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Lesson for Afghanistan: Establish rule of law first

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ARCHITECTS CRAFTING the framework for peace in war-weary Afghanistan must be alert to models that have worked reasonably well elsewhere.

While circumstances vary and analogies rarely serve as clear guides to action, the process of reconstructing (or constructing) a nation, whose populace has for more than two decades been subjected to violence and war, can benefit from successful efforts in other crisis zones. The dramatic psychological lift brought about by the routing of the Taliban must be quickly built upon so the perception of progress is not lost.

One place to look for a lesson in successful peacekeeping is the small Bosnian municipality of Brcko. While Bosnia-Herzegovina still has a long way to go in attaining a stable peace in the aftermath of Europe's most savage war since 1945, the once volatile city of Brcko is on the road to a modicum of stability and interethnic harmony under the rule of law.

Yugoslav army and Serbian paramilitary forces descended on Brcko without warning on April 30, 1992 and effectively "cleansed" the area of non-Serbs. Three years of bitter fighting ensued. Some of the heaviest

casualties and human atrocities of the Bosnian war occurred in and around Brcko.

Postwar tensions between Bosnia's two "entities" - Republika Srpska and the Muslim/Croat Federation - concerning political control of Brcko could not be reconciled at U.S.-brokered peace negotiations at Dayton, Ohio in 1995.

To resolve the crisis, then-Secretary of State Warren Christopher proposed to submit the Brcko dispute to binding arbitration. The parties reluctantly agreed. In early 1997, the Arbitral Tribunal imposed an international supervisory regime on Brcko.

In 1999, the tribunal decided Brcko should become a neutral, demilitarized district under the exclusive control of neither entity. On March 8, 2000, the supervisor inaugurated the Brcko District, a jurisdiction best described by the term "condominium."

In a stroke of judicial foresight, the presiding arbitrator - an American lawyer - decreed that a Brcko Law Revision Commission be established to harmonize and modify the laws of the two entities so the district would function under a uniform and progressive body of law.

Known as BLRC, the commission introduced reform based on transparency and accountability for all three governmental branches. Imbued with the belief that chaos can only be tamed by the rule of law, the BLRC placed a premium on overhauling the criminal justice system and judiciary.

Five basic principles were judged essential to meaningful and sustainable reform: clear separation of powers among the three branches of government; free public access to government institutions; mechanisms to promote transparency in government; accountability, uniformity and multi-ethnicity in delivering public services; and independence and professionalism of the judiciary.

By focusing on a strategy to revise and draft laws fundamental to a modern, democratic polity - yet sensitive to local tradition - the BLRC was able within two years to lay a uniform legal foundation for the new district.

Today, the Brcko District is a microcosm of what Bosnia-Herzegovina is intended to be under the Dayton accords: a multi-ethnic community governed by democratic institutions under the rule of law adapted to local traditions. Now that the legal infrastructure is in place and a democratic process appears to be taking hold, the district is poised to prepare for elections and a program of attracting outside investors.

Establishing the rule of law, rather than holding elections, must be the first priority in Afghanistan. Enduring stability and security can only be achieved under a widely accepted and viable legal and regulatory framework.

Law brings order and order brings stability, which is required for investors and sustainable development. Thus, the only exit strategy that can be counted upon to work over time is to leave behind a prosperous, self-sustaining community under the rule of law.

Nation builders in Afghanistan would do well to consider the Brcko experience.

Robert W. Farrand was supervisor of Brcko from 1997 to 2000. Michael G. Karnavas was chairman and executive director of the Brcko Law Revision Commission from 1999 to 2001.

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