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U.S. Bombing of Afghanistan Not Justified As Self-Defense Under International Law

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[T]he right of self-defence "exists within and not outside or above the law."[1]

Introduction

On October 7, 2001, the United States began its bombing campaign in Afghanistan. That same day, the United States representative to the United Nations, John Negroponte, informed the Security Council that the U.S. was invoking article 51 of the UN Charter:

> 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 action in the exercise of its inherent right of individual and collective self-defence following the armed attacks that were carried out against the United States on 11 September 2001.[2]

Thus the U.S. set forth its formal justification for the massive bombing of Afghanistan as legally supportable self-defense under international law. But was it? This article will explore the meaning of "self-defense" and how it should be applied to the actions in Afghanistan.

The *Caroline* case has been recognized by scholars as stating the modern rule of customary international law on self-defense.[3] The case arose in 1837, when the British suspected that the Caroline, an American ship docked in New York, was transporting arms to Canadian rebels. On British orders, The Caroline was boarded and destroyed, and two men were killed. The British ambassador to the U.S. justified the attack on the ground of self-defense. U.S. Secretary of State Daniel Webster responded that self-defense justifies an attack only when the "necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation." [4]

The U.S. bombing of Afghanistan does not meet this standard. The need for defense was not instant; indeed the bombing did not begin until three weeks after September 11—leaving more than a moment for deliberation.

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As many have argued, there was a choice of means—in particular, the resort to international criminal process and investigation, as well as peaceful negotiation for the surrender of those responsible.[5]

The *Caroline* rule was later incorporated into article 51 of the UN Charter.[6] Article 51 provides, in relevant part:

> 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.[7]

Any evaluation of the requirements of article 51 must be looked at in the context of the prohibition on the use of force, embodied in article 2(4) of the Charter.[8] This part of the Charter has been described by the International Law Commission as "a conspicuous example of a rule in international law having the character of *jus cogens*"[9]—a view which has been accepted by the U.S.[10] Article 51 is an exception to the prohibition on the use of force. Ultimately, if a state's use of force cannot be legally justified as self-defense, then that state has violated the Charter. Article 2(4) must be seen as paramount. If the concept of self-defense is not carefully reigned in and if countries claiming to exercise it are not carefully scrutinized, then the exception will usurp the rule.

In its 1986 judgment in *Nicaragua v. United States*, the International Court of Justice (ICJ) concluded that the U.S. had breached its obligation under customary law not to use force against another state.[11] The court rejected the U.S. claim of collective self-defense for, among other things, mining Nicaragua's harbors and attacking its oil installations,[12] The decision includes an extensive discussion of the law governing claims of self-defense.

According to the ICJ, in order for the use of force in self-defense to be lawful under international law, the defending state must be responding to an armed attack. This response must also comply with the principles of necessity and proportionality.[13] The ongoing attacks on Afghanistan do not meet this test.

Armed attack

Article 51 states explicitly that an armed attack is required before the right of self-defense can be invoked. The ICJ has described this requirement as the "condition *sine qua non*" of lawful self-defense.[14]

In the *Nicaragua* case, the U.S. alleged that Nicaragua had supplied weapons to rebel groups in other countries. The U.S. claimed that the acts of which it was accused were justified by its right of collective self-defense

against an armed attack by Nicaragua on El Salvador, Honduras or Costa Rica.[15] The ICJ found that an armed attack was not established by the provision of arms by one state to the opposition in another state, even though such conduct might still be unlawful.[16]

In the case of the bombing of Afghanistan, the analysis is complicated because a non-state actor initiated the attack. Therefore, we must examine what level of assistance must be given by a state in order for the armed attack to be imputed to the state.

