

WARFIGHTING, COUNTERINSURGENCY AND PEACEKEEPING IN AFGHANISTAN: THREE STRATEGIES EXAMINED IN THE LIGHT OF JUST WAR THEORY

A. WALTER DORN¹

Just War theory is an ethical framework, refined over many centuries, to assess whether war or a particular use of force in war is justified.² The theory can be contemplated in the abstract or applied to specific cases, either actual or contemplated. It offers a set of important principles (typically five to seven) that cumulatively suggest the degree of moral justification for the application of armed force. These principles have proven so useful and meaningful that they have been largely incorporated into international law.³ Furthermore, the UN-endorsed "Responsibility to Protect" criteria for military intervention were based on them.⁴

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² A standard modern work on Just War theory is Michael Walzer, *Just and Unjust Wars* 4th ed. (New York: Basic Books, 1977, 2006). Original texts with commentary, showing the evolution of Just War theory, are provided in: Gregory M. Reichberg, Henrik Syse, Endre Begby, eds., *The Ethics of War: Classic and Contemporary Readings* (Oxford: Blackwell Publishers, 2005).

³ See, for instance: Richard Falk, "Legality to Legitimacy: The Revival of the Just War Framework," *Harvard International Review* 26 (Spring 2004): 40-44.

⁴ The "Responsibility to Protect" ("R2P" for short) concept was developed by the International Commission on Intervention and State Sovereignty, established by the government Canada in 2000. R2P adopts the following principles explicitly: "Just cause," "Right intention," "Last resort," "Proportional means," "Reasonable

One of the enduring strengths of the Just War theory's principles is that they can provide relatively straightforward answers to some of the most basic questions concerning war. As these questions will be addressed in connection with the Afghanistan conflict later in this essay, they can at the outset be briefly enumerated as follows: Question 1: Why use force? Answer: Just War theory requires that there be just cause, right intent and a net benefit. Question 2: Who should authorize force? Answer: A legitimate authority should authorize the use of force. Question 3: When can force be used? Answer: Force can only justly be used as a last resort. Question 4: What type of force can be used? Answer: A proportional means of force can be used. Question 5: Where is it just to apply such proportional force? Answer: Proportional force may be applied to military, not civilian locations and targets. Question 6: How to apply force? Answer: Force must be used with right conduct.

Just War theory has often been used as a simple checklist to declare a war as either just or unjust. However, such applications are prone to oversimplification. For example, if each criterion is somewhat satisfied (as is often the case), a proponent might declare the entire war just. A more refined application takes the theory beyond simple binary evaluation of yes/no or just/unjust and recognizes that the criteria are almost always satisfied *to some degree*. To handle this, a novel measure, the "Just War Index," is introduced later in this essay. The Just War Index gives scores to each criterion, and will be applied to the case at hand—the post-9/11 war in Afghanistan. The Index allows us to compare not only the justifications of different wars or conflicts but also the strengths and weaknesses of different strategies or operations within the same conflict.

Afghanistan provides an excellent test or "proving ground" for such an approach, since several international forces are in the country, struggling to achieve different ends through different means. The United States government heads the "Operation Enduring Freedom" (OEF) coalition, whose primary objective is to "defeat terrorists," especially al-Qaeda and more broadly the Taliban. The North Atlantic Treaty Organization (NATO) leads the International Security Assistance Force (ISAF), whose mission is to enhance security in the country. Over time, ISAF has

prospects of success," "Right Authority," and a series of "Operational Principles," including adherence to international humanitarian law. See: International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre), <http://iciss.ca>. Endorsement of R2P was made by a summit of world leaders in 2005. See: United Nations General Assembly, "2005 World Summit Outcome," UN Doc. A/60/L.1, 15 September 2005, para. 138-9.

fashioned itself as a counterinsurgency mission. Finally, the UN's peacekeeping department directs the United Nations Assistance Mission in Afghanistan (UNAMA) with the aim of creating conditions for a long-term peace. While these missions overlap significantly, their methods differ considerably, including the degree and type of armed force applied. OEF uses primarily a warfighting strategy, while ISAF takes a counterinsurgency approach and UNAMA resembles a preliminary peacekeeping mission. OEF has to date shown considerably less restraint than ISAF. UNAMA, for its part, has at present only a small cadre of uniformed personnel in Afghanistan and very little ability to use force, but a more robust future peacekeeping operation can be envisioned with combat-capable forces, though undoubtedly with less firepower than either ISAF or OEF. Broadly speaking, these three missions can be classified as warfighting (OEF), counterinsurgency (ISAF) and quasi-peacekeeping (UNAMA).

Each of the three missions has a different origin, objective and strategy, arising out of different worldviews. Since the Just War theory provides an excellent prescriptive framework of factors that ought to be adhered to by each mission, it will be used in what follows to develop a moral assessment of the missions. In addition, the Just War Index offers a subjective measure of the degree of adherence to Just War criteria, permitting a contrast between the two missions employing force (OEF and ISAF) and an additional possible future mission involving robust peacekeeping (UNAMA II). Both the background below and the quantitative Just War Index assessment afterwards are intended to help intellectuals, planners and the public judge which activities are justified and worth pursuing.

Why Fight?

This fundamental question finds a natural answer in Just War theory: there must be a just cause coupled with the right intent to fight. In addition, there should be a net benefit arising from the fighting, so that the damage done does not exceed the good achieved. Different thinkers may define these three criteria differently but the general sense of the criteria remains clear. In the case of Afghanistan, the three missions are deployed for quite different reasons, which it would be helpful to parse out. While most of the reasoning summarized below is of American and international (UN) perspectives, the Canadian position is also presented and explored.

1. Warfighting (OEF)

The Bush administration formally launched Operation Enduring Freedom in October 2001 as the operational (military) arm of its “Global War on Terror.” The goal of this war, in the view of President Bush, was to defeat “the terrorists.” OEF was, to this extent, a direct response to the terrorist attacks of 11 September, 2001. Speaking hours after the attack, Bush told the world he had ordered a search “for those who are behind these evil acts.” He also vowed to make “no distinction between the terrorists who committed these acts and those who harbour them.”⁵ On 16 September 2001, President Bush vowed to “hunt down and smoke out” the terrorists who were believed to be in Afghanistan.⁶ Bush made a more assertive and encompassing statement of this policy (sometimes called the Bush Doctrine) in his 20 September 2001 address to the U.S. Congress:

We will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.⁷

This doctrine became the justification for the October-November, 2001 “regime change” in Afghanistan, since the Taliban government was known to harbour al-Qaeda. From the beginning, the cause behind OEF was clearly stated (i.e., the defeat of terrorism), even if its logic and application to the Taliban might be questioned.

In contrast to its cause, the *intent* of OEF is harder to determine. Intention, like motivation, is often multifaceted and may not even be understood by the actors themselves. However, at least the overt intent of OEF was clearly stated by President Bush: “My administration has a job to do, and we’re going to do it. We will rid the world of the evil-doers. We

⁵ The White House: President George W. Bush, “President’s Address to the Nation,” 11 September, 2001, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html>.

⁶ The White House: President George W. Bush, “Remarks by the President Upon Arrival,” 16 September 2001, at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html>. There is evidence the US administration was also contemplating regime change in Afghanistan at this point. See: Ian Traynor and Gary Yonge, “Secret memo reveals US plan to overthrow Taliban regime,” *The Guardian*, September 21, 2001.

⁷ The White House: President George W. Bush, “Address to a Joint Session of Congress and the American People,” 20 September 2001, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>.

will call together freedom loving people to fight terrorism.”⁸ In this black and white world view, the “evildoers” were terrorists who “can’t stand freedom” and “hate what America stands for.”⁹ America was again taking on leadership of the “free world,” as it had during the Cold War.¹⁰ It was protecting its allies as well as itself.

Critics suggest that other factors, similar to those allegedly behind the 2003 Iraq invasion, were behind the Global War on Terror and the OEF-Afghanistan mission. These suspected motives include: self-promotion of a would-be war-president, along with the accompanying sharp increase in popularity;¹¹ a new global enemy on which to target governmental and military efforts, and divert attention from other matters such as the disputed election of 2000 and the economic challenges of 2001;¹² a new “lease on life” for the Pentagon over a decade after the end of the Cold War;¹³ associated funding for the military-industrial complex (with annual defence expenditures increasing by well over \$100 billion);¹⁴ and control

⁸ Bush, “Remarks by the President Upon Arrival.”

⁹ Ibid.

¹⁰ The White House: President George W. Bush, “President Bush’s remarks on Afghanistan to the local business community Elizabeth, New Jersey,” 16 June 2003, <http://georgewbush-whitehouse.archives.gov/infocus/afghanistan/20040708.html>.

¹¹ “Going the legal route won’t boost the President’s approval ratings the way a war does, nor will it make the world fear our military power. But at least we won’t be fighting terrorism with more terrorism, and fuelling an escalating cycle of violence.” Mark Weisbrot, “A War on Civilians?” *Counterpunch*, November 3, 2001, <http://counterpunch.org/weisbrot1.html>.

¹² “America was targeted for attack because we’re the brightest beacon for freedom and opportunity in the world. And no one will keep that light from shining.” The White House: President George W. Bush, “President’s Address to the Nation,” 11 September, 2001. See also: The White House: President George W. Bush, “Address to a Joint Session of Congress and the American People,” 20 September 2001.

¹³ “The Bush doctrine has been used to justify a new assertiveness abroad unprecedented since the early days of the Cold War—amounting nearly to the declaration of American hegemony—and it has redefined U.S. relationship around the world.” Michael Hirsch, “Bush and the World,” *Foreign Affairs*, 18, no. 5 (2002): 19, <http://comw.org/qdr/fulltext/0209hirsh.pdf>.

¹⁴ A major critic of the Bush administration is Professor Paul Krugman (winner of the 2008 Nobel Prize in Economics, and New York Times columnist) who wrote in 2002: “It’s true that the administration is using the terrorist threat to justify a huge military buildup....Second, the military buildup seems to have little to do with the actual threat, unless you think that Al Qaeda’s next move will be a frontal assault by several heavy armored divisions....No politician hoping for re-election will dare to say it, but the administration’s new motto seems to be ‘Leave no defense

over natural resources such as oil resources and future pipelines envisioned for the region.¹⁵

After assuming the Presidency in 2009, Barak Obama has continued OEF but he has generally avoided the black and white Bush outlook, with its U.S.-centred and jingoistic overtones. He has also dropped the term “Global War on Terror,” saying it inflated the opponent and the nature of the conflict.¹⁶ Nonetheless he has vowed to “disrupt, dismantle and defeat al Qaeda in Pakistan and Afghanistan, and to prevent their return to either country in the future,”¹⁷ and has strongly defended the justice of the war. In keeping with these views, Obama increased the number of troops in Afghanistan by over 70,000 in his first two years of office, though some of these troops were placed under ISAF command and are not part of OEF.

Canada made its original military contribution to Afghanistan in 2001-02 through OEF, providing Special Forces to help search for al-Qaeda members, particularly its chief, Osama bin Laden, the alleged mastermind behind the 9/11 attacks. Prime Minister Jean Chrétien declared on 7 October 2001: “we are part of an unprecedented coalition of nations that

contractor behind.” Krugman, Paul, “Bush’s Aggressive Accounting,” *New York Times*, February 5, 2002, <http://nytimes.com/2002/02/05/opinion/05KRUG.html>.

¹⁵ “[T]he U.S. and U.K. ousted the Taliban and secured Afghanistan for the construction of an oil pipeline from Turkmenistan, south through Afghanistan, to the Arabian Sea.” Marjorie Cohn, “Why Iraq and Afghanistan? It’s About the Oil,” *Counterpunch*, July 30, 2003, <http://counterpunch.org/cohn07302003.html>.

¹⁶ The Obama administration did away with the Global War on Terror label using the following reasoning: “[D]escribing our efforts as a global war only plays into the warped narrative that al-Qaida propagates. And perhaps more dangerously, portraying this as a global war reinforces the very image that al-Qaida seeks to project of itself, that it is a highly organized, global entity capable of replacing sovereign nations with a global caliphate.” Speech by John Brennan, Assistant to the President for Homeland Security and Counterterrorism at the Center for Strategic and Intelligence Studies, “A New Approach for Safeguarding Americans”, Center for Strategic and Intelligence Studies, 6 August 2009, Washington, D.C., 8, http://csis.org/files/attachments/090806_brennan_transcript.pdf.

¹⁷ “So I want the American people to understand that we have a clear and focused goal: to disrupt, dismantle and defeat al Qaeda in Pakistan and Afghanistan, and to prevent their return to either country in the future. That’s the goal that must be achieved. That is a cause that could not be more just.” The White House: President Barack Obama, Office of the Press Secretary, “Remarks by the President on a New Strategy for Afghanistan and Pakistan,” 27 March, 2009, The White House, http://whitehouse.gov/the_press_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan/.

has come together to fight the threat of terrorism.”¹⁸ In 2002, Canada provided over 500 soldiers in the U.S.-led Operation Anaconda to scour the caves above the Shah-e-Kot valley, but the operation ended like the more famous Tora-Bora operation, without finding senior al-Qaeda leaders.

In 2003, Canada provided about 1,500 troops to ISAF, which was at the time confined to Kabul and its environs. In 2005 Canada went back to OEF, jumping from the “the frying pan into the fire” by accepting the leadership of the Provincial Reconstruction Team in Kandahar, the “homeland” of the Taliban insurgency. On his first trip abroad as Prime Minister, Stephen Harper visited Kandahar in March 2006, explaining to the soldiers the cause for which they were fighting: “You have put yourself on the line to defend our national interests; protect Canada and the world from terror; help the people of Afghanistan rebuild their country.”¹⁹ He clearly wanted Canada to be a leader internationally, not merely a follower, and boasted of the “Canadian-led security operation.” In fact, the senior Canadian general (one star) in Regional Command (South) reported to a U.S. general (two star), even as the international operation in Kandahar transitioned from OEF to ISAF (NATO) leadership at the end of July, 2006. The U.S. two-star reported to Central Command in Tampa, Florida, which reported to the Pentagon, so Canadian “leadership” was really an insertion into a longer U.S. chain of American command.

2. Counterinsurgency (ISAF)

After the fall of the Taliban government and the creation of the Afghan Interim Authority, the UN Security Council established ISAF, in accordance with the Bonn proposals of December, 2001. The Bush Administration wanted to leave the envisioned “nation-building mission” to the United

¹⁸ “We are part of an unprecedented coalition of nations that has come together to fight the threat of terrorism.” PM of Canada, Jean Chrétien, “An Address to the Nation Concerning the International Campaign Against Terrorism,” 7 October 2001, Archives Canada, http://epe.lac-bac.gc.ca/100/205/301/prime_minister-ef/jean_chretien/2003-12-08/stagingpm_3a8080/default.asp@language=e&page=newsroom&sub=speeches&doc=nationterrorism.20011007_e.htm.

¹⁹ Later in the short speech PM Harper said: “Of course, standing up for these core Canadian values may not always be easy at times. It's never easy for the men and women on the front lines. And there may be some who want to cut and run. But cutting and running is not your way. It's not my way. And it's not the Canadian way.” *CBC News Online*, “Text of Prime Minister Stephen Harper's address Monday to Canadian soldiers in Afghanistan,” March 13, 2006, <http://cbc.ca/news/background/afghanistan/pmspeech.html>.

