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PREFACE

On the Heels of Militia Mobilization

On July 22, 2010, I, along with about a dozen other representatives from civil society groups and international organizations, crowded into the hot, airless boardroom of an NGO office in Kabul, a five-minute walk from the concrete jungle of embassies, international bases, and Afghan ministerial compounds that served as the nerve center of Afghan policy. We were there to hear a presentation by a brigadier general named “Scottie” Miller, supported by other representatives of the NATO mission in Afghanistan, the International Security Assistance Force. Years later, Miller would serve as the last American commanding general in Afghanistan, overseeing the end of the twenty-year-long engagement in Afghanistan in July 2021. But at the time he was heading up one of the U.S. Special Operations commands, known as Task Force Alpha.

I had been acting as a human rights researcher and advocate in Kabul for well over a year at that point, focused on documenting civilian casualties and other conflict-related abuses. The idea that U.S. Special Operations Forces (SOF) were reaching out to NGOs and civil society groups to answer questions about a new security initiative was notable. Among international forces, SOF and their activities were the most opaque. They were not in the business of responding to NGO or press queries about their operations or practices, much less consulting with such organizations about new initiatives.

But this briefing was to be different. Rather than the night raids and stealth operations that SOF at the time were known for,¹ it concerned a more public-facing counterinsurgency effort to mobilize community and tribal militias against the Taliban insurgency. The military presenters shied away from the term “militias,” referring to the groups they planned to mobilize as community self-defense units, “village defense forces,” or *arbakai*—a traditional Afghan term for tribal self-defense forces.² “Community watch[es] with AK-47s” was the way that General David Petraeus, the commanding general of U.S. and NATO forces in Afghanistan from 2010 to 2011, would later frame the initiative.³

The assembled NGOs and civil society representatives received the news of militia mobilization (however they were named) with reactions ranging from suspicion to outrage. If there is one country whose history might make you think twice about mobilizing militias, it is Afghanistan’s. Looking back only to the last few decades, in the 1980s, Afghan resistance fighters known as the mujahideen turned the Soviet occupation of Afghanistan into a bloody quagmire.⁴ Some of those militias then set their sights on the United States, with former mujahideen joining Osama bin Laden to form al-Qaeda, the terrorist organization whose presumed threat would dominate global security dynamics for the next two decades.

Throughout the 1990s, militias continued to roil the Afghan state and to prey upon the population. During the 1980s, the Afghan state—then controlled by a left-leaning Marxist-Leninist party known as the People’s Democratic Party of Afghanistan (PDPA)—began mobilizing its own pro-government militias to counter the mujahideen. These militias, known as the Regional Guard Brigades, were known for their lawless behavior and corruption, and over time the PDPA’s overreliance on such groups contributed to the Afghan state’s collapse in 1992.⁵ What ensued at that point was a bloody, internecine civil war between all of these competing factions and their associated militias, decimating cities like Kabul and ravaging the Afghan population.⁶ Many outlying provinces and regions were awash with banditry and infighting between a range of competing militias and ethno-political or tribal factions.⁷ As scholar Ashley Jackson observed of dynamics in eastern Nangrahar Province, “At one point, the roughly 80 km road from Jalalabad to the Torkham border crossing into Pakistan was controlled by five different commanders, each demanding their own taxes and occasionally going to war with one another.”⁸ The

level of violence, atrocities, and disorder across Afghanistan was so extreme that much of the population initially welcomed the Taliban's promises of harsh order and its subsequent assumption of control in 1996.

Nor were the cautions about militia mobilization a matter of historical record alone. Since 2001, the international community had embraced a neo-Weberian vision for the new Afghan state. International interventions aimed to reinforce (or create) the Afghan state's "monopoly on force," by countering the latent Taliban threats, but also by disbanding or taming all the other warlords, militias, and commander networks that had accrued in the prior two decades. However, in reality, those same warlords and militias who had torn the country apart in the 1990s still thrived—with leading warlords embedded in key positions within the new Afghan state.⁹ Rather than cooperating with international disarmament plans, the warlords-cum-government avoided disarmament by appointing their militias to the new Afghan police, army, and other security positions.¹⁰ This patronage-based system, together with overall weak rule of law in the post-2001 period, meant that Afghan security forces and pro-government militias were rarely held to account, even for egregious abuses.¹¹ They preyed upon the population and engaged in other abuses that were seen as a driving source of resentment, contributing to the Taliban's resurgence from 2005 onward.