According to both the ICJ and the International Law Commission, "the right of self-defense does not apply with full force" in cases involving terrorists operating from a third country. [17] Moreover,

> [a]s with the case of attacks against nationals abroad, there is a risk in broadening the right of self-defense to justify the use of force against non-state-sponsored terrorism. Toleration of such action increases the potential for abuse of the right of self-defense and for the indiscriminate violation of state sovereignty.[18]

As international law professor and current ICJ member Rosalyn Higgins has pointed out, states sometimes assert self-defense in cases "that really bear the characteristics of reprisals or retaliation,"[19] which are not permitted under the U.N. Charter. For example, the U.S. described its 1986 bombing of Libya, in response to perceived terrorism against nationals, as

> designed to 'disrupt Libya's ability to carry out terrorist acts and to deter future terrorist acts by Libya.' The former is the language of retaliation, the latter of reprisals. Neither is really the language of self-defence.[20]

When one examines the meager evidence publicly available on October 7, it is difficult to conclude that the attacks of September 11 qualify as "armed attacks" by the state of Afghanistan. Indeed, the statements made by U.S. officials at the start of the military campaign are insufficient to support a claim of self-defense. For example, in his letter to the Security Council, John Negroponte wrote:

> Since 11 September, my Government has obtained clear and compelling information that the Al-Qaeda organization, which is supported by the Taliban regime in Afghanistan, had a central role in the attacks. There is still much we do not know. Our inquiry is in its early stages. We may find that our self-defence requires further actions with respect to other organizations and other States.[21]

Negroponte stated further that Al-Qaeda posed an "ongoing threat" to the U.S. that had been "made possible by the decision of the Taliban regime to allow the parts of Afghanistan that it controls to be used by this organiza-

tion as a base of operation." The U.S. had, therefore, mobilized armed forces to "prevent and deter" additional attacks.[22] It is doubtful that Rosalyn Higgins would describe this as the language of self-defense.

U.S. Secretary of Defense Donald Rumsfeld used similar language, stating that terrorists had "chosen Afghanistan from which to organize their activities," that the Taliban "continues to tolerate" their presence, and that "harboring terrorists is unacceptable and carries a price."[23] The Security Council has condemned the Taliban "for allowing Afghanistan to be used as a base for the export of terrorism by the Al-Qaeda network" and "for providing safe haven" to Osama bin Laden.[24] None of these statements describe sufficient involvement by the state of Afghanistan to hold it responsible for an armed attack under the law governing self-defense.

Furthermore, as Professor Thomas Franck recently noted, "any principled decision" that a clear state-to-state attack has occurred must be based on "a credible assessment of the facts" of the particular case.[25] What "facts" were provided on October 7? At the time the bombing started, there was no evidence presented, although there was apparently secret evidence shared with certain allies. Indeed, Negroponte admits that the U.S. did not have a great deal of information. The U.S. government refused to share any evidence it did have with the public, the press, or the government of Afghanistan, despite requests to do so.

Even if, for the purpose of argument, the September 11 attack could be construed to be an armed attack by the state of Afghanistan, the subsequent bombing by the U.S. would still have to meet the tests of necessity and proportionality in order to qualify as self-defense under international law.

Necessity and proportionality

The large number of Afghan civilian deaths, which now exceeds the number of deaths caused by the September 11 attack, the destruction of Afghanistan's infrastructure, the exacerbation of the refugee crisis, and the exacerbation of the unexploded ordnance problem go well beyond what may be considered necessary and proportional.

The ICJ has emphasized, more than once, that under customary international law a claim of self-defense must meet the requirements of necessity and proportionality. Indeed, in the *Nicaragua* case, the U.S. agreed "that whether the response to the attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence."[26]

Some scholars have suggested that when a non-state actor is involved, "the victim state should have to meet a heavier burden of necessity and proportionality than when the initial attack was state-sponsored," even when the third party state has been shown to support the initial attack.[27]

Necessity

When, as here, the armed attack has ended, the state relying on self-defense "has a heavy burden" to show that its response was necessary and that it does not "amount to retaliation."[28] According to Maureen Brennan,

> The requirement of necessity provides that the use of force must be the only available means of self-defense and no other peaceful means of redress would be effective. Oscar Schachter, a distinguished international law professor and advisor in the preparation of the Restatement, distinguishes between cases where an armed attack is occurring, and those where an armed attack has already occurred, but additional attacks are expected. In the former case, the use of force always meets the requirement of necessity, but in the latter case the issue is not as clear. However, as an example of when preemptive self-defense is valid, Schachter proposes the case of an armed action to rescue hostages, where captured persons are in imminent danger. [29]

The time between the armed attack and the response is a relevant consideration. For example, in 1993, the U.S. launched missile strikes on Baghdad two months after an assassination attempt on President George H. W. Bush. Many in the international community complained that the strikes were not necessary and proportional because of the delay and because the strikes did nothing to prevent an armed attack.[30]

The U.S. bombing of Afghanistan was of questionable necessity. The attack of September 11 was over three weeks before the U.S. military strikes began. While the U.S. feared further attacks, they were not imminent. The threats were vague and the bombing was not specifically targeted at the source of the threat. Thus the ongoing bombing campaign appears to be closer to retaliation than self-defense.