Nations after the overthrow of the Taliban government.²⁰ The UN-mandated military mission was to assist with the “maintenance of security” in Kabul and surrounding areas in order to allow Afghan authorities and UN personnel to “operate in a secure environment.”²¹ The Council also requested ISAF to help establish and train new Afghan security forces.

The leadership of ISAF initially transitioned from the United Kingdom to Turkey to a Dutch-German team until, in August of 2003, NATO agreed to take over the direction of the mission, while also dramatically increasing its size.²² NATO did not have an organizational role in Afghanistan until then, even though it had invoked its collective security provision (Article 5 of its Charter) on 12 September, 2001 in response to the 9/11 attacks.²³ In Afghanistan, ISAF ran in parallel with OEF, though

²⁰ In October, President Bush saw a role for the United Nations in stabilization and national-building after US operations completed their job: “It would be a useful function for the United Nations to take over the so-called ‘nation-building.’” The White House: President George W. Bush, “President Holds Prime Time News Conference,” 11 October 2001, The White House, Archives, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011011-7.html>.

²¹ Security Council Resolution 1386 (2001) of 20 December 2009, adopted unanimously, has an operational paragraph: “*Authorizes...* the establishment for 6 months of an International Security Assistance Force to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations can operate in a secure environment.” See: UN Press Release, SC/7248, UN News Service, <http://un.org/News/Press/docs/2001/sc7248.doc.htm>.

²² When NATO took responsibility for ISAF on 11 August 2003, the total strength of the force was under 6,000 personnel, drawn from over 30 nations. Six years later, when it helped provide security for the August 2009 election, the number of troops was over ten times higher (65,000), drawn from 42 nations, including all 28 NATO member states, though most nations provide only a token contribution. Only seven nations provide over 2,000 military personnel: the United States (29,050), United Kingdom (9,000), Germany (4,050), France (3,160), Canada (2,800), Italy (2,795) and Poland (2,000). See: International Security Assistance Force (ISAF), “International Security Assistance Force and Afghan National Army Strength and Laydown,” NATO, 23 July 2009, <http://nato.int/isaf/docu/epub/pdf/placemat.pdf>.

²³ On 12 September 2001, NATO invoked the principle of Article 5 of its Charter (the Washington Treaty), stating that the attacks of 9/11 against the US constituted an attack on the alliance as a whole, provided that such actions had been conducted from abroad. When the latter was confirmed on 2 October 2001 by the NATO Secretary-General after an investigation, the Article 5 provision became fully operative. The investigation concluded that “the attacks belonged to the worldwide terrorist network of Al-Qaeda, headed by Osama bin Laden and protected by

from 2008 onward both missions reported to the same commander (an American general).²⁴

The ISAF mandate did not specify a role in fighting “terrorists” but the growing focus on the insurgency was natural for NATO, as this constituted the greatest threat to ISAF’s and Afghan security. An ISAF spokesperson declared in 2004: “our intent is to make sure we can remove the capability of those people [terrorists] to perform those attacks no matter what form they take.”²⁵ Like OEF and the press generally, ISAF often uses short form to characterize anti-government elements as the “Taliban,” though in fact there are a number of different anti-government groups fighting for different reasons.²⁶ An additional oversimplification is to refer to the insurgents as “terrorists,” as some groups target military forces only.

ISAF’s goal under NATO continues to be to “assist the Afghan Government in exercising and extending its authority and influence across the country, paving the way for reconstruction and effective governance.”²⁷ ISAF has accordingly gradually expanded its coverage from the Kabul region to the entire country. Its Provincial Reconstruction Teams support nation building, particularly by trying to secure areas so that national and international development agencies can operate safely. ISAF also strove to create a secure environment for the 2004, 2005 and 2009 national

the Taliban regime in Afghanistan.” NATO Update, “Invocation of Article 5 Confirmed,” NATO <http://nato.int/docu/update/2001/1001/e1002a.htm#FN1>.

²⁴ Given that the US provides by far the largest contingent to ISAF, it will likely continue to be commanded by a US General (at the time of writing, Stanley McChrystal) for the foreseeable future. McChrystal currently also commands OEF.

²⁵ “We continue to work in support of the institution of the Afghan government to pre-empt them [insurgents], no matter what form they take.... Our intent is to make sure we can remove the capability of those people to perform those attacks no matter what form they take.” ISAF, “Q&A: Norwegian Soldier killed during and RPG attack,” 24 May 2004, NATO [spokesperson not identified], <http://nato.int/ISAF/docu/speech/2004/sp040524b.htm>.

²⁶ Besides al-Qaeda and the Taliban, other prominent anti-government forces fighting in Afghanistan or supporting from neighbouring Pakistan (and their leaders) are: Hizb-i-Islami (HIG) [Gulbuddin Hekmatyar], Hizb-i-Islami Khalis (HIK) [Malawi Khalis], Haqqani Faction [Jalaluddin Haqqani], Tehrik-e-Taliban Pakistan [Hakimullah Mahsud], Lashkar-e-Islami [Mangal Bagh Afridi], and Tehreek-e-Nafaz-e-Shariat-e-Mohammadi. In addition there are numerous local fundamentalist groups and tribe-based militia, drug lords and warlords, groups offering protectionist services and paid mercenaries, all claiming some reason to fighting against foreign forces.

²⁷ NATO, “NATO’s role in Afghanistan,” 17 August 2009, http://nato.int/cps/en/natolive/topics_8189.htm.

elections.²⁸ Over time, however, the anti-government insurgency gained considerable momentum. Suicide bombings and improvised explosive device attacks had devastating effects after being introduced by the insurgents, practices probably transferred from Iraq after 2003.²⁹ The number of ISAF soldiers killed annually increased significantly from 57 in 2003 to 294 in 2008.³⁰

By the end of 2010, President Obama had increased the number of U.S. forces in ISAF by over 70,000, so that the U.S. provided three quarters of ISAF's total strength of 130,000.³¹ The United Kingdom is the second largest of the 43 troop contributing nations with 9,500 troops. The U.K. has taken heavy casualties in Afghanistan, causing considerable debate about the mission domestically. Canada provided fewer troops (2,900) but has suffered the highest rate of casualties among ISAF contributors with a 2009 rate of 11 dead per 1,000 deployed.³²

The greatest challenge to ISAF has been the insurgency, which caused most of the mission's 2,200 fatalities from 2001 through 2010. Over time, ISAF focused on a counterinsurgency strategy. After taking command in June 2009, General Stanley McChrystal emphasized, "it is most important to focus on almost classic counterinsurgency."³³ In 2009, he issued the

²⁸ Previously Karzai had been Chairman of the Transitional Administration (December 2001-June 2002) and Interim President (June 2002-December 04). "ISAF will continue to work toward ensuring a safe and secure environment conducive to free and fair elections and the spread of the rule of law." See: ISAF, "ISAF Spokesperson Speaking Notes Joint ISAF/CFC-A Press Conference," 5 May 2004, <http://nato.int/ISAF/docu/speech/2004/sp-040505.htm>.

²⁹ The number of suicide attacks in Afghanistan increased as follows: 0 (2002), 2 (2003), 3 (2004), 17 (2005), 123 (2006). Source: Abul Ahrar Ramizpoor, Human Rights Officer, UNAMA, personal communication, Bari, Italy, 23 October 2007.

³⁰ For ISAF and OEF combined, the annual number of fatalities increased annually: 58 (2003), 60 (2004), 131 (2005), 191 (2006), 232 (2007), 295 (2008), to 521 (2009). See: "Coalition Military Fatalities by Year", icasualties.org: "Operation Enduring Freedom," <http://icasualties.org/oef>. The annual fatality rate (per 1,000 troops deployed) also increased from year to year.

³¹ ISAF is responsible for 26 Provincial Reconstruction Teams, while OEF remains responsible for the remaining provinces, "International Security Assistance Force and Afghan National Army Strength & Laydown, as of 15 Nov 2010", <http://nato.int/isaf/docu/epub/pdf/placemat.pdf>.

³² The annual fatality rates (per 1,000 troops deployed in Afghanistan) in 2008 were as follows: 11.9 (Canada), 6.6 (UK); 4.7 (U.S.A.); 3.3 (France). These calculations use fatality numbers found at <http://icasualties.org> and troop numbers supplied by ISAF.

³³ Total War Center, "Q&A with General Stanley McChrystal, Commander of ISAF," 29 July 2009, <http://twcenter.net/forums/showthread.php?t=282029>.

“Commander ISAF’s Counter Insurgency Guidance” and similar documents.³⁴ The goal was to “defeat the insurgency” by winning over the population as the primary means to success. But gaining the support of the population meant *supporting* the population, something quite “different from conventional combat.” The Commander warned troops to avoid “the trap of winning tactical victories—but suffering strategic defeats—by causing civilian casualties or excessive damage and thus alienating the people.”³⁵

The stated intent behind NATO’s mission in Afghanistan is to provide security in the country, which in turn should help prevent the spread of “terrorism” by removing Afghanistan as a potential base for the terrorist training (though in fact, the Taliban are certainly training their forces in terror tactics in Afghanistan still). More generally, NATO also seeks to serve as a collective alliance against common threats, and to maintain the trans-Atlantic partnership. Many members, particularly those from Eastern Europe, wanted to show the United States that they were good allies, and so sent forces to Afghanistan. For NATO in the new century, the Afghanistan mission continued its effort to justify the existence of its alliance, which was founded to meet a former no-longer-existent Soviet and Warsaw Pact menace.³⁶

3. Peacekeeping and peacebuilding (UNAMA)

Like ISAF, UNAMA was established by the Security Council after the December 2001 Bonn Agreement, which put in place a transitional government for Afghanistan. Unlike ISAF, UNAMA is directly run by the United Nations, under the control of the UN Secretary-General. Its role is to promote peace and stability in Afghanistan. It supports a presumed peace process, though this has not attained the level of negotiations and cease-fires. In practice, UNAMA provides “political outreach” through its presence in provinces across the country, including the conflict-ridden south. It is mandated to offer “good offices in support of Afghan-led

³⁴ Michael T. Hall and Stanley A. McChrystal, “ISAF Commander’s Counterinsurgency Guidance,” ISAF, August 2009. See also: NATO, “ISAF conducts counterinsurgency and relief operation,” 23 May 2008, <http://nato.int/isaf/docu/news/2008/05-may/080523a.html>.

³⁵ ISAF Commander Stanley McChrystal, “Tactical Directive,” released 2 July 2009, portions made public on 6 July 2009.

³⁶ See: David Caprezza, comment on “NATO’s One Priority: Afghanistan,” *New Atlanticist: Policy Analysis Blog*, comment posted 6 February 2009, http://acus.org/new_atlanticist/natos-one-priority-afghanistan.

reconciliation programmes.”³⁷ It could hold a future role as a mediator to assist discussions among the government, insurgents and the international community.

UNAMA is also mandated to strengthen the foundations of constitutional democracy in the country. It assisted with the drafting of a new constitution in 2003-04, and has played a major role in the 2004 and 2005 elections and in supporting and evaluating the 2009 Afghan-led elections. UNAMA also supports efforts to improve Afghan governance, to strengthen the rule of law and to combat corruption. The mission also sponsors a programme for human rights protection and promotion. In addition, it helps coordinate UN humanitarian aid, recovery, reconstruction and development activities.

UNAMA is primarily a political mission but it is directed and supported by the UN’s Department of Peacekeeping Operations. It has some elements of a peacekeeping operation: it has, for instance, a political head (Special Representative of the Secretary-General or SRSG), along with branches dealing with military affairs, human rights and democracy. It also has field offices in many provinces of the country. UNAMA has approximately 1,500 staff in Afghanistan, the vast majority of whom (around 80%) are Afghan nationals. Only two dozen of the international staff are uniformed personnel, though this is likely to increase.³⁸ These lightly armed personnel provide military and police advice. ISAF is tasked to provide close protection for UN staff in Kabul and while travelling.³⁹ The United Nations contracts a private security firm to provide local security guards for UN premises.

Though UNAMA does not have the capacity to use force, one can envision a future operation (perhaps named UNAMA II) with the same guidelines found in modern robust UN peacekeeping missions, such as the United Nations Mission in the Democratic Republic of the Congo (MONUC). Such a mission could become a reality, especially if the situation becomes calmer, and a peace process gets underway. With the U.S. looking for a more multilateral approach to solving the conflict,

³⁷ UNAMA, “Mandate,” <http://unama.unmissions.org/Default.aspx?tabid=1742>.

³⁸ United Nations, “Security Council Endorses Establishment of a UN Assistance Mission in Afghanistan for Initial 12-Month Period,” 28 March 2002, <http://un.org/News/Press/docs/2002/SC7345.doc.htm>. Two of the twenty-odd UNAMA military advisers are Canadian officers.

³⁹ In the 28 October 2009 attack on a guest house in Kabul where many UN workers reside, it took a full hour for ISAF to reach the scene. Meanwhile, UN-hired security guards and an armed contractor held off the attackers from parts of the hotel. However, five UN foreign staff were killed in the attack.

coupled with the increasing reticence of many NATO nations, a growing involvement of the United Nations can be expected.

The intent of the UNAMA mission is consistent with that of its parent organization, the United Nations, which seeks “to maintain international peace and security.” While UNAMA advocates a peace and reconciliation process, the mission is careful not to be seen to be out of step with the two larger entities in Afghanistan, OEF and ISAF. Both the U.S. and NATO have opposed peace negotiations with Taliban leaders, while UNAMA remains deliberately ambivalent. The two larger missions also employ robust rules of engagement and significant firepower, unlike UNAMA.

As seen above, each of these missions has its own cause and intent. In principle, there is significant overlap between these justifications. When the missions are examined more critically later in this paper, however, major discrepancies will be pointed out and the justifications contrasted.

Who Authorizes Force?

For an intervention to be just, it must be approved by a legitimate authority.⁴⁰ Under current international law, only the UN Security Council can authorize the use of force.⁴¹ The UN Charter (Article 51) also recognizes “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.”⁴² But Article 51 does not give nations the unlimited right to act anywhere in the world with any amount of force in the name of self-defence. For sizeable interventions (including toppling governments),

⁴⁰ The concept of “legitimate authority” in international law can be distinguished from the more traditional criterion of “proper authority,” which means a ruler or government in the more traditional Just War literature. For examples of the later, see James Turner Johnson, *The War to Oust Saddam Hussein* (Lanham, Md.: Rowman & Littlefield, 2005), 38; Darrell Cole, *When God Says War Is Right* (Colorado Springs: Waterbrook Press, 2002), 78; Davis Brown, *The Sword, the Cross, and the Eagle* (Lanham, Md.: Rowman & Littlefield, 2008), chap. 4; and also Davis Brown, *Who Judges Wars?* in the same volume.

⁴¹ The monopoly of the Security Council on the use of force is drawn from the provisions of the UN Charter. In article 2, para. 4, all Members are prohibited from “from the threat or use of force against the territorial integrity or political independence of any state.” Regional arrangements or alliances are not forbidden but article 53 states that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.” The UN Charter is available at <http://un.org/en/documents/charter>.

⁴² This self-defence provision is given in Article 51 of the UN Charter.

the Council remains the legitimate authority at the international level to endorse armed force, as reaffirmed in the “Responsibility to Protect” doctrine.⁴³

Here there is a problem, for the Security Council authorized neither the U.S. invasion of Afghanistan nor the establishment of OEF, contrary to common belief. Many erroneously think that OEF gained approval from the Security Council through the Council’s reaffirmation of the right to self-defence the day after the attacks of September 11, 2001.⁴⁴ On September 12, the Council did reaffirm “the inherent right of individual or collective self-defence in accordance with the Charter,” but the resolution (1368) made no mention of Afghanistan or of U.S. military action. It certainly did not authorize an invasion of Afghanistan or the establishment of a U.S. military operation (OEF) to wage a Global War on Terror.⁴⁵ Over the next few weeks, it became apparent that the Bush administration did

⁴³ See: International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre), <http://iciss.ca>. The report does admit an exception if the Security Council is deadlocked and the humanitarian need is great. In such a case, the General Assembly or regional organizations can offer limited authorization.

