

Bombing of Afghanistan

Material for Day 6

International Court of Justice / 27 June 1986 / *I.C.J. Reports* 1986, p. 14 / **Military and Paramilitary Activities in and against Nicaragua** / *Nicaragua v. United States of America* / Merits, Judgment

202. ...

In the Corfu Channel case, when a State claimed a right of intervention in order to secure evidence in the territory of another State for submission to an international tribunal (*I.C.J. Reports* 1949, p. 34), the Court observed that:

”the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.” (*I.C.J. Reports* 1949, p. 35.)

292. For these reasons,

THE COURT

...

(3) By twelve votes to three,

Decides that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State;

(4) By twelve votes to three,

Decides that the United States of America, by certain attacks on Nicaraguan territory in 1983-1984, namely attacks on Puerto Sandino on 13 September and 14 October 1983 ; an attack on Corinto on 10 October 1983 ; an attack on Potosi Naval Base on 4/5 January 1984; an attack on San Juan del Sur on 7 March 1984; attacks on patrol boats at Puerto Sandino on 28 and 30 March 1984; and an attack on San Juan del Norte on 9 April 1984; and further by those acts of intervention referred to in subparagraph (3) hereof which involve the use of force, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to use force against another State;

(5) By twelve votes to three,

Decides that the United States of America, by directing or authorizing overflights of Nicaraguan territory, and by the acts imputable to the United States referred to in subparagraph (4) hereof, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to violate the sovereignty of another State;

(6) By twelve votes to three,

Decides that, by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted, against the Republic of

Nicaragua, in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce;

(9) By fourteen votes to one,

Finds that the United States of America, by producing in 1983 a manual entitled *Operaciones sicológicas en guerra de guerrillas*, and disseminating it to contra forces, has encouraged the commission by them of acts contrary to general principles of humanitarian law; but does not find a basis for concluding that any such acts which may have been committed are imputable to the United States of America as acts of the United States of America;

(12) By twelve votes to three,

Decides that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

(13) By twelve votes to three,

Decides that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law enumerated above;

(14) By fourteen votes to one,

Decides that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;

(15) By fourteen votes to one,

Decides that the form and amount of such reparation, failing agreement between the Parties, will be settled by the Court, and reserves for this purpose the subsequent procedure in the case;

New York Times / 17 Jul 1986, p. A23; Editorial desk / **A Way to Rejoin The World Court** / By Thomas M. Franck; Thomas M. Franck, professor of law at New York University Law School, has written a study of the World Court for the Twentieth Century Fund

No American will rejoice that the United States has just lost a major lawsuit brought against it by Nicaragua in the International Court of Justice. The Administration has rejected this decision and criticized the World Court, but this should not lead Americans to abandon our commitment to international law or to the Court.

...

The imprudence of this acceptance was demonstrated by the Nicaraguan case, in which the Court ruled that the United States is using force illegally in Central America. That case should not - and need not - have gone to the Court. To make sure the United States retains sovereign discretion to defend itself and its allies, any new American acceptance of the Court's compulsory jurisdiction should emulate the good sense of others like India and Kenya by excluding disputes involving armed conflict. America -acting alone or with its allies - still needs the freedom to protect freedom. The finger on the trigger cannot be that of the global judiciary.

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Is the Court fair? Since its debut in March 1948, the sitting American judge has dissented only 16 of 98 times - suggesting that the bench is probably not loaded.

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Times (London) / 22 Sep 2001 / **US banks on British troops** / By Philip Webster and Charles Bremner

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America drew closer to conflict with Afghanistan yesterday as President Bush rejected out of hand demands from the Taleban for proof of Osama bin Laden's involvement in last week's attacks. The White House said that there would be "no discussions and no negotiations" after Mr Bush heightened tension by raising America's own demands.

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Mr Bush's tough message came after the ruling Taleban refused to give in to American pressure to hand over bin Laden. "We are not ready to hand over Osama bin Laden without evidence," Mullah Abdul Salaam Zaeef, the Taleban Ambassador to Pakistan, said.

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Daily Telegraph (London) / 4 Oct 2001, p. 9 / **Pakistan halts secret plan for bin Laden trial Fugitive** / By Patrick Bishop in Paris

A SECRET plan to put Osama bin Laden on trial in Pakistan has been blocked after President Musharraf said he could not guarantee his safety, it was disclosed yesterday.

Suggested by the Taliban's closest allies in Pakistan, it was a last-minute attempt to satisfy Western demands for bin Laden's surrender while averting a war and ensuring the fanatical regime's survival.

