

USE OF FORCE IN AFGHANISTAN
&
INTERNATIONAL LAW
POST 9/11 SCENARIO

T-6345



Submitted By:

CH. ATIF ABBAS
LL.M (International Law)
20-FSL/LLMIL/F04

Supervised by:
JAMSHED A. HAMID

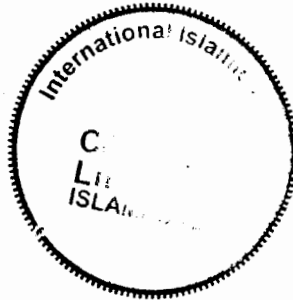
FACULTY OF SHARIAH AND LAW
INTERNATIONAL ISLAMIC UNIVERSITY
ISLAMABAD

141870

MS
958.1047
ABU

EN ~~2~~

JFK
M. 01



Accession No TH-6345

September 11, terrorist attacks, 2001

War on Terrorism, 2001 - Political aspects

United States - Foreign Relations - 2001

United States - Politics and government -

2001



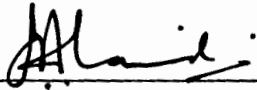
IN THE NAME OF ALLAH, THE MOST MERCIFUL, THE MOST KIND

FINAL APPROVAL

It is certified that I have read the dissertation submitted by Ch. Atif Abbas entitled "Use of Force in Afghanistan and International Law, Post 9/11 Scenario" as a partial fulfillment for the award of degree of LLM (International Laws). We have evaluated the dissertation and found it up to the requirements in its scope and quality for the award of degree.

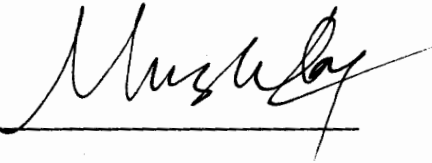
1- Supervisor

Jamshed A. Hamid
(Associate Professor)
Faculty of Shariah & Law
International Islamic University
Islamabad.



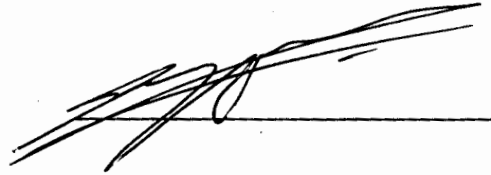
2- Internal Examiner

Muhammad Mushtaq Ahmed
(Assistant Professor)
Faculty of Shariah & Law
International Islamic University
Islamabad.



3- External Examiner

Barrister Usman Karim Khan
(Associate Professor)
Faculty of Shariah & Law
International Islamic University
Islamabad.



DEDICATION

This dissertation is dedicated to my loving parents. Without their knowledge, wisdom and guidance, I would not have the goals I have to strive and be the best to reach my dreams.

Mom Dad you are truly missed

ACKNOWLEDGMENT

I wish to record my utmost gratitude to Almighty Allah for bestowing upon me the blessing of health and time to complete this dissertation. I expressed my gratitude to my family, my colleagues and my teachers specially Mr. Muhammad Munir who helped me to make this study possible. Most of all I am deeply indebted to my supervisor Mr. Jamshed Hamid for generously providing all possible support advice and guidance which enabled me to complete this dissertation.

Last but not the least I am greatly thankful to my senior officer Raja Nasir Mehmood for his continues encouragement during the entire phase of my job and study.

List of Cases

- 1- Military and Paramilitary activities in and against Nicaragua, (*Nicaragua vs America*), ICJ Reports, 1986, p 48.

- 2- Soering v. United Kingdom, EHHR 439, (ECHR 17July 1989) 98 ILR, P 170.p 39

- 3- Yaser Esam Hamdi and Esam Fouad Hamdi as next friend of Yaser Esam Hamdi, Petitioners Vs Donald H. Rumsfeld, Secretary of Defense. 542 U.S. 507 (June 28th 2004)p.58

- 4- Salim Ahmed Hamdan, Vs. Donald H. Rumsfeld, United States Secretary of Defense; John D. Altenburg, Jr., Appointing Authority for Military Commissions, Department of Defense; Brigadier General Thomas L. Hemingway, Legal Advisor to the Appointing Authority for Military Commissions; Brigadier General Jay Hood, Commander Joint Task Force, Guantanamo, Camp Echo, Guantanamo Bay, Cuba; George W. Bush, President of the United States. 548 U.S. 557 (June 29th 2006) p. 28

- 5- Shafiq Rasul Vs. George W. Bush, President of the United States, 542 U.S. 466 (June 28th 2004) p.28

LIST OF ABBREVIATIONS

1. ATA Afghan Transitional Authority
2. CIA Central Intelligence Agency
3. ICC International Criminal Court
4. ICJ International Court of Justice
5. ICTY International Criminal Tribunal for the former Yugoslavia
6. KNMB Kabul Multinational Brigade
7. MTA Military Technical Assistance Agreement
8. NAC North Atlantic Council
9. NATO North Atlantic Treaty Organization
10. ONUC United Nations Operation in the Congo
11. PLO Palestine Liberation Organization
12. PRT Provincial Reconstruction Team
13. RDU Radioactive Depleted Uranium
14. SACEUR Supreme Allied Commander in Europe
15. SHAPE Supreme Headquarter Allied Power in Europe
16. UNAMA United Nation's Association Missions in Afghanistan
17. UNFICYP United Nations Peacekeeping Force in the Cyprus
18. UNIFIL United Nations Interim Force in Lebanon
19. UNSMA United Nations Special Mission In Afghanistan
20. WMD Weapons of Mass Destruction

ABSTRACT

Terrorist attacks in United States of America on September 11 of 2001 can be regarded as an entirely new phenomenon and unprecedented savagery falling wholly out side of the existing framework of International Law. United Nations Security Council triggered on the legal consequences surrounding these events however, it had never authorized any country to wage war against Afghanistan in the wake of 9/11 terrorist attacks. "War against Terrorism" in the shape of Operation Enduring Freedom in Afghanistan is a clear violation and disregards International Law and UN Charter. United States and NATO's confrontation with Afghanistan was straightforward. Neither Afghanistan attacked any state, nor was any attack imminent by Afghanistan. Attacks in Afghanistan under Self-Defense or Pre-Emptive Self-Defence by the US and NATO are plainly illegal under United Nation Charter and without the explicit authorizations of the United Nations Security Council. Those who have and will die from these attacks will be the victim of a crime against humanity, just like the victims of the September 11 attacks. It inevitably resulted in many deaths of civilians, both from the bombing and disruption of aid in a country where millions were already at stake. United States and NATO are actually engaged in a punitive expedition and a manhunt in Afghanistan. The bombing in Afghanistan was the legal and moral equivalent of what was done to the Americans on September 11 of 2001. We may remember that day, not for its human tragedy, but for the beginning of a plunge into a violating and lawless world and military attacks have nothing to do with terrorism, however these attacks would be far more likely to promote terrorism in the world.

INTRODUCTION

Since 1979, the History of Afghanistan has been characterized by never-ending armed struggle between various groups in and out of Afghanistan. However, the Taliban movement which began as a reaction against the immoral activities of few feudal lords gradually gained momentum and within a short period of about one & half years Taliban captured and took control of Afghanistan's Capital in September 1996. The Taliban Regime in Afghanistan remained controversial because of the Islamization process it introduced in Afghanistan, its relation with Osama Bin Laden and the organization headed by him, namely, *Al-Qaeda*. The September 11 2001, attacks on US suddenly changed the world scenario. The meaning of friendship, enmity and neutrality totally changed and global war against terrorism in the shape of "*Operation Enduring Freedom*" was initiated by U.S.A and its allies.

What is terrorism? The definition of terrorism is yet to be agreed upon, however the United States of America, giving its own interpretation of terrorism, by involving Osama and Al-Qaeda responsible for 9/11 terrorist attacks without any authentic proof started to criticize the Afghan regime and declared that the world either to be with justice "meaning the U.S.A" or with terrorism. Broadly speaking it's a "*War with no option of neutrality*".

The U.S.A invasion of Afghanistan was initiated by launching an armed attack in Afghanistan on Sunday the 7th Oct 2001. The officially stated purpose of this invasion was to target *Al-Qaeda* members and to punish Taliban government in Afghanistan, which provided support and shelter to Osama and his fellows.

Under International Law and the United Nation's Charter, despite repeated reference to the right of self-defence under article

51 of United Nation's Charter, which gives a state the inherent right of self-defense if an armed attack occurs, provides only a temporary measure to the state that is the victim of aggression until the Security Council takes steps necessary for securing International Peace and Security. However, there is a huge difference between theory and practice regarding use of force. History reveals that States intervened and used force against other states by justifying their action on the grounds of Protection of Nationals and Property abroad, Humanitarian Intervention and Intervention by Invitation. However, in the present international scenario justification given for "*Operation Enduring Freedom*" for the use of force legally against another State or entity for its involvement in terrorist activities. After 9/11 terrorist attacks, Security Council passed two Resolutions 1368 and 1373 of 2001. These Resolutions particularly deal with the issue of how to combat terrorist attacks in the future. However, an honest reading of Article 51 of the United Nation's Charter and the two resolutions one can possibly conclude that these resolutions read with and article 51 of United Nation's Charter, authorize the use of force in Afghanistan. They only condemn the terrorist attacks of 11th September 2001. But the two resolutions do not even mention Afghanistan by name. Consequently there is no doubt that the US and UK attack on Afghanistan is not a war against terrorism but is meant to punish and demolish an unfriendly regime of the Taliban? Is there any legal justifications for the U.S and U.K. attacks on Afghanistan in the wake of 9/11 terrorist attacks?

To legalize and justify attacks on Afghanistan U.S.A convinced North Atlantic Treaty Organization (NATO) to help the alliance in the fight against terrorism. NATO deployed its forces in Afghanistan under Article 5 of Washington Treaty which provided that an armed attack against one or more of them in Europe or North America shall be considered as an attack against them all

and that if such an armed attack occurs, each of them, in exercise of the Right of Individual or Collective Self-Defence recognized by Article 51 of the United Nation's Charter, will assist the Party or Parties so attacked by taking forthwith, individually and in consent with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area". NATO considered 9/11 attack as an external attack threatening the peace and security of the region. NATO took command and co-ordination of the International Security Assistance Force (ISAF) in August 2003. ISAF is NATO's first mission outside the Euro-Atlantic area. ISAF operates in Afghanistan under a United Nation's mandate. Initially this operation was for a limited period. However, with the expansion of operational area beyond Kabul to the south of Afghanistan, the presence of coalition forces in Afghanistan also included preventing the *Taliban* and *Al-Qaeda* from re-establishing bases that could threaten regional or global security. But the force deployed is insufficient to establish a real Democratic Afghan State that could sustain and continue for a long period of time.

The discussion of the illegality of war against Afghanistan in the wake of 9/11 terrorist attacks, has been divided into three chapters and an epilogue at the end.

Chapter one of this dissertation deals with the problems faced by Taliban regime in Afghanistan. This chapter is further divided into sub sections:-

Section 1.1:- deals with historical background of Afghanistan in pre-war perspective. In this section those reasons and circumstance have discussed due to which the Afghans were repeatedly involved in wars during past two centuries. Attention is focused on the four Afghan wars which were fought by the Afghans

against Great Britain and the then The Union of Socialist Soviet Republic (USSR).

Section 1.2:- mainly deals with Status of the Taliban regime under International Law. This section further discusses International Law of Recognition of Governments. Various Books and Articles have been examined and discussed. At the end of the section the transformation that took place in the Executive, Legislative and Judicial institutions during the Taliban regime have been discussed.

Section 1.3:- deals with the International Law of Terrorism. In this section effort has been made to define Terrorism and differentiate between different kinds of terrorism. Detailed analyses have been made of the International Conventions and Protocols regarding International Terrorism. This section finally discuss the 9/11 terrorist attacks as a violation of International Law and its aftermath in the shape of "*War against Terrorism*".

Section 1.4, deals with International Law of Extradition and law of extradition has been examined. This section in addition to analyzing the Law of Extradition, further discusses the role of Taliban regime regarding extradition of Osama Bin Laden and his colleagues under International Law. For this purpose various documents, books and related material have been discussed to prove that United States of America can not demand Osama's extradition under the norms of International Law.

Section 1.5:- deals with the provisions of United Nation Charter and International Law relating to Use of Force. In this section the illegalities regarding the Use of Force in Afghanistan in the wake of 9/11 are discussed. Various documents, books article and United

Nations Charter's relevant articles i.e. Article 2, 42 and 51 have been examined and discussed in detail.

Chapter No.2 of this dissertation deals with United States invasion in Afghanistan under International Law and United Nation Charter. This chapter is also further divided into sub sections.

Section 2.1:- mainly deals with the illegality of "*Operation Enduring Freedom*" and the "*War against Terrorism*" in Afghanistan. The role of U.S. and its allies, jurisdiction of International Courts and Tribunals to deal with this problem amicably, have also been analyzed. Various books documents and articles have been examined and discussed in this respect. This section finally discuss that neither 9/11 terrorist attacks in U.S.A. amounted to a threat to International Peace and Security nor authorized any State to wage a war against Afghanistan without authentic proof. An effort has been made to prove that this operation, in fact, was a failure of U.S.A. and its allies in the war against terrorism.

Section 2.2:- This section discusses Individual or Collective Right of Self-Defence under the United Nation Charter and Customary International Law in connection with the Use of Force. Various documents books, articles and web sites have been consulted. This section further discusses the concept of Uniting for Peace Resolutions under the United Nation's Charter.

Section 2.3:- deals with "*War against Terrorism in Afghanistan*" in the light of the United Nation Security Council Resolutions, which were adopted after 9/11 terrorist attacks and which the US and the U.K to wage War against Terrorism. For this purpose, United Nation Security Council Resolution Nos:- 1368 of 2001 & 1373 of 2001 have been studied, analyzed and discussed in detail. Finally in this section it is discussed that these resolution never

authorized United State or any other country to wage war against Afghanistan. United State and its allies clearly violated the UN Security Council Resolution in letter and spirit.

Section 2.4:- Deals with International Laws of War, "*International Humanitarian Law*" and "*Option of Neutrality*" during war time. These laws have been analyzed in the light of the War against Terrorism in Afghanistan. For this purpose various books, articles, documents and relevant material have been studied and analyzed. This section discusses the violation by President George W. Bush and his allies.

Chapter No. 3 of this dissertation deals with the Role of North Atlantic Treaty Organization's Intervention and International Security Assistant Forces (ISAF) in Afghanistan.

Section 3.1:- deals with violation of United Nation's Charter and Security Council Resolution in War against Afghanistan. This section discussed various provisions of United Nation Charter and Resolutions of the Security Council. This section further discusses Article 5 of the Washington Treaty invoked by NATO in war against Afghanistan. However, article 5 did not apply to Afghanistan and it violates Article 52 of the United Nations Charter which prohibits regional agencies to use force until Security Council take all necessary measures to maintain International Peace and security. For this purpose various articles, documents i.e. Washington Treaty 1945, United Nations Resolution 1378/20 and articles 2 of United Nations Charter have been studied, discussed and analyzed.

Section 3.2:- deals with the International Security Assistant Force's (ISAF) operation in Afghanistan. In this section the status of ISAF under International Law, as it authorized by United Nation

or not has been discussed. The failure of primary object, mission, and role of ISAF in Afghanistan has been analyzed in detail.

Section 3.3:- of this dissertation analyzes the Bonn Agreement of 2001 and the Afghanistan Compact 2006. A detailed analysis have made regarding their failure in the reconstruction of the real democracy, peace and security in Afghanistan.

Section 3.4:- discusses the failure of War against Terrorism in Afghanistan and subsequently in Iraq. This section further discusses the aftermaths and negative effects of War on Terrorism in the context of Afghanistan and the International Community.

Epilogue.

Finally a detailed Epilogue has been drawn up wherein War against Terrorism and Use of Forces in Afghanistan is proved to be illegal and completely unjustified under International Law. This Use of Force in Afghanistan not only violates International Law but also the United Nations Charter and the Security Council Resolutions.

Table of Contents

Dedication.	ii
Acknowledgment.	iii
List of Cases.	iv
List of Abbreviation.	v
Abstract.	vi
Introduction.	vii
<u>Chapter No.I :- TALIBAN REGIME IN AFGHANISTAN.</u>	
1.1 History of Wars in Afghanistan.	1
1.1.1 First Afghan War 1839-1842.	2
1.1.2 Second Afghan War 1878-1881.	4
1.1.3 Third Afghan War 1919-1921.	5
1.1.4 Fourth Afghan War 1979-1989.	7
1.2 Taliban Regime under International Law .	9
1.2.1 Recognition of Government under International Law.	12
1.2.2 Talibans Transformation after 1996.	12
1.2.3 Terrorism, 9/11 Terrorist Attacks and aftermaths.	14
1.2.4 Definition of Terrorism.	14
1.2.5 An overview of Protocols and Conventions on Terrorism	17
1.2.6. 9/11 Terrorist attacks and aftermaths.	19
1.3 Taliban, Osama's Extradition and International Law.	22
1.3.1 Extradition under International Law.	23
1.3.2 Osama's Extradition under International Law.	25
1.4 United Nations Charter and use of Force against Afghanistan.	29
1.4.1 Article 2 of the United Nation Charter.	30
1.4.2 Article 42 of the United Nation Charter.	31
1.4.3 Article 51 of the United Nation Charter.	31
<u>Chapter No.2:- UNITED STATE'S INVASION IN AFGHANISTAN</u>	
2.1 Legal Appraisal of Operation Enduring Freedom in Afghanistan	34
2.1.1 Operation Enduring Freedom under International Law	34
2.1.2 Operation Enduring Freedom and Jurisdiction of International Criminal Courts and Tribunals.	37
2.1.3 9/11 Terrorist attacks as Threat to International Peace and Security.	39

2.2 Individual or Collective Self-Defence and Uniting for Peace Resolution.	41
2.2.1 The Concept of Individual and Collective Self-Defence.	42
A) The Individual Use of Force.	43
B) The Collective Use of Force.	44
C) Uniting for Peace under UN Charter.	46
2.2.2 Violation of the United Nations Security Council Resolutions.	49
A) UN Security Council's Resolution 1368 of 2001	51
B) UN Security Council's Resolution 1373 of 2001	54
2.3 International Law of War and War with No Option of Neutrality in Afghanistan.	56
2.3.1 The Laws of War: "International Humanitarian Law"	56
2.3.2 Violation of Geneva Conventions 1949.	58
2.3.3 Commencement of Neutrality.	59
2.3.4 Concept of Neutrality under International Law.	61
A) Neutrality and United Nations Charter.	61
B) Violation of the Law of Neutrality in Afghanistan.	62
 <u>Chapter No.3:- NATO AND ISAF IN AFGHANISTAN</u>	 65
3.1 Violation of UN Charter and Security Council Resolutions.	65
3.1.2 Article 5 of the Washington Treaty.	69
3.1.3 Violation of NATO'S own Charter.	70
A) Violation of Convention for the Protection of Cultural Property in the Event of Armed Conflict	71
B) Violation of International Law regarding the Protection of Civilians and Environment.	71
C) Violation of Humanitarian Law and the Territorial Integrity.	72
D) NATO's Aggression and War Crimes	73

3.2 International Security Assistance Forces (ISAF) in Afghanistan.	74
3.2.1 ISAF's Primary Object and Mission in Afghanistan.	76
3.2.2 Functional Structure of ISAF.	77
3.2.3 ISAF, UN authorized but not a UN Operation.	78
3.2.4 Expansion of ISAF's Role in Afghanistan.	78
A) Provincial Reconstruction Teams (PRTs).	79
B) How the Location of PRTs is determined.	79
C) ISAF's Mandate under UN Security Council Resolution 1386/2001.	80
3.3 Critical Appraisal of :	
A) Bonn Agreement 2001.	84
B) Afghanistan Compact 2006.	87
3.4 Failure of War against Terrorism in Afghanistan.	89
3.5 Impact of War against Terrorism.	91
<u>EPILOGUE:-</u>	94
<u>BIBLIOGRAPHY</u>	104
Security Council Resolution No. 1368/2001	Annex i
Security Council Resolution No. 1373/2001	Annex ii
Security Council Resolution No. 1510/2003	Annex iii

Chapter 1

TALIBAN REGIME IN AFGHANISTAN

1.1 HISTORY OF WARS IN AFGHANISTAN:

The current situation of war in Afghanistan is all too well known to most but its past is unfamiliar. An insight into the history of wars in Afghanistan with the Sikh regime of India during 17th and 18th centuries, with the British East India Company in the early 19th century and ten years war with the U.S.S.R at the end of the 19th century clearly indicate that Afghanistan has a very long history of wars. Later on the domestic, regional, and international politics exposed Afghanistan, which was once one of the most stable States in Asia, to instability and the resulting damage to its economy.

At the beginning of the 19th century there were 2000 miles of Afghan territory separating British India from the outlying regions of Tsarist Russia. Much of the land in between was unmapped. At Imperial Russian expansion, threatened to collide with the increasing British dominance over the occupied Indian sub-continent, the great empires chalked out a subtle game of exploitation, espionage and imperialistic diplomacy through out Central Asia. The conflict always threatened, but never quite managed to break out into direct warfare between the two powers Great Britain and Russia. During this period the center of activity was in Afghanistan.

The "*Great Game*" was a term usually used to describe the rivalry and strategic conflict between the British Empire and Tsarist Russian Empire. This rivalry between these two States was for the supremacy

over Central Asia. In Russia the same rivalry and strategic conflict was known as the "*Tournament of Shadows*". The classic Great Game period is generally regarded as beginning from approximately 1813 up to Anglo Russian Convention of 1907. In 18th and 19th centuries, Afghanistan fought three major wars against the British East India Company and in the 20th century about ten years war was fought against Union of Soviet Socialist Republic (U.S.S.R).

1.1.2 First Afghan War 1839-1842:

The First Afghan war was the result of British involvement in the region of Central Asia. The British became involved in Afghanistan in order to secure the over land route for India. It was not that they wanted to use this route for themselves, but rather that they wished to control and even deny when necessary, the use of this route by others.¹ The reason of this first Afghan war was the British perspective towards the Russian expansion, which threatened to destroy the so-called "*Jewel in the Crown*" of the British Empire, namely India. That was also a threat for their supremacy at sea which favored the route to India by sea. Through this route the British merchantmen sailed under unruffled protection of the all-powerful Royal Navy and where enemy warships or vessels wanted to transport troops they had little chance of reaching Indian shores. But the route through Afghanistan was one route from which no country could block. Therefore, they began to take measures to prevent over land for invasion in to their Indian Empire. ²

The first important incident which led the Afghans towards there first war after the annexation of Peshawar. The Sikh Raja Ranjit annexed Peshawar after defeating the Mughal Rulers of India. However, this annexation was finalized by a treaty between the British Government and Raja Ranjit Singh in 1809. After the annexation of

¹ Heathcote, T. A., *The Afghans Wars 1839-1919*,(Osprey Publishing Limited, London.1980), p. 19

² Ibid.p13

Peshawar on 25 June 1833 a "*The Tripartite Treaty*", also referred to as "*Treaty of Simla*", was signed between Shah Shujah of Afghanistan and Ranjit Singh and British Government of India. The treaty concluded that "*friends and enemies of the three contracting parties were to be the friend and enemy of all*".³

The decision to invade Afghanistan on behalf of Shah Shujah was based on Treaty of Simla. The British attitude against the Amir Dost Muhammad, another Afghan leader, was based on this treaty. The reason was that Dost Muhammad was the enemy of the Raja Ranjit Singh. Dost Muhammad was prepared to become the ally of Shah Muhammad of Iran who, by attacking Herat, had become Britain's enemy. Britain thus support Dost Muhammad's enemy, Shah Shujah, who was considered the legitimate monarch of Afghanistan. However, in this war, no mention was made of Russia because Russian ambassador was opposing the Iranian aggression against Herat.⁴The British government launched their first Anglo-Afghan war in February 1839 and the first military card had been played in the "*The Great Game*". This first Anglo-Afghan war was meant to impose a puppet regime in Afghanistan under Shah Shujah.