Proportionality

> Now, the word "proportion"—"proportionate"—is interesting. And I don't know that it's appropriate. And I don't know that I could define it.... It's a—your question's too tough for me. I don't know what "proportionate" would be....
>
> I just don't know. I mean, you simply can't have outside inquiries on every single thing that goes on in the world.... I mean, this is a messy place. There's a war going on.
>
> U.S. Secretary of Defense Donald Rumsfeld, November 30, 2001[31]

The principle of proportionality is measured by evaluating the military importance of a particular operation compared to the impacts on civilians and civilian objects. Thus it is important to identify which objects of attack are legitimate: " If there is any doubt whether an object normally devoted to civilian use, such as a church, school or museum, is being used for its proper purpose or being put to military use, they must be given the benefit of the doubt and not subjected to attack."[32]

When force is used in self-defense, it must be proportionate to the force defended against; it cannot be excessive. Military strikes that indiscriminately target civilians are an example of excessive force.[33]

The numerous reports of civilian deaths and damage to civilian infrastructure in Afghanistan demonstrate that the force used by the U.S. is excessive and does not meet the requirement of proportionality.[34] For example, just four days after the U.S. began bombing, Reuters reported that 76 civilians had already been killed and 100 injured.[35] By October 30 there was no electricity and no running water in Kandahar.[36] Twice U.S. bombs hit clearly marked facilities of the International Committee of the Red Cross, which contained humanitarian supplies. Several world leaders have criticized the high rate of civilian casualties.[37]

Professor Marc Herold, an economist at the University of New Hampshire, has released a well-documented report indicating that the U.S. bombing campaign killed 3,767 civilians between October 7 and December 10. This figure, which exceeds the latest death toll from September 11, does not include deaths caused by landmines, starvation, or disease. Herold gathered the information from numerous sources, including the mainstream press in Europe and first-hand accounts.[38]

Perhaps the most dramatic evidence of the lack of proportionality in the U.S. military campaign can be found by looking at the nature of the weapons being used.

> The use by the U.S Air Force of weapons of enormous destructive capability—including fuel air bombs, B-52 carpet bombing, BLU-82s, and CBU-87 cluster bombs [shown to be so effective at killing and maiming civilians who happen to come upon the unexploded 'bomblets']—reveals the emptiness in the claim that the U.S has been trying to avoid Afghan civilian casualties.[39]

Cluster bombs are particularly devastating. Each one breaks up into more than 200 "bomblets" which are designed to detonate when they hit the ground, but which often do not. They remain buried, "as deadly as unexploded mines," and are sometimes mistaken for humanitarian food packages. Several hundred of these weapons have rained down on the population of Afghanistan

since the U.S. began using them in October.[40] Amnesty International has asked the U.S. to stop using cluster bombs as they "present a high risk of violating the prohibition of indiscriminate attack."[41]

The military campaign also interfered with the delivery of much needed food supplies to civilians already at risk of starvation and has caused a massive refugee crisis. In early December, the Office of the UN High Commissioner for Refugees reported that the usual daily number of refugees fleeing southern Afghanistan had risen from 400 to 1200.[42] Afghan widows in Kabul have reported that the meager humanitarian aid that they had been receiving suddenly stopped at the end of November.[43]

In addition, the country's infrastructure has been targeted:

> On October 15th, U.S bombs destroyed Kabul's main telephone exchange, killing 12. In late October, U.S warplanes bombed the electrical grid in Kandahar knocking out all power, but the Taliban were able to divert some electricity to the city from a generating plant in another province, Helmand, but that generation plant [at Kajakai dam] was then bombed. On October 31st, it launched seven air strikes against Afghanistan's largest hydro-electric power station adjacent to the huge Kajakai dam, 90 kilometers northwest of Kandahar, raising fears about the dam breaking. On November 12th, a guided bomb scored a direct hit on the Kabul office of the Al Jazeera news agency, which had been reporting from Afghanistan in a manner deemed hostile by Washington. On November 18th, U.S warplanes bombed religious schools [Madrasas] in the Khost and Shamshad areas.[44]

As of January 4, 2002, U.S. bombs continued to kill Afghan civilians,[45] even though the Taliban government has been ousted and the whereabouts of Osama bin-Laden are unknown.[46] This military campaign was not proportionate under international law.[47]

Conclusion

The United States military strikes against Afghanistan cannot be justified as self-defense under the United Nations Charter or customary international law. There is insufficient evidence of an armed attack by the state of Afghanistan and the strikes have been neither necessary nor proportional.