A senior delegation led by Qazi Hussain Ahmad, head of Pakistan's Islamic party, the Jamaat-i-Islami, met Mullah Omar, the Taliban leader, in secret on Monday. Omar agreed that bin Laden should be taken to Pakistan, where he would be held under house arrest in Peshawar. The proposal, which had bin Laden's approval, was that within the framework of Islamic shar'ia law evidence of his alleged involvement in the American attacks would be placed before an international tribunal.

The court would decide whether to try him on the spot or hand him over to America. The secret deal was agreed after a meeting in Islamabad on Saturday at which Mulla Abdus Salaam Zaeef, Taliban ambassador to Pakistan, and Hamid Gul, former director of Pakistan's inter-service intelligence, and Qazi were present.

Qazi, along with Maulana Fazlur Rahman, head of Jamaat Ulema-e-Islam, another Islamic party, and Maulana Sami ul-Haq, head of the Sami group of the same organisation, met Omar in Kandahar.

The clerics, who run religious schools in Pakistan that have provided the Taliban with thousands of fighters, warned Omar that Pakistan would be plunged into crisis unless bin Laden was handed over. Qazi quoted a verse from the Koran asking Allah's forgiveness and begging him not to impose too great a burden on his people.

However, a member of the Taliban threatened that, if attacked, they were ready to launch a wave of strikes against Western targets.

Gen Musharraf and Wendy Chamberlain, America's ambassador to Pakistan, were told of the mission in advance and yesterday Qazi met the Pakistani president to relay the proposal.

"He was told that, while he backed the idea, the stumbling block was that he could not guarantee bin Laden's safety," said a source close to the delegation.

Office of Prime Minister Tony Blair / 4 Oct 2001 / Responsibility for the Terrorist Atrocities in the United States

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Osama Bin Laden and the 11 September attacks

61. Nineteen men have been identified as the hijackers from the passenger lists of the four planes hijacked on 11 September 2001.

At least three of them have already been positively identified as associates of al-Qaeda.

One has been identified as playing key roles in both the East African embassy attacks and the USS Cole attack.

Investigations continue into the backgrounds of all the hijackers.

62. From intelligence sources, the following facts have been established subsequent to 11 September; for intelligence reasons, the names of associates, though known, are not given.

In the run-up to 11 September, bin Laden was mounting a concerted propaganda campaign amongst like-minded groups of people - including videos and documentation - justifying attacks on Jewish and American targets; and claiming that those who died in the course of them were carrying out God's work.

We have learned, subsequent to 11 September, that Bin Laden himself asserted shortly before 11 September that he was preparing a major attack on America.

In August and early September close associates of Bin Laden were warned to return to Afghanistan from other parts of the world by 10 September.

Immediately prior to 11 September some known associates of Bin Laden were naming the date for action as on or around 11 September.

Since 11 September we have learned that one of Bin Laden's closest and most senior associates was responsible for the detailed planning of the attacks.

There is evidence of a very specific nature relating to the guilt of Bin Laden and his associates that is too sensitive to release.

63. Osama Bin Laden remains in charge, and the mastermind, of al-Qaeda. In al-Qaeda, an operation on the scale of the 11 September attacks would have been approved by Osama Bin Laden himself.

64. The modus operandi of 11 September was entirely consistent with previous attacks.

Al Qaeda's record of atrocities is characterised by meticulous long term planning, a desire to inflict mass casualties, suicide bombers, and multiple simultaneous attacks.

65. The attacks of 11 September 2001 are entirely consistent with the scale and sophistication of the planning which went into the attacks on the East African Embassies and the USS Cole.

No warnings were given for these three attacks, just as there was none on 11 September.

66. Al-Qaeda operatives, in evidence given in the East African Embassy bomb trials, have described how the group spends years preparing for an attack.

They conduct repeated surveillance, patiently gather materials, and identify and vet operatives, who have the skills to participate in the attack and the willingness to die for their cause.

67. The operatives involved in the 11 September atrocities attended flight schools, used flight simulators to study the controls of larger aircraft and placed potential airports and routes under surveillance.

68. Al-Qaeda's attacks are characterised by total disregard for innocent lives, including Muslims. In an interview after the East African bombings, Osama Bin Laden insisted that the need to attack the United States excused the killing of other innocent civilians, Muslim and non-Muslim alike.

69. No other organisation has both the motivation and the capability to carry out attacks like those of the 11 September - only the al-Qaeda network under Osama Bin Laden.