Outwardly it appeared that British government achieved its Central Asian policy. However, this first Afghan war was very devastating and humiliating for the British Government of India. Although they remained successful in imposing puppet regime of Shah Shujah by defeating Dost Muhammad it was very difficult for them to stay there any more. However the regime of Shah Shujah was short lived and unsustainable without the support of the British army. In 1842 mobs attacked the British army on the streets of Kabul and it was agreed the British garrisons would return from Kabul, with guarantee

³ Afzal, Iqbal., *Circumstances Leading To The First Afghan War*, (Research Society Of Pakistan, University of the Punjab, Lahore, 2nd edition 1976), p.79

⁴ T. A. Heathcote., *The Afghans Wars 1839-1919*, (Osprey Publishing Limited, Long Acre, London.1980), p. 31

of safe passage, by the 6th of March 1842. Unfortunately for the British, the guarantee proved to be worthless. The retreating British forces consisting of approximately 4,500 military personal and 12,000 camp followers including many women and children were killed by the Afghans and only a few were able to survive. It was the failure of the "Grand Design" in Afghanistan.⁵ The British Government of India remained unsuccessful to gain control this buffer state of South Asia.

1.1.2 Second Afghan War 1878-1881:

The British curbed their ambitions in Afghanistan after their humiliating retreat from Kabul. However the Indian rebellion in 1857, the successive British government saw the Afghanistan as a buffer state. The Russians on the other hand continued to advance steadily southward towards Afghanistan. In 1865, Tashqand and Samarqand had become part of Russian empire where the independence of Bukhara virtually disappeared under a peace treaty between the Russia and Great Britain in 1868. In 1876, Turkey was also defeated by Russian forces but they deprived off their triumph tactfully by the English at the Berlin Conference on 20th July of 1876. The Turkish Empire, though weakened, survived once again by virtue of this treaty.⁶

During the Turkish - Russian war, Amir Ali Shah of Afghanistan remained neutral. After this war, an event occurred that precipitated the Second Anglo-Afghan war. The Russian government without receiving permission from Amir Ali Shah, sent a diplomatic mission to Afghanistan. On hearing this British government forced to accept a British mission in Kabul, but Amir Ali Shah refused.⁷The British government considered this refusal as an insult and in retaliation, a force of 40,000 personnel was sent across the border, launching the

⁵ www.wikipedia.org/wiki/The-Great-Game (last time visited on 11/22/2008)

⁶ Ahmed, M. A., Colonel, D.N., *The Survival Of Afghanistan*, (People's Publication House, Lahore. 1973), p.42

⁷ Louis, Dupree., *Afghanistan*, (Princeton University Press Princeton, New Jersey. 1986), p408

second Anglo-Afghan war.⁸ Yaqub Khan became Amir after the death of his father Amir Ali Shah and in order to prevent further British advance, under pressure signed The Treaty of Gundmak on 26th May 1879. Afghans considered this treaty as the worst and the most disgraceful agreement ever signed by any Amir of Afghanistan.⁹ The main points of Treaty Of Gundmak were that a) the British would control Afghanistan's foreign affairs, b) the English representative would reside in Kabul and other areas, under the protection of Afghanistan, c) in return for these concessions, Amir would receive 60,000 pounds per year and d) guarantee for assistance in event of foreign aggression against British government.¹⁰ This treaty caused the mass rebellion in Afghanistan and the second Anglo-Afghan war broke out.

The second Afghan war was also as disastrous as the first for the British government. In 1879 the British Embassy which was placed in Kabul under the Treaty of Gundmak was stormed by the Afghan masses. Only few members of the British embassy survived. The British force again pulled out from Afghanistan in 1881, and lost many Indian soldiers engaged in fighting in Afghanistan. They left Abdur Rehman Khan on the throne as he agreed to follow the Afghan foreign policy dictated by the British Empire. He managed to suppress the internal rebellions with ruthless efficiency and brought much of the country under central control.

1.1.3 Third Afghan War 1919-1921:

In 1884, after the Panjdeh incident, the Russian expansion brought about another crisis in Afghanistan.¹¹ It was evident that the British would resist any further advance by the Russian troops. The Russian

⁸ www.wikipedia.org/wiki/The-Great-Game (last time visited on 06.22.2009)

⁹ Louis, Dupree., *Afghanistan*, (Princeton University Press Princeton, New Jersey. 1986), p408

¹⁰ *ibid*, p.409

¹¹ *Ibid*, p.412

accepted a compromise which allowed them to consolidate their gains at Panjdeh in exchange of border adjustments elsewhere.¹²The British decided to accept the Russian possession as fait accompli and without any Afghan participation a Joint Anglo-Russian Boundary Commission delineated the Afghan boundary in 1893. This delineation of the Afghan boundary is known as the "*Durand Line*" which constitutes a permanent boundary between Afghanistan and Indian sub-continent. In 1907, Anglo- Russian Convention brought an end to the classic period of the Great Game.

During this period a series of disorders out brook in India. These sprang out of a variety of sources i.e. pressure of political reforms from Indian National Movements, economic hardships, Indian Criminal law Amendment Act known as Rewalt Act and above all, the April 11, 1919, killing by Brigadier General Dyer of 379 persons at Amratsar in Punjab. Amir Habibullah Khan declared that in the name of Islam and humanity, the people of India where justified in rising up against the British.¹³

The Third Anglo Afghan war was precipitated a result of the assassination of Amir Habibullah Khan. To revenge his father's death his son Amanullah declared full independence and attacked the British Indian Northern Frontier. Little was gained militarily by this attack and the stale mate that resulted was resolved by the Rawalpindi Agreement of 1919¹⁴. By this agreement Afghanistan was guaranteed to determine its foreign policy. In May 1921, Afghanistan and the U.S.S.R signed a Treaty of Friendship.¹⁵ The Soviets provided aid to Afghanistan in the form of cash, technology and military equipment. The British influence in Afghanistan waned, but relations between Afghanistan and the U.S.S.R also remained equivocal.

¹²T. A. Heathcote., *The Afghans Wars 1839-1919*, (Osprey Publishing Limited, London.1980), p165

¹³ Ibid, p.172

¹⁴ Ibid, p.178

¹⁵ Ibid, p185

1.1.4 Fourth Afghan War 1979-1989:

After the First World War, Amanmullah's reforms in Afghanistan proved insufficient to strengthen the army quickly enough. In 1928, he abdicated and was killed later. The individual to emerge from these crises was King Muhammad Nadir Shah who reigned from 1929 to 1933. He was replaced by Zahir Shah who ruled Afghanistan from 1933 to 1973.¹⁶ After Second World War, there arose a drastic change in the Sub-Continent and two new states, India and Pakistan emerged. Soon after the emergence of these states, the two super powers, the U.S.A and the U.S.S.R used economic assistance to compete in furthering their influence. United States established military ties with Pakistan, and Afghanistan increasingly turned U.S.S.R support.

The crises that led directly to the Soviet intervention occurred in 1978, following the so-called "*Sauer Revolution*". The chain of events began with the Soviet General Secretary Leonid Brezhnev's visit of Afghanistan in 1977. Brezhnev demanded that NATO advisors should be removed from Afghanistan. Afghan president Daoud, who was essentially a nationalist anxious about growing U.S.S.R influence, refused it. Brezhnev decided to remove Daoud regime in Afghanistan, but the murder of a Parcham leader ideologues mobilized the People Democratic Party of Afghanistan (PDPA), and when Daoud tried to have the Parham leader arrested, they carried out the "*coup detate*" the so-called Revolution of Sauer (*the zodiac symbol of Taurus*) on 27 April 1978. Armored units stormed the Presidential Palace and Daoud with his allies were massacred.¹⁷The Soviet government sent troops into Afghanistan for a number of reasons: First, they wished to expand their influence in Asia. Secondly, they also wanted to preserve the Communist Government that had been established in the 1970s, and

¹⁶ www.wikipedia.org/wiki/The-Great-Game (last time visited on 06/21/2009)

¹⁷ Rob, Johnson., *A Region In Turmoil South Asian Conflicts Since 1947*, (Viva Books Private Limited. 2006), P.166-167.

was collapsing because lack of its support other than in the military. Thirdly, the Soviets wanted to protect their interest in Afghanistan Iran and the Western Nations.¹⁸

This invasion, more than anything else, exposed the Soviet government as an aggressor. It was carried out in the name of the Brezhnev Doctrine, which declared that once a nation became a part of the Soviet block, it could not leave.¹⁹ While the U.S.S.R had already demonstrated its willingness to enforce that doctrine in Europe, particularly in Hungary in 1956, Czechoslovakia in 1968 and this is the first time it had done so in Asia.

In December 1978, Afghanistan and Russia signed a bilateral treaty "*Treaty of Friendship and Cooperation*" that permitted Soviet deployment in case of an Afghan request, but this invasion was totally violation of this treaty. It was not interference on invitation but was aggression and invasion. When Afghanistan President, Hafizullah Amin, defied the Soviet he was eliminated by them.²⁰ The Soviet government's claim that they responding a plea for help from the Afghan Government, suffers from the fundamental weakness subsequent acts. A Soviet airborne unit had already made sure that Amin was dead before the call for Soviet troops were made.

The Soviet's invasion in Afghanistan elicited a strong reaction from all over the world. The United States condemned the Russian invasion immediately and the US President Jimmy Carter indicated that the Soviet invasion was the most serious threat to the peace since the Second World War.²¹ Later President Ronal Reagan sent hundreds of millions of dollars worth of weapons and food to Afghanistan to assist

¹⁸ <http://www.afghana.com/directories/SovietWar.htm> (last time visited on 08/22/2006)

¹⁹ Richard, S. Newell., Nancy, Newell, Peabody., *The Struggle for Afghanistan*, (Cornell University Press, London. 1981),p.12

²⁰ Ibid, p.13

²¹ Terence, Smith., *Carter Tell Soviets To Pull Its Troops out of Afghanistan*, (The New York Times, 30th December 1979)

the Mujahideen and the refugees.²² From the Arab world, people gave money and aid to Mujahideens. The United Nations voted to condemn the action, and repeatedly exhorted the U.S.S.R to pull out²³. A Resolution on Afghanistan adopted in January 28, 1980, at the Extraordinary Meeting of the Foreign Ministers of Islamic Conference affirmed that the Soviet occupation of Afghanistan constitutes a violation of its independence and demanded immediate and unconditional withdrawal of all Soviet troops, stationed in Afghanistan.²⁴. Although the primary reason for Russian withdrawal was their military failure, the diplomatic pressure from around the world also played its part. The Soviet decision to withdraw was taken in November 1986, although no announcement was made until early 1988. Russian President Gorbachev of that time, according to Soviet record, was the main mover of Russian withdrawal.²⁵ In 1989, the Soviet forces pulled out of Afghanistan because they were unable to defeat the Mujahideen and were also pressed by world opinion to leave Afghanistan. The U.S.S.R greatly affected by this failure. The Soviets had lost about fifteen thousand troops and also suffered material loss as well. However, the true damage done was the degradation of Russian image as a super power.

1.2 TALIBAN'S REGIME UNDER INTERNATIONAL LAW:

For a decade after the Soviet withdrawal, Afghanistan involved in internal conflict where various factions wanted to take over control of the country. This state of affairs was described as a "complete

²² Ronald Reagan., *Radio Address to the Nation on the Soviet Occupation of Afghanistan*. 28December.<http://www.reagan.utexas.edu/resources/speeches/a985/122885a.htm> (last time visited on 12/23/2006)

²³ United Nation Resolution No. ES-6/2 , 14 January 1980. www.un.org/doc/scres (last time visited on 12/23/2006)

²⁴ Richard., S. Newell., Nancy, Newell, Peabody., *The Struggle for Afghanistan*, (Cornell University Press, London. 1981),p.217

²⁵ Rob, Johnson., *A Region in Turmoil South Asian Conflicts since 1947*, (Viva Books Private Limited. 2006), P.179

anarchy".²⁶ The Mujahideen were unable to unite even after completion of their common objective of defeating the Soviet Union. Thus, civil war became as an Intra-Mujahideen struggle. To overcome this problem in Afghanistan, It was the Afghans who decided that an interim Afghan council would be established for the transfer of power in Kabul. All the parties' leaders excluding Hikmatyar signed the Accord on April 24,1992. It was decided that for two months *Mujadadi* would be the acting President to be followed by Rabbani for four months. At the end of these six months a *Shura* would be held to choose the government for the next eighteen months, after which time elections would be held. The President was answerable to the council composed of Mujahideen party leaders. The government arrived on April 28, in Kabul and proclaimed the establishment of the Islamic State of Afghanistan.³¹

This agreement reflected a sort of compromise, being a power-sharing formula between the President and the Prime Minister. Rabbani continued as the President, Masood as the Defense Minister while Hikmatyar became Prime Minister. This agreement was signed in Islamabad on 7 March 1993. Professor Burhanuddin Rabbani was appointed as the head of Mujahideen Leadership Council and consequently appointed as President of Afghanistan in the same year.²⁷ Although Rabbani and his loyalists were never backed by the majority of the population. They were in possession of the important asserts like International Diplomatic Recognition and the privilege to print and distribute the Afghan currency notes.²⁸ However, this unstable and weak government faced with local commander's aggressions. These local commanders acting like undisputed rulers of the areas under their control, with there shifting personal interests and the basic loyalty of the Mujahideen. However, it did not proved to be a permanent solution and the intra Mujahideen struggle gained momentum.

²⁶ Ghufuran, N. *The Taliban and the civil War Entanglement in Afghanistan*, (Asian Survey, 2001), p.462

²⁷ Rick, A., *Afghanistan's Taliban: An Islamic Revolution of the Pashtuns*, (German journal For Politics and economics of the middle East 38,1997),p121

²⁸ Ibid

At that time, few realized the implications of the emergence of Taliban in Afghanistan. The Taliban emerged in early 1994 from the Sunni religious schools (called *madrassat*) near Quetta, Pakistan, at a time when factional fighting and resulting lawlessness were at their height. Originally a small band of warriors from the majority Pashtoon tribe, their numbers swelled as they met with increasing success. Their take-over of the southern Afghan city of Kandahar, in April 1994, was welcomed by its citizens, who had long suffered under corrupt and brutal Mujahideen commanders. The Taliban (the name derives from the Arabic word for student) quickly established order in Kandahar, disarming all factions and the general population.²⁹

Taliban wanted to disarm all rival militia, fighting against those who did not accept their request, while struggling for internal stability and implementation of Shariah in Afghanistan. The Taliban enjoyed the overwhelming support of the war-tired population, which had lost patients with the Mujahideen parties, and their abuse of power. Taliban were relatively successful in avoiding direct fighting with potential rival groups.

So far as the question of recognition of the Taliban regime was concern, one had to distinguish between the recognition of states and the recognition of governments. In Taliban's case the question clearly concerned the problem of recognition of a government, not a new state. The fact that the Taliban had changed the name of the country into "*Islamic Emirates of Afghanistan*" does not amount to establishment of a new state. The changed name reflected the particular approach of the Taliban, concerning the establishment of Islamic State to govern by the Shariah. Now question comes down to the problem of recognition with a government under International Law. It has to understand the basic

²⁹ Ghufuran, N. *The Taliban and the civil War Entanglement in Afghanistan*, (Asian Survey, 2001), p.479

elements necessary in international law and the legal consequences arose as result.³⁰

1.2.1 Recognition of Governments under International Law:

Primarily recognition of governments is a political act that has legal consequences. However, two conditions need to be fulfilled to avoid arbitrariness. First, new government must exercises effective authority and reasonable expectation that it will remain in power. Second, the government concerned must be able and willing to fulfill its international obligations. The first condition is objectively and logically precedes the second, which is subjective. However, in normal circumstances objective criteria are kept in view which, in addition to the above also includes control over a major portion of the state. As for as the issue relating to the recognition of Taliban government in Afghanistan is concern, various questions and ambiguities arose which seriously threatened the newly established government of Taliban.

1.2.2 Taliban's Transformation after 1996:

Taliban had taken control of Kabul in 1996, and when they resumed control of around 90% of the country, they organized their rules. They make their government as an Independent Islamic State. Security was the Taliban's primary objective. Taliban made sure that their laws would be strictly enforced and they had established a security service, Amr bil-Marooif Wa Nahi Anil-Munkir (Ministry for the Promotion of Virtue and the Eradication of Vice)³¹ task of which was to eradicate corruption and other vices from Afghan society. At the administration side they established a six members Provisional Ruling Council, headed by Mullah Muhammad Rabani and changed the name of the country into "*Islamic Emirates of Afghanistan*". This was followed

³⁰ Brownlie, I., *Recognition in Theory and Practice*, (BYIL 53,1982),p.197

³¹Rob, Johnson., *A Region In Turmoil, South Asian Conflicts Since 1947*, (Viva Book Private Limited, New Delhi.2006), p.192

by instituting a framework of Shuras (consultative bodies). A Central Shura comprising ten members was established in Kandahar. Directives and policies were initiated from this Central Shura, and Kandahar became the Capital of the Taliban controlled areas as well as the head quarter of the Taliban movement. The Central Shura had rather intermediate character, as it saw participation from tribal leaders, military commanders and clerics.³² A Cabinet, a Shura in Kabul, and a Military Shura assisted this Central Shura.³³ They all reported to the Central Shura. The Kabul Shura dealt with day-to-day problems of the government and the city, decisions were actually made in Kandahar Shura.³⁴ In areas under their control, the Taliban were trying to create a centralized Afghan state, by appointing provincial governors and administrators of districts, cities, and town from the center. Governors generally came from different provinces than the ones in which they served.

The Taliban rebuilt their judicial system according to Islamic system of law. The Kandahar Islamic Supreme Court became the most important court in the country. The Court appointed Muslim Judges, Qazis and assistant Qazis in the provinces and once or twice a year assembled them all in Kandahar to discuss cases and the application of Shariah. A parallel system exists in Kabul where the Ministry of Justice and the Supreme Court of Afghanistan were based. The Kabul Supreme Court handles about 40 cases a week and comprises eight departments which deal with Laws related to commerce, business, criminal and public law, but it clearly does not have the same powers as the Kandahar Supreme Court.

After the complete analysis of Taliban's form of government it is very obvious that, they had developed a complete democratic form of government in Afghanistan under the injunctions of Islamic laws,

³² Ghufuran., *The Taliban and the civil War Entanglement in Afghanistan*, (Asian Survey 2001), p.474

³³ Ibid. P474

³⁴ Ibid. P474

followed by a comprehensive mechanism of check and balance with in the three organs of the state namely executive, judiciary and legislature. International community, especially the western countries did not recognize Taliban because of their bias and prejudice attitude towards Taliban's regime in Afghanistan, and they don't want to see a strong and stable Islamic State, which might be a threat to their interests in this region of South Asia.

1.2.3 Terrorism, 9/11 Terrorist Attacks and Aftermaths:

1.2.4 DEFINITION OF TERRORISM:

The issue relating to the definition of terrorism has haunted the debate among states for decades. First attempt to arrive at an internationally acceptable definition was made under the League of Nations, but the convention regarding this which was drafted in 1937, never came into force. The international community, till the end of the 20th century, never agreed upon a single concise definition of terrorism. Terminology consensus on definition of terrorism was, however, be the main object for a single comprehensive definition on terrorism, which has favored by some countries in place of the present 13 piecemeal conventions and related protocols. The lack of agreement on a concise definition of terrorism has been a major obstacle to the meaningful International Counter-Measures. For example, if terrorism is defined strictly in terms of attacks on non-military targets, a number of attacks on military installations and soldier's residences could not be included in the statistics.

A) League of Nations Convention (1937)

"All criminal acts directed against a State and intended or to create a state of terror in the minds of particular persons or a group of persons or the general public."³⁵

³⁵ http://www.unodc.org/unodc/terrorism_definitions.htm (Last time visited on 12/11/06)

B) A.P. Schmidt, being one of the prominent scholars of International Law, proposed a very short but comprehensive legal definition to United Nations Crime Branch in the following words:

*"Act of Terrorism = Peacetime Equivalent of War Crime"*³⁶

While the United Nation yet not accepted a definition of terrorism, the United Nations "*Academic Consensus Definition*" also written by A.P Schmidt and widely used by the social scientists as an Academic Consensus Definition:

C) Academic Consensus Definition:

"Terrorism is an anxiety inspiring method of repeated violent action, employed by (semi-clandestine individual, group of state actors, for idiosyncratic, criminal or political reasons, whereby in contrast to assassination the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat and violence based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought" (Schmidt, 1988).³⁷On March 17, 2005 The UN penal describe terrorism as any act "intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or to abstain from doing any act".³⁸

D) Arab League Definition:

"Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources."

³⁶ http://www.unodc.org/unodc/terrorism_definitions.htm (Last time visited on 12/11/06)

³⁷ http://www.unodc.org/unodc/terrorism_definitions.htm (Last time visited on 12/11/06)

³⁸ Ibid

E) Domestic, State and International Terrorism:

Domestic terrorism, a phrase used to describe some acts of political violence within a state that are carried out or commissioned by forces inside or originating from that state, as opposed to external attacks.³⁹ It can be defined as:

"Terrorist acts by individuals or groups within a given country, without foreign direction or involvement. Terrorism practiced in your own country against your own people,"⁴⁰

Domestic terrorism can also be defined as "local" or "Sub-National" terrorism as Hindu Tamils in Sri Lanka.

While the State Terrorism is a controversial term, it is separate from the more common term "state sponsored terrorism". State terrorism is defined as violence upon a population committed by national governments or their proxies when not in a state of armed conflict with that population. State terrorism can be affected directly, at the hands of national military or security forces, or indirectly, through state sponsored terrorist organizations.⁴¹ It became more acute in the post 9/11 period, with the US declaration of its Pre-emptive Doctrine, Invading Iraq without the United Nations authorization or resolution. The international community has shown no inclination to deal with this aspect of state terrorism.

However, in the current International scenario, the main problem in combating with terrorism is international terrorism "Trans Boundary Terrorism" or "Transnational terrorism", with groups having linkages across national borders and subscribing to an international agenda.⁴² Yet, there is still no internationally accepted definition of "International Terrorism". International Terrorism is a political disorder that has been

³⁹ www.En.Wikipedia.Org/wiki/Domestic/Terrorism. (Last time visited on 02/14/07)

⁴⁰ www.Wordnet.Princeton.Edu/perl/webwn. (Last time visited on 02/14/07)

⁴¹ Ibid

⁴² www.En.Wikipedia.Org/wiki/International/Terrorism. (Last time visited on 02/14/07)

grown to the detriment of the International Legal System. A political disorder is like “*a wasting disease*” to start with it is easy to cure but difficult to diagnose, unless it has been diagnosed and treated at the outset, it becomes easy to diagnose but difficult to cure.⁴³ However, states inter alia, have duty to abstain and prevent agents and subjects from committing acts constituting a violation of another state’s independence and territorial supremacy under international law.

The terrorist phenomenon may involve several members of the International Community. These members can be divided in two categories “*Supportive States*”, which supports the aggrieved group and support its objectives while “*Suppressive States*” confronts the group and its objectives.⁴⁴ In this phenomenon different states used different terminologies to describe the same acts and actors in the other way i.e. Soviet Union’s view regarding Palestinian violence as legitimate armed struggle but Afghan resistance as terrorism. The US on the other hand, describes Afghan-armed struggle against U.S.S.R as Legitimate Struggle, but condemn Palestinian resistance as terrorism. However, inefficiency of the existing remedies to counter terrorism and the current trend of non-negotiations between the parties not only undermines UN Charter but also intensifies the problems of International Terrorism.

1.2.5 An Overview of Protocols and Conventions on Terrorism:

The universal conventions and protocols on terrorism, which have been developed under the auspices of the United Nations and its specialized agencies, are open to participation by all Member States. During the period of 1963 to 2005, international community negotiated some 13 Conventions for the Suppression of Terrorism.⁴⁵ These

⁴³ Ali, Khan., *A Legal Theory of International Terrorism*, (Connecticut Law review 1985), p.945-972

⁴⁴ Ibid

⁴⁵http://en.wikipedia.org/wiki/International_conventions_on_terrorism (last time Visited on 06/22/2009)

Conventions relates to the Prevention and Suppression of Terrorism. These universal legal instruments, one amendment and two protocols to them serve as the global regime against terrorism. It provided important framework of International Co-operation in combating terrorism. The U.N Security Council's resolutions both passed before and after the 9/11 terrorist attacks, have called upon Member States to ratify these International Instruments and to fully implement them through passage of the Domestic Legislation, necessary to fulfill obligations imposed by the conventions.⁴⁶

These conventions and protocols have been negotiated from 1963. Most are penal in nature with a common format. Typically the instruments:

- a) *Defined a particular type of terrorist violence as an offence under the convention, such as seizure of an aircraft in flight by threat or violence;*
- b) *Required state parties to penalize that activity in their domestic law;*
- c) *Identified certain bases upon which the parties responsible are required to establish jurisdiction over the defined offence, such as registration, territoriality of nationality.*
- d) *Created an obligation upon states in which a suspect is found to establish jurisdiction over the conventional offences and to refer these offences for prosecution, if the party does not extradite pursuant to other provisions of the convention.*

The last element is commonly known as the principle of "No safe Haven for Terrorist."⁴⁷ It has been stressed by the Security Council in its Resolution 1373 of 28th September 2001, as an essential anti terrorism obligation for Member States.⁴⁸ It is very obvious that United States and its allies have certain options to resolve the dispute in a peaceful and amicable manner under International Law but they do not avail these options to resolve this problem.