⁴⁴ For example, Michael Pugh states: “Operation *Enduring Freedom* was authorized by the Council against the Taliban in Afghanistan.” Pugh, Michael, “Peace Enforcement” in *The Oxford Handbook on the United Nations*, ed. Thomas G. Weiss and Sam Daws (Oxford: Oxford University Press, 2007), 370. The closest the Security Council comes is in Resolution 1368 of 12 September 2001, but it does not mention Afghanistan, the Taliban or the use of force. It simply calls on all states “to work together urgently to bring to justice the perpetrators, organizers and sponsors of the September 11 terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable.” Similarly, Amnesty International makes the same legal jump, stating: “Security Council Resolution 1368 adopted on 12 September 2001 granted international legal authority for OEF, condemning the 11 September attacks and affirming the right of states to individual and collective self-defence.” See: Amnesty International, “Afghanistan Detainees Transferred to Torture: ISAF complicity?” ASA 11/011/2007, 13 November 2007, <http://amnestyusa.org/document.php?id=ENGASA110112007&lang=e>.

⁴⁵ Resolution 1368 (2001), the Security Council expressed sympathy and condolences to the victims of 9/11 and to Government of the United States of America. It called on states to bring to justice to the perpetrators and expressed “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.” In the Council’s next resolution on terrorism, number 1373 of 28 September 2001, the Council created the Counter-Terrorism Committee. It makes no mention of Afghanistan or al-Qaeda.

not want to be limited by any international body, the Security Council included. The U.S. fought the Taliban both directly and indirectly by aiding indigenous anti-Taliban forces (the “Northern Alliance”) without explicit Council approval. In fact, the Council did not pass a resolution on Afghanistan until 14 November, 2001, the day after the Taliban government fled Kabul under heavy U.S. bombardment. Resolution 1378 (2001) of that day merely expressed “support for the efforts of the Afghan people to establish a new and transitional administration” and encouraged “Member States to support efforts to ensure the safety and security of areas of Afghanistan no longer under Taliban control.”⁴⁶ This was very different than authorizing force under the “Chapter VII” of the UN Charter. Chapter VII (enforcement) was not even mentioned in the resolution, nor were the prerequisite actions outlined in “Chapter VI” involving the “Pacific Settlement of Disputes.”

While no international authorization was sought or received for OEF, national (U.S.) authorization was forthcoming. President Bush obtained Congressional approval on 18 September to use “all necessary and appropriate force” against those “he determines” responsible for the 9/11 attacks and those harbouring such organizations or persons.⁴⁷ Afghanistan was not mentioned explicitly. Essentially, Congress gave President Bush *carte blanche* on the use of force against these two types of targets. Shortly thereafter, Bush announced the likely military response, along with several demands he was making of the Taliban and al-Qaeda.⁴⁸ Military action under OEF began on 7 October, 2001 after a short Presidential radio address to the nation.⁴⁹

⁴⁶ UN Security Council resolutions can be found at <http://un.org/documents/scres.htm>.

⁴⁷ The resolution affirmed the US was exercising “its rights to self-defense.” 107th Congress, 1st Session, S. J. Res. 23, Joint Resolution “To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States,” <http://law.cornell.edu/background/warpower/sj23.pdf>.

⁴⁸ Bush, “Address to a Joint Session of Congress and the American People,” 20 September 2001.

⁴⁹ The White House: President George W. Bush, “Presidential Address to the Nation,” 7 October 2001, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011007-8.html>. Also on October 7, 2001, the US ambassador to the United Nations, John Negroponte, wrote to the President of the U.N. Security Council stating: “In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that the United States of America, together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defense following armed

By contrast, ISAF was UN-authorized. It was created by the Security Council in resolution 1386 of December 2001. The resolution included the phrase of “acting under Chapter VII,” though ISAF was not envisioned as an enforcement mission but as a security provider. The Council provided a mandate for ISAF and sanctioned its “taking all necessary measures to fulfil its mandate.” The Council has reviewed and extended the mission every six months or annually since 2001.

The North Atlantic Council, NATO’s highest decision-making body, agreed on 16 April 2003 that NATO would assume leadership for the operation of ISAF with UN agreement. The military alliance sought continuity for the UN-mandated mission as indicated by the title of the NATO announcement: “Same name, same banner, same mission as NATO enhances ISAF role.”⁵⁰ The Security Council provided the mandate and the North Atlantic Council provided some political direction for the mission, while strategic command and control is exercised by NATO’s main military headquarters, Supreme Headquarters Allied Powers Europe, located in Mons, Belgium. NATO Spokesman Yves Bordeur stated: “ISAF will continue to work within the UN mandate and will operate according to the current and future UN resolutions.”⁵¹ ISAF does, however, include at least a dozen non-NATO nations.

Thus ISAF is responsible to two higher bodies: the UN Security Council and NATO. NATO headquarters provides day-to-day supervision and direction. ISAF must also present quarterly reports to the Security Council. This reporting requirement is important if the Council is to influence the mission mandate and direction, and for mission accountability.

ISAF reports sent to the United Nations, though sometimes late by four or five months,⁵² provide a succinct overview of the diverse activities of ISAF and the challenges the mission faces. These provide a summary of

attacks that were carried out against the United States on September 11, 2001.” Berlin Information Centre for Transatlantic Security, “Negroponte Letter to UN Security Council President,” 7 October 2001,

http://bits.de/public/documents/US_Terrorist_Attacks/negroponte.htm.

⁵⁰ NATO, “Same name, same banner, same mission as NATO enhances ISAF role,” 16 April 2003, <http://nato.int/docu/update/2003/04-april/e0416a.htm>.

⁵¹ NATO, “Announcement by NATO Spokesman Yves Brodeur on 16 April 2003 on NATO’s intention to take over command of ISAF,” 17 April 2003, NATO Online Library, <http://nato.int/docu/speech/2003/s030416a.htm>. On 2 Oct 2003, NATO offered to the UN its “Longer-term strategy for the North Atlantic Treaty Organization in its International Security Assistance Force role in Afghanistan.” Enclosure in UN Doc. S/2003/970 of 8 October 2003,

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/547/44/pdf/N0354744.pdf>.

⁵² ISAF Report of 18 May 2006.

activities such as judicial reform, training of an Afghan army and police force, and airport development, etc. Notably, any collateral damage caused by the Force's actions is rarely described. The task of keeping count of civilian casualties was taken up by UNAMA, which tracks fatalities caused by both pro-government forces (PGF) like ISAF, and Anti-Government Elements (AGEs) like the Taliban. It publishes these figures in the semi-annual *Bulletin on Protection of Civilians in Armed Conflict*.⁵³

In contrast to ISAF, OEF has evidently assumed that it has no reporting requirements to the United Nations, though the Charter states that "measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council."⁵⁴

The only mention of OEF in Security Council resolutions is in relation to ISAF. The first reference came on 13 October, 2003, when the Council requested ISAF "to continue to work in close cooperation with" several entities, including OEF, in the implementation of the ISAF mandate.⁵⁵ Resolution 1659 (2006) called for closer operational synergy with OEF. Thus, it is fair to state that OEF was not "UN authorized" but it was eventually "UN recognized" as being in Afghanistan, some two years after its unilateral establishment.

In contrast to both OEF and ISAF, UNAMA is not only UN authorized but it is also UN run. The Security Council created the mission on 28 March, 2002, following the Bonn Agreement of 5 December, 2001.⁵⁶ Although UNAMA is classified as a "political mission," it is directed and supported by the UN's Department of Peacekeeping Operations. UNAMA coordinates the UN family of agencies operating in Afghanistan (UNDP, UNICEF, WFP, and so on), which are decentralized organizations and have their own governing boards at their international headquarters. Like all UN bodies (and OEF/ISAF), UNAMA operates with the consent of the host government.

⁵³ United Nations Assistance Mission to Afghanistan, Human Rights Unit, "Afghanistan: Mid Year Bulletin on Protection of Civilians in Armed Conflict, 2009," July 2009, <http://unama.unmissions.org/Portals/UNAMA/human%20rights/09july31-UNAMA-HUMAN-RIGHTS-CIVILIAN-CASUALTIES-Mid-Year-2009-Bulletin.pdf>.

⁵⁴ UN Charter, Article 51.

⁵⁵ The Security Council: "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..." United Nations Security Council, Resolution 1510, 13 October 2003, http://un.org/Docs/sc/unsc_resolutions03.html.

⁵⁶ UNAMA was created by Security Council Resolution 1401 (2002).

Thus, the three missions each have different forms of authorization. The most controversial is that of OEF, which lacks explicit UN Security Council authority. As will be seen later, this can significantly reduce its legal and ethical legitimacy according to Just War theory, especially given that it engaged in regime change and employs the most permissive rules of engagement of the three missions.

When to Fight?

For armed force to be legitimate according to Just War theory it should be applied only as a “last resort,” when all other means of conflict resolution have been exhausted. To what extent was OEF initiated as a last resort? When OEF employed force in the field, to what extent was it a last resort?

It was apparent to virtually everyone that the U.S. needed to take some form of action against the perpetrators of the September 11, 2001 attacks.⁵⁷ Within days of the attack, the U.S. fingered al-Qaeda as responsible. The organization’s leader, Osama bin Laden, and his associates were known to be hiding in Afghanistan, where they had training camps. A week after 9/11, as the Central Intelligence Agency and the U.S. military were preparing to mobilize, President Bush made a series of demands, “not open to negotiation or discussion,” to Taliban leaders.⁵⁸ The President’s demands were to: “Close terrorist training camps; hand over leaders of the al Qaeda network; and return all foreign nationals,

⁵⁷ The direct perpetrators of the 9/11 attack were nineteen hijackers belonging to al-Qaeda who died when the planes crashed into the Twin Towers of the World Trade Center in New York City, the Pentagon in Washington and the a field in Pennsylvania. Most hijackers were from Saudi Arabia, but also United Arab Emirates, Egypt, Lebanon. Several trained in an al-Qaeda camp in Afghanistan. See: David Johnston, “Two years later: 9/11 Tactics; Official Says Qaeda Recruited Saudi Hijackers to Strain Ties,” *New York Times*, September 9, 2003, <http://query.nytimes.com/gst/fullpage.html?res=9803E4DD143BF93AA3575AC0A9659C8B63>.

⁵⁸ “And tonight, the United States of America makes the following demands on the Taliban: Deliver to United States authorities all the leaders of al Qaeda who hide in your land. Release all foreign nationals, including American citizens, you have unjustly imprisoned. Protect foreign journalists, diplomats and aid workers in your country. Close immediately and permanently every terrorist training camp.... These demands are not open to negotiation or discussion. The Taliban must act, and act immediately. They will hand over the terrorists, or they will share in their fate.” Bush, “Address to a Joint Session of Congress and the American People,” 20 September 2001.

including American citizens, unjustly detained in your country.” In his address of 7 October, on the eve of the first OEF strikes, Bush declared “none of these demands were met” and “the Taliban will pay a price.”⁵⁹ Bush informed the nation and the world that he ordered “strikes against al Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan.” Bush did not state that he was engineering a regime change. That was only implied but the goal became apparent a few weeks later.⁶⁰ The Taliban regime was overthrown in just 49 days.

There was no attempt to negotiate with the Taliban *de facto* government (even if it was not UN-recognized) for the hand-over of the al-Qaeda leadership. Prior to the aerial bombardment, the Taliban showed a willingness to send bin Laden for trial in an Islamic court or a third country.⁶¹ However, the Bush Administration eschewed any bilateral dialogue, communicating its ultimatums instead through Pakistan, a neighbour decidedly unfriendly towards Afghanistan.⁶² Other possible approaches were also pushed aside in favour of regime change. The U.S. did not limit itself to Special Force operations to locate, capture and try the al-Qaeda individuals deemed responsible for 9/11 attack, or to apply penalizing sanctions against the Taliban for their support of al-Qaeda post 9/11, or even targeted assassinations against a number of al-Qaeda or Taliban leaders. “Last resort” was not a principle declared relevant by the Bush administration in 2001.

⁵⁹ Bush, “Presidential address to the Nation,” 7 October 2001.

⁶⁰ “Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest.” Bush, “Address to a Joint Session of Congress and the American People,” 20 September 2001.

⁶¹ The Taliban proposed in early October to try bin Laden in an Islamic court in Afghanistan and also offered to hand bin Laden over to a third country for trial if they were given evidence of bin Laden's involvement in the events of September 11, 2001. The U.S. publically rejected these proposal and started its military operations. Douglas Frantz, “Taliban Say They Want to Negotiate With the U.S. Over bin Laden,” *New York Times*, October 3, 2001, <http://nytimes.com/2001/10/03/world/nation-challenged-afghans-taliban-say-they-want-negotiate-with-us-over-bin-laden.html>.

⁶² Darrel Moellendorf, “Is the War in Afghanistan Just?” *Imprints* 6, no.2 (2002), <http://eis.bris.ac.uk/~plcdib/imprints/moellendorf.html>. The border between Afghanistan and Pakistan has been a point of contention for the governments for decades, especially since 1993 when the Durand Line Agreement is alleged by Afghanistan to have expired, one hundred years after its signature.

After the fall of the Taliban government, the Bush administration also did not seek to follow the principle of last resort. When questioned during a 28 December 2001 press conference about when he believed that the war would be complete, Bush responded: "...Taliban gone, the country secure, the country stable, Al Qaeda cells rounded up, Taliban fighters brought to justice."⁶³ The Taliban and its allies were not invited or represented at the December Bonn conference. Bush stated what, in effect, were war aims for the Afghanistan campaign, including: "making sure the Taliban is out of existence."⁶⁴ In hindsight, years later with a resilient Taliban, it is apparent that these objectives were naïve and unachievable.

The last resort principle can also be applied at the tactical and individual level, as well as at the strategic (country leadership) level. Soldiers should not apply deadly force unless there are no other apparent ways to achieve their objectives. The use of armed force by OEF and ISAF personnel are governed by separate Rules of Engagement. It is much easier to use force in OEF than in ISAF. For instance, on aerial bombardment, Human Rights Watch reports:

NATO and the US both require "hostile intent" for aerial munitions to be employed to defend their forces. [But] NATO defines "hostile intent" as "manifest and overwhelming force." The US Rules of Engagement defines hostile intent as "the threat of the imminent use of force," a much lower threshold than NATO for employing airstrikes, permitting anticipatory self-defense.⁶⁵

⁶³ George W. Bush, "President, General Franks Discuss War Effort" 28 December 2001, The White House, Archives, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011228-1.html>. President Bush also defined the war goals in the following succinct statement of 31 December 2001: "The definition of success is making sure the Taliban is out of existence, helping rebuild Afghanistan and disrupting this international terrorist network." The White House: President George W. Bush, "President Discusses Foreign Policy for Year Ahead" 31 December 2001, The White House, Archives, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011231.html>.

⁶⁴ President Bush also defined the war goals in the following succinct statement of 31 December 2001: "The definition of success is making sure the Taliban is out of existence, helping rebuild Afghanistan and disrupting this international terrorist network." The White House: President George W. Bush, "President Discusses Foreign Policy for Year Ahead," 31 December 2001.