Conclusion

70. The attacks of the 11 September 2001 were planned and carried out by al-Qaeda, an organisation whose head is Osama Bin Laden.

That organisation has the will, and the resources, to execute further attacks of similar scale.

Both the United States and its close allies are targets for such attacks.

The attack could not have occurred without the alliance between the Taleban and Osama Bin Laden, which allowed Bin Laden to operate freely in Afghanistan, promoting, planning and executing terrorist activity.

Xinhua General News Service / 7 Oct 2001, 11:44 AM Eastern Time / **Taliban to Detain Osama if Requested by US: Zaeef**

DATELINE: ISLAMABAD, October 7

The Taliban regime is willing to detain the suspected terrorist leader, Osama bin Laden and try him under Islamic law if requested formally by the United States, Taliban chief representative in Islamabad Abdul Salam Zaeef told the media Sunday.

"Islamic laws have been implemented in Afghanistan and it is the appropriate place for Osama to be put on trial," Zaeef said. He said that if the United States provides the allegation against bin Laden, "detention is not a problem."

The Taliban supreme leader, Mullah Mohammad Omar, last month made a similar call to the United States in an apparent fear of possible military strikes.

"Under Islamic law, we can put him on trial according to allegations raised against him and then the evidence would be provided to the court," Zaeef said, adding that "it is up to them to come to us. It is their problem."

Associated Press / 7 Oct 2001 / **Taliban say they willing to detain bin Laden and try him under Muslim law if U.S. requests** / By Kathy Gannon

In an eleventh-hour appeal to halt U.S. attacks, Afghanistan's ruling Taliban offered Sunday to detain terrorist suspect Osama bin Laden and try him under Islamic law if the United States makes a formal request.

"Islamic laws have been implemented in Afghanistan, and it is the appropriate place for Osama to be put on trial," the Taliban ambassador to Pakistan, Abdul Salam Zaeef, told reporters.

"Detention is not a problem," he added. "If someone comes and gives the allegation against him, we would detain him. But if we detain him without allegations, he will say to us 'where is America? Why have you detained me?'" Zaeef's offer was similar to one made last month by the Taliban supreme leader, Mullah Mohammed Omar, and indicated the Afghan leadership's desperation to avoid punishing military strikes for refusing to hand over bin Laden and his lieutenants.

Zaeef said the proceedings could begin even before the United States had offered any evidence to support its claims that bin Laden was behind the Sept. 11 terrorist attacks against the World Trade Center in New York and the Pentagon.

"Under Islamic law, we can put him on trial according to allegations raised against him and then the evidence would be provided to the court," Zaeef said. "It is up to them to come to us. It is their problem," referring to the United States.

The United States has repeatedly rejected Taliban offers to negotiate over bin Laden, who has lived in Afghanistan since 1996. Appeals by Afghanistan for help in the Islamic world have received little support from governments although Muslim parties and movements here and elsewhere oppose any U.S. attack.

Zaeef accused the United States of dismissing Islamic laws as irrelevant.

"While we are ready to put Osama on trial in an Islamic court in Afghanistan, America is still thinking of attacking Afghanistan," Zaeef said. "It means America has no respect for Islamic laws. They want to show Islamic laws as irrelevant."

The United States, however, is in no mood for compromise.

On Saturday, President Bush warned the Taliban to surrender bin Laden and his lieutenants or face the consequences.

"The Taliban has been given the opportunity to surrender all the terrorists in Afghanistan and to close down their camps and operations," Bush said.

Washington has also rejected Afghanistan's attempt to use jailed foreign aid workers as bargaining chips to pressure the United States to halt its planned anti-terrorist offensive.

"The president has made clear from the beginning that the Taliban needs to release the aid workers and that it is time for action, not negotiation," said White House spokeswoman Claire Buchan.

The eight aid workers in Kabul - four Germans, two Americans and two Australians - were arrested in August on charges of trying to convert Muslims to Christianity.

On Sunday, Taliban authorities released British journalist Yvonne Ridley, arrested last month in Afghanistan, and Zaeef said she would be handed over to British diplomats Monday, presumably at the Afghan-Pakistan border.

Washington Times / 9 Oct 2001, p. A14 / **United States officially informs United Nations of strikes**

The following is the text of a letter sent yesterday by John Negroponte, U.S. permanent representative to the United Nations, to Richard Ryan, president of the U.N. Security Council.