Some commentators have raised the issue of the ineffectiveness of article 51 to deal with the present day realities of armed conflict and the uncertainties of terrorism, arguing that the law should adapt and the concept of self-defense be broadened to include the current U.S. campaign.[48] In fact, the realities of terrorism support the opposite conclusion. Less force is better. If the current bombing can be justified as legitimate self-defense, we are surely on a slippery slope that does not bode well for the rule of law or for

the guiding principles of the UN Charter.

If self-defense justifies the actions of the U.S. and its allies, then when does that justification end? Can a country say that the threat of terrorism is ongoing and continue to bomb any country anywhere in the world where it suspects that the state is "harboring" members of a terrorist organization? What evidence, if any, will the defending country be required to produce? U.S. officials have indicated that the next front in the war on terrorism could include the Philippines, Somalia, Yemen, Tajikistan, and Uzbekistan.[49] Indeed, there are reports of Al-Quaeda related cells throughout Europe. Will the U.S. be dropping cluster bombs there as well?

Even more disturbing is the possibility that the U.S. has set a new standard for combating terrorism that may be adopted by other countries—giving them "permission" to go after groups with military force rather than negotiation or criminal process.[50] Former U.S. national security adviser Zbigniew Brzezinski recently warned that:

> By declaring war against an undifferentiated, undefined and fundamentally vague phenomenon like global terrorism, or terrorism with global reach, we in a sense opened the gates to a lot of countries to leap into this exercise on our backs. They are all declaring whoever their enemy is to be a terrorist, and then claiming moral justification for doing whatever they decide to do.[51]

No matter how horrible the events of September 11 and how real the desire of the United States to protect its residents, seeking refuge in the concept of self-defense is both misplaced and dangerous. The bombing of Afghanistan is illegal and it will not make anyone safer.[52]

NOTES

1. JOHN BURROUGHS, THE (IL)LEGALITY OF THREAT OR USE OF NUCLEAR WEAPONS, A GUIDE TO THE HISTORIC OPINION OF THE INTERNATIONAL COURT OF JUSTICE 60 (1997), quoting dissenting opinion of Judge Koroma, at 267.
2. Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, S/2001/946, 7 October 2001; available at <http://www.un.int/usa/s-2001-946.htm>.
3. *See,* e.g, ROSALYN HIGGINS, PROBLEMS & PROCESS, INTERNATIONAL LAW AND HOW WE USE IT, 243 (1994). Higgins finds Webster's formula from *Caroline* to be "very useful in providing the required balance between allowing a state to be obliterated and encouraging abusive claims of self-defence. It still has great operational relevance and is an appropriate guide to conduct."
4. Leah M. Campbell, *Defending Against Terrorism: A Legal Analysis of the Decision to Strike Sudan and Afghanistan*, 74 TUL. L. REV. 1067, 1076-1077 (2000). *See also,* Moore's DIGEST OF INTERNATIONAL LAW, II, 412. The *Caroline* Case

was also cited as the appropriate standard at the Nüremberg War Crimes Trials. *See, Final Judgment of the International Military Tribunal at Nuremberg*, 1 International Military Tribunal, Trial of the Major War Criminals 171 (1947) in WESTON, FALK & CHARLESWORTH, SUPPLEMENT OF BASIC DOCUMENTS TO INTERNATIONAL LAW AND WORLD ORDER. 1217 (3rd ed. 1997).