⁴⁶ <http://www.canadianliberty.bc.ca/liberty-vs-security/gail-davidson-war-on-afghanistan.html> (last time visited on 12/02/2008)

⁴⁷ Ali, Khan., *A Legal Theory of International Terrorism*, (Connecticut Law review 1985), p.967

⁴⁸ United nations Security council resoluton 1373, 28th September 2001

1.2.6 9/11 Terrorist attacks and after maths:

On September 11th of 2001, nineteen persons of Non-U.S Nationality hijacked four US commercial passenger jets and crashed them into the World Trade Center in New York, the Pentagon in Washington D.C and the Pennsylvania. All these jets were leaving with huge oil in there fuel tanks.⁴⁹ Approximately 3000 people died in the accident. Soon after these terrorist attacks there was an immediate call within the United States for the military response. President George. W Bush quickly stated that the United States would “*Hunt down and punish those responsible for these cowardly attacks*”.⁵⁰ However, later on, President Bush said “*I want justice*”. We can call it as the change in the hierarchy of values in International law, means preference of “*Justice over Peace*”.⁵¹ But after some time, President Bush called these attacks as an “*act of terrorism*” which was, at that time defined under the Domestic Laws of the United States.⁵² However, there is no generally accepted definition of an act of terrorism, and International Law did not provide any comprehensive definition of terrorism as well. Soon thereafter, apparently after consultation with Secretary of State Mr. Colin Powell, they started to call these attacks as “*act of war*”. The Bush administration, indirectly involved Taliban regime for hosting Osama Bin Laden and United States argued to hand over Osama Bin Laden and his fellow beings as they were involved in these attacks. But there was no such relationship between Taliban and Al-Qaeda, which were proposed to have been done these attacks. The Director Mueller and the Deputy Director of the CIA also supported this fact and publicly admitted that they have found no evidence that Afghanistan linked to the September 11 attacks.⁵³ But in any event that was not an

⁴⁹ Dr. Sher, Zaman, Taizi., *Terrorist Attacks in USA and US Attacks on Afghanistan*, (Kamil Pukhto Adabi Jirgah Pabo Seema, Nowshera Pakistan 2002), p3

⁵⁰ <http://www.whatreallyhappened.com/whoiscongresslisteningto.html> (last time visited on 10/22/08)

⁵¹ Robert, J. Beck., and Antrhony, Clark, Arend., *International Law and the Use of Force*, (Routledge publishers London 1993), p177

⁵² <http://www.globalsearch.com/articals/afghanistan> (last time visited on 12/20/2006)

⁵³ http://www.unodc.org/unodc/terrorism_convention_civil_aviation.html (last time visited on 02/12/08)

act of war. Clearly these were acts of terrorism as defined by United States domestic laws at the time, but not an act of war. Normally, terrorism is dealt as a matter of International and Domestic Law enforcement. Indeed there was a treaty directly on point at that time, the *Montreal Sabotage Convention*⁵⁴ to which both the United States and Afghanistan were parties. It has an entire regime to deal with all issues in dispute regarding 9/11 terrorist attacks, including access to the International Court of Justice to resolve International disputes arising under the treaty, such as the extradition of Bin Laden. The Bush administration completely ignored this treaty, jettisoned it, set it aside, and never even mentioned what had been laid down in this treaty. They paid no attention to this treaty or any other International treaty dealing with acts of terrorism that could have been applied to handle this matter in a peaceful and lawful manner without resorting to use of force in Afghanistan.

Later on, President George W. Bush went to the United Nations Security Council to get a resolution authorizing the use of military force against Afghanistan and Al-Qaeda, but he failed. The United Nations Security Council has never authorized this war. In this regard two resolutions passed by the UN Security Council, ⁵⁵and it is very clear from these resolutions that what President Bush tried to do was to get the exact same type of language which Bush, Sr. got from the UN Security Council in Resolution 678 in 1990, which authorize the war against Iraq to produce its expulsion from Kuwait.⁵⁶ It is very clear from these resolutions that President George. W. Bush tried to get the exact same language twice by UN Security Council Resolution No's 1368 and 1373 of 2001 but they failed. Indeed the First Security Council Resolution 1368 refused to call what happened on September 11th of 2001 an "*armed attack*" that was by one state against another state.

⁵⁴ Dr. Sher, Zaman, Taizi., *Terrorist Attacks in USA and US Aattacks on Afghanistan*, (Kamil Pukhto Adabi Jirgah Pabo Seema, Nowshera Pakistan 2002), p47

⁵⁵ United Nation Resolutions 1368&1373, 2001

⁵⁶ <http://www.un.org/Docs/scres/1990/scres90.htm> (last time visited on 02/12/08)

Rather they called it “terrorist attack”. But the critical point here is that the UN Security Council has never approved this war so technically this war against Afghanistan after 9/11 terrorist attacks was illegal under International Law. It constitutes an act of war and aggression by the United States against Afghanistan.

However, after failure to get their desire version from UN Security Council President George W. Bush and his colleagues approached American Congress to get authorization to resort war against Taliban regime, which they suppose to be mainly residing in Afghanistan and hosted by Taliban government. President Bush tried to get a formal declaration of war, along the lines of December 8, 1941 after the Day of Infamy on Pearl Harbor and began to use the rhetoric of Pearl Harbor to get this declaration of war because Bush and his supporters knew full well that he would be a Constitutional Dictator. However, he failed to get a declaration of war as Congress never declared war against Afghanistan or against anyone. There is, technically, no state of war today against anyone as a matter of constitutional law as formally declared. However, what President Bush acquired from congress was a “*War Powers Resolution*” which is not a declaration of war.⁵⁷ This is what law processors call an imperfect declaration of war. It does not have the constitutional significance of a formal declaration of war. It authorizes the use of military force in specified and limited circumstances. Senator Byrd, the Dean of the Senate, clearly said that;

*“this is only a War Powers Resolution and we will give authority to the President to use military force, subject to the requirements of the War Powers Resolution, which means that the President must inform us, there is Congressional oversight, in theory, controlled funding, and ultimately we decide, not the Executive branch of the government – we are the ones who gave the authorization to use force”.*⁵⁸

⁵⁷ <http://www.law.northwestern.edu/journals/jjhr/v3/4/> (last time visited on 02/16/07)

⁵⁸ <http://www.whatreallyhappened.com/whoiscongresslisteningto.html> (last time visited on 10/22/08)

Failure of the President Bush's administration, to get any formal authorization from the Security Council, as well as from congress, the US Ambassador Negro Ponte, who has the blood of about 35,000 people in Nicaragua on his hands when he was US Ambassador down in Honduras, sent a letter to the Security Council asserting Article 51 of the UN Charter. It was to justify the war against Afghanistan and basically saying that USA reserve the right to use force in elf-defense against any state somehow involved in the events of September 11 of 2001. It was the same as in Nuremberg judgment of 1946, when the lawyers for the Nazi defendants argued that "*We the Nazi government had a right to got to war in self-defense as we saw it, and no one could tell us any differently*".⁵⁹ Of course those preposterous arguments were rejected by Nuremberg. It is very distressing to see some of the highest level of officials making legal arguments that were rejected by the Nuremberg Tribunal. Therefore, the Security Council also rejected this request. So it is quite obvious that there was no legal justification for military attacks on Afghanistan by United States and its allies in the wake of 9/11 terrorist attacks violated the International Law as well as Domestic Law of U.S.A.

1.3 Taliban, Osama's Extradition and International Law:

Much of the controversy has its roots in the facts that the events of September 11, 2001, a terrorist attack of unprecedented savagery. These terrorist attacks apparently carried out by a shadow organization operating out side the control of any state and did not fit easily within the any obvious category of International Law. These attacks can be regarded as an entirely new phenomenon falling wholly out side of the existing framework of International Law with its emphasis on relations between states and individuals. As the Taliban Government, before September 11th attacks, was already facing so many problems from international community regarding extradition of Osama Bin Laden and

⁵⁹ <http://www.sanfranciscochoronicals/articals/use-of-force.html> (last time visited on 02/28/09)

other members of Al-Qaeda, after these attacks they found themselves in a very difficult situation.

1.3.1 Extradition under International Law:

*“Extradition” can be defined as “The surrender by one state to another state, of a person charged with a crime. This surrender is made in response to the demand of the latter state that the accused be returned to face the charge”.*⁶⁰ The consensus in International Law is that a state does not have any obligation to surrender an alleged criminal to a foreign state among the Principles of Sovereignty. One of the principles of the sovereignty of a state is that every state has legal authority over its people within its borders. Such absence of International Obligation and desire of the right to demand such criminals of other countries has caused a web of extradition treaties or agreements to evolve. There are two types of extradition treaties (A) *“List Criminality Treaties”* and (B) *“Dual Criminality Treaties”*. The most common and traditional is the List treaties, which contains a list of crimes for which a criminal be extradited. Dual criminality treaties used since the 1980s, generally allow extradition of a criminal suspect if the punishment is more than one year imprisonment in both countries. Occasionally the amount of the time of the sentence agreed upon between the two countries is varied. However, under both types of treaties, if the conduct is not a crime in either country then it will not be an extraditable offence.⁶¹

Most of the countries have signed Bilateral Extradition treaties with most other countries. No country in the world has an extradition treaty with all other countries for example the United States lacks extradition with over fifty nations, including Afghanistan, People’s Republic of China, Namibia and North Korea. Therefore, United States can not force or demand Afghanistan to extradite Osama Bin Laden,

⁶⁰ Barbara, M. Yarnald., *International Fugitives- A New Role for International Court of Justice*, (Plager Publishers, New York 1991), P.3

⁶¹ Ibid, p.9

because they don't have any extradition treaty with Afghanistan.⁶² However after the September 11th attacks, investigators rapidly accumulated evidence implicating Osama Bin Laden. Bush administration turned these terrorist attacks into an "act of war" which means a military attack by one state against another one. But these attacks did not amount to an actual armed attack and did not create any special right of self-defense for US under United Nation Charter⁶³. Prior to the Military attacks in Afghanistan United States President George. W. Bush delivered an ultimatum to the Taliban government to:

1. *Deliver Al-Qaeda leaders located in Afghanistan to the United States*
2. *Released all foreign nationals including American citizens, you have unjustified imprisoned. Amazing "shelter now" workers*
3. *Close immediately and permanently every terrorist training camp in Afghanistan and,*
4. *Hand over every terrorist and every person in their support structure to appropriate authorities. And give the United States full access to terrorist training camps, so we can make sure that no terrorist training camp still operating*
5. *These demands are not open to negotiation or discussion.*⁶⁴

President Bush forced that the Taliban must act and act immediately he says, "...they will hand over the terrorist or they will share their will". Taliban refused to directly speak to Bush, but they made their statements through their embassy in Pakistan. Their initial response demanding evidence of Osama's culpability in the September 11th attacks and included a proposal to try Osama in an Islamic country.⁶⁵ Later on, as the likelihood of the military attacks become more imminent, they offered to extradite Osama to a neutral nation.⁶⁶ Moderates within the Taliban allegedly met American Embassy officials in Pakistan in October, 2001. They tried to work out a way to convince Mullah Muhammad Omar to turn Osama over to US to avoid its impending retaliation. President Bush rejected all these offers by calling

⁶²Dr. Sher, Zaman, Taizi., *Terrorist Attacks in USA and US Attacks on Afghanistan*, (Kamil Pukhto Adabi Jirgah Pabo Seema, Nowshera Pakistan 2002), p19

⁶³ Article 51 of the United Nations Charter

⁶⁴ Steve, Cole., *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion September 10, 2001*, (The Penguin Press 2004, P.244)

⁶⁵ <http://www.internationalextradition.com/practice-areas.htm> (last time visited on 01/09/2007)

⁶⁶Dr. Sher, Zaman, Taizi., *Terrorist Attacks in USA and US Attacks on Afghanistan*, (Kamil Pukhto Adabi Jirgah Pabo Seema, Nowshera Pakistan 2002), p47

the Taliban insincere.⁶⁷ It shows that US planned to attack on some countries because of endangering their security and respect by attacking them. Later on they involved and mentioned Taliban and Al-Qaeda as the culprits of September 11 attacks, wage war on Afghanistan, avoiding the other available possible solutions to resolve the matter amicably.

1.3.2 Osama's extradition under International Law:

The extradition of Osama Bin Laden, under the International Diplomatic Relations amongst the two states particularly, under International law was not justified. Hence the Taliban regime has no extradition treaty with US at that time, and with out any extradition treaty, Taliban regime was not under any legal obligation to handover Osama to US authorities. There is no duty under International Law to surrender a defendant to stand trial in another state. Such a duty to extradite arises only where there is a treaty of extradition in force between the states concerned. However, a state may choose to surrender someone for trial (if its own domestic law permits) even in the absence of an extradition treaty. ⁶⁸

United States did not provide any authentic proof of Osama or Al-Qaeda's direct involvement in the attacks on September 11, 2001. Indeed, FBI Director Mueller and the Deputy Director of the CIA publicly admitted that they have found no evidence in Afghanistan linked to the September 11 attacks.⁶⁹ If the United States like they can take the matter to International Court of Justice. The International Criminal Court (ICC) is also designed to track down International terrorists⁷⁰ and other criminals, and ring them to justice. ICC came in

⁶⁷ Ibid. p 24

⁶⁸ Sir. R. Jennings., Sir. A. Watts., *Oppenheim,s International Law*, (9th edition, Longman London, 1992, vol.1), p 51

⁶⁹ Frances, Boyle., *Is Bush's War Illegal? Let Us Count the Ways, The Criminality of Nuclear Deterrence*, (Duke University Press 2002), pp.172

⁷⁰ Ibid. P, 185

to force on 1st july 2001. ICC treaty (The Rome Statute) was approved by 120 countries, twenty countries abstained from voting, and seven voted against it. Those seven included China and the United States of America. Therefore, United States can not demand Osama's extradition as they never show any inclination to make strong this aspect of International Law of extradition.

Originally the ICC was designed to catch conventional criminals. On 26 September 2001 the Council of Europe parliamentary assembly voted in favors of expanding the mandate of the International Criminal Court to allow it to prosecute perpetrators of terrorist acts. The U.S.A, despite significant involvement in the drafting of the Rome Statute, is the only Western democracy now opposed it. USA Congress recently re-introduced the bill that will ban any kind of cooperation and military assistance with Member States of the UN that have ratified the Rome Statute and obstruct the participation of the U.S.A in UN peacekeeping operations. The same bill will authorize the President of the U.S.A to use "all the necessary measures" to liberate any U.S.A citizens detained by the ICC.⁷¹

Another option was also available to U.S.A to solve this issue amicably, that was Montreal Sabotage Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal 23 September, 1971. This convention imposed a duty on the part of the state in which the individual was found either to extradite him or to refer the case to its own prosecuting agencies. Afghanistan and United States are also parties to this convention. However, United States never even bothers to mention this convention at any stage during this period.

⁷¹ <http://www.canadianliberty.bc.ca/liberty-vs-security/gail-davidson-war-on-afghanistan.html> (last time visited on 12/02/2006)

It is worth mentioning here that shortly after September 11,2001 attacks, American Society Of International Law in its reports referred that *"we cant attack a country only because its harbors terrorists"* On October 1, 1985 Israeli planes bombed the headquarters of the Palestine Liberation Organization (PLO) near Tunisia⁷². In explaining its action to the Security Council, Israel argued that the bombing was justified by Tunisia having knowingly harbored terrorists who had targeted Israel. The Security Council evidently rejected this claim and condemns the Israeli action by a margin of 14-0, with the United States abstaining.⁷³

*"[Condemned] vigorously the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct."*⁷⁴

It described the air raid as a *"threat to peace and security in the Mediterranean region."* The resolution further requested UN member states:

*"To take measures to dissuade Israel from resorting to such acts against the sovereignty and territorial integrity of all States."*⁷⁵

Finally, the resolution stated, *"Tunisia has the right to appropriate reparations as a result of the loss of human life and material damage."* and

*"While it is well established that an international obligation may be breached through an act or an omission, mere inaction would likely be insufficient to give rise to state responsibility for the acts in this case."*⁷⁶

In view of the above, Afghanistan has a right of appropriate reparations as a result of loss of human life and material damages because of the illegal bombardment and violation of International Humanitarian Law by United States and its alias. It is also very obvious

⁷² http://www.cyberus.ca/~baker/pal_plo_1.htm (Last time visited on 07-10-2007)

⁷³ United Nations Security Council Resolution, 573 of 1985

⁷⁴ Ibid, para. no.1

⁷⁵ Ibid, para. no.3

⁷⁶ Ibid

that it is not legally justifiable under International Law, to blame a whole country for the acts of a few the suggested policy of holding entire nations accountable for the acts of a few would not appear to be lawful since collective punishment would, by definition, entail the unnecessary suffering of innocent populations.⁷⁷

Another problem to extradite Osama was United States denial to give all captivities the right to hear or defend them before the courts on and POW status under Geneva Convention 1949, that Guantanamo Bay is not the part of United States and have no jurisdiction over there. However, US supreme Court has refused his administrative approach and reject military trial of the Guantanamo in the case Shafiq Rasul Vs. George W. Bush, President of the United States, (June 28th 2004)⁷⁸ as various captivities sent to Guantanamo Bay by different routes, captured or arrested during the U.S. invasion of Afghanistan a petition for a writ of habeas corpus (release from unlawful imprisonment) filed on February 19, 2002 by Shafiq Rasul of British citizenship requested:

- That he be released
- That he be allowed to have private, unmonitored conversations with their attorneys
- That interrogations cease until the trials were complete

In this case the petitioner Rasul challenged the U.S. government's practice of holding foreign nationals captured in Afghanistan during the war against the Taliban regime and al-Qaida in detention indefinitely. The detainees had been designated enemy combatants and did not have access to counsel, the right to a trial or knowledge of the charges against them. The Supreme Court, over the administration's objections, agreed in November 2003 to hear the cases of the Guantánamo

⁷⁷http://www.ejil.org/forum_WTC/ny-stahn.html#TopOfPage (last time visited on 02/24/2007)

⁷⁸ Shafiq Rasul Vs. George W. Bush, President of the United States, 542 U.S.466 (June 28th 2004) http://www.supremecourtus.gov/opinions/casefinder/casefinder_1984-present.htmls (Last time Visited on 06/22/2009)

detainees. In a ruling on June 28th 2004, the Court ruled that the United States Constitution entitled the detainees to challenge the validity of their detention and military commission to try Plaintiff is illegal and lacking the protections required under the Geneva Conventions and United States Uniform Code of Military Justice.⁷⁹ The degree of control exercised by the United States over the Guantanamo Bay base is sufficient to trigger the application of habeas corpus rights. The right to habeas corpus can be exercised in all dominions under the sovereign's control.

The war against Afghanistan violated International Law including the Charter of the United Nations, the Geneva Convention's Protocol No:-1 relating to the *Protection of Victims of International Armed Conflict* and the relevant provisions of the International agreements dealing with the Suppression and Control of Terrorism. The attacks through bombing and the use of other military force are war crimes pursuant to the Rome Statute. Under Chapter (vii) of U.N Charter, Security Council has the power to require a state to surrender a person where there is a threat to International Peace and Security, and it has exercised this power on a number of occasions.⁸⁰ In the aftermath of the September 11 of 2001 attacks, the Security Council decided that all states should "afford the greatest measures of assistance in relation to criminal investigation of terrorist offences"⁸¹ but it definitely stopped short of imposing a requirement of extradition. Thus, United States was not justifiable in demanding extradition of Osama beyond the paradigm of International Law and United Nations Charter.

1.4 United Nations Charter and Use of Force against Afghanistan:

The preamble of the United Nation's Charter states the purpose of the United Nation "to save the succeeding generations from the scourge of the war". The United Nation Charter's prohibition on the use

⁷⁹

⁸⁰United Nations Security Council Resolution, 748 of August 1992

⁸¹United Nations Security Council Resolution 1373,28 September of 2001

TH-6345

of force against the other member states was the main aim, for which the United Nation was founded, in wake of the destruction of World War II, to prevent war in future.⁸² This overriding concern for prohibition on the use of force is also reflected in the Nuremburg Trial,⁸³ the concept of crimes against peace "*starting or waging a war against the territorial integrity, political independence or sovereignty of a state, or in violation of international treaties or agreements...*" crime against peace, which was held to be the crime that makes all war crimes possible.

1.4.1 Article 2 of the United Nation's Charter:

Article 2 (3&4) of the UN Charter clearly prohibits the use of force among the member states;

Article 2(3) "All member shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered"

Article 2(4) "All members shall refrain in their international relation from the threat or use of force against the integrity or political independence of any state, or in any other manner in consistent with the purpose of United Nation".

Prohibition on the use of force under Article 2(3&4) has been reiterated in numerous resolutions of UN General Assembly affirming the inadmissibility of the policy of the state terrorism including action of states as undermining the socio-political system in other sovereign states.⁸⁴

1.4.2 Article 42 of the United Nation's Charter:

Chapter VII of the United Nations Charter sets out the UN Security Council, and embodied it with the primary responsibility for

⁸² Leland. M. Good., Edward, Hambro., and Anne, Patricia, Simmons., *Charter of the United Nations, Commentary and Documents*, (Columbia University Press London 1969), p.23

⁸³ http://en.wikipedia.org/wiki/Nuremberg_Trials (last time visited on 10/22/06)

⁸⁴ <http://www.un.org/Depts/dhl/res/resa39.htm> (last time visited on 10/22/06)

the maintenance of International Peace and Security. It allows the Council to "*determine the existence of any threat to the peace, breach of the peace, or act of aggression*" and to take military and nonmilitary action to "*restore international peace and security*". In this regard the most famous and important article of the UN Charter is Article 42,

Article 42 of UN Charter:

"Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations".

1.4.3 Article 51 of the United Nation's Charter:

Article 51 of the UN Charter gives member states to narrow power to defend them against the continuing armed assault until such time as the Security Council intervenes to maintain and restore peace and security. Article 51 does not create any right to make retaliatory attacks or to engage in the use of force to repeal anticipatory armed attack.⁸⁵ Right of self defense under article 51 of the UN Charter, is restricted to actions that are necessary to repel and proportionate to an on going attack and only exist until the Security Council take necessary measures to restore International Peace and Security. The right of self defense is restricted to self defense action and is further restricted to those action necessary to maintain "*International Peace and Security*" and must be carried out in accordance with the United Nations Charter.

However, the US and UK attacks in the wake of September 11th of 2001 terrorist attacks, on Afghanistan were illegal and it violated International Law and United Nation's Charter. Despite the repeated reference to the right of self defense under article 51, the Charter

⁸⁵Detter, De. Luppis., Ingrid., *The Laws of War*, (Cambridge University Press Great Britain 1987), p51

simply does not apply here. Article 51 only gives a state the right to repel an attack that is ongoing or imminent, as a temporary measure, until the Security Council can take steps necessary for international peace and security. Before the Attacks on Afghanistan, Security Council already passed two resolutions condemning the September 11 attacks and announced a host of measures aimed at combating terrorism. This includes the legal suppression of the terrorism and its financing,⁸⁶ and for co-operation between states in security, intelligence, criminal investigations and proceedings relating to terrorism.⁸⁷ The Security Council had also set up a committee to monitor progress on the measures in the resolutions and had given all states 90 days to report back to it.⁸⁸

Whereas, two resolutions 1368 & 1373 of United Nation Security Council's passed before attacks on Afghanistan, can not remotely be said to authorize the use of military force in Afghanistan. True, both, in their preambles, abstractly "*affirm*" the inherent right to self defense, but they do so, "*in accordance with the Charter*". They do not say that military action against the Afghanistan would be in the right of self-defense, nor they could, because the right of unilateral self-defense does not include the right to retaliate once an attack has been stopped.