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 rights of individual and collective self-defense following armed attacks that were carried out against the United States on Sept. 11, 2001.

On Sept. 11, 2001, the United States was the victim of massive and brutal attacks in the states of New York, Pennsylvania and Virginia. These attacks were specifically designed to maximize the loss of life; they resulted in the death of more than 5,000 persons, including nationals of 81 countries, as well as the destruction of four civilian aircraft, the World Trade Center towers and a section of the Pentagon. Since Sept. 11, 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-defense requires further actions with respect to other organizations and other states.

The attacks on Sept. 11, 2001, and the ongoing threat to the United States and its nationals posed by the al Qaeda organization have been made possible by the decision of the Taliban regime to allow the parts of Afghanistan that it controls to be used by this organization as a base of operation.

Despite every effort by the United States and the international community, the Taliban regime has refused to change its policy. From the territory of Afghanistan, the al Qaeda organization continues to train and support agents of terror who attack innocent people throughout the world and target United States nationals and interests in the United States and abroad.

In response to these attacks, and in accordance with the inherent right of individual and collective self-defense, United States armed forces have initiated actions designed to prevent and deter further attacks on the United States. These actions include measures against al Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan.

In carrying out these actions, the United States is committed to minimizing civilian casualties and damage to civilian property. In addition, the United States will continue its humanitarian efforts to alleviate the suffering of the people of Afghanistan. We are providing them with food, medicine and supplies.

I ask that you circulate the text of the present letter as a document of the Security Council.

Japan Economic Newswire / 14 Oct 2001 / **Taliban say 200 civilians killed by misdirected U.S. bomb** / By Toshimitsu Sawai

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Meanwhile, U.S. President George W. Bush on Sunday rejected the latest offer from the Taliban to discuss turning over Islamic militant Osama bin Laden if the U.S. stops the air strikes.

'When I said no negotiations, I meant no negotiations,' Bush told reporters.

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Xinhua General News Service / 14 Oct 2001 / **Wrap-up: Bush Rejects New Taliban Offer to Hand Over Bin Laden**

U.S. President George W. Bush Sunday rejected the latest offer by the Taliban regime in Afghanistan to turn over suspected terrorist Osama bin Laden if the United States supplied sufficient evidence of his guilt.

"There's no need to negotiate," Bush said upon his arrival at the White House from the presidential retreat at Camp David, Maryland. The bombing in Afghanistan would not stop unless the ruling Taliban "turn him over, turn his cohorts over, turn any hostages they hold over," he said.

"There's no need to discuss innocence or guilt. We know he's guilty" in the recent terrorist attacks, Bush added.

The United States has accused bin Laden of masterminding the September 11 attacks on the World Trade Center in New York and the Defense Department building in Washington which killed nearly 5, 400 people.

Earlier Sunday, Taliban said it might be willing to extradite bin Laden to stand trial in a neutral country outside U.S. or Taliban influence, but repeated a demand for evidence of bin Laden 's involvement in last month's attacks.

"If proof is provided, a third country could be chosen, which is neither under the influence of the United States, nor the Taliban," Maulani Abdul Kabir, the governor of Jalalabad told a group of visiting international journalists.

The offer came exactly one week after Bush ordered military strikes in Afghanistan in his campaign to eradicate terrorism. Several hours before the strikes were launched, Bush rejected a similar offer from the Taliban.

The latest offer from the Taliban came a day after the Taliban' s supreme leader rebuffed a "second chance" by Bush for the Islamic militia to surrender bin Laden.

U.S. Newswire / 15 Oct 2001 / **Remarks of President Bush Upon Return to the White House**

The following are remarks by President Bush upon his return to the White House, Oct. 14:

The South Lawn

Q: Mr. President, there's a new offer from the Taliban to turn over bin Laden. What's your response to that, sir?

THE PRESIDENT: Turn him over. Turn him over, turn his cohorts over, turn any hostages they hold over, destroy all the terrorist camps. There's no need to negotiate. There's no discussions. I told them exactly what they need to do. And there's no need to discuss innocence or guilt; we know he's guilty. Turn him over. If they want us to stop our military operations, they've just got to meet my conditions. Now, when I said no negotiation, I meant no negotiation.

Q: You reject his offer?

THE PRESIDENT: I don't know what the offer is. All they've got to do is turn him over. And his colleagues, and the stocks he hides, as well as destroy his camps, and the innocent people being held hostage in Afghanistan.

Q: They want you to stop the bombing and see evidence.

