

## UNDERSTANDING SEPTEMBER 11TH—AN INTERNATIONAL LEGAL PERSPECTIVE ON THE WAR IN AFGHANISTAN

MICHAEL J. KELLY†

The disaster that befell our nation on September 11, 2001 is of such monstrous proportions, that the image of airliners slamming into the World Trade Center is surely destined to run in perpetuity alongside the grainy black and white footage from 1937 of the Hindenburg exploding into flames.<sup>1</sup> Like all events comprising elements of unimaginableness and deep significance, “9-11” is now burned into humanity’s collective conscience as firmly as such other events in American history like the assassination of President Kennedy or the landing on the Moon of Apollo 11.

Indeed, 9-11 is yet another item in the long sequence of events during the past century where the world stopped and cast all eyes toward America. It is yet further confirmation, painful though it is, of our unique role as the preeminent force on the globe, socially, politically, economically and militarily. It is against this hegemonic power that the terrorists who boarded United flight 175, United 93, American 11 and American 77 struck with such ferocity on that deceptively calm morning. Over the ensuing week, newspapers across the country began to ask, “why do they hate us?”<sup>2</sup> For any international angle of analysis to be meaningful, we must struggle to understand the genesis of the hatred harbored against our hegemony. Then we must adjust our policies accordingly to pursue our national security priorities without unwittingly engendering further ill will.

That the onus of the attacks was blatant, blindingly insane hatred of the West, and America in particular, is now evident. What America did to deserve such unbridled animosity is less clear. Apparently,

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† Assistant Professor of Law, Creighton University School of Law. B.A., J.D., Indiana University; LL.M. - International & Comparative Law, Georgetown University. Professor Kelly teaches international law courses at Creighton. The author wishes to thank his wife, Shannon Hunt Kelly, J.D., for her insightful comments in the preparation of this essay. All references to events are current as of the date of this writing – December 15, 2001.

1. Jonathan Mandell, *History is Impatient to Embrace Sept. 11*, N.Y. TIMES, Nov. 18, 2001, at AR1.

2. Joe Hallett & Catherine Candisky, *Why Do People Hate America Enough to Kill?*, COLUMBUS DISPATCH, Sep. 13, 2001, at 1A; Joseph S. Nye, *Why Do They Hate Us? The Reasons Are Many, The History Long ‘America Represents Global Capitalism,’* BOSTON GLOBE, Sep. 16, 2001, at D1; Editorial, *Why Do They Hate Us So Much?*, ST. LOUIS POST-DISPATCH, Sep. 16, 2001, at B6.

Osama bin Laden and his like-minded colleagues were incensed about America's involvement in the Middle East on a variety of points that led to a general amalgam of single-minded abhorrence fused with indignancy.<sup>3</sup> Still, we must understand that these grievances change character as they are viewed through the fundamentalist lens.<sup>4</sup>

For instance, the traditional U.S. support of Israel translates into lack of sympathy for the Palestinian cause. The American-led Gulf War, intended to ensure political and economic stability in the region translates into the dressing down of an Arab leader who presumed to defy to the West. The presence of U.S. troops in Saudi Arabia for security purposes after 1991 translates into two things: reliance by the corrupt House of Saud on hired foreign mercenaries to retain power and Western assurance of continued, uninterrupted oil flow with no regard for the Arab people. Approval of American military actions abroad by the U.N. Security Council translates into further revelation of that body as a willing tool of American foreign policy.

How do we affect this mind-set? How can America argue against this minority Muslim view of Islam's continued humiliation and manipulation by the West? It is difficult when such perceptions are based on kernels of truth. It is even more difficult when the source of this mind-set finds its roots in religious irrationality.<sup>5</sup>

Historians, theologians, sociologists and anthropologists confirm that this irrational Islamic hatred of the West cannot be easily excoriated. It was born during the Roman occupation and then reborn during the Crusades. It was inflamed after the collapse of the Ottoman Empire and the Balfour Declaration supporting a Jewish homeland in Palestine. It was further intensified after the creation of Israel in 1948 and the partition of India during independence that same year on terms perceived as anti-Muslim, pro-Hindu. Based partially in reality and partially imagined, this attitude in the Islamic,

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3. Fouad Ajami, *The Sentry's Solitude*, 80 FOREIGN AFF. 2, 7 (Nov. 1, 2001):

A sacred realm apart, Arabia had been overrun by Americans, bin Laden said. 'For more than seven years the United States has been occupying the lands of Islam in the holiest of territories, Arabia, plundering its riches, overwhelming its rulers, humiliating its people, threatening its neighbors, and using its peninsula as a spearhead to fight the neighboring Islamic peoples.' Xenophobia of a murderous kind had been dressed up in religious garb.