The right of self- defense in International Law is just like the right of self-defense in our domestic law, because it allows defending yourself when the law is not around you, but it does not allow you to take the law into your own hands. U.S.A and UK undertake these attacks without the explicit authorizations of the Security Council and those who die from it will be the victim of a crime against humanity, just like the victims of the September 11 attacks. However attacks on Afghanistan are about vengeance. It is being done on the backs of the people who have the far less control over their government than even

⁸⁶ United Nation Security Council Resolution no.1368/2001, (passed on 09/12/2001) annex i

⁸⁷ United Nation Security Council Resolution no.1373/2001 ,(passed on 09/28/2001) annex ii

⁸⁸ <http://www.globalresearch.ca/articals/MEN110A.html> (last time visited on 12/05/08)

the poor souls died at September 11. It will inevitably result in many deaths of civilians, both from the bombing and disruption of aid in a country where millions were already at stake.

For all that how things have changed after September 11, one thing has not changed that is, United States disregard for International Law. Its decade long bombing campaign against Iraq in 1990 and in Yugoslavia in 1999 were both illegal. U.S.A does not recognize the Jurisdiction of the World Court and withdraw from it in 1986 when the courts condemned Washington for attacking Nicaragua, mining its harbors and funding the contras.⁸⁹ In this case, the International Court of Justice rejected the US claims that it was acting under Article 51 in defense of Nicaragua's neighbors.⁹⁰ We can say that bombing in Afghanistan was the legal and moral equivalent of what was done to the Americans on September 11 of 2001. We may remember that day, not for its human tragedy, but for the beginning of a plunge into a violent lawless world and military attacks on Afghanistan had nothing to do with terrorism, however, these attacks would be far more likely to promote terrorism.

⁸⁹ Military and Paramilitary activities in and against Nicaragua, *Nicaragua vs America*, ICJ Reports, 1986. p 48

⁹⁰ Ibid

Chapter 2

UNITED STATE'S INVASION IN AFGHANISTAN

2.1 LEGAL APPRAISAL OF OPERATION ENDURING FREEDOM IN AFGHANISTAN:

Operation Enduring Freedom is the official name of “*War against Terrorism*”, used by the US government for its military action in response to the September 11, 2001 attacks on the United States. The United States was supported by several European nations during “*Operation Enduring Freedom*” in Afghanistan.¹Any analysis of International Law and the “*Operation Enduring Freedom*” following the events of 11 September 2001 needs to start with recognition of the fact that the terrorist atrocities perpetrated in the United States on that date were plainly illegal. Whatever lay behind those terrible events, there was no legal justification for them and none has been offered.² Yet the consensus of the illegality of the terrorist attacks did not lead to a similar consensus about the legal questions raised by the US reaction to them. The legality of the United States resort to force against Al-Qaeda, a shadow organization, the Taliban regime in Afghanistan, of the conduct of the hostilities which followed, the status and treatment of prisoners held by the United States at the naval base at Guantanamo Bay have all been matters of controversy.

2.1.1 Operation Enduring Freedom under International Law:

Legal status of Operation Enduring Freedom in Afghanistan can be analyzed under International Law and it is become quite obvious

¹ http://en.wikipedia.org/wiki/Operation_Enduring_Freedom (last time visited on 12/22/2008)

² Fred, Holliday., *Two Hours That Shock The World*, (Saqi Books Publishers, London 2001), p.7

that this operation have never been allowed or approved by United Nations Security Council. The illegality of this operation against Taliban regime under International Law can be concluded as a fact, that Public International Law recognizes the jurisdiction of the United States to try a particular crime does not, however, mean that it requires other states to cooperate in enabling such a trial to take place. Three problems, in particular, have to be considered in this matter.

First, there is no general duty under International Law to surrender a defendant to stand trial in another state. Such a duty to extradite arises only where there is a treaty of extradition in force between the states concerned. While a state may choose to surrender someone for trial (if its own domestic law permits) even in the absence of an extradition treaty, it is not normally under an obligation to do so.³ Many states have no extradition treaty with the United States. Nevertheless, this problem is considerably reduced by the effect of the multilateral anti-terrorist conventions. If a suspected perpetrator of the 11 September attacks were to be found outside the United States, the Hague Convention for the Suppression of the Unlawful Seizure of Aircraft (1970) and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) would apply, give rise to a duty on the part of the state in which the individual was found either to extradite him or her or to refer the case to its own prosecution authorities. The 11th September crimes would also have come within the scope of the International Convention for the Suppression of Terrorist Bombings (1997), which entered into force on 23rd May 2001. However, the United States has signed that convention, it had not ratified it by 11 September 2001 and was not, therefore, a party at the relevant time. In the aftermath of the event of September 11, the Security Council decided that all states should

³ Sir, R. Jennings., Sir, A. Watts., *Oppenheim,s International Law*, (9th edition, Longman London, 1992, vol.1), p 51

"afford one another the greatest measures of assistance"⁴ in relations to criminal investigation of terrorist offences, but it stopped short of imposing a requirement of extradition.

Secondly, for many states there would be a serious legal obstacle to surrender someone, wanted for the 11 September attacks on the United States. The United States has retained the death penalty for certain offences, and anyone convicted of perpetrating the killing of 11th September would be likely to receive that sentence. Capital punishment is not, in itself, contrary to general International Law or to any of the treaties to which the United States is party. The European states, on the other hand, are parties to the European Convention on Human Rights (1950) and, in most cases, to Protocol VI to that Convention. In 1989, the European Court of Human Rights held in *Soering vs. United Kingdom*,⁵ that it would be a violation of the convention prohibiting inhuman treatment or punishment to extradite a defendant to the United States if there was a substantial risk that he would be sentenced to death, because the length of time taken between sentence and actual execution was considered as amounting to inhuman treatment. Moreover, Protocol VI to the convention prohibits the parties to the protocol (which include the United Kingdom) from passing or carrying out death sentence in peacetime, and the court might well hold it has also prohibited a European state which was party to the protocol from surrendering someone to face a death sentence in a country that was not party to the convention, even if, there would be no delay between sentence and actual execution., in that case, a party to the convention and protocol could lawfully surrender of the offenders involved in accused of the 11 September atrocities only if it received an undertaking that the accused person would not be executed.⁶

⁴ Security Council Resolution 1373, 2001, para.2 (f) (annex i)

⁵ 2nd European Human Rights Report, 1989, p439

⁶ Scot, Lord., *Decision of House of Lords in R (Al-Fawaz) vs Governor of Brixton Prison* (World Law Review 2002), p. 101

Thirdly, the sheer horror of the events of 11th September has led some observers to question whether, irrespective of the issue of death penalty, anyone accused of perpetrating those crimes could receive a fair trial in the United States.⁷ This view at least, provided the accused to be tried before the regular courts of the United States but it would undoubtedly present an obstacle to extradition to the United States. The problem becomes even greater in the case of an accused whose extradition is sought for trial before the military commissions established by the President of the United States with Jurisdiction to try foreign nationals accused of terrorism.

While the use of military courts or commissions as courts of trial does not, in itself mean that an accused will not receive a trial which meets international standards of due process, these commissions will not be bound by the normal rules of evidence and it must be open to doubt whether other states would be willing to surrender persons for trial before them.⁸

2.1.2 Operation Enduring Freedom and Jurisdiction of International Criminal Courts and Tribunals:

The two existing International Criminal Tribunals have jurisdiction only in respect of crimes committed in the territories of the former Yugoslavia and Rwanda respectively, and only a very restricted list of crimes. The International Criminal Court (ICC) might have been able to try the case had been in existence before 11th September 2001,⁹ but the statute of the ICC had not by that date attracted the 60 parties necessary to bring it into force; and even when it does enter into force, the ICC will not have retrospective jurisdiction. The International Criminal Court (ICC) is a permanent

⁷ Robertson, Q. C., Geoffery., (*The Times*), 18 December, 2001

⁸ Scot, Lord., *Decision of House of Lords in R(Al-Fawaz) vs Governor of Brixton Prison* (World Law Review 2002), p. 103

⁹ W. Schabas., *The International Criminal Court*, (Cambridge University Press, 2001), p.36

tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression, although it cannot currently exercise jurisdiction over the crime of aggression. The court came into being on 1 July 2002 when Rome Statute of the International Criminal Court, entered into force and it can only prosecute crimes committed on or after that date. The other international courts currently in existence, including the International Court of Justice, does not have criminal jurisdiction. As of March 2009, 108 states are members of the Court. A further 40 countries have signed but not ratified the Rome Statute. However, a number of states, including China, Russia, India and the United States, are critical of the court and have not joined.

The only way in which the surviving 11th September offenders could be brought to trial before any international court, would be if the Security Council created one for the purpose of trying them. It has the power to do as, as the Yugoslav and Rwandan precedents demonstrate; but there is no sign that it plans to exercise that power in this case.

The question then arises, however, whether the characterization of those events as crimes means that they could not also amount to criminal acts, acts of war, armed attacks or threats to the peace, which might give rise to a right to use force against any state. Even if the 11th September attacks were criminal acts means that they could not also be the justification for military action, whether under the enforcement powers of the United Nations or under the right of self-defense as demonstrated by US.¹⁰ The concept of International Crime, threats to the peace and armed attack are not, however, mutually exclusive and there is no reason why they should be treated as such.

¹⁰Robertson, Q. C., Geoffrey., *There is a Legal Way Out of This*, (Guardian, 14 September, 2001).

The term "*act of war*" is inappropriate here. Although, many people spoke of the attacks on the World Trade Center and the Pentagon in those terms and drew comparisons with Japan's surprise attack on Pearl Harbor in 1941, the concept of war in International Law is confined to conflicts between states and, indeed, is no longer much used there, surrounded as it is by technicalities, it has largely given way to the factual notion of "*armed conflict*" as Afghanistan have never attacked United States.¹¹ References to the attacks as "*acts of war*", like the subsequent talk of a "*war against terrorism*", are understandable in political terms but are not to be taken as referring to the concept of war in International Law.

2.1.3 9/11 Terrorist Attacks as Threat to International Peace and Security:

The most important issue is whether the events of 11th September amounted to a "*threat to the International peace*". A threat to, or breach of, International Peace and Security is what brings into play the powers of the UN Security Council to take economic, political and even military measures under Chapter VII of the United Nations Charter.¹² The resolutions adopted by the Council since 11th September 2001, have been unequivocal in their condemnation of the terrorist attacks as threats to International Peace. Resolution 1368 (2001), adopted on 12th September 2001, expressed the determination of the Security Council "*to combat by all means threats to international peace and security caused by terrorist acts*" and condemned "*the horrifying terrorist attacks which took place on 11th September 2001*" as being "*like any act of International Terrorism...a threat to international peace and security*". Resolution 1373 of 2001, adopted on 28th September 2001, repeated that characterization and

¹¹ Christopher, Greenwood, Professor., *The Concept of War in Modern International Law*, (International and Comparative Law Quarterly 36, 1987), p.283

¹² Conte, Alex., *Security in the 21st Century, the United Nation ,Afghanistan and Iraq*, (Ashgate Publisher, London 2005), p191

went on to impose a requirement on all states to take various measures, set out in the resolution, against the perpetrators and states suspected of assisting them. Both resolutions were adopted unanimously. The Security Council never authorized these military actions. The Security Council Resolution 1373 required all states to take certain economic and political actions, but it did not give the United States an authority to use military force, in the way that Resolution 678 of 1990 had authorized "*states co-operating with the government of Kuwait*" to use force against Iraq. In defending the legality of the actions, which they were taking, both the United States and the United Kingdom relied on the right of self-defense enshrined in Article 51 of the United Nation's Charter. In November 2001, a meeting of the Security Council held at ministerial level adopted a Declaration on the Global Effort to Counter Terrorism, which was again based on the Characterization of International Terrorism as a Threat to International Peace and the "*war against the terrorism*".¹³ This does not, however, put an end to discussion about this threshold requirement of the right of self-defense and in particular two issues arose:

First, the attack of 11th September 2001, terrible as they were, over long before the United States military response was commenced. Self-defence, which is lawful under International Law, has to be carefully distinguished from reprisals, which, if they involve the use of armed force, are no longer considered lawful. The requirement of necessity in self-defence means that it is not sufficient that force is used after an armed attack; it must be necessary to repel that attack. The use of force in response to an armed attack does not meet that requirement and looks more like as reprisals. The US action has, therefore, been criticized for constituting some what considered being a reprisal, rather than a genuine action in self-defence.

¹³ Conte, Alex., *Security in the 21st Century, the United Nation ,Afghanistan and Iraq*, (Ashgate Publisher, London 2005), p168

Secondly, the attacks of 11 September emanated, so far as it is possible to judge, from Al-Qaeda, rather than from a state. Yet the military action taken by the United States and its allies involved extensive military operations on the territory of the state of Afghanistan without the consent of the Taliban regime, which was in fact, governing most of that territory. Indeed, the Taliban armed forces were themselves objects of attack from the start of the military operations. While the letters from the US and UK governments to United Nation, accused Afghanistan for harboring the Al-Qaeda organization and permitting it to operate from the territory under their control, they stopped short of alleging that Afghanistan was responsible, as a matter of International Law, for the attacks themselves.¹⁴

It has therefore, been argued that if Afghanistan was not internationally responsible for the attacks, and it should not have been the target of military action, taken in response to those attacks and continuity of this illegal operation is proved to be useless and failed to maintain international peace and security.

2.2 INDIVIDUAL OR COLLECTIVE SELF-DEFENCE AND UNITING FOR PEACE RESOLUTION:

As like other legal system, International Law also seeks to prevent its subjects from the use of force while settling its disputes. It should be examine that, how the use of armed force is regulated by International Law. As emphasized by the International Court of Justice in Nicaragua case,¹⁵ these rules encapsulate some of the

¹⁴ Christopher, Greenwood, Professor., *International Law and the War against Terrorism*, (International and Comparative Law Quarterly 36, 1987), p.195

¹⁵ Military and Paramilitary activities in and against Nicaragua, (*Nicaragua vs America*), ICJ Reports, 1986

most fundamental of all international obligations and there is much to commend the view of a number of Judges that the primary obligation not to use force has attained the status of Jus Cogens. Unfortunately, however, this important area of International Law is also one of the most troublesome. While every state agrees that the use of force is generally impermissible, there is considerable disagreement over the precise circumstances in which it may lawfully be used. Of course, this is not surprising given that armed force has traditionally played such a central role in International Relations. Yet it is a sad fact that many states are not prepared to relinquish their ability to impose a settlement forcefully in favour of a system where disputes are settled on the basis of legal principle.¹⁶ In this view, such idealism is misplaced precisely because International Law does not provided adequate, effective and compulsory machinery for the peaceful resolution of disputes, which is completely wrong.

2.2.1 The Concept of Individual and Collective Self-Defence:

The rules of International Law regulating the right to use force (the jus ad bellum) will be considered in two sections. First, consideration will be given to those rules controlling the use of armed force by individual states or groups of states acting on their own initiative. This is often referred to as the "*unilateral or individual use of force*" although the same general rules apply whether one state or twenty states resort to armed action. Secondly, and by way of contrast, there are those rules indicating when force may be used by a competent international organization, such as the United Nations. This is commonly referred to as the "*collective use of force*", because it results from a collective decision of a duly authorized body.¹⁷ Thus,

¹⁶ Dixon. Marton. *Public International Law*, (Blackstone Publishers, 4th edition 1998), P.185

¹⁷ Ibid. P, 187

the distinction between a “*unilateral and collective*” use of force is not one of numbers, but of authority and purpose.

A) The Individual Use of Force:

The jus ad bellum today, is not simply a product of the United Nation Charter. Prior to 1945, there was a web of customary and treaty law, which regulates the unilateral or individual use of force by states. In the early development of International Law, the “*Just War Doctrine*” governed the use of force by states. As developed by writers such as St. Augustine and Hugo Grotius, the “*Just War Doctrine*” stipulated that war was illegal unless undertaken for a “*just cause*”.¹⁸ A just cause encompassed a variety of situations, but essentially involved a wrong received or a right illegally denied.¹⁹ Then, as state practice it came to be regarded as the ultimate source of International Law “*legal positivism*” even this watered-down version of the Just War Doctrine disappeared.²⁰ By the eighteenth century, the governing doctrine was the sovereign right to resort to war. Every state had a perfect legal right to resort to war for any reason. The sovereign right to resort to war, founded in state practice, governed international relations until the birth of the League of Nations in 1919. Here then, is the legal origin of such concepts as self-defence, reprisals and protection of nationals. The Covenant of the League of Nations introduced a limited restriction on the sovereign right to resort to war. Under the Covenant, war was lawful only if the procedural safeguards laid down in Arts 10 to 16 of the Covenant were observed,²¹ although if this was done a state remained perfectly entitled to achieve its objectives through formal war. The Covenant of the League of Nations was proved to be ineffective in prohibiting resort to violence to any

¹⁸ Ibid.P. 189

¹⁹ Ibid.P. 190

²⁰ Arend, and Beck, J., *International Law and The Use of Force*, (Routledge Publishers, London 1993), p122

²¹ <http://www.yale.edu/lawweb/avalon/leagcov.htm> (last time visited on 01/22/2008)

great degree. In a more general sense, however, the Covenant have two significant consequences. First, the right of self-defence began to emerge. Secondly, the categories of "*force short of war*", already developed prior to the Covenant, began to appear more clearly as legal rights, rather than as political justifications. In 1928, the General Treaty for Renunciation of War supplemented the Covenant.²² This treaty sometimes known as the "*Pact of Paris*" or the "*Kellogg- Briand Pact*" respectively after the names of French Foreign Minister and United States Secretary of State.²³ However, the League of Nation and the Covenant proved to be insufficient to control the use of force by the states and turned to be ineffective to maintain International Peace and security.

B) The Collective Use of Force:

The United Nations Charter is a treaty, and as such forms part of the "*supreme law of the land*" under International Law. The U.N Charter is the highest treaty in the world, superseding state's conflicting obligations under any other international agreement.²⁴ However, under United Nation's Charter, there are only two circumstances in which the use of force is permissible, in collective or individual self-defense against an actual or imminent armed attack, and when the Security Council direct or authorize use of force to maintain or restore International Peace and Security.²⁵ Article 51 of the United Nations Charter states:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of

²² General Treaty For the Renunciation of War, (Kellogg Briand Pact) 27th August 1928

²³ Dixon. Marton. *Public International Law*, (Blackstone Publishers, 4th edition 1998), P.198

²⁴ United Nation Charter., Article.103

²⁵ <http://www.lcnp.org/global/iraqstatement3.htm> (last time visited on 03/10/08)

self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security"

Under Article 51 of the UN Charter, the triggering condition for the exercise of self-defense is the *occurrence* of an armed attack "*if an armed attack occurs*". Notwithstanding, the literal meaning of that language, some, though not all, authorities interpret Article 51 to permit anticipatory self-defense in response to an "*imminent*" attack. Neither of those circumstances was existed at that time, United State's use of force against Afghanistan was unlawful and does not establish the right of collective self-defence or anticipatory self-defence under International Law or United Nation Charter.

However, generally recognized guide to the conditions for collective self-defense is Daniel Webster's statement regarding the *Caroline* affair in 1837 "*Self-defense is justified only when the necessity for action is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.*"²⁶. A modern version of this approach in this respect is as under:

"The development of the law, particularly in the light of more recent state practice, in the 150 years since the Caroline incident suggests that action, even if it involves the use of armed force and the violation of another state's territory, can be justified as self defence under international law where:

- a) An armed attack is launched, or is immediately threatened, against a state's territory or forces (and probably its nationals);*
- b) There is an urgent necessity for defensive action against that attack;*
- c) There is no practicable alternative to action in self-defence, and in particular another state or other authority which has the legal powers to stop or prevent the infringement does not, or cannot, use them to that effect;*

²⁶Letter from Daniel Webster, Secretary of State, to Lord Ashburton, August 6, 1842, reprinted in 2 John Bassett Moore, (A Digest of International Law, 1906),p.409

d) *The action taken by way of self-defence is limited to what is necessary to stop or prevent the infringement, i.e. to the needs of defence...*²⁷

The Charter of the United Nations provided another way of the collective use of force, the Security Council of United Nations. The use of force by the Security Council recognizes only international police action by the United Nations Charter. The methods for carrying out such action are set out in Articles 42, 43 and 47 of the Charter, which provide that the Council shall “*undertake*” air, land and sea military operations,²⁸ and that the necessary forces for such operations shall be made available to it by member states “*on the basis of special agreements*”.²⁹ These forces are to be controlled by a command Committee, which is in turn dependent on the Security Council.³⁰

C) Concept of Uniting for Peace under United Nation's Charter:

The Charter gives the United Nation's Security Council “*the primary responsibility of maintenance of international peace and security.*” But long ago, the members of the United Nations recognized that due to the permanent members veto powers, impasses would occur within the Security Council. They set up a procedure for insuring that such stalemates would not prevent the UN from carrying out its mission to “*maintain international peace and security.*” Uniting for Peace is a legitimate United Nation mechanism. The titled “*Uniting for Peace*”, Resolution 377 of 1950 was the solution to this problem. The Resolution provides that, “*if because of the lack unanimity among permanent members of the Security Council, the Council cannot maintain international peace, the General Assembly “shall consider the matter immediately...”*” It provides that if, because of the lack of unanimity of the permanent members of the Security Council (France,

27 Jennings, R, Sir., Watts, A, Sir., *Oppenheim's International Law*, (6th edition, Longman Publishers, London, 1990), P.140

28 Artical42, United Nation Charter

29 Artical43, United Nation Charter

30 Artical47, United Nation Charter

China, Russia, Britain, and United States), the Council cannot maintain International Peace and Security. The General Assembly can meet within 24 hours to consider such matter and can recommend collective measures to maintain or restore international peace and security.

The procedure to adopt this is, If one of the UN Member State requests that a meeting be convened to consider adoption of such a resolution and either Seven Members of the Security Council or a majority of the Members of the General Assembly agree, and come together to discuss the threat to International Peace. This Resolution was drawn on, perhaps most notably, during the Suez crises.³¹

Whereas, US has based its military action against the Taliban and Al-Qaeda on Article 51 of the UN Charter, the inherent right to self- defence in the face of an armed attack. The inherent right of individual and collective self-defense, recognized in Article 51 of the UN Charter, has come in for sustained scrutiny in recent years. Two interpretative tendencies, moving in opposite directions, can be observed.³²On the one hand, the United States government has argued for a broadened understanding of the article 51 of the UN Charter, contending, e.g., that it should be construed to permit self-defense in a range of circumstances in which an armed attack has neither occurred nor is imminent. On the other hand, the International Court of Justice (ICJ) has taken an increasingly restrictive view of Article 51 of the UN Charter and the customary norms associated with it, e.g. by construing it to prohibit self-defense against attacks that do not reach certain level of gravity or whose source is not identified by convincing evidence.³³ The former trend gives great weight to the risk of attack by rogue states or terrorist

³¹ <http://www.ccr-ny.org> (last time visited on 02/14/08)

³² Ibid

³³ Military and Paramilitary activities in and against Nicaragua, (*Nicaragua vs America*), ICJ Reports, 1986. p.48

groups sponsored by them, the later trend emphasizes the risk that in the absence of substantial legal constraints, powerful states will be too prone to take recourse to violence.

In the second option for collective or individual use of force by the Security Council, in practice no international police action conducted by the United Nations has been carried out in this fashion. In the few cases, where the UN Security Council has set up international forces, it has always delegated its powers to the Secretary-General of the UN, who has concluded agreements with member states to secure the armed contingents, which have retained command of their operations. This was the case, for example, with the ONUC (Congo)³⁴, UNFICYP (Cyprus)³⁵ and UNIFIL (Lebanon)³⁶ operations, although these were instances of considerably less importance than the Gulf War, because the task of these forces was limited to acting as a buffer between the parties in conflict. Delegation of peace-keeping police actions to the Secretary-General by the Security Council is not explicitly provided by the Charter, but it is nonetheless to be regarded as legitimate since involvement of the Secretary-General, an agency independent of any government, is bound to provide guarantees of objectivity, impartiality and conformity with U.N Security Council directives.