⁶⁵ Human Rights Watch, "Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan" September 2008, 31, [http://reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/SHIG-7JACE9-full_report.pdf/\\$File/full_report.pdf](http://reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/SHIG-7JACE9-full_report.pdf/$File/full_report.pdf).

After extensive research into casualties from airstrikes, Human Rights Watch's 2008 report found OEF to be responsible for more civilian deaths than ISAF due to OEF's heavier reliance on Special Forces (often lightly armed troops who call for air support when attacked) and its more permissive Rules of Engagement.⁶⁶ Due diligence was not taken by OEF especially in "unplanned situations":

TICs (Troops in Contact) use far fewer checks to determine if there is a civilian presence. The tactical collateral damage assessment performed by the Joint Terminal Attack Controller (JTAC), a service member qualified in directing airstrikes on the ground is one of the only checks done, and, of necessity, such assessments often are made under the stress of hostile fire.⁶⁷

In fact, both OEF and ISAF have relied heavily on air power, resulting in many fatalities, including of Afghan civilians and allied forces. An example of death by "friendly fire" is the first set of Canadian fatalities in Afghanistan, when four soldiers died in 2002 bombing after American OEF pilots mistook Canadians in a designated firing range for hostile forces.⁶⁸ Routinely, the U.S. has kept bombers and fighter jets on patrol to provide close air support when called upon by ground troops.

From the beginning, OEF has relied much more than ISAF on Special Forces personnel to carry out search and destroy operations, including targeted assassinations. In Pakistan, OEF has made extensive use of CIA Reaper drones equipped with Hellfire missiles to assassinate Taliban and al-Qaeda leaders. In such attacks, many innocent civilian casualties have also been killed, often resulting in a strong backlash among local populations that, no doubt, have helped to swell the Taliban's ranks.⁶⁹

OEF also established an extensive system to hold Afghan "detainees" both in Afghanistan and at special facilities abroad. Hundreds of captured fighters and other suspects were held as "unlawful combatants." This more

⁶⁶ Ibid., 4.

⁶⁷ Ibid., 6.

⁶⁸ The two F-16 pilots who dropped the 500-pound bomb onto the practice firing range, killing the four Canadian soldiers, were charged with involuntary manslaughter, aggravated assault and dereliction of duty for the April 2002 incident. But the charges were dropped by the Air Force in June 2003. David M. Halbfinger, "Charges Are Dropped in Bombing of Allies," *New York Times*, June 20, 2003, <http://nytimes.com/2003/06/20/us/charges-are-dropped-in-bombing-of-allies.html?partner=rssnyt&emc=rss>.

⁶⁹ Mazzetti, Mark, "The Downside of Letting Robots Do the Bombing" *New York Times*, March 21, 2009, <http://nytimes.com/2009/03/22/weekinreview/15MAZZETTI.html>.

closely resembles first resort than last resort since many were captured and held on mere suspicion, without charges and without due legal process. Allegedly the “worst of the worst” according to Secretary of Defence Donald Rumsfeld,⁷⁰ were flown to the U.S. base on Guantanamo Bay, Cuba. The U.S. refused to recognize the authority or applicability to detainees of the Geneva Conventions, which the U.S. had signed and ratified (though not the Additional Protocols).⁷¹ The Bush administration purposefully sought to leave the Guantanamo detainees in legal limbo in a territory outside continental U.S.A., where they would, supposedly, be out of the reach of U.S. courts. But as several cases made it to the U.S. Supreme Court, several of the administration’s military-justice practices were ruled unconstitutional. One of President Obama’s first acts on assuming office was to order the closure of the Guantanamo detention centre within one year, following up a campaign promise—though the promise and the order remain to be fulfilled two years later.

The Afghan government is also ethically obliged to respect the last resort principle in its fight with the Taliban. It promotes “reconciliation,” but rather than being a process of negotiation, such reconciliation to date has been mainly conceived in terms of the surrender of Taliban soldiers. Those seeking reconciliation are told they must first accept the Afghan Constitution, with the implication that the government of Hamid Karzai is the legitimate ruler and that the Taliban are illegal combatants. This position is not acceptable, obviously, to the Taliban, who maintain that they were ousted illegally.

Unlike OEF, ISAF was not party to the overthrow of the Taliban regime in 2001. By the time ISAF was created in December of 2001, the United Nations had been presented with a *fait accompli*: the Taliban had been replaced by another regime, the leader of which, Hamid Karzai, had been hand-picked by the U.S. government. The UN-mandated ISAF mission was originally designed to have a light military footprint, in accordance with the views of the UN Special Representative in

⁷⁰ Bob Herbert, “Madness and Shame,” *New York Times*, July 22, 2008, <http://nytimes.com/2008/07/22/opinion/22herbert.html>.

⁷¹ The US signed the 1949 Geneva Conventions in 1949 and ratified them in 1955. However, it has not ratified either of the two “1977 Additional Protocols”, designed to “strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought.” Protocol II was signed but not ratified, and Protocol I was neither signed nor ratified, though Human Rights Watch argues that Article I is accepted by enough countries that it has become Customary international law. See: Human Rights Watch, “Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan” 34.

Afghanistan, Lakhdar Brahimi.⁷² Thus ISAF operated in a defensive mode for the first few years, protecting only Kabul and its environs. In 2005, ISAF expanded to other provinces, seeking to extend governmental control over large swaths of territory still under Taliban control. At first the Taliban resisted, using conventional military tactics, and massing large numbers of its “soldiers” to hold territory. However, NATO gained substantial victories in such force-on-force encounters. For instance, after ISAF took responsibility for Regional Command South under Canadian leadership, it launched Operation Medusa to clear the Panjwai valley of Taliban fighters. Some 1,000 Taliban soldiers were killed, while Canada lost 16 and the U.S. lost two soldiers. The Taliban quickly learned to avoid such direct confrontations and increasingly resorted to attacks through improvised explosive devices.

Under President Obama, the U.S. approach to force has become more nuanced and sensitive. The principle of last resort, though not declared explicitly, now appears in ISAF counterinsurgency guidance. General Stanley McChrystal issued directives in 2009 to minimize force in order to reduce casualties and collateral damage. He further stated: “This directive does not prevent commanders from protecting the lives of their men and women as a matter of self-defence where it is determined *no other options* are available to effectively counter the threat.”⁷³ The specific options were deleted from the publicly released document due to “operational security.” But the last resort provision is clearly stated.

Where to Fight?

In the Just War tradition, some locations are clearly out of bounds for targeting. For instance, bombs should not be dropped on medical facilities or civilian facilities and events, such as weddings. Furthermore, targets should be chosen so as to not inflict harm on innocent persons and civilian structures. This principle of *distinction* (sometimes called *discrimination*) between combatants and civilians is not only part of Just War theory but

⁷² United Nations Information Service, “Secretary-General, Special Representative Brahimi Tell Security Council Rapid Disbursement of Funds Pledged Essential for Afghan Recovery,” 7 February 2002, United Nations, <http://unis.unvienna.org/unis/pressrels/2002/sc7295.html>.

⁷³ ISAF HQ (Commander ISAF, General Stanley McChrystal), “ISAF revises tactical directive”, 6 July 2009, Press Release, http://nato.int/isaf/docu/press_releases/2009/07/pr090706-tactical-directive.html, emphasis added. The directive itself is available (with some sections deleted for operational security) at http://nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf.

has become a key part of the law of armed conflict, including the Additional Protocols to the Geneva Conventions. In guerrilla warfare, however, distinction can pose a difficult challenge since insurgents often mix freely with the local civilian population.

The Taliban have often ignored the principle of distinction, which also has a basis in the Qur'an and in Islamic jurisprudence. In fact, some Taliban attacks deliberately target civilian population centres, frequently by suicide bombers, and Taliban spokesmen boast of the fact. Furthermore, the Taliban is also known to use "human shields," purposely mixing with civilians as a protective measure for themselves and perhaps to increase civilian casualties. However, violations by one side do not justify the weakening of the distinction principle by the other, especially for international forces seeking to abide by and to uphold international law.

The record of undesirable "collateral damage," especially from U.S. air strikes, is substantial and tragic. For instance, early in the war, the Red Cross compound in Kabul was hit by "stray bombs" on two occasions (16 and 26 October, 2001).⁷⁴ In 2007, an airstrike killed nine members of a family across four generations after a clash with militants in Jabar.⁷⁵ Some twenty-five civilians, including nine women and three young children, were killed in an air strike in Helmand province in 2007.⁷⁶ Further, in 2008, in the Shindand district aerial bombing killed more than ninety civilians, including sixty children, according to a UN report.⁷⁷ In July 2008, the bombing of a large wedding in Nangahar province caused the deaths of thirty-five children and nine women.⁷⁸ A few months later, a

⁷⁴ Public Broadcasting Service (PBS), "U.S. Pummels Taliban Military Sites in Tenth Day of Strikes," *Online News Hour*, October 16, 2001, http://pbs.org/newshour/updates/october01/attack_10-16.html.

"Red Cross warehouse hit again," *The Telegraph*, October 27, 2001, <http://telegraph.co.uk/news/worldnews/asia/afghanistan/1360715/Red-Cross-warehouse-hit-again.html>.

⁷⁵ "Official: NATO airstrike hits Afghan house, Family of 9 killed a day after Afghans allege U.S. Marines fired on civilians," *MSNBC*, March 5, 2007, <http://msnbc.msn.com/id/17462080>.

⁷⁶ AFX News Limited, "NATO Airstrike kills 25 Afghan civilians: police," *Thompson Financial*, 22 June 22, 2007, <http://forbes.com/feeds/afx/2007/06/22/afx3847828.html>.

⁷⁷ United Nations, "The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General," UN Doc. A/63/372-S/2008/617, 23 September 2008.

⁷⁸ Human Rights Watch, "Troops in Contact: Summary"; UNAMA Human Rights Unit, "Afghanistan: Annual Report on Protection of Civilians in Armed Conflict, 2008," January 2009,

wedding in Kandahar City was bombed, allegedly killing over ninety people.⁷⁹ After a UN investigation exposed the high death rate in a bombing near Herat in May 2009, the U.S. revised its numbers from five to thirty-three civilian deaths.⁸⁰

In 2008-09, President Karzai firmly and frequently insisted that foreign forces exercise greater discretion in aerial attacks and called for an end to civilian casualties. The Obama administration proved sympathetic to this call. On appointment in 2009, General McChrystal issued directives to minimize casualties. His Tactical Directive of 9 July stated that gaining the support of the population must be “our overriding operational imperative.” McChrystal also noted that “excessive use of force resulting in an alienated population will produce far greater risks” than “carefully controlled and disciplined employment of force.” He recognized the problem as not only as “a legal and a moral issue,” but also as an “overarching operational issue.” Therefore, he limited the use of force, especially close air support, against residential compounds and other locations where civilian casualties would be likely.

Even after the new policy of strictly minimizing civilian casualties came into effect in July of 2009, disaster struck as a U.S. plane bombed a gasoline tanker truck in Kunduz province, killing some seventy people. Ironically, this led the Taliban—who have regularly killed their countrymen in attacks—to hypocritically call on the United Nations to investigate the bombing, saying, “if they respect human rights and the blood of human beings, they should determine the truth or falsity of this situation.”⁸¹

In addition to air strikes, ground troops can also cause civilian fatalities, especially when firing on vehicles wrongly suspected of carrying improvised explosive devices. In this way many innocent lives have been lost, including those of women and children. For instance, in July of 2009, Canadian forces accidentally killed a young girl when their bullets

http://unama.unmissions.org/Portals/UNAMA/human%20rights/UNAMA_09february-Annual%20Report_PoC%202008_FINAL_11Feb09.pdf.

⁷⁹ Sameem, Ismail, “US Strike kills wedding party goes--Afghan officials,” *Reuters*, November 5, 2008,

<http://reuters.com/article/latestCrisis/idUSISL367820>.

⁸⁰ *Agence France Presse*, “US-led strikes, clashes kill 100, mostly civilians,” May 5, 2009, http://google.com/hostednews/afp/article/ALeqM5ipy2_iz7C9sv13zDZuViG0HcROUw.

⁸¹ *New York Times*, “Afghan Group Says NATO Strike Killed 70 Civilians,” September 7, 2009, <http://nytimes.com/aponline/2009/09/07/world/AP-AS-Afghan-Tanker-Attack.html>.

ricocheted off of a motorcycle that failed to stop at a military checkpoint.⁸² In another instance, U.S. Marines allegedly fired on cars and pedestrians as they fled a suicide attack, leaving up to ten Afghans dead.⁸³ Admittedly, the Taliban forces have a far worse record, compounded by the fact that they sometimes deliberately target civilians.

The Brookings Institution's "Afghanistan Index" shows the number of civilian casualties from both "anti-government" and "pro-government" forces (including the Afghan Government and all international forces). The casualty counts from both sides increased dramatically between 2006 and 2008, with pro-government force causing a jump from 230 to 828 casualties, and with 2009 looking even worse. An estimated 26% of all civilian casualties in 2008 were caused by airstrikes from pro-government forces.⁸⁴ The available UN statistics⁸⁵ are even more damning of pro-government forces, as shown in Table 1.

Table 1: Civilian Fatalities in Afghanistan, 2007-08

Fatalities	2007	2008
by Anti-Government Elements	700 (46%)	1,160 (55%)
by Pro-Government Forces	629 (41%)	828 (40%)
by Others	194 (13%)	130 (5%)
Total civilian fatalities	1,523	2,118

ISAF troops routinely call for close air support when they find themselves under fire from insurgent forces. In some operations, indeed, they deliberately seek to *draw* fire from insurgents so that air strikes can eliminate the sources. Their rules of engagement, however, are stringent: they must abort the use of force (except in self-defence) when civilians in the vicinity might be injured. NATO affirms that ISAF forces have been

⁸² Dene Moore, "Soldier's warning shot kills Afghan girl" *The Toronto Star*, July 23, 2009, <http://thestar.com/news/world/article/670480>.

⁸³ *Associated Press*, "Official: NATO airstrike hits Afghan house. Family of 9 killed a day after Afghans allege U.S. Marines fired on civilians," March 5, 2007, <http://msnbc.msn.com/id/17462080>.

⁸⁴ Jason H. Campbell and Jeremy Shapiro, "Afghanistan Index", Brookings Institution 29 July 2009, <http://brookings.edu/foreign-policy/~media/Files/Programs/FP/afghanistan%20index/index20090729.pdf>.

⁸⁵ "The situation in Afghanistan and its implications for international peace and security. Report of the Secretary-General," UN Doc. A/63/751-S/2009/135, para. 66, 10 March 2009.

given orders to consider “tactical withdrawal” rather than calling for air support in civilian-populated areas.⁸⁶ Nevertheless, “collateral damage” is frequent from airstrikes, as has been noted.

Because of the local backlash against NATO from its night raids into Afghan homes, ISAF has directed that entry into Afghan houses should be done by Afghan National Security Forces (ANSF) rather than ISAF soldiers. Since mosques have a special protected status for Muslims, according to the Qur’an,⁸⁷ the directive also stated that “no ISAF forces will enter or fire up on a mosque or any religious or historical site except in self-defence.”⁸⁸

What to Fight?