THE PRESIDENT: There's no negotiation – they must have not heard – there's no negotiation. This is non-negotiable. These people, if they're interested in us stopping our military operations, we will do so if they meet the conditions that I outlined in my speech to the United States Congress. It's as simple as that. There's nothing to negotiate about. They're harboring a terrorist, and they need to turn him over. And not only turn him over, turn the al Qaeda organization over, destroy all the terrorist camps – actually, we're doing a pretty good job of that right now – and release the hostages they hold. That's all they've got to do. But there is no negotiation, period.

CONTACT: White House Press Office, 202-456-2580

New York Times / 16 Oct 2001, p. A1 / **Taliban Envoy Talks of a Deal Over bin Laden** /
By John F. Burns

At secret talks in Pakistan today, a senior Taliban leader appealed for an American bombing pause in Afghanistan while moderates in the Taliban government sought to persuade the supreme Taliban leader, Mullah Muhammad Omar, to agree to a formula for the handover of Osama bin Laden, officials in Pakistan disclosed tonight.

...

In his talks in Islamabad, the Taliban envoy suggested that the moderate Taliban camp he represents might be able to turn Taliban policy around if it had a period of calm, without American bombing, to rally other Taliban officials.

But after the talks here, it was not clear if the moderates intended to openly challenge Mullah Omar, who has steadfastly refused to hand over Mr. bin Laden, or if their proposal was part of an attempt to confuse the situation and get the bombing stopped without any definite progress on Mr. Bin Laden.

...

Whether the secret intrigue and high-level diplomacy would move the crisis closer to a resolution remained highly doubtful, American and Pakistani officials said.

One reason is that President Bush has said repeatedly that he will not negotiate, or even discuss, terms for the handover of Mr. bin Laden, who has been identified by the United States, along with his Al Qaeda terrorist organization, as the "prime suspect" in the Sept. 11 attacks.

A bombing pause, even one that allowed moderates to argue for Mr. bin Laden's handover, could be seen as compromise or weakness by the United States, those officials said.

Beyond that, the officials said, there were major reasons to doubt whether Mullah Muttawakil could shift Mullah Omar on the issue of handing over Mr. bin Laden, even assuming that the plea for a bombing pause was sincere.

Although Mullah Muttawakil, in his 30's, has long been considered one of the more worldly of the Islamic clerics who control the Taliban, specialists on the Taliban said he is not in Mullah Omar's inner circle of a half-dozen or so clerics, most of whom make their headquarters in the southern city of Kandahar. Mullah Muttawakil, although a Kandahari, oversees the foreign ministry from Kabul, the capital, 300 miles to the northeast.

It is not clear that even Mullah Omar or a successor as leader of the Taliban could hand over Mr. bin Laden if they decided to try.

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Further Reading

GENERAL BOOKS AND ARTICLES

Bloch, Marc (1954). *The Historian's Craft*. Manchester University Press, Manchester, England. A master craftsman of the comparative method discusses how historians look at evidence.

Herman, Edward S. and Noam Chomsky (1988). *Manufacturing Consent: The Political Economy of the Mass Media*. Pantheon, New York. One theory, with lots of documentation, explaining why the media act as they do; uses the comparative method extensively.

Mill, John Stuart. *On Liberty*. Classic essay on the value of free and wideranging discussion.

Orwell, George (1946). 'Politics and the English Language'. <http://www.resort.com/~prime8/Orwell/patee.html>

Russell, Bertrand (1967). *War Crimes in Vietnam*. Monthly Review Press, New York. Chapter 1 is particularly useful for examples of slanting by the media.

Stone, I. F. (1952). *The Hidden History of the Korean War*. Monthly Review Press, New York. Book-length example showing how a brilliant investigative journalist digs out buried information from mainstream sources.

NEWSPAPERS AND JOURNALS THAT SOMETIMES OR OFTEN PUBLISH VIEWS NOT FOUND IN THE MAINSTREAM US PRESS

Independent (London), <http://www.independent.co.uk>

Guardian (London), <http://www.guardian.co.uk>

New Statesman (London), <http://www.newstatesman.co.uk>

Le Monde Diplomatique, <http://www.en.monde-diplomatique.fr>

Many of the above indexed in the Lexis/Nexis service: <http://web.lexis-nexis.com/universe>

MEDIA ANALYSIS SITES

Fairness and Accuracy in Reporting, <http://www.fair.org>

Media Lens, <http://www.medialens.org>

This course, <http://www.inference.phy.cam.ac.uk/sanjoy/teaching/reading-media>