However, "*Uniting for Peace*" should be used to require that no military action be taken against Afghanistan and Iraq, without the explicit authority of the Security Council. It could also mandate that the inspection teams be permitted to complete their inspections. We believe it unlikely that the United States and Britain would ignore such a measure. A vote by the majority of countries in the world,

³⁴ *Operation of the United Nations in Congo*, United Nations Security Council Resolution 143, July 14, 1960. www.un.org/Depts/DPKO/Missions/onuc.htm - 11k, (last time visited on 11/17/2007)

³⁵ *United Nations Peacekeeping Force in Cyprus*, www.un.org/Depts/DPKO/Missions/unficyp.htm - 13k, (last time visited on 11/17/2008)

³⁶ *United Nations Interim Force in Lebanon*, *United Nation*, Security Council Resolution 425 and 426 on March 19, 1978, www.un.org/Depts/dpko/missions/unifil/ - 10k, (last time visited on 11/17/2008)

particularly if it were unanimous, would make the unilateral rush to war more difficult.³⁷

Thus, the application of the basic law regarding self-defense under United Nation Charter and International Law, to present US confrontation with Afghanistan was straightforward. Neither Afghanistan attacked any state, nor was there any showing whatever that an attack by Afghanistan was imminent. United States and its Allies never took all the options provided by the United Nations Charter to resolve the matter amicably. Therefore self-defense does not justify the use of force against Afghanistan by the United States and its allies under both United Nation Charter and International Law.

2.2.2 VIOLATION OF THE UN SECURITY COUNCIL RESOLUTIONS 1368 AND 1373 OF 2001:

The reaction of the United Nations Security Council and North Atlantic Treaty Organization (NATO) to the terrorist attacks on the World Trade Center and the Pentagon has triggered a lively debate on the legal consequences, surrounding these events.³⁸ When assessing the impact of the current developments on International Law, it seems to be particularly important to take a closer look on the legal documents, whether they give any authorization of attacks on Afghanistan? The United Nations Security Council, the body with primary responsibility for the maintenance of International Peace and Security, passed two resolutions regarding the September 11 attacks: resolution 1368 on 12th September 2001 and Resolution 1373 on 28th September 2001. Neither resolution authorizes the use of force against Afghanistan.

In the days after 11th September 2001 there was widespread condemnation of the terrorist attacks on the US, within the United

³⁷ <http://www.lcnp.org/global/iraqstatement3.htm> (last time visited on 03/10/08)

³⁸ Dupuy., *The Law after the Destruction of the Towers*, http://www.ejil.org/forum_WTC (last time visited on (02/22/2008)

Nations, the General Assembly expressed both its sympathy and anger at the attacks and adopted a resolution on the condemnation of the terrorist attacks.³⁹ On 12th September the Security Council unanimously adopted Resolution 1368 which regarded the acts as "*threats to international peace and security*" and required states to work together to bring those responsible to justice, to respond the terrorist attacks in accordance with its Character responsibilities.⁴⁰

By the end of September, 2001, the Security Council further clarified the wide-ranging, steps and strategies that were to be taken to combat international terrorism, with the unanimous adoption of Resolution 1373 of 2001. These "*steps*" included duties upon states to suppress the financing of terrorism and to improve international cooperation in relation to counter-terrorism measures. In addition, this resolution reiterated the need to combat terrorism "*by all means*". Provision was made for the establishment of a Counter-Terrorism Committee, whose duties include the monitoring of compliance with the resolution's provisions and to which states were to report, within 90 days, the actions that they had taken to combat international terrorism.⁴¹ The sense of urgency with which states were to take action and also the commitment to cooperation was reinforced by the Security Council's adoption of Resolution 1377, 2001, which referred specifically to the situation in Afghanistan.⁴²

The United States and its allies have argued that the law is on their side. In particular, they have argued that certain United Nations resolutions i.e.1368 and1373 of 2001, and justify their war against Afghanistan. However, a deep analysis of the resolutions makes it very clear that the attacks on Afghanistan were never authorized by the

³⁹ For detail see, Press Release GA/9903, including the adoption of Resolution A/56/1 on the Condemnation of Terrorist attacks in the USA.

⁴⁰ United Nations Security Council Resolution 1368, September 12, 2001. (annex i)

⁴¹ United Nations Security Council Resolution 1373, September 28, 2001. (annex ii)

⁴² United Nations Security Council Resolution 1368, September 12, 2001. (annex i)

U.N Security Council and the attacks by United States and its allies, are totally illegal and in violation of UN Security Council Resolutions as well as United Nations Charter.

A) United Nation Security Council's Resolution 1368 of 2001:

Under Chapter VII of the UN Charter, the UN Security Council may adopt binding measures against states or authorize the use of military force where it finds that International Peace and Security are threatened. However, In connection with acts of terrorism, the Security Council has previously implemented sanctions against Libya,⁴³ Sudan⁴⁴ and Afghanistan⁴⁵. Whereas, the Security Council Resolution 1368 of 2001, makes no reference to Chapter VII of the U.N Charter and it contains no explicit sanctions upon Afghanistan under Chapter VII of the United Nations Charter.⁴⁶ The UN Security Council may adopt binding measures against Afghanistan or authorize the use of military force where it finds that International Peace and Security are threatened by Afghan government of Taliban. However, the Security council has not previously approved the use of military force in the fight against Afghanistan and international terrorism which clearly indicate that the Security Council had never authorized any use of force nor imposed any sanctions against Afghanistan after 9/11 terrorist attacks.

The U.N Security Council Resolution 1368 of 2001 strongly condemned the terrorist attacks on the U.S and declared that such acts were a threat to International Peace and Security. But United Nation's Resolution 1368 of 2001, does not recognize the U.S right to exercise force against Afghanistan and other states that may be

⁴³ United Nation Security Council Resolutions 748, 31st December 1992

⁴⁴ United Nation Security Council Resolutions 1054, 26th April, 1996

⁴⁵ United Nation Security Council Resolutions 1267, 15th October, 1999 and United Nation Security Council Resolutions 1333, 19th December 2000.

⁴⁶ United Nation Security Council Resolutions 1368, 12th October, 2001 (annex i)

deemed to have contributed to terrorism.⁴⁷ Here, reference may be made to the fact that the resolution acknowledges the right of self-defense, recognizing the inherent right of individual and collective self-defense in accordance with the Charter.⁴⁸ However, it should be noted that the right of self- defense follows from general International Law and from Article 51 of the UN Charter. Consequently, it does not require approval by the Security Council. The Security Council has been given no role in the exercise of the right of self-defense, other than that this right only applies under Article 51 of the UN Charter, until the Security Council has taken measures necessary to maintain international peace and security.

Furthermore, the approval of the use of force, in addition, the formulation concerning self-defense is part of the preamble to the resolution, not its operative part. This is in contrast, for example, to the U.N Security Council Resolution 678, adopted in 1990 after Iraq's invasion of Kuwait, which in the operative part of the resolution "*authorizes*" all member-states cooperating with Kuwait to use "*all necessary means*" to force Iraq to implement the council's resolutions and restore International Peace and Security in the region.⁴⁹

Furthermore, the wording of the Resolution 1368 of 2001 has been taken word by word from Article 51 of the UN Charter, and the resolution makes particular reference to the right of self-defense that exists under the terms of the UN Charter. This can only mean that the Security Council did not take a position on whether the UN Charter's conditions for the use of force in self-defense had been satisfied in the case then under consideration, in contrast to UN Security Council Resolution 661 of 1990, which also made reference to the right of self-

⁴⁷ United Nation Security Council Resolutions 1368, 12th October, 2001(annex i)

⁴⁸ Article 51, Chapter VII of United Nations Charter

⁴⁹ <http://www.canadianliberty.bc.ca/liberty-vs-security/gail-davidson-war-on-afghanistan.html> (last time visited on (12/02/2006))

defense but at the same time linked this right to the armed attack by Iraq against Kuwait.⁵⁰

It is also relevant that Resolution 1368 was passed on the day following the terrorist attacks, at a time when it was not possible to know with certainty, that who was behind the attacks or whether they had been planned from abroad.⁵¹ It has the presumption against it that the Security Council had, at that time, given unlimited authority to US for the use force against any state that had connections with terrorism in general or 9/11 attacks in particular. Nor were either the right of self-defense or the design of the resolution touched upon in statements made in the Security Council in connection with the resolution's adoption, though the USA as the finally, that no distinction would be made between terrorists and those who "harbor them" in terms of responsibility. Finally, it may be argued that the use of force is a far-reaching intrusion into state sovereignty and thus ought to require clear legal authority.

Given these arguments, it must be clear that, legally speaking, Resolution 1368 does not in itself approve the use of force on the part of the USA. It may be claimed, though, that the resolution represents political acceptance of the idea that the use of force in exercise of the right of self-defense may be appropriate in cases of terrorism. However, it is difficult to see that the Security Council could have been expressed in its opinion on the right of self-defense in a more non-committal way than through a simple reference to Article 51 of the UN Charter.

⁵⁰Geir, Ulfstein., *Terrorism and the Use of Force*, (Published in Security Dialogue Vol 34 No 2, June 2003, Department of Public and International Law, University of Oslo, Norway), pp. 153-168

⁵¹ Ibid

B) United Nation Security Council's Resolution 1373 of 2001:

The UN Security Council Resolution 1373 which was passed on 28th September, 2001 mainly deals with the financing of terrorism and places on member-states a duty to prevent and criminalize such financing.⁵² This resolution also refers in its preamble to the right of self-defense, it may be asked whether the Security Council therein approved the USA's right to use force in exercise of the right of self-defense? The relevant formulation is "*Reaffirming the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001)*". In contrast to the earlier Resolution 1368, this resolution was adopted under Chapter VII of the UN, though this may be explained by the fact that the resolution places demands on the member-states that are binding in International Law, inter alia with regard to the prevention of the financing of terrorism. Furthermore, in this resolution too, the formulation concerning self-defense is found in the preamble, not in the resolution's operative part. The wording of Resolution 1373 is just as general as that of Resolution 1368 and provides no explicit acknowledgement of the right on the part of the USA to use force against a particular state or states in exercise of the right of self-defense. And since no debate took place in the Security Council in connection with the adoption of Resolution 1373, there is no guidance to be found there with regard to how the resolution is to be interpreted.

The U.S.A and the UK informed the UN Security Council, by sending their letters to the President of the UN Security Council, that actions had been implemented against Afghanistan in self-defense in accordance with Article 51 of the UN Charter. In the letter from US, however, it was stated that the issue of self-defense might also be relevant with regard to organizations other than Al-Qaeda and states

⁵² United Nations Security Council Resolution 1373, 28th September 2001. Para 4.(annex ii)

other than Afghanistan. In a press statement from the President of the Security Council, it was announced that the Security Council met at the request of the U.S and the UK to be informed of measures that had been taken.⁵³ The Security Council took note of the letters from the two countries and its members 'were appreciative of the presentation. It has since been claimed that the Security Council that the two states were acting should take this as agreement in self-defense.⁵⁴ However, the President did not explicitly state that the Security Council endorsed the actions taken. Furthermore, a press statement by the President is not equivalent to a decision by the Council, nor even equivalent to a formal Presidential statement adopted by consensus and read out at a formal meeting of the council. Accordingly, this press statement should not be seen as a formal recognition by the Security Council of the lawfulness of the military actions in Afghanistan.

In view of the above, it may be concluded that, the Security Council has not approved use of force by the US, in exercise of the right of self-defense, neither against Afghanistan nor against or other states, in any of its resolutions.⁵⁵ The Security Council had never authoritatively taken a standpoint on whether the conditions for the exercise of the right of self-defense in accordance with Article 51 of the UN Charter have been satisfied. However, these resolutions may have legal significance as expressions of the Security Council's view that the right of self-defense has not been impaired through the Security Council's having taken 'measures necessary to maintain International Peace and Security' in pursuance to Article 51. Furthermore, the Resolutions' coupling of terrorism and self-defense may be a relevant

148United Nations, 2001d. *'Press Statement on Terrorist Threats by Security Council President,*(8 October', AFG/152 SC/7167).

⁵⁴ United Nations, 2001., *Provisional Verbatim Records Security Council, 12 September*, available on <http://www.pm.gov.uk/output/page3577.asp> (last time visited 09/19/2007)

⁵⁵ L. Frederic. Kirgis., *Security Council Adopts Resolution on Combating International Terrorism, Addendum*, 2001. <http://www.pm.gov.uk/output/page3577.asp> (last time visited 09/19/2007)

interpretation factor in an evaluation of the right of states to use force on the basis of terrorist acts.

The U.S, however, has not asked for legal approval of its military actions. It has preferred to act without formal international recognition. This is consistent with increasing unilateralism on its part,⁵⁶ seen in its rejection of the Kyoto Protocol on climate change, the International Criminal Court and other multilateral agreements. All the same, the political support from other states represented by the Security Council resolutions with regard to military measures taken against Afghanistan is welcomed by the US. But this support has not been given in an explicit form: the Security Council has chosen to make general references to the right of self-defense and measures against terrorism. At the same time, no countries, not even Afghanistan are specifically mentioned, and explicit reference is made to the provisions of the United Nations Charter concerning the use of force. These resolutions therefore, cannot be seen as support for absolutely any military measure against Afghanistan. Nor do they provide political support for the implementation of military measures against states other than Afghanistan.

2.3 INTERNATIONAL LAW OF WAR AND WAR WITH NO OPTION OF NUTERALITY IN AFGHANISTAN:

2.3.1 The Law of War: "*International Humanitarian Law*"

The "*Laws of War*" consist of the limits set by International Law within which the force required to overpower the enemy may be used, and the principles there under governing the treatment of individuals in the course of war and armed conflict. In the absence of such rules, the barbarianism and brutality of war would have known no bounds.

⁵⁶ Ness, Van, Peter., Gurtov, Mel., *Confronting the Bush Doctrine, Critical views from the Asia – Pacific*,(Routledge Csurzon publishers, London 2005), p.5

These laws and customs have arisen from the long-standing practices of belligerents; their history goes back to the Middle-Ages when the influence of Christianity and of the spirit of chivalry of that epoch combined to restrict the excesses of belligerents.⁵⁷ Under present war crimes rules, such acts as the killing of civilians, the ill treatment of prisoners of war, and military use of poison gases, and sinking of merchant ships without securing the safety of the crew are unlawful. The aims of these rules are not to provide a code governing the 'game' of war, but for humanitarian reasons to reduce or limit the suffering of individuals, and to circumscribe the area within which the savagery of armed conflict is permissible. For this reason, they were sometimes known as the "*Humanitarian Law of War*", or the rules of "*Humanitarian Warfare*".⁵⁸

2.3.2 VIOLATION OF GENEVA CONVENTIONS 1949:-

The Geneva Conventions and their Additional Protocols are part of International Humanitarian Law, a whole system of legal safeguards that cover the way wars may be fought and the protection of individuals. They specifically protect people who do not take part in the fighting (civilians, medics, chaplains, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war).⁵⁹ The clear violation of these rules by the Bush administration to deal with the Guantanamo Bay detainees makes clear that US have no respect for the international rules regarding POW or Enemy combatant for their free and impartial trial and refused these rights even their own nationals. But Bush administration has also failed to justify their action even under their domestic laws. The US Supreme Court held in Hamdi Vs Ramsfeld on 28th June, 2004 that US citizens

⁵⁷ Q.C, Stark, J. G., *Introduction to International Law*. (10th Edition, Butterworth London & co publishers, 1989), P 552

⁵⁸ Antoniou, T. Crish., and W, Michael, Riesman., *The Laws of War, A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflicts*, (Vintage Publishers London, 1994). P 232

⁵⁹ Ibid. p 254

designated as enemy combatants by the Executive Branch have a right to challenge their detainment under the Due Process Clause.⁶⁰The Principal International Institute also, concerned with this branch of International Law is that at San Remo, Italy, known as the International Institute of Humanitarian Law.

The detainees of Guantanamo Bay have been trialed by the Military Commission set up by the Bush Administration and denied all POW status rights under Geneva Conventions 1949. It violates the fundamental rights of the detainees to heard before a proper platform, however, US Supreme court held in the case Hamdan Vs Ramsfeld (June, 29 2006) that military commissions set up by the Bush administration to try detainees at Guantanamo Bay lack "the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949."^[1] Specifically, the ruling says that Common Article 3 of the Geneva Conventions was violated.⁶¹

There are two kinds of status of the parties outside the range of hostile relations (a) status of neutrality in a war fare and (b) the status of non participation or non-involvement by states or non-state entities in non-war conflict. The later status is sometimes loosely referred to as neutrality but there are certain differences between it and neutrality proper.⁶² It is perhaps better to refer to between it and neutrality proper. It is perhaps better to refer as quasi-neutrality or in certain cases simply as non-belligerency.

⁶⁰ Yaser Esam Hamdi and Esam Fouad Hamdi as next friend of Yaser Esam Hamdi, Petitioners Vs Donald H. Rumsfeld, Secretary of Defense, et al.542U.S.547,(24th June 2004) http://www.supremecourtus.gov/opinions/casefinder/casefinder_1984-present.htmls (Last time visited on 06/22/2009)

⁶² Salim Ahmed Hamdan, v. Donald H. Rumsfeld, United States Secretary of Defense; John D. Altenburg, Jr., Appointing Authority for Military Commissions, Department of Defense; Brigadier General Thomas L. Hemingway, Legal Advisor to the Appointing Authority for Military Commissions; Brigadier General Jay Hood, Commander Joint Task Force, Guantanamo, Camp Echo, Guantanamo Bay, Cuba; George W. Bush, President of the United States,. 548 U.S. 557 (29th June 2006) http://www.supremecourtus.gov/opinions/casefinder/casefinder_1984-present.htmls (Last time visited on 06/22/2009)

2.3.3 The Concept of Neutrality under International Law:

In its popular sense, neutrality denotes the attitude of a state which is not at war with belligerents, and does not participate in the hostilities. In its technical sense, however, it is more than an attitude and denotes a legal status of a special nature, involving a complex of rights, duties and privileges at International Law, which must be respected by belligerents and neutrals alike. This status of neutrality has been the subject of a long and complicated development, at each stage of which the content of the status has varied with the nature of warfare, and with the conditions of a political power in the international community of states.

The concept of Neutrality gradually developed through bilateral treaty stipulating that neither party to the treaty should assist the enemies of the other if one party were engaged in war.⁶³ In the nineteenth century, neutrality developed much more extensively than in all its previous history. Most historians attributed this to a part played by the United States as a neutral in the Napoleonic Wars, when Great Britain was aligned against Napoleon and his continental satellites.⁶⁴ The government of the United States refused to allow the equipping or arming of vessels in American territory on behalf of the belligerents, and it prevented the recruitment of American citizens for service in the belligerent forces. At the same time Great Britain was endeavoring to block neutral commerce with France, and many rules as to neutral and belligerent rights evolved as compromise solutions of a conflict of interests between the British and United States Governments. Also during the years of the Napoleonic Wars, Lord Stowell presided over the British Prize Court and the newly developing law as to neutral rights and duties owed much to his intellect and

⁶³ Ibid. p 446

⁶⁴ Ibid. P 562

genius as a judicial legislator.⁶⁵ Later in the century the American Civil War gave rise to several disputes on questions of neutrality between the legitimate United States Government and Great Britain. Out of these arose the famous Alabama Claims Arbitration of 1872,⁶⁶ concerning the construction and fitting in England of ships with weapons. The United States Government alleged a breach of neutrality in that the British Government had failed to exercise due care to prevent the equipping of the vessels with weapons, their dispatch to the Confederates to fight against American government, and the claim for damage suffered through the activities of the vessels, one of those was The Alabama, in the Civil War was sustained by the arbitrators.

Other important factors which favored the development of neutrality in the nineteenth century were the permanent neutralization of Belgium and Switzerland, which supplied useful precedents for neutral rights and duties, and the general growth of great unified sovereign states. It was commercial intercourse with belligerents without being drawn into war, as it was plainly to the interests of the belligerents to prevent assistance being given to their enemies by such countries.⁶⁷ Moreover, conditions were peculiarly favorable to neutrality in as much as the principal wars fought in the nineteenth century were wars of limited objectives, unlikely to embroil states other than the participants, so that there was little risk of threat to neutrals as long as they observed the rules. In these circumstances the generally recognized rules of neutrality, some of them embodied in instruments such as the Declaration of Paris 1856, and in The Hague Convention of 1907, commanded the support of, as they corresponded to the interests of most states.

⁶⁵ Ibid. P 563

⁶⁶ Dixon, Marton, Robert., Me, Corquodale., *Cases and Material on Public International Law*, (4th edition Oxford University Press, New York 2003), P 238

⁶⁷ Antoniou, Crish, T. and Michael, Riesman., *The Laws of War, A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflicts*, (Vintage publishers London, 1994), P 334

2.3.3 Commencement of Neutrality:

For the commencement of Neutrality, Immediate notification of neutrality is desirable, and is regarded as necessary by most states. Although, a non-belligerent state is entitled to declare itself as a neutral, it is not under any legal obligation to do so. In the Second World War, immediately after its outbreak in September 1939, almost all neutral states announced their neutrality at once and specifically communicated the fact to the belligerents. Certain states were then members of the League of Nations, and the declarations of neutrality were regarded as necessary statements of intention not to be bound by the obligations of the League Covenant.

A) Concept of Neutrality and United Nations Charter:

Member states of the United Nations have no absolute right of neutrality. The states may be under a duty to apply enforcement measures against a state or states engaged in war under article 25 of the UN Charter which provides that;

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter"

Paragraph 5 of article 2 of the United Nations Charter further provides that:

"All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action".

United Nations Charter bound member states to give assistance to the United Nations, in any action under the Charter and to refrain from giving assistance to any state against which preventive or enforcement action is being taken by the Organization. However the

war against terrorism in Afghanistan was neither authorized by United Nations nor by the United Nation's Security Council. In this respect the two resolutions 1368 and 1373 of 2001 which were passed by the United Nation's security Council before the attacks on Afghanistan only called other member states to work together to bring those responsible to justice, information sharing, criminal investigations to respond the terrorist attacks in accordance with its Character responsibilities. Therefore, there was no general duty upon the other member states to engage or participate with the allies in the war against terrorism.

B) Violation of the Law of Neutrality in War against Afghanistan:

In the wake of 9/11 terrorist attacks United States of America and U.K started war against Afghanistan alleging the government of Taliban for providing shelter and support to the terrorists on their state territory. This war was officially named as "*War against Terrorism*". President Bush, while Initiated war against Afghanistan, very clearly and in a threatening manner asked the whole world "*either you are with us or with the terrorist*" and there was no option of neutrality for any state of international community to remain impartial against the illegal war against Afghanistan after 9/11 terrorist attacks. This is the violation of not only International law but also the right of neutrality of a state under United Nation's Charter.

Neutrality is not, however, completely abolished under United Nation's Charter. Even where preventive or enforcement action is being taken by the United Nations Security Council, as in Afghanistan,⁶⁸ certain member states may not be called upon to apply the measures decided upon by the Council or may receive special exemptions. Article 48 of the United Nation's Charter provides that:

⁶⁸ Roy, Arundhati,. *Why America Must Stop the War Now*, (She Magazine Monthly U.K, 28th November 2001)

"A) The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

B) Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members."

This allows member states to remain neutral in situation like Afghanistan as the Security Council have already taken security measures in United Nation Security Council's Resolution 1368 and 1373 of 2002 before the armed attack on Afghanistan after 9/11 terrorist attacks. In this event their status is one of "qualified" neutrality inasmuch as they are bound not to assist the belligerent state against which enforcement measures are directed, and must also assist the member states actually taking the measures. Article 49 of the United Nation's Charter provides that:

"The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council."

This Article only provide that if the Security Council have decided to take necessary measures to maintain international peace and security in the shape of mutual assistance but it did not enforced to wage war against any country who decided to remain neutral during hostilities. It seems also that where the "veto" is exercised by the permanent member of the Security Council so, that no preventive or enforcement action is decided upon with reference to a war, in such cases member states may remain absolutely neutral towards the belligerents.⁶⁹ Article 50 of the United Nation's Charter states as:

"If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures

⁶⁹ <http://indigo.ie/~goodwill/icnd/neutrality.html> (last time visited on 03/22/2008)

shall have the right to consult the Security Council with regard to a solution of those problems."