5. *See, e.g.*, Marjorie Cohn, *Rise Above It: Fight Terror Legally*, 24 NATIONAL LAW JOURNAL A25, Oct. 1, 2001; Michael Ratner and Jules Lobel, *An Alternative to the U.S. Employment of Military Force*, Sept. 26, 2001, available at <http://www.humanrightsnow.org>; Ramkesh Thakur and Hans van Ginkel, *An International Perspective on Global Terrorism*, UNITED NATIONS CHRONICLE, no. 3 (2001), available at <http://www.un.org/Pubs/chronicle/2001/issue3/0103p71.html>. Thakur and van Ginkel point out that, "The global coalition to combat threats to international security, of any type, is already in place. We call it the United Nations."
6. Article 51 "was intended to encompass customary international practice concerning self-defense." Campbell, *supra* note 4, at 1079.
7. Charter of the United Nations, June 26, 1945, 59 Stat.1031, T.S. No. 993,3 Bevans 1153, entered into force Oct. 24, 1945. UN Charter, article 51, states further:

   > Measures taken by Members in the exercise of this right of self-defense 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.

   There have been a number of issues raised about the role and effectiveness of the Security Council, including disagreements over the meaning of its resolutions and whether it has tacitly authorized the use of force. Such issues, though important, are beyond the scope of this article. *See* S/RES/1368 (12 Sept. 2001), S/RES/1373 (28 Sept. 2001), S/RES/1378 (14 Nov. 2001). For a discussion of these issues, *see, e.g.*, Frederick L. Kirgis, *ASIL Insights on the Terrorist Attacks of Sept. 11*, available at <www.asil.org>; Jules Lobel and Michael Ratner, *Bypassing the Security Council: Ambiguous Authorizations To Use Force, Cease-Fires and the Iraqi Inspection Regime*, 93 A.J.I.L. 124 (1999).
8. Article 2(4) states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." UN Charter, *supra* note 7.
9. *Jus cogens* refers to a peremptory norm of general international law, based on "the notion that there exist some rules of international law so fundamental that they prohibit acts by states even if such conduct is expressly sanctioned by state consent." MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 34 (1993).
10. Nicaragua v. United States, 1986 I.C.J. 14, para. 190; Judgement On Merits in Case Concerning Military and Paramilitary Activities in and Against Nicaragua, 25 I.L.M. 1023 (1986).
11. *Id.* The ICJ based its decision on customary law, rather than the charters of the United Nations or the Organization of American States because of the U.S. reservations to the statute of the ICJ. *See* jurisdictional phase, ICJ Reports, pp. 424-425 (1984). Although they relied on customary law, the parties agreed that article 51 of the UN charter and the general rule prohibiting force except in the case of

self-defense were the same under customary law.

12. 1986 I.C.J. 14, para. 227, 228, 238.
13. *See id.*, para. 194.
14. *Id.*, para. 237.
15. *Id.*, para. 229.
16. *Id.*, para. 230, 247.
17. Maureen F. Brennan, *Avoiding Anarchy: Bin Laden Terrorism, the U.S. Response, and the Role of Customary International Law,* 59 LA. L. REV. 1195, 1207 (1999).
18. *Id.*, at 1208-1209.
19. Higgins, *supra* note 3, at 244.
20. *Id.* at 245.
21. *See supra* note 2.
22. *Id.*
23. *See, e.g.*, Statement of the Secretary of Defense, United States Department of Defense News Release, Oct. 7, 2001, available at http://www,defenselink.mil/cgi-bin/dlprint.cgi.
24. S/RES/1378, Nov. 14, 2001.
25. Thomas M. Franck, *The Institute for Global Legal Studies Inaugural Colloquium: The UN and the Protection of Human Rights: When, If Ever, May States Deploy Military Force Without Prior Security Council Authorization?*, 5 WASH. U. J.L. & POL'Y 51,61 (2001).
26. 1986 I.C.J. 14, para. 194; *see also* Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), 1996 I.C.J. (General List No. 95) para 41.
27. Brennan, *supra* note 17, at 1208.
28. See Jordan J. Paust, *Responding Lawfully to International Terrorism: The Use of Force Abroad*, 8 WHITTIER L. REV. 711, 716-718, 722 (1986).
29. Brennan, *supra* note 17 at 1201-1202 (footnotes omitted).
30. *Id.* at 1203.
31. These comments were made by Secretary Rumsfeld at a press briefing at which he was asked about Amnesty International's request for an inquiry into the proportionality of the response to the prison uprising at Mazar-e-Sharif. A transcript is available at <http://www.defenselink.mil/news/Nov2001/t11302001_t1130sd.html>.
32. L.C. GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT 330-331 (1996).
33. Mark A. Drumbl, *Judging Terrorist Crime, Taliban Guilt, Self-Defense, and Western Innocence,* JURIST, (2001), available at <http://jurist.law.pitt.edu/terrorismdrumbl.htm>.
34. *See, e.g., Accountability for Civilian Deaths*, Amnesty International News Release, 26 Oct. 2001, available at <http://www.amnesty-usa.org/news/2001/afghanistan10262001.html>.
35. A.J. Chien, *The Civilian Toll*, ZNET (Oct. 11, 2001), available at <http://www.zmag.org/civiliantoll.htm>.
36. Report of Nic Robertson, live via videophone from Kandahar, CNN, Oct. 30, 2001.
37. Esther Schrader, *Pentagon Defends Strikes as Civilian Toll Rises*, L. A. TIMES,