Shortly after September 11, 2001, the Bush administration chose to expand its war aims from destroying al-Qaeda to overthrowing the Taliban government in Afghanistan. An important underlying question for Just War theory is whether this expansion of the enemy was a proportionate response. While al-Qaeda was a legitimate target, did the U.S. have the moral right to force regime change in Afghanistan? The main supportive argument in favour of this view is that otherwise the Taliban would have continued to harbour terrorists, even in the face of U.S. surgical attacks. While such a statement is counter-factual and not verifiable, especially given the uneasy relationship that existed between the Taliban and their foreign terrorist visitors, it is true that the defeat of the Taliban dealt a heavy blow to al-Qaeda, forcing its fighters to move to the tribal belt of Pakistan. But an equally strong counterfactual argument also holds: a more precise series of attacks on al-Qaeda targets could have yielded better results, possibly even the capture of bin Laden. The search for a small

⁸⁶ “We’ll do anything we can to prevent unnecessary casualties, and we’ll ensure that we’ll have safe use of force. That includes not only airstrikes but ground operations.... If you can achieve the effect you’re looking for without using a 2,000 pound bomb, if you can achieve the same effect you’re looking for with a different kind of weapon then that’s your responsibility as a commander on the ground... It’s a question of requisite restraint.” Brigadier General Richard Blanchette, Chief spokesman for NATO in Afghanistan, states in a press conference that NATO forces have been given orders to consider “tactical withdrawal” rather than calling in for air support in civilian-populated areas. Rondeaux, Candice, “NATO Modifies Airstrike Policy in Afghanistan,” *Washington Post*, October 16, 2008, http://washingtonpost.com/wpdyn/Content/article/2008/10/15/AR2008101503572_pf.html.

⁸⁷ See for instance, Surah 2:191 which stipulates: do not fight at a “Sacred Mosque, unless they (first) fight you there.”

⁸⁸ ISAF HQ, “ISAF revises tactical directive.”

network of individuals would have been much easier for U.S. intelligence agencies and Special Forces if the country had not been turned upside down through regime change. By whacking the whole “hornets’ nest,” so to speak, it became much harder to find the source of the trouble, as the early focus on al-Qaeda was dropped in favour of fighting the Taliban and, later, removing Saddam Hussein from Iraq. U.S. forces consequently could not find or capture the al-Qaeda leaders who had planned the 9/11 attacks.

No doubt part of the original incentive to overthrow the Taliban government (and later the Iraqi government) was the sheer ease with which it could be done. Dealing with the aftermath, however, proved much more difficult. This shows once again the time-honoured truth that removing a government is easier than removing an insurgency and winning the war is easier than winning the peace.

In addition, the costs and benefits of a wider war have to be taken into account. Has there been a *net benefit* to the overthrow of the Taliban government? The benefits of removing the government have to be weighed against the challenge of dealing with the Taliban insurgency in the long-term. Already, the costs have been high. In the first nine years of international intervention in Afghanistan, approximately 2,300 US and other foreign soldiers died, mostly from Taliban attacks, including by improvised explosive devices. This is about half the number of people killed in the original 9/11 attacks. The number of Afghan civilians who died far exceeds that of 9/11. What makes the statistics more alarming is that the annual number of fatalities is rising steadily for coalition forces, as shown in Table 2.⁸⁹

⁸⁹ Source: <http://icasualties.org>.

Table 2: Annual Number of Coalition Fatalities (OEF and ISAF)

Year	US	UK	Canada	Other	Total
2001	12	0	0	0	12
2002	49	3	4	13	69
2003	48	0	2	7	57
2004	52	1	1	6	60
2005	99	1	1	30	131
2006	98	39	36	18	191
2007	117	42	30	43	232
2008	155	51	32	57	295
2009	317	108	32	64	521

Moreover, for many Afghans, the net benefit has been difficult to assess. The level of security is commonly said to be worse than during Taliban times, given that the influence of warlords and drug lords is greater, and that corruption in the Karzai government (especially its police force) is rampant. Though the Taliban meted out summary and brutal justice, they did control corruption and reduce drug production dramatically. The Taliban regime was even lauded by the U.S. government prior to the 9/11 attacks for its anti-drugs policy.⁹⁰ In 2009, democracy was under attack not only from the Taliban but from the candidates themselves. The Afghan-run election turned from being a source of national pride to being an embarrassment as the final results could not be announced for two months due to widespread fraud. Over a million ballots had to be discarded after a review by UN-supported agencies. Finally, the ongoing presence of international forces has caused great resentment to a proud people, who also suffered increasing numbers of civilian fatalities from coalition attacks (see Table 1 for 2007-08 fatality figures).

The international forces, which have been in Afghanistan longer than either World War (and almost as long as the two combined), are themselves experiencing fighting fatigue. Given that no victory is on the horizon, several countries have sought a reduced role and others have pledged to withdraw. The Netherlands is due to leave Afghanistan in 2010

⁹⁰ Barbara Crossette, "Taliban's Ban on Poppy a Success, U.S. Aides Say", *New York Times*, May 20, 2001, <http://nytimes.com/2001/05/20/world/taliban-s-ban-on-poppy-a-success-us-aides-say.html>.

and Canada has pledged to remove its combat forces by 2011, in line with a parliamentary motion passed in March of 2008.⁹¹

Whatever the military proportionality of the U.S. response in 2001 and of international actions afterwards, there is a strong argument that the international community has a responsibility to rebuild Afghanistan. UNAMA currently embodies a vision of support for the Afghan people and government through non-kinetic (non-offensive) means. Elections are a key component of its work. For instance, UNAMA was put in charge of the elections of 2004, with ISAF playing a supporting role to provide security. On 9 October, 2004, UNAMA received an early victory when presidential elections were successfully held in Afghanistan, with minimal disruption. According to UN estimates, over 10 million people registered to vote, 42% of whom were female.⁹² Hamid Karzai, leader of Afghanistan's transitional government, received 55.4% of the popular vote, running as an independent. The closest competitor out of the 17 other candidates, Yunus Qanuni of the Afghan National Party, received only 16% of the vote. Karzai, who had first been sworn in as President of Afghanistan on 9 December, 2001, was thus legitimized, at least until the 2009 elections. Those later elections were Afghan-run but the Electoral Complaints Commission, with a majority of UNAMA-appointed commissioners, found overwhelming evidence of fraud, enough to reverse the preliminary declared results of a Karzai victory with over 50% of the votes. The road to building a democratic Afghanistan is a long one involving both military and civilian efforts.

⁹¹ The end date was specified in the following fashion: "the government of Canada notify NATO that Canada will end its presence in Kandahar as of July 2011, and, as of that date, the redeployment of Canadian Forces troops out of Kandahar and their replacement by Afghan forces start as soon as possible, so that it will have been completed by December 2011." See: "Afghanistan mission", House of Commons, 39th Parliament, 2nd Session, March 13, 2008, <http://www2.parl.gc.ca/HouseChamberBusiness/ChamberVoteDetail.aspx?Language=E&Mode=1&Parl=39&Ses=2&FltrParl=39&FltrSes=2&Vote=76>. Earlier motions had extended the mission: one passed on May 17, 2006 (two year extension to Feb 2009) and another passed on 13 March 2008 (two year extension to end 2011). See: Leader of the Government in the House of Commons and Minister for Democratic Reform, "Government Motion—Seeking to Continue the Mission in Afghanistan," Government of Canada,

<http://lgc.gc.ca/docs/media/press-presse-archives/pdf/20080208-2-eng.pdf>.

⁹² *CBC News Online*, "Afghanistan's presidential election" October 12, 2004, <http://cbc.ca/news/background/afghanistan/afghanelection.html>.

How to Fight?

Right conduct in Just War theory includes adherence to the international laws of armed conflict. In addition to the distinction principle mentioned above, there are many additional rules described in treaty law, especially the Geneva Conventions. However, the United States held that the Geneva Conventions were not binding in the Global War on Terror and hence they were not applied uniformly in OEF in Afghanistan and abroad. The Bush Administration claimed that terrorists were not lawful combatants so they did not deserve the rights and protections granted by the Geneva Conventions. The Global War on Terror not only bent the rules of armed conflict⁹³ but also distorted them to such an extent that even the U.S. Supreme Court ruled that certain U.S. practices were unlawful, especially in relation to detention.⁹⁴ Prominent in news coverage was the unlawful treatment of prisoners (“detainees”) from Afghanistan and elsewhere held in the Guantanamo facility, which had been deliberately chosen since it was located outside the continental U.S.A. and hence presumed outside the reach of U.S. courts.

At Guantanamo, CIA interrogators employed a variety of coercive techniques to frighten suspects. In particular, water-boarding was used at least 266 times on two prisoners at the facility.⁹⁵ Top Obama administration officials later described the activity as illegal torture. Other atrocities disclosed included choking, mock executions and threatening a prisoner with a gun and power drill, and another with killing the detainee’s children. Sleep deprivation was common. The growing list of atrocities led Obama’s Attorney General Eric H. Holder Jr. to appoint a criminal prosecutor to investigate the interrogations of suspects.⁹⁶

The U.S. was also accused of other crimes, some more indirect. It practiced “extraordinary rendition,” whereby detainees were sent to countries that routinely practice torture, such as Syria and Egypt. As Amnesty International, for instance, has argued, such rendition is a

⁹³ George W. Bush, “President Discusses Creation of Military Commissions to Try Suspected Terrorists,” 6 September 2006, The White House, Archives, <http://georgewbushwhitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

⁹⁴ In the US Supreme Court, three relevant cases (with references) were: *Rasul v. Bush*, 542 U.S. 466, 124 S.Ct. 2686 (2004); *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006); *Boumediene v. Bush*, 128 S.Ct. 2229 (2008).

⁹⁵ Shane Scott, “2 Suspects Waterboarded 266 Times” *New York Times*, April 20, 2009, <http://nytimes.com/2009/04/21/world/21detain.html>.

⁹⁶ Mark Mazzetti and Scott Shane, “C.I.A. Abuse Cases Detailed in Report on Detainees,” *New York Times*, August 25, 2009, <http://nytimes.com/2009/08/26/us/politics/26intel.html>.

violation of both U.S. and international law. Some 100-150 detainees have been “rendered” by the United States for detention and interrogation by governments in the Middle East. Human Rights Watch noted: “In an increasing number of cases, there is now credible evidence that rendered detainees have in fact been tortured.”⁹⁷

Similarly, the treatment of detainees in Afghanistan proper has also caused considerable controversy since coalition forces have not been able to guarantee that persons turned over to the Afghan government have not been tortured. This issue was particularly sensitive in Canada, which claims to treat detainees according to common article 3 of the Geneva Conventions. The country had in 1993 experienced the trauma of uncovering torture conducted by several of its soldiers in Somalia, leading to courts-martial of the soldiers directly involved and a multi-year governmental inquiry that led to the disbandment of the Canadian Airborne Regiment, to which the soldiers in question belonged. The tortuous path of Canada on the detainee issue is typical of a democratic nation struggling to fight a guerrilla war in a conscientious and law-abiding fashion.

The treatment of detainees by the Canadian Forces has been in question throughout Canada’s Afghan mission. At the outset of Canada’s military involvement in 2001-02, the Canadian Forces turned detainees over to U.S. forces to be held and questioned.⁹⁸ However, this stopped in 2002 as the treatment of detainees by U.S. officials came increasingly into question, particularly at Guantanamo Bay, souring the Canadian public mood domestically. As Canada took on the tough Kandahar mission in late 2005, it forged an agreement with the Afghan government to hand detainees over to Afghan forces. Under this deal, signed by Canadian Chief of Defence Staff Rick Hillier, Canadian forces notified the International Committee of the Red Cross of the transfers but did not check on the treatment of detainees thereafter.⁹⁹ Though the Red Cross monitored the conditions of transferred detainees, findings were only reported to the Afghan government. Canadian officials were therefore

⁹⁷ Human Rights Watch, “Getting Away with Torture?” 23 April 2005, <http://hrw.org/en/node/11765/section/2>. For full report see: <http://state.gov/g/drl/rls/hrrpt/2008/sca/119131.htm>.

⁹⁸ *CBC News*, “The controversy over detainees: Are prisoners of war Canada’s responsibility?” April 27, 2007, <http://cbc.ca/news/background/afghanistan/detainees.html>.

⁹⁹ Paul Koring, “Amnesty Slams Canada over Afghan Detainees,” *Globe and Mail*, March 31, 2009, <http://theglobeandmail.com/news/national/article743285.ece>.

unaware of the detainees' status after transfers took place.¹⁰⁰ Therefore it could be argued that Canada was complicit in torture, whether it was aware of it or not.

After an inquiry into the behaviour of Afghan officials found that torture and abuse was widespread, Amnesty International and the British Columbia Civil Liberties Association filed a complaint against the government of Canada and requested an injunction to terminate Canada's detainee transfer practice in 2007.¹⁰¹ In the ensuing Federal Court case, it emerged that in fact the 2005 agreement for recorded detainee transfer could be circumvented by handing detainees directly to Afghan authorities within 96 hours, without formally taking them prisoner.¹⁰² In such a case, the Red Cross would not be notified of the detainees' capture or transfer and the Canadian Forces could possibly be absolved of all responsibility for any breach of international law thereafter.¹⁰³

In May of 2007, the Canadian government concluded a supplemental detainee transfer agreement with Afghanistan that included more stringent monitoring and preventative action against torture and abuse, as well as giving Canadian officials' "full and unrestricted access" to detainees in custody.¹⁰⁴ Still, after fresh evidence of widespread torture by Afghan officials was revealed, Canada halted detainee transfers altogether on 6 November 2007, using instead its own ad-hoc detention facility at Kandahar Air Field. The transfers resumed two months later, after Canadian Officials cited sufficient reform, including increased record-keeping and a new Canadian-sponsored training program for prison officials.¹⁰⁵ However, in May 2009 the Military Police Complaints

¹⁰⁰ Then Defence Secretary Gordon O'Connor asserted several times that the Red Cross informed the Canadian Government of any mistreatment of the detainees. When it emerged that this had never been the case, O'Connor came under heavy criticism and was eventually transferred with Peter Mackay taking over the file in 2007. *CBC News*, "The controversy over detainees: Are prisoners of war Canada's responsibility?"

¹⁰¹ Paul Koring, "Canada signs new Afghan detainee agreement," *Globe and Mail*, 31 March 2009,

<http://theglobeandmail.com/news/national/article756101.ece>.

¹⁰² *Ibid.*

¹⁰³ *CBC News*, "Canadian Forces Handle Some Detainees Differently, Documents Say," May 2, 2007, <http://cbc.ca/canada/story/2007/05/02/detainees-afghan.html>, and Koring, *ibid.*

¹⁰⁴ Koring, *ibid.*

¹⁰⁵ Graeme Smith, "Canada Resumes Afghan Detainee Transfers," *Globe and Mail*, February 29, 2008, <http://theglobeandmail.com/news/world/article669955.ece>.

Commission took up the detainee transfer issue and is to resume hearings in fall of 2009.¹⁰⁶

The Military Police Complaints Commission also investigated the possible abuse of three Afghan detainees by Canadian Forces members held in 2006. The inquiry followed a civil complaint filed in 2007 by a University of Ottawa professor whose research uncovered suspiciously similar injuries amongst three detainees held by Canadian Forces in Kandahar in April 2006. The Canadian Military Police Complaints Commission took up the complaint in 2007 after the *Globe and Mail* brought the Professor's allegations to public attention.¹⁰⁷ In their final report in April 2009, the Commission cleared the Canadian Forces officials under question of any wrong-doing, stating that detainees had been handled, "professionally and humanely."¹⁰⁸ The report, however, found a "failure by the military police...to investigate the origins of the injuries of one of the detainees, when it was their duty to do so" and recommended increased educational programmes amongst other courses of action.¹⁰⁹ Overall, the issue of proper behaviour towards detainees continues to be a difficult one for Canada and its armed forces.