Under this article the states which suffered from the war have right under United nation's Charter to demand certain necessary economical measures to prevent its economy and all the states like Pakistan Iran and other Asian countries have right to consult with Security council. But, neither U.S.A and UK nor the United Nation gave any impotence to this fact which also greatly affected the neutrality of any state during war. Whereas, in the war against Afghanistan, Security Council have never imposed any kind of duty upon the member states to participate in the war against terrorism and no state can be forcefully invoke in this illegal war which clearly violates the provisions of the United Nations Charter and the article 5 of Washington Treaty by the NATO member countries in their war against terrorism, as article 52 of the Charter prohibits regional agencies to take any action without the authorization of United Nations Security Council and forcefully indulge other states of the region in war.

Chapter 3

NATO AND ISAF IN AFGHANISTAN

The North Atlantic Treaty Organization (*NATO*) also called the “*North Atlantic Alliance*” or the “*Western Alliance*”. It is a military alliance, established by the signing of the North Atlantic Treaty on 4th April 1949, with headquarters in Brussels, Belgium. The organization established a system of collective security whereby its member states agreed to mutual defense in response to an attack by any external party. *NATO*, a regional organization with the goal of restoring and maintaining the security of the North Atlantic area. After 9/11 terrorist attacks, *NATO* resolved on September 12, 2001 that the September 11 attacks were covered by Article 5 of the Washington Treaty. Therefore, all *NATO* members considered the September 11 attacks as an armed attack against all *NATO* members.¹ However, Intervention and use of force by *NATO* in Afghanistan infact have never been authorized by North Atlantic Council or United Nations Security Council prior to attacks by *NATO* forces in Afghanistan.

3.1 Violation of the United Nation’s Charter and the Security Council Resolutions:

A rational examination of International Law makes clear that the bombing on Afghanistan by the US and UK, not only lacks legal justification, but also expressly violates a number of legal

¹Varadarajhan, Siddharth,. *Threat to the World is NATO not Afghanistan*., Times of India, 19 October 2001

instruments and International Law, including the UN Charter and several international treaties on the suppression of terrorism. The legal foundation of the UN is embodied in the UN Charter, and expressly outlines for member states, obligations regarding the use of force, the right to self-defence, and the obligation of regional agencies such as NATO to act in accordance with the UN Charter.

NATO's intervention in Afghanistan, constitute a violation of Article 2(4), of the UN Charter. Article 2(4) of the UN Charter states as under:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN".²

Evidence of the coalition's willful violation of this mandate was abundantly clear in Tony Blair's much-publicized October 2 of 2001 speech that *"I say to the Taliban: surrender the terrorists; or surrender power. That is your choice."* While such a statement might get a warm reception from the three countries bombing Afghanistan, however, the demand has no legal basis for other countries.³ All the efforts to justify NATO's intervention in Afghanistan under UN Security Council Resolutions or Chapter 7 of the United Nation's Charter are the acts of distortion and convenience. Article 39 of the United Nations Charter provides that:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

Article 51 of the United Nations Charter provides tha;

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council

² <http://www.un.org/docs/scr/html> (last time visited on 03/08/2009)

³ <http://www.icj.law.glc.ac.uk> (last time visited on 02/15/2009)

has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Article 51 gives member states the narrow power to defend themselves against a continuing armed assault until such time as the Security Council intervenes to maintain and restore peace and security. Article 51 of the UN Charter, does not create any right to make retaliatory attacks or to engage in the use of force to repel anticipated armed attacks. However, Article 51 does not displace the obligation imposed on states by Article 2 (3&4) of the United Nations Charter.

Article 2(3):

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

Article 2(4):

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Furthermore article 52 of United Nation's Charter, restricts regional agencies to work, consistent with the purposes and principles of the United Nation's Charter. Article 52 of the United Nations Charter states as under:

Article 52:

"Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations".

This article 52 of the UN Charter clearly prohibits any kind of activities of the regional agencies in their peacekeeping actions,

inconsistent and violates with the United Nations Charter. It further provides that

"The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council."

It is also implies the duty upon the action taking states to take such action after and only when the United Nations Security allows, which is never authorized by the United Nations Security Council in this war against Afghanistan.

The Security Council's Resolution 1373 of September 28th 2001, affirming Resolution 1368 of September 12th 2001, does not authorized the armed attacks in Afghanistan. These resolutions condemned the September 11th attacks, affirm the Charter right to individual and collective self-defence and specifically direct member states to combat threats to International Peace and Security caused by terrorism in *"accordance with the Charter"*.⁴ Member states are called on to ratify the UN Conventions on Terrorism and to implement measures to ensure International Co-Operation in all matters necessary to the investigation, prevention and prosecution of crimes of terrorism. The resolution 1373 directs states to co-operate in such activities as information exchanges, criminal investigations and proceedings, bringing terrorist to justice under criminal law statutes and in taking measures *"in conformity with ... national and international laws including international human rights standards."*⁵ Nowhere does either of these important Security Council resolutions authorize the use of force against non-combatants or the use of force to overthrow the Taliban government.

⁴<http://www.canadianliberty.bc.ca/liberty-vs-security/gail-davidson-war-on-afghanistan.html>(last time visited on 12/02/2009)

⁵ For detail see, Press Release GA/9903, including the adoption of Resolution A/56/1 on the Condemnation of Terrorist attacks in the USA. <http://www.un.org/docs/gra/html> (last time visited on 06/20/2009)

3.1.2 Article 5 of the Washington Treaty:

This is an important point regarding Article 5 of the Washing Treaty, which makes common misconception that by invoking Article 5 of the Washington Treaty; NATO can provide legal justification for the attacks. However, it does not, because NATO resolutions cannot over-ride the provisions of the UN Charter, as the Charter does not provide legal authorization for the bombing of Afghanistan so these attacks were the violation of UN Charter.⁶ Whereas article 5 OF The Washington Treaty states as under:

*"The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such actions as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measure taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to respect and maintain international peace and security."*⁷

Furthermore, little attention is being paid to the fact that the strikes are inconsistent with the September 12th NATO's resolution.⁸ Although this resolution invoked Article 5 of the Washington Treaty that enables NATO countries to act collectively, the resolution in clear language barred any action until further decision by the United Nation's Security Council as *"No collective action will be taken by NATO until further consultations are held and further decisions are made by the North Atlantic Council"*.⁹ However, US and UK rejected this collective approach and put

⁶ <http://www.canadianliberty.bc.ca/liberty-vs-security/gail-davidson-war-on-afghanistan.html> (last time visited on (12/02/2006)

⁷ Ibid

⁸ Ibid

⁹ Alliance, Stephan, Walet., *Balancing and Bandwagoning in International Politics*, (Harper Colins Press,2002).p 264

together its own group of "allies", leaving the US in control of all aspects of the current bombing of Afghanistan and of any future war actions, including bombings of additional countries like Iraq.

However, United States and NATO violates International law by attacking Afghanistan, which was a sovereign independent state. NATO makes laws to suit its convenience as it goes along. The relevant International Law is likely to be changed *ex post facto* to legitimize the gross violations committed by NATO and the United State's allies in Afghanistan.¹⁰ Indeed, the United States has declared itself the prosecutor, judge, and executioner of whatever International Law it chooses to invent to advance its policy agenda.

3.1.3 Violation of NATO's own Charter:

The bombing of Afghanistan is a violation of NATO's own Charter, which claims it is a defensive organization and is "committed to force only if one of its members is attacked".¹¹ No member state of NATO was attacked. NATO's operation in Afghanistan was a violation of Clause 4 of the Declaration of Principles Guiding Relations between Participating States of the Helsinki Accords Final Act of 1975, which guarantees the territorial frontiers of the states of Europe.¹² According to this agreement, "The participating states will respect the territorial integrity of each of the participating states. Accordingly, they will refrain from any action . . . against the territorial integrity, political independence, or the unity of any participating state." It is very clear and pertinent that NATO not only violates International Law but also its own Charter.

¹⁰ Abraham, Thomas. *Is NATO Attack Justified*, (Hindu, 28 March 2002).

¹¹ <http://www.nato.org/north-atlantic-treaty/htm> (last time visited on 02/18/2009)

¹² <http://www.lrwc.org/pub2.php?sid=8> (last time visited on 02/18/2009)

A) Violation of Convention for the Protection of Cultural Property in the Event of Armed Conflict:

The bombing of Afghanistan results in the destruction of Afghan religious and historical sites, it will be in violation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.¹³ This convention was adopted in the light of two World Wars during which there was wanton destruction of cultural and historical property in Europe. President Woodrow Wilson and British Prime Minister Herbert Asquith first mooted it during the First World War.¹⁴ But the United States could do little to protest action destroying cultural properties since it has engaged in such actions from the air itself in Afghanistan and now in Iraq.

B) Violation of International Law regarding the Protection of civilians and Environment:

The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which specifically prohibits deliberate, attacks on civilians. Part 2, Article 13 of this convention states that *"The Provisions of Part 2 cover the whole populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war."*¹⁵ The Geneva Conventions Act (amended in 1995) of the United Kingdom specifically states that *"civilians shall not be the objects of attack"* and that *"civilians shall enjoy protection unless they take a direct*

¹³ Keith, W., *The united States Reconsidered the 1945 Hague Convention*, (International Journal of Cultural Property 3,no 1 2003). P97

¹⁴ Ibid. P 94

¹⁵ Crish, T. Antoniou., and Riesman, Michael, W., *The Laws of War, A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflicts*, (Vintage publishers London, 1994). P 297

part in hostilities".¹⁶ ²⁶ The attack on the Afghan radio station at night when only civilians, leading to the deaths of at least twenty, occupied it and serious injury to many more, constituted an intentional attack on civilians. This was mass murder, not collateral damage. Beyond the above, there may be several other international regulations about the environment that are being violated by the attacks on chemical plants, fuel storage areas, and refineries. For example, in the 1976 Convention on the Prohibition of Military or Other Hostile Use of Environmental Modification Techniques,¹⁷ and the 1977 Protocol 1 Additional to the Geneva Conventions, Article 55 states as under:

*"Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare, which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population".*¹⁸

The International Action Center of New York, among other organizations in Britain and elsewhere, has claimed that many of the American weapons used against in Afghanistan and now against Iraq utilize Radioactive Depleted Uranium (DU) for more efficient penetrating effect.¹⁹

C) Humanitarian Law and the Territorial Integrity of States:

Claims have also been made in the post 9/11 terrorist attacks, that Articles 1(2) and 55 of the UN Charter, which speak of self-determination of peoples, counter Article 2(4) of the UN Charter, which upholds the territorial integrity of states against external military attacks. If NATO had the right to intervene in

¹⁶ For detail see: Schedule 5, Article 52.1 and Schedule 6, Article 13.3 of Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (Amendments of 1995)

¹⁷ Jiri, Toman, Schindler, Dietrich., *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and other Documents*, (Martinus Nijhoff Publishers Dordrecht, The Netherlands, Henry Dunant Institute, Geneva, 1988), P 163

¹⁸ Ibid. P 621

¹⁹ www.iacenter.org (Last time visited on 06.13.2009)

Afghanistan on violation of Human Rights violation, does it now have the right to intervene in Iraq, Iran and North Korea where human rights violations are also taking place? Clearly, NATO cannot unilaterally invoke the 1948 Genocide Convention, the 1948 Universal Declaration of Human Rights, and other humanitarian laws and proceed to attack independent states. Only the Security Council can do so, but NATO deliberately by passed the Security Council, knowing that Russia and China would veto such an attack.

D) NATO's Aggression and War Crimes:

In account of the Nuremberg Trials of 1945-46, Justice Robert H. Jackson's clause on aggression defined that the "Chief Crime against Peace" for which indictments against the Nazi political leaders were prepared: (1) planning, preparation, initiation, or waging war of aggression, or war in violation of international treaties, agreements, or assurances or (2) participation in a common plan or conspiracy for the accomplishment of any of the foregoing.²⁰ An application of this definition to NATO's actions against Afghanistan shows criminal culpability that calls for its own separate war crimes trial. Indeed, the UN Human Rights Chief, Mary Robinson, warned that the International Criminal Tribunal, too, could try NATO, for the Former Yugoslavia (ICTY). Robinson pointed out that large numbers of civilians were "incontestably" killed, civilian installations were targeted, and "NATO remains the sole judge of what is or is not acceptable to bomb."²¹ And there is no doubt that

²⁰ Eugene, Davidson., *The Trial of the Germans: An account of the Twenty-Two Defendants before the International Military Tribunal at Nuremberg*, (Macmillan publishers New York, 1966). P 19

²¹ Crish, T. Antoniou., and Riesman, Michael, W., *The Laws of War, A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflicts*, (Vintage publishers London, 1994), P 135

NATO alliance violates international law and guilty of mass killing and material loss in Afghanistan.

No doubt, maintaining an alliance without predetermined external threats may serve notice to nonmembers that the security interests of the alliance countries will be protected. But a single military alliance without the prevalence of countervailing military power would be perceived as a serious threat to other states and will provoke them to seek appropriate military counterbalancing measures.²² Already there are moves among Russia, China, and India to forge a strategic partnership. Thus, the rationale for NATO's existence could become a self-fulfilling prophecy. NATO constitutes a standing provocation to the rest of the world, an alliance in search of an enemy, or needing to create one, in order to justify its existence. Thus far, NATO has found its mission--as absurd as it may sound to normal people except NATO enthusiasts--in pulverizing 10 million impoverished Serbs into the ground through a twenty-four-hour-a-day aerial bombardment. Meanwhile, Russia is not supposed to feel threatened by an expanded NATO and the attack on Serbia. Imagine the US response to a similar attack on Canada.

3.2 INTERNATIONAL SECURITY ASSISTANCE FORCES (ISAF) IN AFGHANISTAN:

International Security Assistance Force "ISAF" has a "Peace Enforcement" mandate under the Chapter VII of the United Nations Charter and to operate according to Security Council's Resolution 1386 of December 2001. It was created with the Bone Conference of December 2001 at which Afghan Opposition leader gathered to begin the process for reconstruction of Afghanistan by setting a new government scheme namely Afghan Transitional Authority

²² Ibid, P139

(ATA). ISAF's tasks were detailed in a Military Technical Agreement (MTA) of January 2002.²³ In carrying out this mission, *"ISAF conducts patrols throughout the 16 different police districts in Kabul and its surrounding areas. Over a third of these patrols are carried out jointly with the Kabul City Police"*. NATO took command and co-ordination of the International Security Assistance Force (ISAF) in August 2003. ISAF is NATO's first mission outside the Euro-Atlantic area. ISAF's mission was initially limited to Kabul. Resolution 1510 passed by the United Nations Security Council on 13 October 2003 opened the way to a wider role for ISAF to support the Government of Afghanistan beyond Kabul.

NATO is a key component of the international community's engagement in Afghanistan, assisting the Afghan authorities in providing security and stability, paving the way for reconstruction and effective governance." *This is one of the most challenging tasks NATO has ever taken on, but it is a critical contribution to international security"*²⁴ The North Atlantic Council (NAC), NATO's highest decision-making body, provides the political direction and co-ordination for the mission. The NAC works in close consultation with non-NATO nations taking part in ISAF and special meetings with these nations are held on a regular basis, based on the political guidance provided by the NAC, strategic command and control is exercised by NATO's main military headquarters, the Supreme Headquarters Allied Powers in Europe (SHAPE) in Mons, Belgium, led by the to the Supreme Allied Commander Europe (SACEUR). The Joint Force Commander (JFC) based at the Joint Force Command in Brunssum (The Netherlands), is responsible at the operational level for manning, training, deploying and sustaining ISAF.

²³ <http://www.asil.org/ilib/ilib0510.htm> (last time visited on 02/22/2008)

²⁴ <http://www.nato.int/issues/afghanistan/index.html> (Last time visited on 03/08/2008)

3.2.1 ISAF's Primary Object and Mission in Afghanistan:

The primary object of ISAF's role was "to assist" the Government of Afghanistan and the International Community in maintaining security within its area of operation. ISAF's mission was established to "assist the Government of Afghanistan in maintaining security within the ISAF Area of Responsibility (AOR) so that the Government of Afghanistan, as well as the personnel of the United Nations can operate in a secure environment"²⁵ in order to enable the government to build up of security structures in Afghanistan in accordance with the Bonn Agreement and as agreed in the Military Technical Agreement. ISAF supports the Government of Afghanistan expanding its authority to the rest of the country, and in providing a safe and secure environment to conduct free and fair elections, the spread of the rule of law, and the reconstruction of the country.²⁶

ISAF also coordinate with Civil Military Co-operation (CIMIC) projects, throughout its area of operations. The Civil Military Co-operation objectives are to assist the Commander of ISAF in his effort to support the Government of Afghanistan in maintaining and expanding security throughout the country, to support stabilization, reconstruction and nation-building activities, and to co-operate with the International Organizations and Non-Governmental Organizations (NGOs).²⁷ The CIMIC teams work in close co-operation with the local population and authorities and assess the situation concerning education, health, water, sanitation and internally displaced persons and returnees. They also initiate and monitor projects funded by either national or international donors.

²⁵ *Index to Proceedings of the Security Council-Fifty Seventh Year-2002*, (United Nation Publishers New York, 2003),p 127

²⁶ Conte, Alex., *Security in the 21st Century-The United Nations Afghanistan and Iraq*, (Ashgate Publishing Company England 2005),p286

²⁷ Douglas, A. Borer., *Super Power Defeated-A Comparison of Vietnam and Afghanistan*, (Ashgate publishers New York 2003), p.266

3.2.2 Functional Structure of ISAF:

ISAF is structured into four main components:

A) ISAF Headquarters:

It provides operation-level direction and planning support to the Kabul Multinational Brigade (KMNB) and conducts operational tasks in its area of responsibility. It liaises with and assists in the work of UNAMA, the Afghan Transitional Government and governmental and non-governmental organizations:

B) The Kabul Multinational Brigade:

The Kabul Multinational Brigade is responsible for the planning and conduct of patrolling and CIMIC operations on a day-to-day basis.

C) Kabul Afghan International Airport:

ISAF assists the Afghan Ministry of Civil Aviation and Tourism in the overall operation of the airport.

D) Provincial Reconstruction Teams (PRTs):

Provincial Reconstruction Teams (PRTs) are arranged as civil-military partnership to facilitate the development of a secure environment and reconstruction in the Afghan regions. As of 31 December 2003, the military element of the German-led Provincial Reconstruction Team in Kunduz became subject to the ISAF chain of command as a pilot project. Additional PRTs under ISAF command are being established.²⁸

²⁸<http://www.nato.int/issues/afghanistan/index.html> (Last time visited on 03/08/2007)

3.2.3 ISAF, UN authorized but not a UN Operation:

The Security Council resolution 1386 of 2002, approved unanimously on 20th December 2001, provided for the creation of ISAF, and its deployment to Kabul and the surrounding areas.²⁹ ISAF is a multinational force, consisting of 36 NATO nine partner and two non-NATO/non-partner countries. Although authorized by the UN Security Council. However, ISAF is not organized, staffed nor funded by the United Nations.³⁰

Participants in ISAF are expected to provide their own equipment and personnel and pay their own way. In addition to Turkey and the United Kingdom, contributing countries including Austria, Belgium, Bulgaria the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, New Zealand, Norway, Portugal, Romania, Spain, and Sweden most of these states signed a joint memorandum of understanding in London on 10 January 2002 to formalize their participation in ISAF. The United Kingdom initially offered to serve as lead nation for three months, seeking to hand over command responsibility to another country by 30th April 2002, but ultimately extending its role.³¹

3.2.4 Expansion of ISAF's role in Afghanistan:

ISAF is not a UN force, but it is deployed under a mandate of the United Nation's Security Council Resolutions relate to ISAF. ³² A detailed Military Technical Agreement between the ISAF Commander and the Afghan Transitional Government provides additional guidance for ISAF operations. Initially, individual nations volunteered to lead the ISAF mission every six months. The

²⁹ <http://www.un.org/docs/scr/html> (last time visited on 03/08/2007)

³⁰ <http://www.nato.int/issues/isaf/index.html> (last time visited on 03/10/2007)

³¹ Index to Proceedings of the Security Council-Fifty Seventh Year-2002, (United Nation Publishers New York, 2003), p. 131

³² For details please see: United Nations Security Council Resolutions No, 1386/2001 (annex i), 1413&1443/2002 and 1510/2003.

first ISAF mission was run by the United Kingdom, Turkey then assumed the lead of the second ISAF mission. The third ISAF mission was led by Germany and the Netherlands with support from NATO.

ISAF's mandate was initially limited to security assistance to Kabul. Resolution 1510 passed by the United Nation's Security Council on 13th October 2003 opened the way to a wider role for ISAF to support the Government of Afghanistan beyond Kabul. Following the UN decision³³, NATO decided to expand further its assistance for stability and security throughout Afghanistan on the basis of Provincial Reconstruction Teams and temporary deployments for specific purposes and events, this progressive expansion, started in the North of the country, is now underway.

A) Provincial Reconstruction Teams (PRTs):

PRTs are structured as a civil-military partnership and they demonstrate the commitment of the International Community to the reconstruction of Afghanistan. Only the military elements of PRTs are integrated in the ISAF chain of command. The primary purposes of PRTs are:

- To help the Government of Afghanistan extend its authority,
- To facilitate the development of a secure environment in the Afghan regions, including the establishment of relationships with local authorities,
- To support, as appropriate, security sector reform activities, within means and capabilities, to facilitate the reconstruction effort.

³³United Nations Security Council Resolution, 1510 of 2003. 13th October 2003

B) How the location of NATO's PRTs is determined?

The composition and geographical extent of PRTs is determined on recommendation by the PRT Executive Steering Committee, in consultation with the Supreme Allied Commander Europe (SACEUR), the Afghan authorities, and the Joint Force Commander and framework nations in light of the specific situation in the provinces in which they operate. Factors such as the security situation, the status of reconstruction, governance and the presence of other international agencies will play a role in defining the specific objectives of individual PRTs.

C) ISAF's Mandate under UN Security Council Resolution 1386/2001.

Following the establishment of a NATO pilot PRT in Kunduz under German lead last December, ISAF established permanent PRT presences in Mazar-E Sharif (UK), Meymana (UK), Feyzabad (GER) and Baghlan (NETH). Together with a Forward Support Base (a logistics hub) near Mazar-E- Sharif and temporary satellite presences in Sar-e-Pol, Samangan, Sherberghan, ISAF is thus being able to influence security in 9 Northern provinces of the country.

NATO is currently in the process of filling the requirements for expansion of ISAF to the West, with a view to establish new PRTs, as well as to incorporate existing PRTs, currently under the command of the US-led Coalition (Operation Enduring Freedom).

However, it seems that ISAF was there to help the Operation Enduring Freedom to tighten their hold and grip therefore, as part of the emergency supplemental request for fiscal year 2002, submitted to Congress in March, the Bush administration requested \$28 million in foreign military financing and \$200 million in economic support funds for Turkey. The countries were

required to provide their own funding, then why these blessings for the participating countries. This can be understood by the analysis of United Nations Security Council's Resolution no1386 of 2002 which states:

1) *"Calls upon the international security assistance force to continue to work in close consultation with the Afghan transitional administration and its successors and the special representative of the secretary-general as well as with the operation enduring freedom coalition in the implementation of the force mandate"*

2) *"For reasons of effectiveness, the United States central command will have authority over the former so that activities between the two factions do not conflict with each other, and to ensure that there is not interference to the successful completion of operation enduring freedom."³⁴*

As it is clear, that US illegally attacked Afghanistan, without having even a single rational right of attack, then why ISAF was then deployed in Afghanistan. Just to legalize their illegalities and give legal cover and mask to further crimes they will commit. And then work under operation enduring freedom for reason of effectiveness and in order to prevent interference in their job and mission so to complete their mandate. It was a joke with international and mission so to complete their mandate. It was a joke with international community and UN Charter and was as providing justification to operation enduring freedom.

3) *"Authorizes the member states participating in the international security assistance force to take all necessary measures to fulfill its mandate"³⁵*

How authorizes and gives free had to complete its mandate, which is to work with afghan government for peace and security, but as been mentioned above shall take logistic, communication

³⁴ <http://www.un.org/Docs/sercs/2001/sc2001.htm> (last time visited on 03/10/2007)

³⁵ Ibid

and information support form operation enduring freedom. Will they be able to take all necessary measures?