4. Ajami, 80 FOREIGN AFF. at 5-12.

5. The minority view is actually a radicalized version of the already conservative form of Wahabi Islamic clericism that controls religious life in Saudi Arabia. Examples of how wildly out of touch Wahabi clerics are include the continued declaration only twenty years ago by the head of the sect that the earth was flat because the Koran told him that was so, and the recent *fatwah* against the Japanese children's toy Pokémon trading cards. *Fresh Air: Interview with Newsweek Correspondent Christopher Dickey* (NPR radio broadcast, Nov. 13, 2001).

especially Arab Islamic, world of victimization is so ingrained as to be almost unapproachable diplomatically.<sup>6</sup>

So, if this minority fundamentalist Islamic hatred cannot be fully eradicated, can it at least be managed and minimized to avoid further acts of terrorism? Perhaps. America has already laid the groundwork in this regard by avoiding a rash and provocative response immediately after the attacks. Although probably emotionally justified at the time, we did not, in fact, launch a nuclear missile at Kabul or Kandahar. Our response was deliberate, rational and sanctioned under international law. This is important if the response is to be viewed as legitimate by the world and especially by the Islamic world.<sup>7</sup>

First, under customary practice, because the attack came during peacetime and was in violation of international law, we can invoke the old doctrine of reprisal against the offending state. Of course, the perpetrators were an organization, not a state; thus, President Bush went out of his way to connect the terrorists to the state by linking them in a principal-agency relationship so this legal rationale can be utilized. The other elements of the doctrine require a request for redress, which Bush made in his address to Congress when he ticked off the list of demands for the Taliban,<sup>8</sup> followed by a denial, which the Taliban dutifully provided. The military response that flows from this doctrine of reprisal must then be proportional to the injury suffered.<sup>9</sup> Here, the toppling of the repressive Taliban, pursuit of international terrorists and creation of conditions for a new coalition government in Afghanistan are certainly proportional to the massive loss of life in America coupled with the astounding physical destruction we suffered.

Second, under the U.N. Charter, America has the right of self-defense. Article 51 allows us to exercise this individually or collectively in response to an armed attack and to continue its exercise "until the Security Council has taken the measures necessary to maintain international peace and security."<sup>10</sup> Indeed, in resolutions issued the day after the attack and again on September 28th, the Security Council defined the situation as an inherent threat to international peace

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6. Douglas Jehl, *Newspapers and T.V. Paint U.S. Action as a Kind of Terrorism*, N.Y. TIMES, Nov. 11, 2001, at B5. This attitude "permeate[s] a region that sees itself as having been cheated, maligned, outsmarted and outmuscled by Westerners for much of its modern history." *Id.*

7. Carola Hoyos, *U.N. Charter and Resolutions Offer U.S. Action Legal Backing*, FIN. TIMES, Oct. 8, 2001.

8. *President's Message to Joint Session of Congress Responding to the Terrorist Attacks of September 11th*, PUB. PAPERS (Sept. 24, 2001).

9. Stephen Erlanger, *So Far, Europe Breathes Easier Over Free Hand Given to U.S.*, N.Y. TIMES, Sept. 29, 2001 at B1.

10. U.N. CHARTER art. 51.

and security and recognized the invocation of article 51.<sup>11</sup> Given the gravity of the September 11th attacks and the tacit support of the most traditionally recalcitrant permanent members of the Council, Russia and China, it is unlikely that the Council would act to truncate the ongoing action in Afghanistan.