Detainee treatment after transfer to Afghan authorities has also been a challenge for the U.S., particularly after the U.S. State Department's 2008 annual report on the human rights situation around the world stated that women and children detainees face rape in Afghan prisons, whilst "security forces continued to use excessive force, including beating and torturing civilians," as well as "...pulling out fingernails and toenails, burning with hot oil, beatings, sexual humiliation, and sodomy."¹¹⁰

¹⁰⁶ Military Police Complaints Commission, "Commission Begins the Public Interest Hearing into the Allegations Regarding Afghan Detainees," 20 May 2009, Media Advisory, http://mpcc-cppm.gc.ca/alt_format/400/media/2009-05-20-eng.pdf.

¹⁰⁷ Paul Koring, "Military police failed to carry out obligations to detainees, probe finds," *Globe and Mail*, April 29, 2009, <http://v1.theglobeandmail.com/servlet/story/RTGAM.20090426.wdetainees27/BNStory/undefined>.

¹⁰⁸ Military Police Complaints Commission, "Final Report: Following a Public Interest Investigation Pursuant to Section 250.38 of the National Defence Act Of a Complaint Submitted by Dr. Amir Attaran Concerning the Conduct of the Task Force Afghanistan Military Police (Roto 1) at Kandahar Air Field in Kandahar, Afghanistan," 23 April 2009, http://mpcc-cppm.gc.ca/alt_format/300/3700/2007-003/2007-003-eng.pdf.

¹⁰⁹ Ibid.

¹¹⁰ Paul Koring, "Torture, abuse still rife in Afghan prisons, U.S. human rights report says," *Globe and Mail*, February 26, 2009, <http://v1.theglobeandmail.com/servlet/story/RTGAM.20090225.wafghan26/BNStory/International>.

Improper conduct by U.S. forces in Afghanistan has in theory been investigated and punished via court-martial under the Uniform Code of Military Justice. Unfortunately, many deadly incidents have gone unpunished, including cases of friendly-fire and civilian deaths. Furthermore, the U.S. has in fact insisted that its forces are immune from prosecution by the International Criminal Court.¹¹¹ The U.S. had signed the International Criminal Court Statute in the waning days of the Clinton administration, but that signature was declared null and void early in the Bush administration. In addition, the U.S. sought to sign immunity agreements with International Criminal Court signatories so that they would never turn over U.S. soldiers for prosecution. This undermining of the newly founded court was protested by many nations, particularly those who suffered punishment (e.g., through the withdrawal of U.S. aid) for not signing an immunity agreement with the U.S., which the U.S. forced the Afghan government to do. However, the Obama administration is currently reviewing U.S. policy towards the International Criminal Court.¹¹² To make matters more tense, the court prosecutor has initiated an investigation of atrocities committed by both sides of the war in Afghanistan. However, the International Criminal Court only takes cases in which national authorities are unwilling or unable to try offences committed by their soldiers or citizens. This puts U.S. actions in Afghanistan into a gray zone, while Taliban atrocities clearly violate international law.

Ethical Evaluation Using a “Just War Index”

To label the “war” in Afghanistan as either Just or Unjust without qualification would appear to be to oversimplify a complex problem, given that there are several operations involved and given that any such evaluation needs to consider all the criteria of Just War theory. A vague answer of “partially just” or “partially unjust” would also be incomplete, since it would not offer sufficient moral clarity or specificity. Moreover, some Just War criteria may be well met while others are not at all met. In order to handle the level of complexity involved, therefore, this essay introduces the notion of a Just War Index.

In the Just War Index, each of the seven Just War criteria is evaluated. A range of -3 to +3 has been chosen to give adequate scope for the scoring

¹¹¹ Jennifer Elsea, “U.S. Policy Regarding the International Criminal Court,” 3 September 2002, Report for Congress, U.S. State Department, <http://fpc.state.gov/documents/organization/13389.pdf>.

¹¹² See: The American non-Governmental Organizations Coalition for the International Criminal Court, <http://amicc.org/usinfo/administration.html>.

of each of the criteria, and to allow some nuance in judgement. The following broad meanings are associated with the scores available within the seven-point range: -3—completely unjust; -2—mostly unjust; -1—partially unjust; 0—neither just nor unjust; +1—partially just; +2—mostly just; and +3—fully just. The average of the values for the seven criteria will thus give an overall score out of a maximum score of +3. The overall score thus attempts to provide a measure of the justice of the war in its several dimensions.

The Just War Index is an analytical tool having heuristic utility, and is employed in order to explain and quantify an evaluation of the justice of the war. Obviously, each score must be explained. However, a comparison of the values for each criterion shows some of the three missions to be more ethically justified than others in various ways. As with any ethical assessment, the results are perhaps subjective, being strongly influenced by the assessor's experience, world perspective and other factors. Nevertheless, evidence will be adduced to justify and support the values presented.

Usually Just War criteria are based on the information available at the time of the decision to go to war. This is appropriate, for instance, for making a judgement about a leader's actions at that time (*jus ad bellum*). In this paper's evaluation, however, the benefit of hindsight is applied to evaluate the military and associated operations, as they have turned out so far. Of course, the final outcome of the struggle in Afghanistan is not yet known (and may not be known for decades), so the assessment offered cannot be final. However, a view from the present time has its own merits, and might be of service in attempting to inform policy decisions that will impact upon that eventual outcome.

While the information provided above was designed to be descriptive and to present facts along with opinions, this assessment section allows for more stark moral judgement, presenting arguments in a manner that will be mainly short and to the point, but building on the considerations more extensively surveyed above. Such scoring necessitates the juxtaposition of the positive and negative sides of a nuanced argument. Extreme assessments (scores of -3 or +3) can rarely describe the real world, even for individual criteria. Though some of the seven criteria overlap significantly,¹¹³ they

¹¹³ For instance, "proportionality of means" is often considered a component of right conduct (*jus in bello*). And "right intent" and "net benefit" are closely linked to the "just cause" criterion. Davis Brown argues that Right Intent is valid only in a narrow application of it. See Davis Brown, *The Sword, the Cross, and the Eagle: The American Christian Just War Tradition*, Lanham, Md.: Rowman & Littlefield Publishers, 2008.

are all of sufficient importance to merit independent assessment. Quantifying the criteria allows for clearer comparison of the missions and the features of the missions, while the sum of the criterion scores can be used to evaluate each mission overall.

The American-led Operation Enduring Freedom (OEF) and the NATO-led International Security Assistance Force (ISAF) are each evaluated in what follows. The United Nations Assistance Mission in Afghanistan (UNAMA) is omitted because it does not use substantial armed force. However, an envisioned UNAMA II (robust peacekeeping) is assessed later.

1. Just Cause

The original cause of the U.S. invasion of Afghanistan under OEF was to defeat al-Qaeda and to capture its leaders. This was strongly justified after the attacks of 9/11. However, the U.S. government quickly moved as well to seek regime change in Afghanistan. This significantly broadened the definition of the enemy, and significantly diluted the justice of the cause on the other. President Bush's declaration that the United States would make no distinction between the terrorists and those who harbour them violated a basic provision of international law. It supposed an equivalency between the two that is not true to the original crime. It was also a recipe for an ever-widening war. The violence, for instance, quickly spread into Pakistan. Furthermore, the overthrow of the Taliban meant that much attention was diverted from the primary goal, and that complicating factors were introduced into the stability equation which have still not been resolved many years later. No doubt the Taliban government of Afghanistan in 2001 was deserving of some form of punishment, beyond the sanctions already applied by the United Nations, for its "delict" of harbouring the terrorist group al-Qaeda that had attacked the U.S. But waging war and overthrowing the government is the strongest form of punishment and one that diverted the U.S. from the primary goal, even if it did remove an odious rights-violating regime. Thus the justice of the cause for OEF cannot be negligible, but it cannot receive a high score either. For such reasons, the middle-range score of +1 on the scale from -3 to +3 has been chosen.

ISAF was created after the Taliban's ouster, which the UN-mandated mission had to accept as a *fait accompli*. The mission was created by the international community as the interim government needed security assistance to function in Kabul and in other regions of the country. It engages in national capacity building. Although ISAF has not succeeded

in its mandate of creating a secure and stable environment, its cause is deemed valuable and strongly justified. ISAF can easily be awarded a score of +2.

Just Cause: OEF: +1; ISAF: +2

2. Right Intent

Intent is one of the most difficult qualities to measure, but the Bush administration's approach in OEF makes judgement easier. The U.S. adopted a black and white view, dividing the world into those who are "with" them versus those who are "with" the terrorists. Initially, such a simple world view would seem to make the question of intent clearer. However, the nuanced reality of the world means the "with us or against us" distinction is artificial and inaccurate. Initially, the intent was articulated by a war-president who saw himself as the representative of good in the battle with evil. While the Obama administration has dropped this form of self-aggrandizement, along with the term "Global War on Terror," it is expanding the Afghan war with additional troops. It is also attempting to divest itself of some of the Bush administration's ideological goals of creating a democratic Afghanistan where individual liberties can thrive. Taking a more pragmatic approach rather than an ideological one, it has dropped much of the language that U.S. troops are there for humanitarian, nation-building and even school building purposes. The intent is now focused on a new goal: not to lose to the Taliban and al-Qaeda. A U.S. withdrawal from Afghanistan in the face of a resurgent Taliban would be seen as an unacceptable victory for the insurgents. Given the range of positive and negative factors, the intent behind OEF (2001 onwards) is quite mixed. Considering the many factors, a score of +1 seems merited.

The intent behind ISAF has been clearly articulated by the Canadian government, which has played a major role in the mission. Canada cited humanitarian grounds for the mission as it sent forces to ISAF in 2003, when ISAF forces were mostly confined to the Kabul region. Prime Minister Jean Chrétien stated: "We are committed to helping the Afghani people build a democratic, pluralistic society."¹¹⁴ His successor, Prime

¹¹⁴ Prime Minister of Canada: Jean Chrétien, "Notes for an Address by Prime Minister Jean Chrétien at the Opening of the 58th Session of the United Nations General Assembly," 23 September 2003, Archives Canada, http://epe.lacbac.gc.ca/100/205/301/prime_minister-ef/jean_chretien/2003-12-08/stagingpm_3a8080/dfault.asp@language=e&page=newsroom&sub=speeches&doc=ungaspeech.20030923_e.htm.

Minister Paul Martin in 2004 cited the dual purposes of “reviving a failing state, for humanitarian reasons and at the same time ensuring that it cannot be used as a base of operations for terrorists.”¹¹⁵

A further look at Canada’s motivation also reveals a sense of national pride. In 2006, Prime Minister Stephen Harper said the mission was to solidify Canada’s leadership internationally: “...we are determined to demonstrate Canada’s leadership on the world stage to regain the trust of our allies and to demonstrate that we will pull our weight in United Nations missions.”¹¹⁶ He also cited national security as a key objective: “because our national security and the safety of Canadians is at stake.... It [terrorism] must be confronted wherever we find it—at home or abroad.”¹¹⁷

Similarly, NATO has sought in the Afghanistan context to prove that it could be a useful alliance at the forefront of international security and in the fight against terrorism. It has thus sought to build a stronger role for itself after the end of the Cold War. In Afghanistan, however, the alliance found a burden greater and of longer duration than many expected. Still, with the new people-centred ISAF approach, having the goal of winning hearts and minds, ISAF has recently shown itself to be a military alliance with adjusted priorities and with a *modus operandi* that goes far beyond simply killing Taliban enemies. Thus, the scores for this criterion are:

Right Intent: OEF: +1; ISAF: +2

3. Legitimate Authority

The OEF and ISAF missions have completely different authorizations. ISAF was authorized and mandated by the UN Security Council (resolution 1386 of 20 December, 2001). Its mandate, indeed, has subsequently been renewed on an annual or semi-annual basis. By contrast, the U.S.-led OEF has neither Security Council authorization nor mandate. It did gain U.S. domestic approval. Still, this falls short of the demands of the UN Charter

¹¹⁵ Prime Minister of Canada: Paul Martin, “Address by Prime Minister Paul Martin at CFB Gagetown, New Brunswick: Speech by the Prime Minister,” 14 April 2004, Archives Canada, http://epe.lac-bac.gc.ca/100/205/301/prime_minister-ef/paul_martin/06-02-03/ and <http://pm.gc.ca/eng/news.asp?id=172>.

¹¹⁶ Office of the Prime Minister: Stephen Harper, “Address by the Prime Minister on new Canadian government assistance for the reconstruction of Afghanistan,” 15 June 2006, Government of Canada, <http://pm.gc.ca/eng/media.asp?category=2&id=1204>.

¹¹⁷ Ibid.

and of the international rules governing the use of force, especially for such large tasks as overthrowing an established government (even if it was one that was not widely recognized). From its creation after 9/11, OEF's use of the self-defence provision of the UN Charter has rung hollow, since no Security Council resolution authorized its use of force in Afghanistan. Many years after the U.S. invasion, the self-defence argument becomes even weaker, since Article 51 of the Charter limits self-defence to a period "until the Security Council has taken measures necessary to maintain international peace and security."¹¹⁸ The Security Council has undertaken many measures, including the creation of ISAF. Furthermore, if OEF were operating under Article 51, it would be obliged to submit reports to the Security Council, which it does not do. By contrast, ISAF reports regularly, if not always punctually, to the Council. Thus, the scores for the two missions are judged to be even more dissimilar than the previous two for this criterion.

Legitimate Authority: OEF: -2; ISAF: +3

4. Last Resort

This provision of Just War theory states that all peaceful means should be exhausted before armed force is applied. Both OEF and ISAF are flawed from this point of view, since no attempt to negotiate with the opponent was made. This is particularly true of OEF before the overthrow of the Taliban government. The U.S. delivered ultimatums but made no effort at discussion, though several avenues remained to be explored, such as the Taliban offer to have bin Laden tried in a third country.¹¹⁹ Furthermore, the U.S. has since remained adamant that no negotiations are possible with terrorists, ignoring that insurgent fighters include moderates and those simply defending their homeland against "foreign occupiers."

¹¹⁸ Article 51 of the UN Charter reads in full: "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 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."

¹¹⁹ Bush, "Address to a Joint Session of Congress and the American People," 20 September 2001.

While ISAF as a whole has not conducted negotiations, some nations in ISAF, including the United Kingdom and the Netherlands, have attempted limited local discussions and negotiations. For instance, in 2006, the commander of the British task force, Brigadier Ed Butler, negotiated a mutual withdrawal with the Taliban from Musa Qala, a town in Helmand province. Nevertheless, efforts to negotiate have not been sustained or supported by ISAF as a whole, and the battle with the Taliban has been waged without any consistent effort to explore peaceful means of dispute settlement, save an ultimatum for Taliban surrender.

On a broader level, alternatives to force were hardly considered in 2001. As military historian Sir Michael Howard observed about the Global War on Terror, “the use of force is seen no longer as a last resort, to be avoided if humanly possible, but as the first, and the sooner it is used the better.”¹²⁰ Furthermore, Howard proposed in October 2001 an entirely different approach to dealing with 9/11: “...many people would have preferred a police operation conducted under the auspices of the United Nations on behalf of the international community as a whole, against a criminal conspiracy whose members should be hunted down and brought before an international court, where they would receive a fair trial and, if found guilty, be awarded an appropriate sentence.”¹²¹

Because OEF was involved at the outset of hostilities, when alternative (peaceful) means could have been tried, its score is considerably lower than that of ISAF, though they both ignored the “last resort” provision. OEF was a “first resort” to force, not a last one. Though an ultimatum was issued to the Taliban government two weeks after 9/11, no discussions or alternative means of settlement were sought.