Oct. 30, 2001, at A6. *See also*, Dexter Filkins, *Flaws in U.S. Air War Left Hundreds of Civilians Dead*, N.Y. TIMES, Jul. 21, 2002, at 1. "[T]he evidence suggests that many civilians have been killed by airstrikes hitting precisely the target they were aimed at. The civilians died, the evidence suggests, because they were made targets by mistake, or because in eagerness to kill Qaeda and Taliban fighters, Americans did not carefully differentiate between civilians and military targets." *Id.*

38. *See* Marc W. Herold, Ph.D, MBA, B.Sc., *A Dossier on Civilian Victims of United States Aerial Bombing of Afghanistan: A Comprehensive Accounting*, December 2001; available at <http://www.democracynow.org/thndtrmb.doc>.
39. *Id.*, at 10.
40. Anna Badkhen, *Unexploded bombs ticking for children*, S. F. CHRONICLE, Dec. 3, 2001, at A1; *see also*, *Afghans warned over cluster bombs*, <CNN.com> (Oct. 30, 2001).
41. *See supra* note 34.
42. Alissa J. Rubin and Tyler Marshall, *U.S bombing supports tribal attacks*, L. A. TIMES, Dec. 2, 2001.
43. Lynda Gorov, *Widows, Unaided, Turn Vocal in Despair*, BOSTON GLOBE, Dec. 11, 2001, at A1.
44. Herold, *supra* note 38, at 10-11 (citations omitted).
45. *See* Beth Daley and Colin Nickerson, *Fighting Terror/Arsenal Leftovers, U.S., Kabul Turn Up Heat On Holdouts Bombs Target Al Qaeda; Talks Seek Surrender*, BOSTON GLOBE, Jan. 4, 2002, at A1.
46. *See* Raz Mohammad, *Trail for Omar, Bin Laden Grows Cold*, REUTERS, Jan. 5, 2002.
47. Apart from proportionality, humanitarian laws of armed conflict are being violated in a number of ways, including the treatment of Taliban prisoners by the Northern Alliance, which may be attributable to the U.S. *See, e.g.*, Carlotta Gall, *A Nation Challenged: Prisoners; Witnesses Say Many Taliban Died in Custody*, N. Y. TIMES, Dec. 11, 2001, at A1; and Special Rapporteur on Human Rights in Afghanistan Emphasized Importance of Complying with Humanitarian Law in Afghanistan, Press Release (Dec. 21, 2001), pointing also to deaths which occurred during the prisoner uprising at Qala-i-Janghi, available at http://www.unog.ch/news2/>.
48. *But see* Franck, *supra* note 25, at 62: "A white-knuckled insistence on the letter of the law embodied in Article 51 will lead to ever-greater disrespect for an obsolete principle. On the other hand, relaxation of Article 51's absolutism would be very dangerous to world peace unless new principles are not only agreed upon, but a process is instituted for these principles to be applied credibly."
49. *Supra* note 34.
50. *See, e.g.*, Jonathan Schell, *Letter from Ground Zero, The Wars on Terrorism*, THE NATION, Jan. 7–14, 2002, at 7.
51. Serge Schmemann, *Caution: This Weapon May Backfire*, N. Y. TIMES, Dec. 30, 2001, at 7.
52. Michael Ratner, *A Crime Against Humanity and Not War: Making Us Safer at Home and Stopping Carnage Abroad*, 58 GUILD PRAC.129,134-135 (2001).