Third, under the North Atlantic Charter, America is backed in this action by its NATO allies. For the first time since its adoption in 1949, the Charter's military response obligation in Article 5 has been triggered.<sup>12</sup> This key provision declares that:

[A]n armed attack against one . . . of them . . . shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as . . . necessary, including the use of armed force . . . .<sup>13</sup>

Thus, the forces deploying on the ground in Afghanistan for peacekeeping purposes are primarily NATO forces. The British will occupy the airbase at Bagram field north of Kabul, the French will occupy the airbase at Mazar-e Sharif, and the Turks will lead a multinational, mostly Muslim, force to police Kabul, "ensuring that no single Afghan militia is able to monopolize power in the capital."<sup>14</sup>

Fourth, the political significance of international and foreign legal changes since September 11th have altered the global dynamic such that support continues to coalesce around our efforts. Specifically, the broad coalition assembled by Secretary of State Colin Powell involved lifting sanctions against Pakistan<sup>15</sup> and India that were imposed after their nuclear tests several years ago. Further signals of support to the Islamic world include: intervening to dismiss the civil damages case by former hostages against Iran in exchange for Tehran's acquies-

11. S.C. Res. 1368, U.N. SCOR, 56th Sess., 4370th mtg, U.N. Doc. S/Res/1368 (2001); S.C. Res. 1373, U.N. SCOR, 56th Sess, 4385th mtg, U.N. Doc. S/Res/1373 (2001).

12. Statement by NATO Secretary General, October 2, 2001, 40 I.L.M. 1268 (2001).

13. North Atlantic Treaty, April 4, 1949, art. 5, 63 Stat. 2241, 2244, 34 U.N.T.S. 243, 246.

14. Alan Sipress & Colum Lynch, *Turkey, Britain, France to Head Peacekeeping Forces*, WASH. POST, Nov. 16, 2001, at A29.

15. The incentive package to Pakistan in exchange for rekindling an old alliance was expensive, but necessary in the grand scheme:

Since [September 11th], Washington has rescheduled \$396 million of Islamabad's debt; approved a \$300 million line of credit for prospective investors in Pakistan; and offered \$73 million to patrol Pakistani borders and \$34 million to fight drug trafficking. On [November 15th], Washington gave Pakistan \$600 million in foreign aid to address the impact of a terror-induced global recession.

Michael Wines, *Leasing, If not Building, an Anti-Taliban Coalition*, N.Y. TIMES, Nov. 18, 2001, at WK3.

cence in the campaign and the agreement to help downed U.S. airmen on Iranian soil;<sup>16</sup> lifting sanctions against Sudan imposed after the American embassy bombings in Africa;<sup>17</sup> allowing Syria to accede to the U.N. Security Council despite past involvement in terrorist activities;<sup>18</sup> and restarting the Middle-East peace process by resurrecting the dormant Mitchell Plan.<sup>19</sup>

Moreover, the passage of a bill in the Japanese Diet allowing participation of its troops in a non-combat role supporting the campaign<sup>20</sup> is significant not only for the constitutional jurisprudence of that country which limits the government's use of military force,<sup>21</sup> but also for the future of collective security efforts in the Asian region.

Accordingly, legitimacy has been secured for America's military action under international law and through international cooperation. President Bush set the correct tone for the allied operations in Afghanistan by stressing that we were not going to war *against* Afghanistan, but *in* Afghanistan. Nonetheless, successful completion of this military mission (driving the Taliban from power and pursuing elements of al Qaeda) is only the first step in a long Afghan journey. The ensuing political aftermath is of equal importance as a demonstration of good faith. When the Soviets pulled out of Afghanistan in 1989, America ended its involvement (supporting the Mujahadeen) and abandoned Afghanistan to its own devices. Subsequently, the country descended into civil war and chaos.<sup>22</sup> We must not abandon Afghanistan again. To do so would only be confirmation of the minority Islamic view: that America and the West are indifferent and selfishly concerned with pursuing their own interests.

America and its allies must communicate to the Islamic world that the West actually does care about its concerns.<sup>23</sup> We must re-

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16. Elaine Sciolino & Neil A. Lewis, *Iran Dances a 'Ballet' with U.S.*, N.Y. TIMES, Oct. 16, 2001, at B1. Usually, when an administration intervenes in such a case, compensation is granted to those litigants negatively affected by the government's action for foreign policy reasons.