4) "Recognizes the need to strengthen the international security assistance forces, and in this regard falls upon member states to contribute personnel, equipment and other resources to the international security assistance force"

Despite the fact that America's attacks were illegal and never been authorized by United Nations, despite of this fact, United Nation's Security Council deployed ISAF with a mandate to help U.S. forces complete their task then asked the countries to contribute personnel; equipment and other resource form their own! Why to have burden of other's wrongs on resources from their own? Why to have burden of other's wrongs on yourself and United Nations asks that. Why the personnel from other countries, funded and provided equipment form US of America's Government?

5) "Stressing the inalienable right of the Afghan people themselves freely to determine their own political future"

6) "Reaffirming its strong commitment to the sovereignty, independence, Territorial integrity and national unity of Afghanistan"

7) "Recognizing that the responsibility for providing security and law and order throughout the country resides with the Afghans themselves"³⁶

However, the Global governance activities in Afghanistan include UNSMA and UNAMA, Operation Enduring Freedom. United Nations Special Representative, ISAF, and United Nation Security Council's decisions on fighting against terrorism, all these measures, which were

³⁶Ibid

taken for the sovereignty of the Afghanistan and Afghan people, infact violates the sovereign right of Afghan people and Afghanistan.

United Nations Security Council's Resolution 1386 also confirms on the one had the "*strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan*", on the other hand imposed legal limits to this sovereignty. The Bonn Agreement describes among other things, "*the existing laws and regulations, to the extent that they are not inconsistent with this agreement of with international legal obligations to which Afghanistan is a party.*"³⁷ Yet the limits on sovereignty in world society go even further. The Security Council in resolution 1386 of 2001 stressed upon, that all Afghan forces must adhere strictly to their obligations under human rights law, including respect for the rights of women, and under International Humanitarian Law. This is declaratory and describes the status of Public International law that limits all sovereigns of the world. Consequently, international law becomes a functional equivalent to national constitutions, in so far as it restricts the sovereignty of the sovereigns. Are operations like Operation Enduring Freedom, the Security Council, ISAF and UNSMA bound in the same way by international law, as is Afghanistan?³⁸The UN is now dominated by the United States and other NATO members, because these powerful and wealthy countries are jointly and separately capable of providing substantial economic rewards to or inflicting severe economic punishments on those who support or do not support their military actions.

³⁷ <http://www.nato.int/issues/afghanistan/040628-factsheet.htm> (last time visited on 03/10/2009)

³⁸ Douglas, A. Borer., *Super Power Defeated-A Comparison of Vietnam and Afghanistan*, (Ashgate publishers New York 2003), p.266

However after an examination of United Nation Security Council's resolutions and other operations in Afghanistan, it seems that they are in favour and are hijacked by U.S. and U.K. authorities, by deploying ISAF force in Afghanistan and gave legal cover to what we are seeing now in Afghanistan and Iraq.

3.3 Critical Appraisal of:

- A) **Bonn Agreement 2001:**
- B) **Afghanistan Compact 2006:**

A) Bonn Agreement 2001:

After the ousting of the Taliban regime, Afghan opposition leaders signed Bonn Agreement in 2001, to begin the process of reconstructing their country by setting up a new government structure, namely the Afghan Transitional Authority (ATA).³⁹ The successful formation of a new Afghan government in Bonn was a great relief to US, UK, and UN leaders coming as it did more than three weeks after the surrender of Kabul and just one day before the final route of the Taliban in Kandahar. But the agreement generated substantial dissent among many Afghan leaders who had spent the previous month consolidating new positions of power throughout the country. The concept of an UN-mandated international force to assist the newly established ATA was also launched to create a secure environment in and around Kabul and support the reconstruction of Afghanistan.

The interim government fashioned in Bonn essentially reflected a compromise between the predominant Tajik interests, who gained the powerful defense, interior, and foreign ministries,

³⁹<http://www.nato.int/issues/afghanistan/040628-factsheet.htm> (last time visited on 03/10/2009)

and those of President Hamid Karzai, a Pashtun royalist.⁴⁰ But neither Karzai nor the other (much weaker) Pashtun members of the administration can reliably command the loyalty of all the Pashtun factions, not even all the decidedly anti-Taliban ones. President Karzai lacks significant military power that he can reliably call his own and final defeat of the Taliban in the south was mostly due to the action of US air power and the ground forces. President Karzai dependent militarily on US forces, whose continuing operations in Pashtun areas, especially bombing runs, have been a divisive, not a unifying factor there. So there was tension between President Karzai's source of military power and his need to build his ethnic political base. All this weakened his position *Vis a Vis* the other interests represented in the government. President Karzai's relative weakness parallels that of the interim government. It is dependent on the ethnic and warlord militias allied with it, most of who are not entirely reliable.

The diffuse character of military power in post-Taliban Afghanistan constitutes a substantial limitation on the government's effective authority. Of course, the President Karzai government can call on US support whenever it needs it. But US priorities were not identical to those of the interim government. Principally, the United States was engaged in a punitive expedition and a manhunt, not a nation-building exercise.

Peacekeepers for Afghanistan too little, too late under pressure, delegates to the Bonn meeting agreed to deployment of an International Security Assistance Force (ISAF) for Afghanistan. The new government on 6 January 2002 signed a military technical agreement. But the agreed force is too small (4,500 troops) to

⁴⁰ Kathy, Gannon., *New Afghan interim administration clearly favors the Northern Alliance*, (AP World stream, 6 December 2001).

accomplish the necessary stability tasks and it comes too late. It was supposed to fully deploy to five Afghan cities by mid-January 2002. ⁴¹Peacekeepers could have played an essential role much earlier than as early as when Afghan cities began to fall to the Northern Alliance in mid-November, 2002. Indeed, the British were ready to deploy several thousand troops in mid-November.⁴²

Deployment of a large, outside stability force could have substantially mitigated the challenges faced by the interim government, dampened the potential for internecine violence, and facilitated humanitarian relief efforts. Such a force might also have served to support disarmament efforts and train a new national army but it remained completely fails to get the required results. Because, minimally adequate performance of these missions would require a contingent of at least 30,000 high-quality troops, assuming substantial support from neighboring countries and Afghan government forces.⁴³ Peacekeeping troops might be divided among the major cities and cross-road towns, boundaries between ethnic militias as needed at that time, humanitarian crisis areas, and militia liaison units. A portion of ISAF forces might also be set apart as a rapid reaction component, a job best left to US military units and air power. Opposition to either a large or early-deploying peacekeeping force was of two quarters:

The Afghan militias, especially the Uzbek and Tajikistan ones, and Russia generally opposed peacekeeping forces of any size other than symbolic, understanding perfectly well that such forces would counter-balance their power. Pressed into accepting peacekeepers,

⁴¹ Arostegui, Martin., *No Plan for Afghan Disarming*, (United Press International, 5 January 2002), p.224

⁴²Taylor, Norton, Richard., *"The fall of Kabul: Next phase: British ground forces on short notice: Soldiers may be used in frontline operations*, (The Guardian London, 15 November 2000), p. 2.

⁴³ International Institute for Strategic Studies. *"Peacekeeping Operations," The Military Balance 1999-2000*, (London Oxford University Press, 1999). p123

they wanted to see them restricted to the capital and tucked away for emergency use only.⁴⁴ The United States also resisted the early insertion of peacekeeping troops. The principal reason for US opposition was concerns that such forces might become targets or crimp US freedom of action against Taliban and Al Qaeda suspects.⁴⁵ By late November of 2002, US opposition to the quick deployment of peacekeepers and the full restoration of humanitarian efforts had begun to fray relations with other international coalition partners.⁴⁶

B) Afghanistan Compact 2006:

The Compact is the result of consultation between the Government of Afghanistan, the United Nations and the international community represents a framework for co-operation for the next five years. The agreement affirms the commitment of the Government of Afghanistan and the international community to work towards conditions where the Afghan people can live in peace and security under the rule of law, with good governance and human rights protection for all, and can enjoy sustainable economic and social development.

The Afghanistan Compact, launched on 31 January 2006 at a conference in London when the growing insurgency was attracting increasing attention, long-term efforts to build the solid governmental institutions a stable Afghanistan requires are faltering. Following conclusion of the Bonn process, which created the country's elected bodies, the Afghan government and the international community committed at the London Conference (31st January To 1st February 2006) to the Afghanistan Compact,

⁴⁴ Hoyos, Carola, and Nicol, Alexander, *US and Russia Delay Troops' Arrival*, (Financial Times, 13 December 2001)

⁴⁵ Ibid

⁴⁶ Michael, R. Gordon, *U.S. and Britain at Odds Over Use and Timing of Peacekeeping Troops*, (The New York Times, 2 December 2001), p. 8

which identified “*three critical and interdependent areas or pillars of activity*” over five years, security; governance, rule of law and human rights and social and economic development.⁴⁷ The government signed on to realizing a “*shared vision of the future*” for a “*stable and prosperous Afghanistan*”, while over 60 nations and international institutions promised to provide the necessary resources and support.

The Compact is meant to bring all Afghan stakeholders into the process of reconstructing the country while measuring progress in areas as diverse as institution-building and delivery of services at the provincial level, nationwide security sector reform, passage of business organization laws and reduction in the numbers of those suffering from hunger. However, even without the insurgency, many of its timelines and benchmarks are overly ambitious, with little prioritization and sequencing. Implementation risks being approached too much as a bureaucratic matter of ticking off a formal checklist rather than a serious commitment at a high political level, Afghan and international to do the tough work necessary to build a state genuinely based on rule of law.

The Afghanistan Compact’s Joint Coordination and Monitoring Board (JCMB) consisting of Afghan ministers and major international players issued a relatively robust first public report in November 2006, emphasizing among other things the need to reform the interior ministry.⁴⁸ Its recommendations need to be actively pursued but the Board’s own unwieldy nature was a serious bar to progress. It meets quarterly and has yet to acquire a

⁴⁷ <http://www.crisisgroup.org/home/index.cfm?l=1&id=4631> (Last time visited on 02/22/2008)

⁴⁸ <http://www.ands.gov.af/ands/I-ANDS/afghanistan-compacts-p1.asp>(Last time visited on 02/22/2008)

full-time, independent secretariat. Between sessions there is little international engagement in the process.

State-building and counter-insurgency efforts must be seen as complementary. To advance the Compact in 2007, the Afghan government and its international supporters have concentrated on:

- *Countering the flourishing culture of impunity, which is the enemy of genuine reform;*
- *Addressing the widely varying capacity of ministries to deliver on commitments;*
- *Developing a comprehensive framework for sub-national governance; and*
- *Bringing the hitherto largely ignored legislative branch into the heart of the governance process.⁴⁹*

By refusing to exclude undesirable elements from positions of power in the new institutions because it was thought they could help on priority matters such as the struggle against terrorism, the international community all too often honored the Bonn Agreement more in letter than spirit. State building was warped from the start. To serve its own interests and those of the Afghan people better, the international community must show more spines by demanding serious steps of the Prime Minister Karzai government to remove corrupt officials and establish clearer time-tables for action, and it must be prepared to impose penalties when the government fails to implement commitments to end impunity. Even at the cost of some short-term pain, the focus must remain on the Compact's long-term goal of a "*democratic, peaceful, pluralistic and prosperous state*". An over view of both these land mark agreements make it clear that it proves to be a great failure for the international community and peace keeping process in Afghanistan.

⁴⁹Conte, Alex., *Security in the 21st Century-The United Nations Afghanistan and Iraq*, (Ashgate Publishing Company England 2005), p.286

3.4 Failure of War against Terrorism in Afghanistan:

Having identified Osama bin Laden and his Al-Qaeda as the central terrorist enemy, and the Taliban as cohorts in crime for providing sanctuary for Al-Qaida, the US supported by the international community, launched the war on terrorism in Afghanistan on October 7, 2001. Massive air power sent Osama Bin Laden and Al-Qaeda on the run and toppled the Taliban government in Kabul with the surviving Taliban leadership also going underground.⁵⁰ A massive haul of prisoners resulted and many were taken to Guantanamo Bay, Cuba, to be incarcerated with no trial or Prisoner of War protection, as required under the Geneva Conventions. As the war in Afghanistan unfolded in the full glare of the international media, the horror of the "Daisy Cutters" and "Bunker Buster" bombs against a hapless Afghan population first began to create space for the terrorists. The killing of POWs at a camp, Qila Jhangi in Afghanistan,⁵¹ and the death by suffocation and shooting of prisoners incarcerated in containers of trucks added to the tales of horror relating to the conduct of the US led war in Afghanistan. ⁵²Gradually, in the face of these developments, the horror of 9/11 diluted with a growing sense that the US was now actively targeting Muslim, both abroad and within the US, under the garb of the "war on terror". All these factors created space for the terrorists in terms of shelter and even future recruitments. The framing of the terrorist issue within a religious framework, the notion of "Islamic terrorism" –also allowed space to the terrorists on the run.

⁵⁰ Christopher, Greenwood., Professor., *International Law and the War against Terrorism*, (International Affairs78,2002), p.337

⁵¹ <http://www.paktribune.com>(last time visited on 03/26/2007)

⁵² <http://www.campxray.org/> (last time visited on 03/26/2008)

So the “war on terror” in Afghanistan and Iraq, failed to adopt a basic strategy, that of space denial to the terrorists. After all, the war was an unconventional war with an ill-defined and mobile enemy, so the first goal should have been of military and political space denial, but this was never part of the US strategy. Sheer military power was seen as the counter to the terrorist threat. To make matters worse, the US then dissipated the focus of the war itself on the transnational network of terrorism, by moving into Iraq through an illegal invasion of a sovereign state which had no links to Al-Qaeda or Osama Bin Laden. Bush’s invasion of Iraq also added a new dimension to the terrorism issue that of Weapons of Mass Destruction (WMD).⁵³ The US began its new doctrine of the “axis of evil” and “rogue states” with WMD. That no WMD were found in Iraq has since shown the Iraq invasion for what it was an effort to enforce regime change, as in Afghanistan and control energy resources of Iraq.

3.5 Impact of War on Terrorist:

The impact of the Iraq war on terrorist recruitment was admitted by the CIA Director, Porter Goss, before the Senate Select committee on Intelligence, in February 2005, when he stated that, “Islamic extremists are exploiting the Iraqi conflict to recruit new anti-US jihadists”... *These jihadists who survive will leave Iraq experienced and focused on acts of urban terrorism*... *They represent a potential pool of contacts to build transnational terrorist cell, groups and networks in Saudi Arabia, Jordan and other countries.*⁵⁴ According to Goss, Abu Musab Zarqawi, a Jordanian terrorist, who joined Al-Qaeda after the US invasion of Iraq, hoped “to establish a safe haven in Iraq” from where he could operate

⁵³Paul, Hoggett., *Iraq: Blair's Mission Impossible*, (British Journal of Politics and International Relations, Blackwell Publishing Volume 7, Number 3, August 2005), pp. 418-42

⁵⁴ Ibid

against Western states and certain Muslim governments.⁵⁵ And Vice Admiral Lowell Jacoby, Director of the Defence Intelligence Agency admitted, to the same Senate panel that US “policies in the Middle East fuel Islamic resentment.”

The massive increase in terrorist counter attacks against American targets finally led the US government to actually abandon the publication of its annual report on international terrorism for the year 2004, which should have come out in early 2005. According to one report, the US government’s main terrorism centre concluded that there had been more terrorist attacks in 2004 than in any year since 1985 – the first year covered by its publication entitled, *“Patterns of Global Terrorism”*.⁵⁶ Even in 2004, the numbers of incidents for 2003 were undercounted, which led to a revision of the publication in June 2004 –two months later. What finally came out was a much higher number of significant terrorist attacks and twice the number of fatalities that had been presented in the original report.

So, clearly by all accounts, international terrorism had been on the increase in the aftermath of the internationally declared war against terrorism led by the US and UK allies, both in terms of intensity and operational milieu under International Law. Of course, in his acceptance speech at the Republican Convention in 2004, in New York, President Bush painted a picture which attempted to show that the war on terrorism was being won. As he put it: *“The government of a free Afghanistan is fighting terror; Pakistan is capturing terrorist leaders; Saudi Arabia is making raids and arrests; Libya is dismantling its weapons programs; the army of a free Iraq is fighting for freedom; and more than three-quarters of*

⁵⁵ White & Priest, *War Helps Recruit Terrorists, Hill Told*, (Washington Post, February 17, 2005).

⁵⁶ Jonathan, S. Landay, *Bush Administration Eliminating 19 Years Old International Terrorism Report*, KnightRider, April 15, 2005. <http://www.globalpolicy.org/empire/terrorwar/analysis/2005/041Selimreport.htm> (last time visited on 11/10/2008)

*Al-Qaeda's key members and associates have been detained or killed.*⁵⁷ At the politico-diplomatic level, there have been a plethora of global and regional conventions and agreements aimed at fighting terrorism, including focusing on the financing of terrorism, as well as number of UN Security Council Resolutions, including Security Council's Resolution 1377 of 2001 and the earlier Resolution 7158 of 2001.

However, on the other side, Osama bin Ladin and his deputy, Dr Ayman al-Zawahiri, as well as Taliban leader Mullah Omar, have neither been captured nor killed and they are still a phenomenon for U.S.A and its allies. Al-Qaeda seems to have "*bone global*", and Afghanistan has yet to become truly free, Presently, not only are there foreign forces controlling security, warlords still reign supreme in many regions and President Karzai, despite being elected, has his security controlled by U.S.A and NATO guards, Additionally, in Afghanistan, linkages between drugs, organized crime and terrorism have increased. As for Iraq, it is seen as under military occupation by the US and its allies and there is an almost daily increase in the intensity of terrorist attacks, In addition, both Asia and Europe have become more vulnerable to acts of terror and the Arab world is highly destabilized. So it is crystal clear that the war against terrorism is infact, a war against the Muslim states, the US, UK and their allies for the implementation of western interests in Afghanistan has imposed this illegal war. In a nutshell, the United States is actually engaged in a punitive expedition and a manhunt, not a nation-building exercise in Afghanistan and Iraq.

⁵⁷ Ibid

EPILOGUE:

Almost eight years have passed since dramatic terrorist attacks on highly symbolic American targets, the World Trade Center in New York and the Pentagon in Washington D.C. A rational examination of International Law makes clear that there is no nexus between 9/11 and the regime in authority in Afghanistan, therefore, the use of force in Afghanistan not only lacks legal justification but also expressly violates the United Nations Charter and several International Treaties on Terrorism. Neither International nor National law of any country authorized attacks on Afghanistan in the wake of 9/11 terrorist attacks in USA. No resolution of the United Nation's Security Council or the North Atlantic Treaty Organization could provide a legal justification for these attacks and none has done.

The United Nations Charter prohibits use of force and the threat of the use of force by the states in their international relations. The Charter specifically prohibits use of force in another state to topple for their governments. It goes without saying that all national and International laws forbid the killing of non-combatants, arguably all Afghan Chechens and Palestinians. The bombing and other use of force in Afghanistan, Iraq and Palestine has and will inevitably kill a large numbers of non-combatants. Mass killing of non-combatants is considered by the world community the most egregious of crimes.

In the War against Terrorism, infact the war against Afghanistan, a number of principles embodied in UN Charter and Customary International Law has been violated including tragically, the right to life of Afghan civilians, a right promised to all people when the UN was established in 1945. The legal foundation of the UN is embodied in the UN Charter, and expressly outlines for member states, obligations regarding the use of force, the right to Self-Defence, and the obligation of regional agencies such as NATO to act in accordance with the Charter. Article 2 of the Charter prohibits the use

or threatened use of force against another state, is a rule of Customary International Law and is universally binding even on the few states which are not members of the United Nations. This Article specifically prohibits *"the threat or use of force against the territorial integrity or political independence of another state"*. Evidence of the coalition's willful violation of this mandate is abundantly clear in war against Afghanistan.

Article 51 gives member states the narrow power to defend themselves against a continuing armed assault until such time as the Security Council intervenes to maintain and restore peace and security. Article 51 does not create any right to make retaliatory attacks or to engage in the use of force to repel anticipated armed attacks. Article 51 does not displace the obligation imposed on states by Article 2 of The Charter.

Article 52 of the UN Charter restricts regional agencies activities, such as NATO, inconsistent with the purposes and principles of the United Nations. This is an important point, gives the common misconception that invoking Article 5 of the NATO Charter *"attack against one is an attack against all"* provides a legal basis for the attacks. However it does not. NATO resolutions cannot override the provisions of the UN Charter, and the Charter does not provide legal authorization for the bombing of Afghanistan. Therefore, it is very clear that NATO and ISAF's Operation in Afghanistan is totally illegal and violates International Law and United Nations Charter.

Furthermore, the Universal Conventions and Protocols for suppression of terrorism, which have been developed under the auspices of the United Nations, as well as a number of Regional Conventions on Terrorism, were also open to participation by America and allied forces. These universal legal instruments, one amendment and two protocols to them serve as the global regime against terrorism. It provided important framework of International Co-

operation in combating terrorism. The UN Security Council's resolutions both passed before and after the 9/11 terrorist attacks, have called upon member states to ratify these International Instruments and to fully implement them through passage of the Domestic Legislation, necessary to fulfill obligations imposed by the conventions.

The Security Council Resolution 1373 of 28th September 2001, affirming Resolution 1368 of 12th September 2001, does not authorize the armed attacks. These resolutions condemn the September 11 attacks, affirm the Charter Right to Individual and Collective self-Defence and specifically directs member states to combat threats to International Peace and Security caused by terrorism in "*accordance with the Charter*". Member states were called upon to ratify the 11 UN Conventions on Terrorism and to implement measures to ensure international co-operation in all matters necessary to the investigation, prevention and prosecution of crimes of terrorism. The resolution directs states to co-operate in such activities as information exchanges, criminal investigations and proceedings, bringing terrorist to justice under criminal law statutes. Nowhere does either of these important Security Council resolutions authorize the use of force against non-combatants or the use of force to overthrow the Taliban government.

Operation Enduring Freedom in Afghanistan was not intended or designed be a stability operation. The Taliban regime was removed in order to punish it and to expedite intense, large-scale action against Al Qaeda in Afghanistan and not to stabilize the country or relieve its humanitarian crisis. Furthermore, little attention is being paid to the fact that the strikes are inconsistent with the NATO's resolution of September 12th 2001. Although this resolution invoked Article 5 of the Washington Treaty that enables NATO countries to act collectively, however this resolution in clear language barred any action until

further decision by the Council. The U.S.A rejected this collective approach and put together its own group of allies, leaving the U.S.A in control of all aspects of the bombing in Afghanistan and of any future war actions, including bombings of additional countries as Iraq. After these illegal invasions now there is an ugly manpower crisis rears its head, even the U.S.A can't keep its fairly minimal personnel commitments, to say nothing of the other, more skittish members of NATO and NATO is losing its hold in the captured areas. For comparison, NATO mustered up about 40,000 troops to occupy the troubled Kosovo province of Serbia, an area in which troops remain today, barely keeping a lid on the simmering and murderous ethnic tensions. Kosovo has about two million people. Afghanistan, a country of about 31 million, received about 30,000 NATO troops. Though the comparison is a bit unfair, to achieve the same troops per capita as Kosovo would require well over 600,000 troops, far in excess of anything any number of countries would be willing to deploy. No one in history been able to pacify a restless country of over 30 million with a mere 30,000 troops. That's less than one troop per thousand people, sheer foolishness for a military occupation. Finally, though human rights abuses by the government or security forces are thankfully rare the security forces are slammed and ineffective. A major increase have been experienced in terrorist attacks on civilians and allied forces in 2007 and 2008, a precipitous drop in public confidence in the militaries or police units to protect them. The gigantic increase in opium trade over the last two years and one of the most corrupt justice systems on the planet.

NATO-led ISAF is now the principal security force, and shares resources with the US-led Operation Enduring Freedom. ISAF operates a rotating command system. There are no legal basis for the presence of ISAF and NATO forces in Afghanistan and still violating the basic fundamental rights of Afghan citizens. The NATO-led deployment of the International Security Assistance Force (ISAF) to

Afghanistan has been resulted in a mass violation of International Humanitarian laws. Aerial bombardments carried out as part of ISAF military operations have, as acknowledged by ISAF commanders, resulted in the killing of civilians in the course of specific engagements. These attacks may have failed to discriminate between civilian and military targets in breach of International Humanitarian law. It has been recently reported by United Nation that United States committed serious human rights violations at its detention centre in Guantanamo Bay, Cuba and People held at Guantanamo Bay are entitled to challenge the legality of their detention before a judicial body and to be released if their detention is found to lack a proper legal basis. However this right is currently being violated and the continuing detention of all persons held at Guantanamo Bay amounts to arbitrary detention in violation of the International Covenant on Civil and Political rights.