International actors had a mixed record on these "militias in uniform." Parts of the international community put substantial effort behind disarmament and demobilization efforts, security sector reform, or other initiatives designed to clean out the corrupted and abusive Afghan security forces. However, many of these commanders and militias were treated as "trusted" allies, whom international military forces counted on to pursue al-Qaeda targets and Taliban insurgents. As a result, while some parts of the international community were dedicated to disarmament and institutionalized security force developments, others, in particular the U.S. military, helped sponsor a range of militia mobilization efforts, or directly partnered with militias and commanders with nefarious records.¹²

All of these risks and consequences were front and center in the minds of the assembled NGO and civil society audience as the idea of further militia mobilization was proposed. In more than an hour of questions and answers, civil society representatives and NGOs warned that the program would be hijacked by the same warlords and commanders who had

exploited past quasi-statutory mobilization initiatives;¹³ that it would undo past disarmament efforts and unleash a new round of abusive militias on the population; and that there would be no way to unwind the initiative at the end of it. One longtime Afghanistan researcher characterized the initiative as a Pandora's box, and argued that once mobilized, these forces would be hard to demobilize and stand down. Community mobilization would open new divisions and old wounds; once awakened, once cleaved, these would not be so easily put back together.

For each objection and critique, Miller and the other members of his team had a response and corresponding measure. To the fears about warlord co-option, the presenters responded that there would be close consideration of which communities might participate, and both SOF and community oversight of the forces mobilized. To fears about abuses and accountability, the presenters responded that these forces would be vetted for their past human rights records, and then given training in human rights and the laws of war. When one advocate raised the potential for detention abuses, Miller or one of his aides responded that they would consider an amendment to the program rules that would prohibit the local forces from taking part in detention operations. Reflecting the atmosphere in the meeting, Human Rights Watch researcher Rachel Reid later reported that in creating these local defense forces, “the US say they have learned the lessons of the past and that this time things will be different. Supporters point in particular to what they describe as more rigorous measures to involve the local community in selecting and vetting recruits, as well as efforts to avoid empowering pre-existing militias and heavy oversight by US special operations forces for most of the new forces.”¹⁴

Although these responses were not fully persuasive to the audience assembled that July afternoon, the initiative was nonetheless authorized soon after in the form of the Afghan Local Police (ALP) (discussed further in chapter 2). All of the various safeguards, checks, and controls that had been proposed to counter objections to the program—human rights vetting and training, careful selection and monitoring to limit warlord intervention, rules against the ALP taking part in offensive or detention operations, etc.—were fully incorporated into the program guidance, and these continued to be part of the formal rules and model for these forces throughout the ten years that the program was authorized and funded.

The sensitivity to civil society concerns over the ALP, and the way these were encoded in these preventive mechanisms or restraints—which this book will refer to as “control mechanisms”—might be viewed as simply the product of a particular ideational moment in Afghanistan. The ALP was created at the height of a counterinsurgency push in Afghanistan. At the time, military strategies and foreign assistance were substantially animated by the idea that “population protection,” tackling corruption, empowering “community-based strategies,” and “bottom-up state building” would be key to reversing the spiraling situation in Afghanistan.¹⁵ NGO voices had greater traction in this environment, both because their concerns about human rights abuses and corruption tapped into what were viewed as the largest strategic threats, and because of their perceived ability to connect with the Afghan population, and to shape the narrative in Afghanistan.

However, as I began to work on similar issues in other country contexts, I saw that this greater attention to risks and controls was not singular to that Afghan moment. In 2016, I began to work more in Iraq, as a conflict analyst and researcher, mapping the mobilization of non-state and substate forces as part of the efforts to counter the Islamic State of Iraq and the Levant. Though very different conflicts and with very different U.S. strategies involved, many of the same control mechanisms and checks on local forces appeared to be manifesting with U.S.-supported local forces in Iraq and Syria.