ISAF makes some mention of last resort in its Commander’s 2009 Directive: “commanders [can] protect the lives of their men and women as a matter of self-defence where it is determined *no other options* are available to effectively counter the threat.”¹²² Negotiating with the Taliban leadership is certainly not one of the options currently used. Some local negotiations have occurred sporadically. In addition, ISAF has sometimes

¹²⁰ Michael Howard, “What’s In A Name? How to Fight Terrorism (Lecture in London, October 30, 2001),”

<http://let.uu.nl/~Arend-Jan.Bokestijn/personal/historisch%20ambacht/Howard.htm>.

¹²¹ Quoted in Tania Branigan, “Al-Qaida is winning war, allies warned,” *The Guardian*, October 31, 2001,

<http://guardian.co.uk/uk/2001/oct/31/afghanistan.highereducation>.

¹²² ISAF, “ISAF revises tactical directive”. Emphasis added. The directive itself is available (with some sections deleted for operational security) at http://nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf.

warned local residents in advance of planned attacks, asking fighters to set down their weapons and surrender before ISAF enters the area.

Last resort: OEF: -2; ISAF: +1

5. Net Benefit

The net benefit, after weighing the gains against the harm, has declined in recent years for both OEF and ISAF. As the missions prove unsuccessful in overcoming Taliban resistance and government progress is painstakingly slow, the mission outlook has become increasingly pessimistic and even the words “likely failure” have been used by commanders.¹²³

On a positive note, there has not been a successful terrorist attack since 9/11 against civilian targets in Western countries from elements trained in Afghanistan. However, a few successful attacks and many attempts were made by indigenous terrorists who found international operations in Afghanistan so offensive that they vowed to retaliate against what they saw as an imperialistic West.

Thanks to the initial war waged under OEF, al-Qaeda no longer has safe haven in Afghanistan. It has now moved its base to the untamed and violent border areas of Pakistan. Overall, the Taliban is no longer in control of the central government in Afghanistan, though it now controls large swaths of Afghan land using guerrilla tactics and intimidation. Warlords, many of them once employed by OEF as a proxy force to overthrow the Taliban, are running many areas of Afghanistan. Since the Taliban times, the human rights situation has improved, especially for women, though the current government commits many human right violations and many Afghan regions are still under Taliban religious/cultural influence.

Since the final outcome of the intervention in Afghanistan is uncertain, it is impossible to judge the final net benefit. However, in recent years the insurgency in Afghanistan has shown signs of strengthening while both OEF and ISAF have lost ground. The conflict has been of far longer duration than expected and the resilience of the Taliban has exceeded predictions. For instance, on 1 May, 2003 during a visit to Kabul, Secretary of Defense Donald Rumsfeld actually declared an end to “major

¹²³ General Stanley McChrystal, the commander of OEF and ISAF forces, said he needed additional troops within the next year or else the conflict “will likely result in failure.” See: Eric Schmitt and Thom Shanker, “General Calls for More U.S. Troops to Avoid Afghan Failure,” *New York Times*, September 20, 2009.

combat” in Afghanistan!¹²⁴ The same day, President George W. Bush declared "mission accomplished" aboard the aircraft carrier USS Abraham Lincoln, which was returning from Iraq. Both statements proved premature and naïve. At the time there were only 8,000 U.S. soldiers in Afghanistan. The necessity to continue fighting major combat operations brought the number of U.S. soldiers in 2010 to over 100,000, with the number from other NATO countries set to fall.

A net benefit analysis measures progress, as well as setbacks in Afghanistan. The capacity of the Afghan National Army has grown considerably. It has in fact surpassed its original recruitment goals, having some 135,000 soldiers at the end of 2010, and is expected to reach 172,000 by 2012.¹²⁵ The economy has grown substantially, though the contribution of the illegal drug trade is still strong. New markets have opened with neighbouring countries for Afghan farmers. Over half a million hectares of land have been rehabilitated since 2004, often using new irrigation systems. Cereal production almost doubled between 2001 and 2007, and agricultural cooperatives have grown exponentially, increasing the number of employed from 7,400 in 2002 to 142,600 in 2007. Electricity production tripled between 2002 and 2008. Some 20,000 kilometres of rural access roads have been constructed or repaired, and Afghanistan’s main national transport artery, the 3,000 km “ring road,” is almost entirely re-paved and re-furbished (at huge international expense).¹²⁶

On the education front, between 2001 and 2008, 3,500 schools were built, while 19 universities are now providing higher learning. Seven million children are enrolled in school, 2 million of whom are female.¹²⁷ Health-wise, 85% of Afghans have access to a basic package of health services.

While some specific figures are encouraging, the overall quality of life picture is more discouraging. Life expectancy at birth is still only 43.6 years.¹²⁸ The UN Human Development Index 2009 ranks Afghanistan

¹²⁴ *Cable News Network (CNN)*, “Rumsfeld: Major combat over in Afghanistan,” May 1, 2003, <http://cnn.com/2003/WORLD/asiapcf/central/05/01/afghan>.

¹²⁵ The Afghan National Army had some 82,000 troops in 2007. See: NATO, “Afghanistan Report 2009,” July 2009, 12, http://nato.int/nato_static/assets/pdf/pdf_2009_03/20090331_090331_afghanistan_report_2009.pdf.

¹²⁶ *Ibid.*, 37-38.

¹²⁷ *Ibid.*, 32.

¹²⁸ United Nations Development Programme, *Human Development Report 2009*, Afghanistan, http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_AFG.html.

second last (only surpassing Niger) in its list of 182 nations.¹²⁹ This abysmal rank stands despite almost a decade of international aid and reconstruction efforts, and the immense help provided by NATO countries. Afghanistan received over \$36 billion of aid for development and reconstruction from 2001-2009, according to the Afghan government, although this number is likely an underestimate.¹³⁰

The costs of the military campaign are enormous. The U.S. spent \$223 billion for OEF from fiscal years 2001-2009. The bill in the fiscal year 2008 was \$34 billion. Combined with Operations Iraqi Freedom and Noble Eagle (homeland security), the Congressional Research Services has predicted that by the fiscal year 2010, “war funding since the 9/11 attacks would total over \$1 trillion.”¹³¹ These are “incremental” costs, which are in addition to normal peacetime military costs, the baseline funding for which pays for salaries and normal equipment purchases.

The cost in national treasure is exceeded by the cost in national blood. The number of lives lost can be precisely counted: as of December, 2010: 1,414 Americans, 345 British and 153 Canadians had died. Overall, the NATO-led coalition had lost over 2,200 lives.¹³² A negative consequence of the military fatalities has been a growing split in the NATO alliance. With many contributors imposing limitations on the use of their forces (“national caveats”) and some nations such as Germany unwilling to send forces into high-intensity combat areas, there is a growing distinction between those carrying the “heavy burden” of combat and those limiting themselves to less lethal projects. Furthermore, the declared withdrawals, of the Netherlands forces in 2010 and Canada’s combat forces in 2011, threaten to further strain relations between ISAF partners, and particularly with the United States, which is assuming a much larger burden.

Within Afghanistan, the corruption of the Karzai government, the spectre of increased warlordism, widening banditry, and higher opium production remains alarming. Human rights abuses by government forces

¹²⁹ *Rawa News*, “In Brief: Afghanistan slipping down UN human development index,” <http://rawa.org/temp/runews/2009/10/05/in-brief-afghanistan-slipping-down-un-human-development-index.html>.

¹³⁰ Elisabeth Bumiller and Mark Landler, “Civilian Goals Largely Unmet in Afghanistan,” *New York Times*, October 12, 2009, http://nytimes.com/2009/10/12/world/asia/12civil.html?_r=1.

¹³¹ Amy Belasco, “The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11,” Congressional Research Service, Report RL33110, 15 May 2009, 46, <http://fas.org/sgp/crs/natsec/RL33110.pdf>. The average cost per deployed troop (in war operations) in the financial year 2006 was \$325,000.

¹³² These are the three nations with the greatest number of fatalities, based on figures available on 3 November 2009, <http://icasualties.org/OEF/index.aspx>.

as well as insurgents persist, especially in the South. The Afghan National Police remains notoriously corrupt and self-serving.

The negative effects of the Afghanistan war are not confined to that country but have spilled over into neighbouring Pakistan. The anti-American movement coalesced with the December 2007 creation of *Tehrik-i-Taliban Pakistan* (literally, “Students’ Movement of Pakistan”). The Pakistani movement not only destabilizes Afghanistan by providing fighters and refuge, but threatens the stability of Pakistan itself. A series of bloody bombings have rocked the country and resulted in savage fighting between government forces and insurgent/Taliban fighters in the tribal areas on the Afghan border. This conflict is spreading from northern areas of Pakistan to its major cities, including its capital.

Thus, the net effects of the overthrow of the Taliban (OEF) have not been much positive, giving OEF a score of at most +1. ISAF does only a bit better since it engages in many more humanitarian and reconstruction projects with modest success, giving it a score of +1. Both missions have disappointingly little to show for their immense efforts after almost a decade.

Net Benefit: OEF: +1; ISAF: +1

6. Proportionality of Means

Both OEF and ISAF employ far more sophisticated and lethal weaponry than do the insurgents.¹³³ OEF has conducted air strikes from B-1 Lancer strategic bombers, B-2 Spirit stealth bombers and B-52 Stratofortress bombers. F-14 Tomcat and F/A-18 Hornet fighter jets have flown combat missions from aircraft carriers. Tomahawk cruise missiles were launched from both U.S. and British ships and submarines. Unmanned Aerial Vehicles, like the Predator drone armed with Hellfire missiles, have been a weapons system of choice due to their long “loiter” capabilities and remote piloting with no possibility of loss of the American pilot’s life. On land, OEF and ISAF forces use Leopard main battle tanks, Bradley fighting vehicles, M777 155mm Howitzer artillery, and heavy machine guns, among other weapons. The insurgent forces are limited to

¹³³ For more on the weapons systems (including photos with extensive captions), see: U.S. Air Forces Central, “Media Gallery,” U.S. Air Force, <http://centaf.af.mil/photos/mediagallery.asp?galleryID=1063>; Tony Holmes, “F-14 Tomcat Units of Operation,” (Oxford: Osprey Publishing, 2008); BBC News, “Timeline Afghanistan: Air Strikes” October 7, 2009, <http://news.bbc.co.uk/2/hi/americas/1584660.stm>.

small arms: rocket-propelled grenades, assault rifles, mines, booby traps and improvised explosive devices.

This asymmetry in forces does not necessarily imply that coalition means were disproportionate. Sophisticated weaponry may be necessary for the protection of coalition forces, particularly when the enemy is indistinguishable from the civilian population. It is often necessary to use high technology and precision weapons to detect and destroy insurgents at night and prevent harm to civilian populations. However, the amount of firepower used has been immense, and air strikes in particular have been heavily criticized because of the large numbers of civilian casualties. Typically, between five hundred and a thousand civilians a year have died from coalition attacks. In particular, the five-hundred-pound bomb has caused widespread destruction. Though not particularly lethal, night raids are considered extremely offensive and disproportionate by Afghan citizens because coalition forces enter homes without permission while the occupants are sleeping. After kicking down doors, their presence traumatizes occupants, including the carefully protected women and children.

OEF has relied heavily on Special Forces to conduct search and destroy missions as well as targeted assassinations. ISAF and UN project managers have sometimes complained that their development efforts, with the goal of winning the “hearts and minds” of locals, have been rendered ineffective, if not sabotaged, by OEF’s uncoordinated attacks.

Some comparisons of figures also give a sense of the (dis)proportionality. The number of Taliban forces is typically estimated at only 10,000 to 20,000 strong. Other insurgent groups may have the same number in total. The OEF and ISAF together made up some 140,000 at the end of 2010. However, this abundance of forces does not ensure victory. At its height, the Soviet Union had deployed some 118,000 troops and it was not able to create stability in the country.¹³⁴

In comparison to the Soviet occupation, however, the current intervention has been much less bloody (more proportionate). Over a period of ten years (1979-1988), the Soviets suffered some 13,300 fatalities and caused an estimated 1.1 million Afghan fatalities. Coalition forces between 2001 and 2010 suffered approximately 2,200 fatalities and caused an estimated 10,000 Afghan fatalities (rough extrapolation from Table 1).

The coalition hopes to build the Afghan Security Forces to a level that can defeat or at least contain the Taliban without foreign combat forces. Nevertheless, the Soviet experience shows that even by developing large

¹³⁴ Richard F. Nyrop, Donald M. Seekins, *Afghanistan: A Country Study*, (Washington, DC: United States Government Printing Office, 1986), XVIII-XXV, <http://gl.iit.edu/govdocs/afghanistan/Afghanistan-Chapter1.pdf>.

numbers of government forces, such a victory is not certain. Overall, by 1988 the government had over 450,000 security forces available, though their loyalty then was questionable, as it is today.¹³⁵ The pro-government Afghan forces at the end of 2010 are much smaller in number: 130,000 active army troops and 110,000 police. Still, this number is much larger than the estimated number of insurgent (mostly Taliban) forces.

In summary, given that OEF deploys greater firepower, more offensive measures, more targeted assassinations, and less caution than ISAF, its proportionality factor is deemed less (0) than ISAF's (+2), but not by much. Both types of coalition forces, desperate to defeat the Taliban, have sought military dominance using overwhelming force. The failure of such a strategy to achieve victory has shown that what matters is not only the level of force but the strategy and conduct of the forces involved.

Proportionality of Means: OEF: 0; ISAF: +2

7. Right Conduct

The loss of civilian lives in coalition attacks, particularly from the air, has been both considerable and very tragic. Both OEF and ISAF forces have engaged in questionable and sometimes objectionable practices. In cases where insurgents have used civilians as "human shields," blending into the population to defend themselves, the resulting civilian casualties have been explicable, if not defensible. However, on too many occasions the use of force has been excessive and the choice of targets inappropriate, as evidenced by frequent Afghan and international newspaper headlines. This is particularly true for OEF, which commands most of the air strike assets. Although civilian fatalities are not deliberate for the most part, due

¹³⁵ The Soviets built up the Afghan security forces to over 300,000 in 1988 from 87,000 at the time of the Soviet invasion in 1979. In 1988, the year of the Soviet withdrawal, the regular military forces reached 90,000 troops. Border guards—considered a separate force—had a strength of around 42,000. The gendarmerie (Tsarandoy) and the secret police (KhaD), heavily armed and organized alongside military lines, reached 92,000 and 68,000, respectively. Special Guards, the elite units that guarded the regime in Kabul, numbered about 11,500. This makes 303,000 government forces. In addition, the Soviets also paid for 150,000 militia to serve on the side of government (Tribal 62,000, GDR 35,000, self-defence 53,000). See: Anton Minkov & Dr. Gregory Smolyneec, "3-D Soviet Style: Lessons Learned from the Soviet Experience in Afghanistan," Defence Research and Development Canada, DRDC CORA TM 2007-36, 26 Oct 2007, <http://cradpdf.drdc.gc.ca/PDFS/unc66/p528465.pdf>.

caution appears not to have been exercised either by OEF or by ISAF forces.