17. Erlanger, *supra* note 9; Marc Lacey, *U.S. Envoy Looks for Change in Sudan*, N.Y. TIMES, Nov. 18, 2001, at A8.

18. Serge Schmemmann, *Syria is Likely to Join U.N. Security Council*, N.Y. TIMES, Oct. 7, 2001, at A28; Christopher S. Wren, *U.S. Advises U.N. Council More Strikes Could Come*, N.Y. TIMES, Oct. 9, 2001, at B5.

19. Hugh Dellois, *Sharon Firm on Calm Before Talks; Powell to Outline U.S. Peace Vision*, CHI. TRIB., Nov. 19, 2001, at 3; Alan Sipress, *Powell Vows U.S. Role in Mideast*, WASH. POST, Nov. 20, 2001, at A1.

20. James Palmer, *Japanese Pass Law Allowing Military to Join Campaign*, INDEPENDENT (London), Oct. 30, 2001, at 7.

21. KENPO, art. 9.

22. Milton Bearden, *Afghanistan, Graveyard of Empires*, 80 FOREIGN AFF. 17, 23-26 (Nov./Dec. 2001).

23. *The Propaganda War - It is Needed to Sustain the Immediate Battle, But Also to Win the Peace*, ECONOMIST, Oct. 6, 2001, at 11. After some initial stumbles in the

peatedly point to past actions undertaken to help Muslim countries: successful intervention in Bosnia to defend Muslims against Serbian aggression, NATO bombing of Serbia despite the absence of U.N. Security Council authorization to protect Muslim civilians in Kosovo, and even unsuccessful humanitarian intervention in Somalia to avert famine. Then we must translate this message into reality on the ground in Kabul.

Under the aegis of the United Nations, the establishment of order in Afghanistan must proceed with invisible Western guidance, but with visible Western support (financial and logistic). The balance will be delicate. As former ambassador Peter Tomsen put it, we must act "through international support for an internal Afghan dialogue leading to an Afghan regime in Kabul chosen through . . . Afghan consensus . . . . Ultimately, the multiple U.S. interests at stake in Afghanistan can only be accomplished when the majority of Afghans believe their leaders in Kabul have been chosen by Afghans and not from abroad."<sup>24</sup>

The *modus operandi* suggested by Professor Tomsen is to establish a U.N. conference with exclusive competence to deal with this consensus process, prohibiting influence or alignment by foreign governments with internal Afghan factions, designating the Secretary General as the sole mediator, and serving as a register for collecting funds to reconstruct the country's infrastructure.<sup>25</sup> Perhaps the most inclusive form of assemblage that can be convened under a U.N. conference is the traditional Afghan Loya Jirga.

This is a grand council with representatives of every Afghan ethnic, tribal, religious and political group that historically only convenes for important national decisions.<sup>26</sup> The last assembly was called thirty-eight years ago to ratify a constitution, and one has not occurred to select a new ruler since 1747.<sup>27</sup> Indeed, with the sudden departure of the Taliban, deposed presidents and kings lurking, and temperaments fraying among Tajiks, Pashtuns, Uzbeks and others

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communication strategy such as President Bush's early reference to the coming conflict as a "crusade" and Italian Prime Minister Berlusconi's remarks about Christian superiority and the need to "occidentalise" the Middle East, the concerted effort to signal increased sensitivity appears to be coming together. *A Battle on Many Fronts*, ECONOMIST, Oct. 6, 2001, at 1.

24. Peter Tomsen, *Untying the Afghan Knot*, 25 FLETCHER F. WORLD AFF. 17, 19 (Winter 2001).

25. *Id.* at 22. Attempts are now underway in Bonn, Germany to successfully conclude a U.N. conference that leads to an inter-tribal accord acceptable to most Afghans establishing an interim government with broad support. Olivia Wood, *Afghan Rivals Hold Key Talks on Future*, TORONTO STAR, Nov. 28, 2001, at A10.

26. Mohammad Bazzi, *Power Struggle: Tribal Divisions Threaten a New Afghan Government*, NEWSDAY (New York), Nov. 18, 2001, at A5.