These same mechanisms of control and risk mitigation manifested not just with the counterinsurgency-themed local forces in Iraq (which were similar to the ALP), but with forces and programs nurtured under a very different model and over whom there were few prospects of control. The Syrian rebels who received arms and equipment from the Central Intelligence Agency (CIA) through a covert assistance program authorized in 2013 (discussed further in chapter 3) went through even more hoops and hurdles than ALP forces did. There was extensive vetting, which appeared to include scrutiny of the ideology and affiliation of the groups in question as well as of their past records of conduct. CIA-supported fighters submitted payroll stubs, filed video or written after-action reports, and returned spent missile casings to receive more.¹⁶ Some remembered a sort of human rights or laws of war protocol, and groups being cut from

funding or subject to retraining on best practices where their strikes caused collateral damage. To borrow a Shakespearean metaphor, it was as if the United States had “let slip the dogs of war,” but in this case it would take steps to regulate and tame them.¹⁷

I recall my own trajectory here to be transparent about my background vis-à-vis the research questions, and to introduce some of the larger questions that intrigued me about this practice. As a human rights lawyer and rule-of-law practitioner, I was initially interested in these risk-mitigation practices for their potential to address misconduct and limit civilian harm by militias or other irregular forces. There are due diligence obligations under international humanitarian law (IHL), under which warring parties have an obligation to ensure that IHL is respected and “not to encourage” violations.¹⁸ This has been interpreted as implying some degree of affirmative or proactive duty where states arm, support, and (especially) direct non-state armed groups in another state.¹⁹ However, the extent of this duty is ambiguous, under-implemented, and under-enforced. It presents an exceedingly weak legal stick, and one that the United States might easily override where such due diligence measures proved difficult to apply or costly, as one might expect with these groups and in these environments.

Instead, the more I studied the use of these control mechanisms, the more I was struck by the political nature and context surrounding them. With the ALP, the motivation for these forces, as well as the objections to them, strongly played into the surrounding counterinsurgency and bottom-up state-building dynamics. In Syria, the heavy emphasis on control mechanisms smacked strongly of the overall fixation on risks and risk aversion that pervaded the Syria policy environment. Even more intriguing, in many cases, those who were demanding controls and using them to constrain U.S. military initiatives were not even U.S. government actors, but other foreign state officials or the sort of NGO or civil society actors who featured in the 2010 meeting described above.

Although it was my past exposure that sparked my interest in these questions, this book is not a personal narrative; rather, it is an academic inquiry into how international relations or conflict studies might explain some of the dynamics I observed. Are these the sort of checks or levers of control that we might expect in any sort of proxy relationship? Should we view these controls, at least the human rights-related ones, as the result

of “activists without borders”—the sort of transnational activists and NGOs described above in the ALP meeting?²⁰ Were there other domestic political factors within the policy environment in Washington, DC, or in the countries in question that either contributed to, or limited the emergence of, such control mechanisms?

Exploring these research questions offers insights into a much larger and highly relevant policy question: Is it possible to regulate irregular forces—to work with actors known to come with a host of policy risks and costs while maintaining the ability to constrain or mitigate those risks, even in environments least disposed to control? And if it is not—as many of the case studies suggest—what are the larger costs for policy making? In the ALP authorization debate previewed above, control mechanisms played a central role (at least rhetorically) in the question of whether to authorize these forces. Are policy makers more willing to engage with these “risky” forces where they think that they can somewhat mitigate or constrain the associated risks? And if so, what are the consequences when those expectations prove to be false? Again and again in the policy situations examined in these pages, there appeared to be a fallacy that it was possible to “have your cake and eat it (too),” so to speak—to work with risky actors in some of the most perilous environments, but without the costs of doing so. This book considers how this policy conceit impacted policy makers’ decision making, and the moral hazard of doing so.