Detention procedures currently used by ISAF, which require the transfer of detainees to the custody of Afghan security forces within 96 hours result in the torture and ill-treatment of Afghan nationals. Amnesty International has for many years raised concerns about the use of torture and ill-treatment by Afghan security forces including the National Security Directorate, enjoying effective impunity, on account of the weak judicial system, lack of adequate training and high levels of corruption in the country.

What worse than anything else has been the stubborn American insistence that the only viable response to the 9/11 attacks was to declare "*war*" on a violent adversary such as al Qaeda, a shadowy transnational network without either a distinct territorial base or allegiance to any specific state. This mistake was further compounded by extending the orbit of the war far beyond al Qaeda to encompass all forms of non-state violence within the operative definition of the "*terrorist*" threat. Furthermore, counter-terrorism policies escalated and spread the war zone that "*harbored*" terrorists within a state's

borders would be held as responsible as the terrorists, and would be regarded as legitimate targets for attack even if a state does not join the U.S.A in the counter-terrorist war, then it will be viewed as an enemy "*You are either with us or you are with the terrorists*". Such an extension of the conflict by the U.S.A government encouraged such countries as Israel, Russia treat self-determination movements within and near their borders as belonging to the war against terror. This futility and injustice of treating the Afghans, Palestinians and the Chechens is an unconditional mandate to engage in an uncontrolled violence and oppression against non-state movements seeking human rights and self-determination.

But worse than Afghanistan, in many respects, was Iraq. The invasion of Iraq was undertaken despite the absence of a connection with the perpetrators of 9/11, a conclusion now even acknowledged by U.S.A governmental investigations. The argument that Iraq under Saddam Hussein posed an intolerable threat because of its alleged possession of weapons of mass destruction never convinced either the UN Security Council, world public opinion, or most of America's most trusted allies, and yet the invasion of this country went ahead. The attack on Iraq was widely regarded as illegal, immoral, and imprudent in the extreme. This impression was reinforced by the subsequent failure of the invaders to find any weapons of mass destruction, despite pre-invasions claims of hard evidence that such arsenals existed. Criticism of the Iraq undertaking also mounted as the brutality and incompetence of the occupation became unmistakably clear. Instead of liberation, what ensued under the American-led occupation seemed crudely abusive of the Iraqi people and their culture. Rather than diminish 9/11 kinds of activities, the Iraq experience has significantly strengthened anti-American violent extremism in the region. Three years after the invasion, Iraq remains ravaged and war torn, caught in an escalating spiral of violence that threatens to spill over its borders. In going forward with its Iraq policy,

and refusing to acknowledge the failure of the occupation, the United States has damaged its credibility as a global leader, as well as weakened the authority of the United Nations and of International Law generally.

It is a fact that U.S.A and its allies never try to exploit the amicable means to resolve this problem and completely ignored this opportunity to react in a constructive fashion to the 9/11 attacks. The war against Afghanistan violates International Law including the Charter of the United Nations, the Geneva Conventions, the Rome Statute, International Criminal Court and International Court of Justice and the relevant provisions of the eleven International agreements dealing with the suppression and control of terrorism. The attacks by bombing and the use of other military force are war crimes pursuant to the Rome Statute. Immediately after these attacks there was a world display of solidarity with the United States, including even demonstrations of support in Tehran and the Palestinian Territories but the United States did not like to take advantage of this climate of opinion it could have pursued those charged with violent acts, including those of 9/11 by reliance on greatly enhanced law enforcement, sustained by much improved transnational framework of police and paramilitary cooperation. Looking back on the seven years, most of the success in preventing further terrorist attacks has resulted from police and intelligence efforts. In contrast, the war paradigm has proved dysfunctional, wasting enormous resources and lives, undermining the legitimacy of the struggle, and inducing many young persons to opt for political extremism.

President Bush, while Initiated war against Afghanistan, very clearly and in a threatening manner asked the whole world "*either you are with us or with the terrorist*" and there was no option of neutrality for any state of international community to remain impartial against the illegal war against Afghanistan after 9/11 terrorist attacks. This is the violation of not only Customary International Law regarding

Neutrality but also the Right of Neutrality of a state under United Nation's Charter. The fact is that President George.W.Bush has shaped his presidency, and his re-election campaign, around the threat that announced itself in the wreckage of the World Trade Center and the Pentagon and priority was to "*play as hard and strong an offense as possible,*" most of it "*offshore, overseas.*" made it clear that he conceived a broader war. First in this war was named "*the war on terrorism,*" and he cast it as a struggle with "*a new kind of evil.*" Under that banner he toppled two governments, eased traditional restraints on intelligence and law enforcement agencies, and reshaped the landscape of the federal government.

As for as, Al-Qaeda is concerned, it has become what some have termed a "*brand name*" having mutated into a "*multi-headed hydra*" comprising of international leaders and local heads. More Worse that if any group that wishes to come into the limelight selects the Al-Qaeda label or "*brand*". This ensures publicity which is part of the intent of such groups. Using the brand name "*Al-Qaeda*" allows them space for recruitment and support. Equally interesting it the fact that many of the born again obscurantist are not citizens of Muslim states but are part of first and second generation Muslims belonging to European states.

From these perspectives, there never should have been a global war on terror, and there certainly should not have been an American and Israeli partnership to reconfigure by force of arms the internal political governing arrangements in a series of countries perceived as hostile. The recently concluded Lebanon War gives added weight to this set of conclusions. Israel launched an aggressive war against Lebanon, implicitly relying on the American doctrine that a territorial state will henceforth be held fully responsible and punished for the acts of non-state actors that operate within its borders. The tactics relied upon in Lebanon and Afghanistan represent more than practical failures. They represent a long step backward with respect to International Law and

morality. What Israel and U.S.A claimed it was entitled to do was to launch a full-scale war against a relatively defenseless state on the basis of cross border terrorism. This is essentially a terrorist logic, inflicting so much suffering on the government and people of these states that will be compelled to decide on the basis of its self-interest and must be surrender to them.

RECOMMENDATIONS:

So, it becomes clear that, at the every least, there is a stalemate in the war against terrorism in the wake of 9/11 terrorist attacks and at worse, the terrorist threat seems to be on the increase both in terms of intensity and operational milieu. There are some recommendations to tackle this problem are as under:

- 1) To begin with failure to deny space to the terrorists and an almost total reliance on military means to deal with the problem of terrorism is a major mistake. Simply by using heavy weaponry as means of reprisal against suspected states and groups will not end the problem. If Asymmetrical warfare fought in this traditional manner, it would be ineffective and costly, and merely aggravates the problem.
- 2) Terrorism itself is merely a symptom of deep-seated political and economic problems which is why there has to be a long term multiple-level strategy that includes security measures but also focuses on the root causes of terrorism, which are primarily political.
- 3) Framing the terrorist issue in religious terms is equally counterproductive since terrorism has political roots. Even Al-Qaeda is not proselytizing for Islam, so if the IRA's acts of terrorism were not seen as "*catholic terrorism*" why should Al-Qaeda's terrorist actions be referred to as "Islamic terrorism"?

4) Additionally, at the tactical level, what is being seen as a continuous abuse of Muslim's Islam, its Prophet (PBUH) and its Holy Book in the US and Europe and parts of the Dominion territories, it increasing the divide between Muslims and the West and this is also creating more space for the obscurantists, by exploiting feelings of hatred and victimization that have increased amongst Muslims in Europe and the US post-9/11.

5) Linking issues of Weapons of Mass Destruction (WMD), regime change and democracy in Muslim states has also diluted the focus of the war against terrorism.

6) To make United Nation and its institutions like Security Council and General Assembly more functional and strong to deal with International problem of terrorism and illegal use of force by the major powers against other countries of the world.

The actions in Afghanistan and Iraq have demonstrated that America simply do not have the stomach to handle legitimate strategic threats to the U.S.A, apart from just brushing aside weak military regime in Iraq and Afghanistan. Unfortunately, the region and the world are more dangerous than five years ago, and future prospects are not encouraging. Finally concluding that Use of Force in Afghanistan by United States of America, UK and their allies, in the wake of 9/11 terrorist attacks have no legal as well as moral justifications under International Law and United Nations Charter to maintain and secure International Peace and Security in future.

BIBLIOGRAPHY:**BOOKS**

1. Antoniou, T. Crish., and W. Michael, Reisman., The Laws of War, A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflicts, Vintage Publishers London, 1994.
2. Akehurst, M., A Modern Introduction to International Law, 5th edition. George Allen and Unwin publishers Ltd, London, 1984
3. Arostegui, Martin., No Plan for Afghan Disarming,. United Press International, 5 January 2002.
4. Beck, J., and Arend., International Law and The Use of Force, Routledge publishersS London 1993.
5. Borer, A. Douglas., Super Power Defeated: A Comparison of Vietnam and Afghanistan, Ashgate publishers New York 2003.
6. Boyle, Francis., Is Bush's War Illegal? Let Us Count the Ways, The Criminality of Nuclear Deterrence, Duke University Press 2002.
7. Cole, Steave., Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion September 10,2001, The Penguin Press 2004.
8. Conte, Alex., Security in the 21st Century: The United Nations Afghanistan and Iraq, Ashgate Publishing Company England 2005.
9. Davidson, Eugene., The Trial of the Germans: An Account of the Twenty-Two Defendants before the International Military Tribunal at Nuremberg., Macmillanpublishers, New York, 1966.
10. Dixon, Martin., Robert, Me, Corquodale., Cases and Material on Public International Law, 4th edition Oxford University Press, New York 2003.
11. Dupree, Louis., Afghanistan, Princeton University Press Princeton, New Jersey. 1986.
12. Ghufuran., The Taliban and the Civil War Entanglement in Afghanistan, Asian Survey 2001.
13. Good, M, Leland., Hambro, Edward., and Simmons, Patricia, Anne., Charter of the United Nations, Commentary and Documents, Columbia University Press London 1969.

14. Heathcote, T. A., *The Afghans Wars 1839-1919*, Osprey Publishing Limited, London.1980.
15. Holliday, Fred., *Two Hours That Shock the World*, Saqi Books, London 2001.
16. Iqbal, Afzal., *Circumstances Leading To The First Afghan War*, Research Society Of Pakistan, University of the Punjab, Lahore, 2nd edition 1976.
17. Jennings, R, Sir., Watts, A. Sir., *Oppenheim,s International Law*, 9th edition, Longman London, 1992, vol.1.
18. Jiri, Toman, Schindler, Dietrich., *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and other Documents*, Martinus Nijhoff Publishers Dortrect, The Netherlands, Henry Dunant Institute, Geneva, 1988.
19. Johnson, Rob., *A Region In Turmoil South Asian Conflicts Since 1947*, Viva Books Private Limited. 2006.
20. Khan, Ali., *A Legal Theory of International Terrorism*, Connecticut Law review 1985.
21. Khan, M. Riaz., *Untying the Afghan Knot, Negotiating soviet Withdraw.* Progressive Publications.1993.
22. Luppis, De, Detter, Ingrid., *The Laws of War*, Cambridge University Press Great Britain 1987.
23. M. A. Ahmed., D. N. Colonel., *The Survival of Afghanistan*, People's Publication House, Lahore.1973.
24. Mazari, M. Shireen., *Future of Terrorism: A Critical Appraisal*, A Quarterly Journal of the Institute of Strategic Studies Islamabad 2006.
25. N. Ghufuran., *The Taliban and the civil War Entanglement in Afghanistan*, Asian Survey, 2001.
26. Ness, Van, Peter., Gurtov, Mel., *Confronting the Bush Doctrine, Critical Views from the Asia –Pacific*, Routledge publishers, Csurzon London 2005.
27. Newell, S. Richard., Newell, Peabody, Nancy., *The Struggle for Afghanistan*, Cornell University Press, London. 1981.
28. Q.C, Stark, J.G., *Introduction to International Law*, 10th Edition, Butterworth London & co, 1989.
29. Schabas, W., *The International Criminal Court*, Cambridge University Press, 2001.
30. T,Grant., *Current Development: Afghanistan Recognize Chechnya*, International Law Rev, 2000.

31. Taizi, Zaman, Sher, Dr., Terrorist attacks in USA and USA attacks on Afghanistan, Kamil Pukhto Adabi Jirgah Pabo Seema, Nowshera Pakistan 2002.
32. Talmon, S., Recognition of Governments in International Law, Routledge Csurzon London 1998.

Articles

33. Abraham, Thomas, Is NATO Attack Justified, Hidu, 28 March 2002
34. Dupuy., The Law after the Destruction of the Towers, Washington Post, 19 July, 2002.
35. Gannon, Kathy., New Afghan interim administration clearly favours the Northern Alliance, *AP Worldstream*, 6 December 2001.
36. Hoyos, Carola., and Nicoll, Alexander., US and Russia Delay Troops' Arrival, Financial Times, 13 December 2001
37. Jonathan, S. Landay., Bush administration Eliminating 19 Years Old International Terrorism Report, KnightRider., April 15, 2005.
38. Peterson, M.J., Recognition of Governments should not be abolished.
39. Kirgis, Frederic. L., Security Council Adopts Resolution on Combating International Terrorism, Addendum, 2001.
40. Greenwood, Christopher., International Law and the War against Terrorism, *International Affairs* 78, 2002.
41. Greenwood, Christopher., The concept of war in modern International Law, *International and Comparative Law Quarterly* 36, 1987.
42. A, Rick., Afghanistan's Taliban: An Islamic Revolution of the Pashtuns, German journal For Politics and economics of the middle East 38, 1997.
43. Michael, R. Gordon., U.S. and Britain at Odds Over Use and Timing of Peacekeeping Troops, The New York Times, 2 December 2001.
44. Richard Norton, Taylor., "The fall of Kabul: Next phase: British ground forces on short notice: Soldiers may be used in frontline operations, The Guardian London, 15 November 2000.
45. Roy, Arundhati., Why America Must stop the war now, She Magazine Monthly U.K, 28th November 2001

46. Wolfrum., International Law of Co-operation, EPIL, 1995.
47. Smith, Terence., Carter Tell Soviets To Pull Its Troops out of Afghanistan, The New York Times, 30th December 1979.
48. Varadarajhan, Siddharth., Times of India, 19 October 2001
49. White & Priest, War Helps Recruit Terrorists, Hill Told, Washington Post, February 17, 2005.
50. Adam, Bernard., United States: Losing the War on Terror; The Harder We Work, The Behinder we Get, Le Monde Diplomatique, April 24, 2004.
51. I, Brownlie., Recognition in Theory and Practice, (BYIL 53,1982),p.197
52. Q, C. Robertson , Jeffery., The Times, 18 December, 2001
53. Reagan, Ronal., Radio Address to the Nation on the Soviet Occupation of Afghanistan.28December,1987.
54. Scot, Lord., Decision of House of Lords in R (Al-Fawaz) vs. Governor of Brixton Prison World Law Review 2002.
55. Ulfstein, Geir., Terrorism and the Use of Force, Published in Security Dialogue Vol 34, No 2 June 2003, Department of Public and International Law, University of Oslo, Norway

UN Security Council Resolutions

56. United Nation Security Council Resolutions 748, 31st December 1992.
57. United Nation Security Council Resolutions 1054, 26th April 1996.
58. United Nation Security Council Resolutions 1267, 15th October 1999.
59. United Nation Security Council Resolutions 1333, 19th December 2000.
60. United Nations Security Council Resolution, 1510, 13th October 2004.
61. United Nations Security Council Resolution, 573, 4th October 1985.
62. United Nations Security Council Resolution, 748, 13th March 1992.
63. United Nations Security Council Resolution, 1368, 12th September 2001.
64. United Nations Security Council Resolution, 1373, 28th September 2001.
65. United Nations Security Council Resolution, 1386, 20th December 2001.
66. United Nations Security Council Resolution, 660, 2nd August 1990.
67. United Nations Security Council Resolution, 678, 29th November 1990.

DOCUMENTS

68. United Nations, 2001., Provisional Verbatim Records Security Council, 12 September, 2001.
69. Walet, Stephan., *Alliance: Balancing and Bandwagoning in International Politics*, Harper Colins Press,2002.
70. United Nations Interim Force in Lebanon, United Nation Security Council Resolution 425 and 426 on March 19, 1978
71. 2nd European Human Rights Report, 1989, p439
72. 49United Nations, 'Press Statement on Terrorist Threats by Security Council President, 8 October, 2001

CASES

73. Soering v. United Kingdom, EHHR 439, (ECHR 17July 1989) 98 ILR, P 170
74. Military and Paramilitary activities in and against Nicaragua, (*Nicaragua vs America*), ICJ Reports, 1986, P48
75. Yaser Esam Hamdi and Esam Fouad Hamdi as next friend of Yaser Esam Hamdi, Petitioners VsDonald H. Rumsfeld, Secretary of Defense, et al. 542 U.S. 507(June 28th 2004)
76. Salim Ahmed Hamdan, v. Donald H. Rumsfeld, United States Secretary of Defense; John D. Altenburg, Jr., Appointing Authority for Military Commissions, Department of Defense; Brigadier General Thomas L. Hemingway, Legal Advisor to the Appointing Authority for Military Commissions; Brigadier General Jay Hood, Commander Joint Task Force, Guantanamo, Camp Echo, Guantanamo Bay, Cuba; George W. Bush, President of the United States. 548 U.S. 557 (29th June 2006)
77. Shafiq Rasul Vs. George W. Bush, President of the United States. 542 U.S.466 (June 28th 2004)

WEBLIOGRAPHY

78. http://www.ejil.org/forum_WTC
79. [http://En.Wikipedia.Org/Wiki/Domestic terrorism](http://En.Wikipedia.Org/Wiki/Domestic%20terrorism)
80. <http://www.ccr-ny.org>
81. <http://www.nato.org/north-atlantic-treaty/htm>
82. <http://campxray.org/>
83. http://en.wikipedia.org/wiki/Nuremberg_Trials
84. http://en.wikipedia.org/wiki/Operation_Enduring_Freedom
85. <http://indigo.ie/~goodwill/icnd/neutrality.html>
86. <http://www.afghana.com/directories/SovietWar.htm>
87. <http://www.ands.gov.af/ands/I-ANDS/afghanistan-compact-p1.asp>
88. <http://www.asil.org/ilib/ilib0510.htm>
89. <http://www.canadianliberty.bc.ca/liberty-vs-security/gail-davidson-war-on-afghanistan.html>
90. <http://www.crisisgroup.org/home/index.cfm?l=1&id=4631>
91. http://www.ejil.org/forum_WTC/ny-stahn.html#TopOfPage
92. <http://www.globalsearch.com/articals/afghanistan>
93. <http://www.icj.law.glc.ac.uk>
94. <http://www.internationalextradition.com/practice-areas.htm>
95. <http://www.law.northwestern.edu/journals/jihr/v3/4/>
96. <http://www.lcnp.org/global/iraqstatement3.htm>
97. <http://www.lrwc.org/pub2.php?sid=8>
98. <http://www.nato.int/issues/afghanistan/040628-factsheet.htm>
99. <http://www.nato.int/issues/afghanistan/index.html>
100. <http://www.pm.gov.uk/output/page3577.asp>
101. <http://www.sanfranciscochoronicals/articals/use-of-force.html>
102. <http://www.un.org/Depts/dhl/res/resa39.htm>
103. <http://www.un.org/docs/scr/html>
104. http://www.unodc.org/unodc/terrorism_convention_civil_aviation.html
105. http://www.unodc.org/unodc/terrorism_definitions.htm
106. <http://www.whatreallyhappened.com/whoiscongresslisteningto.html>
107. <http://www.yale.edu/lawweb/avalon/leagcov.htm>

- 115 <http://www.nato.int/issues/isaf/index.html>
- 108. <http://www.blackwell-synergy.com>
- 109. <http://www.globalpolicy.org/empire/terrorwar/analysis/2005/0415elimeport.htm>
- 110. <http://www.reagan.utexas.edu/resources/speeches/a985/122885a.htm>
- 111. <http://www.un.org/Depts/DPKO/Missions/unficyp.htm> - 13k,
- 112. <http://www.chinesejil.oxfordjournals.org>
- 113. <http://www.un.org/Depts/dpko/missions/unifil/> - 10k
- 114. <http://www.wikipedia.org/wiki/The-Great-Game>
- 115. <http://www.Wordnet.Princeton.Edu/perl/webwn>
- 116. http://www.supremecourts.gov/opinions/casefinder/casefinder_1984-present.htmls



Security Council

Distr.: General

12 September 2001

Resolution 1368 (2001)

Adopted by the Security Council at its 4370th meeting, on
12 September 2001

The Security Council,

Reaffirming the principles and purposes of the Charter of the United Nations,

Determined to combat by all means threats to international peace and security caused by terrorist acts,

Recognizing the inherent right of individual or collective self-defence in accordance with the Charter,

1. *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and *regards* such acts, like any act of international terrorism, as a threat to international peace and security;

2. *Expresses* its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States of America;

3. *Calls* on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and *stresses* that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable;

4. *Calls also* on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999;

5. *Expresses* its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations;

6. *Decides* to remain seized of the matter.





Security Council

Distr.: General

28 September 2001

Resolution 1373 (2001)

**Adopted by the Security Council at its 4385th meeting, on
28 September 2001**

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,



1. *Decides* that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
- (g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls upon all States to:*

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes with concern* the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.

**Security Council**Distr.: General
13 October 2003

Resolution 1510 (2003)**Adopted by the Security Council at its 4840th meeting,
on 13 October 2003***The Security Council,**Reaffirming* its previous resolutions on Afghanistan, in particular its resolutions 1386 (2001) of 20 December 2001, 1413 (2002) of 23 May 2002 and 1444 (2002) of 27 November 2002,*Reaffirming also* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan,*Reaffirming also* its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001 and reiterating its support for international efforts to root out terrorism in accordance with the Charter of the United Nations,*Recognizing* that the responsibility for providing security and law and order throughout the country resides with the Afghans themselves and *welcoming* the continuing cooperation of the Afghan Transitional Authority with the International Security Assistance Force,*Reaffirming* the importance of the Bonn Agreement and recalling in particular its annex 1 which, *inter alia*, provides for the progressive expansion of the International Security Assistance Force to other urban centres and other areas beyond Kabul,*Stressing also* the importance of extending central government authority to all parts of Afghanistan, of comprehensive disarmament, demobilization and reintegration of all armed factions, and of security sector reform including reconstitution of the new Afghan National Army and Police,*Recognizing* the constraints upon the full implementation of the Bonn Agreement resulting from concerns about the security situation in parts of Afghanistan,*Noting* the letter dated 10 October 2003 from the Minister for Foreign Affairs of Afghanistan (S/2003/986, annex) requesting the assistance of the International Security Assistance Force outside Kabul,*Noting* the letter dated 6 October 2003 from the Secretary-General of the North Atlantic Treaty Organization (NATO) to the Secretary-General (S/2003/970)

regarding a possible expansion of the mission of the International Security Assistance Force,

Determining that the situation in Afghanistan still constitutes a threat to international peace and security,

Determined to ensure the full implementation of the mandate of the International Security Assistance Force, in consultation with the Afghan Transitional Authority and its successors,

Acting for these reasons under Chapter VII of the Charter of the United Nations,

1. *Authorizes* expansion of the mandate of the International Security Assistance Force to allow it, as resources permit, to support the Afghan Transitional Authority and its successors in the maintenance of security in areas of Afghanistan outside of Kabul and its environs, so that the Afghan Authorities as well as the personnel of the United Nations and other international civilian personnel engaged, in particular, in reconstruction and humanitarian efforts, can operate in a secure environment, and to provide security assistance for the performance of other tasks in support of the Bonn Agreement;

2. *Calls upon* the International Security Assistance Force to continue to work in close consultation with the Afghan Transitional Authority and its successors and the Special Representative of the Secretary-General as well as with the Operation Enduring Freedom Coalition in the implementation of the force mandate, and to report to the Security Council on the implementation of the measures set out in paragraph 1;

3. *Decides also* to extend the authorization of the International Security Assistance Force, as defined in resolution 1386 (2001) and this resolution, for a period of twelve months;

4. *Authorizes* the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil its mandate;

5. *Requests* the leadership of the International Security Assistance Force to provide quarterly reports on the implementation of its mandate to the Security Council through the Secretary-General;

6. *Decides* to remain actively seized of the matter.