27. *Id.*

within the country,<sup>28</sup> the resort to a known and accepted form of traditional decision-making could prove stabilizing.

In tandem with this effort, although perhaps not simultaneously, the United States must revive the aggressive education efforts within the wider Muslim world that had been pursued during the Cold War but were unwisely discontinued after the fall of the Soviet Union.<sup>29</sup>

In the 1980's, when Pakistan was considered a Cold War battleground, American cultural centers were a focus of intellectual and social life in Islamabad, Karachi, Lahore, Hyderabad and Peshawar. Each offered well-stocked libraries, discussion groups led by visiting Americans and a stream of cultural programs. In Lahore, . . . singers from the Metropolitan Opera created a sensation, and there were long lines for a show of posters of American paintings.

. . .

Following a series of budget cuts . . . [t]he ideals, history and cultural vibrancy of the United States were taken off display . . . . Now, thousands of young people live at fundamentalist academies where they learn nothing but how to chant the Koran and hate the infidel.<sup>30</sup>

As Allan Goodman, head of the Fulbright scholarship program notes, "the only way we're going to reduce hatred for America is by giving people some perception of our society, some opportunity to see who we really are."<sup>31</sup> Moreover, we must not continue to sit passively while inflammatory stories air on Al Jazeera television allowing radical Muslims to cast us in the role of the enemy.<sup>32</sup> We must engage and do what we can to set the story straight. We must espouse our values and ideals, but in a non-threatening, inclusive manner. We must also apply the rule of law impartially, on the basis of universal principles of justice, to any perpetrators of the September 11th attacks that happen to survive the military campaign and are caught.

President Bush's military order establishing secret military tribunals to try, convict and sentence these suspects undermines such a process.<sup>33</sup> It delineates a clear distinction between American citizens who continue to enjoy access to open courts with strict evidentiary and procedural rules, and non-citizens (probably Muslims) who will disappear into closed courts administered by neither the judiciary nor the

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28. Reuters, *Five Years After Ouster, a Professor Returns to Uneasy Alliance*, N.Y. TIMES, Nov. 18, 2001, at B3; *After the Taliban*, ECONOMIST, Oct. 6, 2001, at 17.

29. Stephen Kinzer, *Why They Don't Know Us*, N.Y. TIMES, Nov. 11, 2001, at WK5.

30. *Id.*

31. *Id.*

32. Fouad Ajami, *What the Muslim World is Watching*, N.Y. TIMES MAG., Nov. 18, 2001, at 48.

33. President's Military Order, 66 Fed. Reg. 57833 (Nov. 15, 2001).

Justice Department, but by the Defense Department with relaxed evidentiary and procedural rules.<sup>34</sup> This difference in treatment is reinforced by the fact that while citizens would be tried by a jury of civilians and convicted only upon unanimity, non-citizens would undergo trial by a panel of military officers who may convict on a 2/3 vote.<sup>35</sup>

The illegal nature of this order only serves to perpetuate a sense of unfairness. As written, this order runs afoul of the Third Geneva Convention,<sup>36</sup> a treaty protecting the rights of prisoners of war. The Truman Administration signed this treaty in 1949, and it was ratified under Eisenhower in 1956, fourteen years after the last military commission in the U.S., tried and convicted eight Nazi saboteurs.<sup>37</sup>

This 1942 conviction is the precedent cited most often by Attorney General Ashcroft in his defense of the president's order as applied within the United States. Military commissions were last used outside the U.S. by General McArthur in Japan in 1945. Obviously, no more recent cases can be cited because the rules changed in 1956 with the entry into force of the treaty. Assuming terrorists captured in this conflict are considered "prisoners of war" (not a far leap of logic since the government insists that "we are at war"),<sup>38</sup> such people are guaranteed certain procedural safeguards by the Geneva Convention.

Specifically, they are granted the right to be tried by an independent and impartial court, freedom from coerced confession, the right to counsel with private conferral, the right to a speedy trial (no longer than three months in prior detention), use of the Uniform Code of Military Justice ("UCMJ") in sentencing, and the right of appeal. The president's military order guarantees some Geneva Convention protections like humane treatment, adequate sustenance, free exercise of religion during detention, and the right to counsel during trial.

