with his boss, Kai Eide, and UN Secretary General Ban Ki-moon. The report of the European Union observation mission, released on September 8, points to grave irregularities without conclusively declaring the elections void.

Five large books: this is my rough assessment of the articles published on Afghanistan just this past week in US papers and magazines. Pity President Barack Obama who has to digest this and more, no wonder US policy in Afghanistan nowadays is so disoriented. The confusion is amplified by an increase in violence in both Pakistan and Afghanistan, the bombast by Taliban and Al-Qaeda leaders, incoherence in the American political-military chain of command, and an electoral disaster underlined by the public split between the UN representative in the country, Norwegian Kai Eide, and his aide, American Peter Galbraith, who resigned last week in protest against widespread fraud in the presidential elections and the mute accommodation of his boss to the Afghani president's wrongdoing.

This last development is the most serious. No one can accept the conclusions of the Afghani "independent" electoral commission, so massive the fraud has been, by all accounts. With the collapse of the presidential electoral process, Afghanistan can no longer as a "host nation" provide an interlocutor on the ground in the shape of a democratically functioning president and government.

"Host nation" endorsement is a concept which General David Petraeus uses as key to a successful counterinsurgency strategy. He developed it in "Field Manual 3-24 on COIN (Counterinsurgency)," a 300-page study on military strategy known as the Petraeus doctrine. This is Clausewitz put on its head: unless the government of the "host nation" where the US is battling insurgents supports the military effort of the American troops and NATO, there is no chance for COIN to work.

If the presidential election process continues to stall, the governmental void is bound to persist. Conversely, if Hamid Karzai is confirmed as president by the electoral commission, he will become as illegitimate as Mahmoud Ahmadinejad next door.

With the electoral mess in Afghanistan, the government of the host nation is on the verge of collapse.

With this basic factual wake-up check in mind, here are two basic ideas to move forward in Afghanistan.

The first is methodological: there can be no definitive or grand strategy. The situation on the ground is too elusive, the host nation government too uncertain, and the regional and international over-determination too heavy for a silver-bullet plan. Instead, to use my colleague Bechir Oubary's title for his outstanding blog on Lebanon ([heuristiques.blogspot.com](http://heuristiques.blogspot.com)), any strategy on Afghanistan needs to be "heuristic."

Heuristic, used both as noun and adjective, is defined in the Merriam-Webster Online Dictionary as "involving or serving as an aid to learning, discovery, or problem-solving by experimental and especially trial-and-error method." An Afghan-US plan is perforce such a game, with a set of overarching endgame principles one can simplify into a dual maxim: an extremist takeover is unacceptable, and US troops should leave sooner rather than later.

John McCain is right about the Iraqi simile: the relative success in Iraq, rather than Vietnam, should guide the Afghanistan process. In Iraq, Iraqis are increasingly in control of their country, US troops are on their staged way out, and a decent democratic process is taking root. Even in Iraq, heuristic is the word. Setbacks are possible. Some Iraqi leaders, including commanders of the now large army, could be tempted to resort to old-regime authoritarian practices. They must be prevented from doing so by the United States. Extremism could suddenly arise again, and that could also redefine US military deployment or withdrawal.

The sophisticated Petraeus doctrine, which guided the Bush administration out of the Iraqi morass, applies as follows in Afghanistan.

The most pressing issue is the imminent collapse of the host nation government, not the matter of additional troops. Any additional troops will give a contradictory message. One is positive, showing that the US continues to be committed to a decent future for Afghanistan and will not cut and run, the other is negative, and reeks of colonialism and foreign occupation as the name of the game for the US and the West.

Here I differ with Senator McCain. On balance, it is better to wait on the issue of troops if their usefulness is not compelling. Compelling can be narrowly defined as the imminent take-over by the insurgency of significant areas in the country, which is unlikely.

In contrast, the issue of the Afghan presidency must be addressed immediately. It is now two months since the elections, and they are irretrievable. They should therefore be scrapped as a failure of the current president and/or of the adverse conditions created by the insurgency, with a caretaker government as the main constitutional consequence.

Among the Afghan constitutional dispositions, the most appropriate in the present dramatic circumstances relate to the Loya Jirga, which is the one traditional Afghan consensus-building assembly which has deepest roots in the country.

Under Article 110 of the Constitution, “The Loya Jirga is the highest manifestation of the will of the people of Afghanistan. The Loya Jirga consists of the following: 1- Members of the National Assembly. 2- Chairpersons of the provincial and district councils. The ministers, chief justice and members of the Supreme Court, shall participate in the sessions of the Loya Jirga without the right to vote.”

As the highest manifestation of the sovereign, iraday-e mardam (the people’s will) in the official Dari text, it is convened to carry out the following exceptional measures: “1- To take decision on issues related to the independence, national sovereignty, territorial integrity, and supreme interests of the country. 2- To amend the provisions of the Constitution. 3- To prosecute the president in accordance with the provisions of Article 69 of the Constitution. All three clauses on the Loya Jirga’s powers under Article 111 may be needed.”

Together with this stopgap move to prevent a total void in the host nation, convening a Loya Jirga with the remarkably adept powers is the best way to redraw the political and constitutional map of the country. Some Taliban could even be called in to participate in that process if they expressed their readiness to stop violence or provide a safe haven to those involved international violence. The rest, including the beefing up or reduction of foreign troops, is secondary.

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