The issue of improper conduct by international forces extends from excessive fatalities to the treatment of detainees. As outlined above, OEF has employed detention facilities and methods illegal under international law. To a lesser extent, ISAF forces have been complicit in this potential war crime by handing over detainees to the U.S. and to the Afghan government. The Afghan government's domestic intelligence agency, the National Directorate of Security, is known to commit frequent human rights abuses such as torture. Furthermore, though most ISAF countries, including Canada, have from the beginning affirmed that behaviour will "fully accord with the Laws of Armed Conflict"¹³⁶ OEF forces are not beholden to such a commitment.

Right Conduct: OEF: -2; ISAF: +1

Final Just War Index Scores

Each mission (OEF and ISAF) has been evaluated under the seven specified criteria of the Just War. The simple averaging of scores results in the following: OEF: -0.3 (8%); and ISAF: +1.9 (82%). Clearly, the numbers should not be taken as an objective result having scientific validity. They are in many ways, rather, a quantitative reflection of the wider views expressed in this paper, which, as such, help to crystallise the degree of justification for the Afghanistan conflict in the author's mind. While acknowledging the perspectival nature of the judgements made, however, what this analysis suggests is that ISAF has substantially greater moral justification than OEF. Readers will naturally have their own views, and can also arrive at their own scores if they so desire.

The difference in scores does not mean that the two missions are competitive. The two are, in certain ways, complementary. In many ways they carry the same flaws. What this seems to imply from a moral, if not also a practical point of view, is that a third type of force is well worth considering.

¹³⁶ Department of National Defence Art Eggleton, "MND Statement in the House of Commons—Ottawa, Ontario," 19 November 2001, Minister's Speeches Archive, National Defence and the Canadian Forces, Government of Canada, <http://forces.gc.ca/site/news-nouvelles/view-news-afficher-nouvelles.asp?id=517>.

Evaluating a Future Peacekeeping Force

Just War theory allows one to assess the ethical value not only of past and present operations but also of envisioned plans. Indeed, the criteria in view in Just War theory were designed specifically to help leaders and thinkers assess the legitimacy of *future* actions. Although the creation of a “robust peacekeeping” force is not currently under active discussion, one can readily envision a future mission based on current UN missions working in similarly challenging environments, particularly the current UNAMA mission in Afghanistan and the UN Mission in the D.R. Congo.¹³⁷

A new mission would maintain the cause of nation-building and promoting a peace process, like UNAMA. But any “UNAMA II” in the Afghanistan context would require a sizeable military and police component, numbering in the tens of thousands, ideally drawn predominantly from Muslim nations to make it more acceptable to the population and the insurgents. It would be deployed with the consent of the belligerent parties, including the Afghan government, NATO, the U.S. and the main insurgent groups. It would be the result of negotiations, well beyond the current halting efforts of the Saudi authorities. Whether or not all the parties would accept this deployment cannot be taken for granted, but it cannot be dismissed out of hand, either. As the current stalemate of the Afghan war wearies all sides, the prospect for a UN peacekeeping force increases. Even if the U.S. and NATO gain the upper hand and greater stability is established, it is likely that a peacekeeping force will be introduced to facilitate a U.S./NATO drawdown if not withdrawal. In the opposite scenario, if the war becomes worse for NATO and the U.S., they might well seek to reduce the number of their troops deployed, handing over the difficult situation to the UN.

Peacekeeping forces have frequently served as a key stabilization tool. For the Taliban and other insurgents, the UN force would be far more impartial than the existing ones (OEF and ISAF). The UN force would also be less threatening because its mandate would be to support a peace process and because it would not act in an aggressive manner. It would avoid adopting the “enemy-centred” mentality that is characteristic of both OEF and ISAF. It would assume a defensive posture, as is the case for

¹³⁷ The proposal for a UN peacekeeping force in Afghanistan was made by the author in his testimony to the Canadian House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT) on March 22, 2007, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2785497&Language=E&Mode=1&Parl=39&Ses=1>.

almost all modern peacekeeping operations, though it would probably need to be more robust than any current mission.

Because its approach and military activities would be more defensive and peacebuilding in character, the Just War Index scores would naturally be higher. With a purpose similar to UNAMA, the just cause score would be high (such as +2). The intent of the mission would be clear: to foster and maintain peace, as the term “peacekeeping” implies. Though the UN Security Council might be bowing to U.S. pressure in any deployment of such a force, the intent would still be benevolent, resulting in a high score (+2).

Given that all UN peacekeeping forces are created and mandated by the UN Security Council and funded through the General Assembly, the international legitimacy of the mission would also be high. UNAMA II would need to obtain the consent of the Afghan government and of the main parties to the conflict, which is something that might take time to achieve. But given this prerequisite, a high “Legitimate Authority” score is likely (+2). This, however, is not a perfect score, since the legitimacy of the government and the insurgents may be in question, especially given the fraud committed in the 2009 elections.

Like most peacekeeping forces, UNAMA II would be expected to use force only as a last resort. The Rules of Engagement for modern UN missions contain such a provision explicitly. Peacekeepers are not offensive fighting forces, though they are combat-capable. Their mandate is multi-dimensional, and the goal is clearly peace, so a peacekeeping mission must strive to be an example of using last resort. Unless there are overly aggressive force commanders or soldiers, the last resort provision would likely be fully met (score: +3).

When OEF and ISAF were first established in 2001, many expected that stability would be achieved in a matter of months. Such exaggerated expectations could not be held for any UNAMA II, given the experience of the other two Afghan missions and of difficult peacekeeping operations in other parts of the world. However, the net benefit of UNAMA II should be positive, given the constructive role that is currently played by UNAMA with its small cadre of uniformed personnel. Furthermore, there remains hope that a peace process supported by a peacekeeping force could eventually lead to stability. Peacekeeping forces have greater staying power than most combat forces. Some peacekeeping operations have been in existence to verify and oversee agreements for more than 50 years. Thus, the net benefit of such a mission could reasonably be expected to be very positive (score: +2).

A model for UNAMA II might be the United Nations Transitional Authority in Cambodia (1992-93). The main insurgent group in Cambodia, the Khmer Rouge, was an ideological and military entity more devastating and tyrannical even than the Taliban. While in power (1975-79), the Khmer Rouge sponsored a genocide that resulted in several million deaths. After being ousted from power, it fought by brutal insurgency. In 1990, however, the Khmer Rouge was finally brought to the negotiating table. It joined the Paris peace process, and even sought to run candidates in an envisioned election. But the rebel group became confused about whether to participate in the election or to undermine it. This division within its ranks was one of the factors that led to its slow breakup and marginalization. Eventually, several of its remaining leaders were brought before a hybrid UN-Cambodian court to meet justice.

Whether Taliban leaders will face their day in court is uncertain, though the International Criminal Court is now investigating atrocities in Afghanistan. In any case, through a peace process the insurgents can be represented and their concerns voiced. Possibly the groups will gradually become marginalized as they lose popular support, like the Khmer Rouge. The United Nations Transitional Authority in Cambodia provided a great net benefit to the Cambodian peace process, even though after it withdrew in 1993, internal politics allowed one party (the Cambodian People's Party, under Hun Sen) to seize and maintain power. More importantly for this paper, however, the Khmer Rouge subsequently ceased to be a force in Cambodian politics or to threaten the people or the state.

The resources needed for a future UN peace operation in Afghanistan would be much more modest than those provided for ISAF and OEF, though considerably larger than in Cambodia, where 17,000 military personnel and 3,500 police were involved. A future UNAMA II in Afghanistan might have over 30,000 uniformed personnel. Unlike OEF and ISAF, it would not drop bombs in air strikes, though at first ISAF or OEF forces might provide such protection in urgent cases. UNAMA II might deploy attack helicopters (as the UN does presently in its Congo operations) but these would use missiles only when local negotiations have failed and the United Nations must stop an attack that is under way—and then after giving warnings. Thus the means used could be expected to be less forceful than in the case of OEF or ISAF currently. The problem is more likely to be an under-resourced and overly-defensive combat capability than an overuse of force. Thus, the proportionality of force component of the Just War Index could be expected to be satisfactory (no “overkill”), resulting perhaps in a score of +2.

The main critique of a potential UNAMA II is that it would not be able to handle Taliban attacks. However, if it were not perceived as an enemy or occupying force, as a result of negotiations, it might not be subject to insurgent attacks in quite the same way or to the same extent that American and ISAF forces have been. A UN force would also likely gain greater acceptance in the local population. The current mission, UNAMA, is popular among locals in Afghanistan, beating out the Afghan and international security forces for approval in opinion polls.¹³⁸ Though it has suffered occasional and sometimes horrendous attacks, UNAMA has not withdrawn from Afghanistan, and is increasing safety measures for its staff.

A UNAMA II mission would no doubt have to face the challenge of determining the right level of force and the right means to deal with potential belligerents, as, for example, in the case of any “spoilers” of the peace process. Peacekeeping operations, however, are obligated to apply the rules of the Geneva Conventions and the laws of armed conflict, and the United Nations is developing a detainee policy. Though UN forces might have a tendency to avoid offensive operations, they can do so as a last resort. A few violations of international rules on the use of force could undoubtedly be anticipated, given the weak command and control capability in peacekeeping operations, the mixture of many national forces, and the high threat level. But overall, the score for right conduct could be expected to be high (another +2).

This completes the Just War Index criteria evaluation of an envisioned UNAMA II. A comparison of the Just War Index totals for OEF, ISAF and UNAMA II is now be presented in Table 3. As can be seen, UNAMA II obtains on such reckoning the highest score by far, over double the OEF score, with ISAF in between. While there is an arbitrary element to the numbers, they do help get a sense of relative merit in the eyes of the assessor. They also help contrast the separate character of the three missions, using standard criteria, which will hopefully make the writer’s conclusions clearer.

¹³⁸ Daisaku Higashi, “Challenges of Constructing Legitimacy in Peacebuilding: Case of Afghanistan,” 1 September 2008, UN Peacekeeping Best Practices Unit, United Nations, http://peacekeepingbestpractices.unlb.org/PBPS/Pages/PUBLIC/ViewDocument.aspx?docid=901&cat=34&scat=0&menukey=_4_3.

Table 3: Summary of Scores for OEF, ISAF and a Hypothetical UNAMA II

Criteria	OEF	ISAF	UNAMA II
Just cause	+1	+2	+2
Right Intent	+1	+2	+2
Legitimate Authority	-2	+3	+2
Last Resort	-2	+1	+3
Net Benefit	+1	+1	+2
Proportionality of Means	0	+2	+2
Right Conduct	-2	+1	+2
JWI (average of criteria)	-0.4	+1.7	+2.1
JWI (as percentage)	43%	78%	85%

Conclusion: a Third Force?

No approach to armed force can be ethically perfect and many ostensibly unjust strategies may even have some merit. In comparing ISAF with OEF, however, the ethical evaluation above seeks to show that OEF has serious ethical deficiencies. At its start in 2001, the aim of OEF was greatly expanded from punishing al-Qaeda to Afghan regime change, without anticipating the long-term consequences of that policy. It was based on a simplistic dichotomization of “good versus evil,” “either with us or against us,” that immediately failed to make a distinction between terrorists and those harbouring them. As the military arm of the Global War on Terror, OEF did not take into account either the diversity of world views involved, or the morally nuanced and uncontrollable nature of conflict. Neither was OEF legitimated under international law through Security Council authorization. It was definitely not a last resort mission in Afghanistan, as no efforts were made at peaceful settlement or at meaningful discussions with the Taliban government. The net benefit has proven rather slender, given the ongoing fighting and terrorist activity in Afghanistan and Pakistan. Finally, OEF’s conduct has been highly questionable at times, particularly in the treatment of detainees in Afghanistan and at the Guantanamo facility. All these characteristics justify the low overall score. If the passing mark were arbitrarily set at 50%, the OEF mission at 43% would not pass the ethical test. One might well conclude that it would be better, therefore, if the OEF mission in

Afghanistan were to be rolled into that of ISAF, rather than to continue as at present.

ISAF, for its part, is not so heavily burdened, but it has ethical deficiencies as well. While it supports the just cause of providing security for reconstruction, and while it is UN-authorized, it has been implicated in many civilian fatalities, and it has not adopted means for peaceful settlement (negotiations) with its enemies. Also, the net benefit has been far from the desired level, especially with the continuing insecurity in the country. Still, the mission has considerable ethical traction and merits the reasonable (and well above passing) score of 82%.

UNAMA II is, of course, merely an imagined mission that might well not live up to the high scores suggested (85% overall), but there are genuine grounds for the high ethical evaluation. It would have the just cause of bringing peace to the war-torn country of Afghanistan. Admittedly, this would necessarily involve making compromise with some unsavoury Taliban leaders, which itself poses difficult ethical questions. Such a pragmatic strategy is, however, not without precedent (see Cambodia discussion above). The mission, furthermore, would certainly be UN-authorized and UN-run. It ought ideally to involve a large number of forces from Muslim nations to help establish legitimacy and to avoid the problematic prospect of the arrival of yet more Western “occupying” forces. It would, finally, have the advantage of being seen as more impartial and as distinct from the current U.S. and NATO missions in the country. The force would adopt a defensive posture, using its limited combat power and only when necessary, as a last resort. It ought accordingly to be implicated in far fewer civilian fatalities. In this way, it could help win the “hearts and minds” of the local population.

If peacekeeping would be more ethical, then the question remains: Could it do the job, and stand up to Taliban attack? Certainly it could not do so alone. For the immediate future, in fact, there will need to be a robust coalition of forces that act in tandem to stop the Taliban from overrunning large areas of Afghanistan. Over time, however, as the peace process strengthens and more Taliban units and fighters sue for peace, the role of UNAMA II could increase. While it is unlikely that a peacekeeping force would be accepted by senior Taliban leaders at the negotiating table in the near future, as they become increasingly war-weary in their fight with U.S.-led forces, UN-led negotiations and forces will likely become more appealing to them. As the peace process gained strength, warfighting and counterinsurgency efforts could be expected to decrease while the peacekeeping mission increased in size and strength. This, indeed, could be part of the exit strategy for coalition forces after more than a decade of

fighting. Thus the missions are not mutually exclusive, at least not in the short-term.

In fact, what is proposed here is that any UNAMA II mandate would be complementary to ISAF, for though the two could never be identical, as counterinsurgency and peacekeeping employ different strategies, the two are inherently related. Counterinsurgency has the principal goal of ending an insurgency, and uses the building up of effective government as a means to that end. In peace operations, by contrast, both objectives exist but the order of priorities is reversed. The purpose is to build a representative government that serves the population through an inclusive peace process. One of the means to this end (and one of its consequences also) is to end the insurgency. In peacekeeping, in short, the strategy is less offensive, the method is less aggressive, and the approach is more inclusive.

Most civil wars of the past century have ended in some form of negotiated settlement. The United Nations has gained tremendous experience helping settle internal conflicts through negotiation and peacekeeping. Its track record after the end of the Cold War of successful missions to help end civil wars is impressive, including conflicts in El Salvador, Nicaragua, Guatemala, Namibia, Mozambique, Angola, Sierra Leone, Liberia, Cote D'Ivoire, D.R. Congo, Nepal, and East Timor. It does have some blemished and even clearly failed missions on its record (notably Somalia and Rwanda), but the United Nations has learned from these difficult experiences. The United Nations has greatly increased its capacity in the twenty-first century. This is one more reason to give United Nations and peacekeeping a chance in Afghanistan, where warfighting has failed the moral test and counter-insurgency has shown to be inadequate.