However, it breaches other protections by eliminating the right to appeal, not ensuring an independent and impartial court, and not providing for private conferral with counsel. Moreover, the possibility of

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34. Joan Biskupic & Richard Willing, *Military Tribunals: Swift Judgments in Dire Times*, USA TODAY, Nov. 15, 2001, at 1A.

35. *Id.*

36. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 287.

37. Biskupic & Willing, *supra* note 34.

38. *Excerpts from the President's Remarks on the War on Terrorism*, N.Y. TIMES, Oct. 12, 2001, at B4; *Excerpts From Attorney General's Testimony Before Senate Judiciary Committee*, N.Y. TIMES, Dec. 7, 2001, at B6; Katharine Q. Seelye, *Justice Department Decision to Forgo Tribunal Bypasses Pentagon*, N.Y. TIMES, Dec. 13, 2001, at B6; William Glaberson, *U.S. Asks to Use Secret Evidence in Many Cases of Deportation*, N.Y. TIMES, Dec. 9, 2001, at B1; Elisabeth Bumiller & Katherine Q. Seelye, *Bush Defends Wartime Call for Tribunals*, N.Y. TIMES, Dec. 5, 2001, at A1.

receiving the death sentence “upon the concurrence of two-thirds of the members of the commission present”<sup>39</sup> does not track the unanimity requirement in the UCMJ<sup>40</sup> as it must according to the treaty.

Incongruencies between the president’s order and the treaty make the order legally untenable. Article VI of the Constitution accords federal statutes and treaties coequal status as supreme law of the land.<sup>41</sup> These cannot be overridden by subsequent presidential orders.<sup>42</sup> Thus, the military order of November 13th cannot modify provisions of the Third Geneva Convention, it must comply with them. Only a subsequent statute or treaty, both requiring congressional action, can modify those terms.

Nonetheless, Defense Secretary Rumsfeld could save the president’s order from manifest illegality. Sections four and six of the order require Mr. Rumsfeld to issue rules and procedures for the establishment and functioning of military commissions. By drafting these guidelines to closely mirror UCMJ safeguards protecting American military servicemen, like the unanimity rule, right of appeal, establishment of guilt beyond a reasonable doubt, and strict rules of evidence, compliance with the treaty would be implicit because the UCMJ complies with it.<sup>43</sup> Therefore, the order can become legal.

At this juncture, Mr. Rumsfeld’s regulations need not include a right to private conferral with defense counsel as the treaty requires because the new anti-terrorism legislation passed by Congress in October legally modifies this right by allowing the Department of Justice to eavesdrop on confidential attorney-client communications when the detainee is suspected of being a terrorist.<sup>44</sup> But if this provision of the anti-terrorism law is successfully challenged in court and overturned, as it may be, then the Defense Department’s military commission regulations must include such a right.

Observance of laws, both domestic and international, is key to our success in western civilization. This is all the more important when we, as a free country, help write the laws and agree to be bound by them. What message does it send to the world when we act to change the rules of the game in order to win? If we are acting justly, with faith in our cause and truth on our side, then we will prevail. We don’t

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39. President’s Military Order, 66 Fed. Reg. 57833 (Nov. 15, 2001).

40. William Glaberson, *Tribunal v. Court-Martial: Matter of Perception*, N.Y. TIMES, Dec. 2, 2001, at B6.

41. U.S. CONST. art VI.

42. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

43. Glaberson, *supra* note 40.

44. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (2001).

need to change the rules. They are sufficient for our purpose and fairly crafted to ensure a legitimate outcome.

True, establishment of such tribunals is rightly justified by prosecutors as more expeditious and less complicated due to the ability to use classified evidence without compromising national security.<sup>45</sup> But, the inherent distinction based on nationality unwittingly feeds the mind-set of non-American Muslims as being victimized and unworthy of treatment according to higher standards reserved for Americans. This, of course, does nothing to ameliorate the hatred simmering below the surface. Shortly after the catastrophe, former Secretary of State Madeleine Albright reassured the world on television that America was “a nation of laws,” and President Bush promised to bring those involved to “justice.” Redefining the laws and redefining “justice” for non-Americans as somehow less than that accorded Americans actively works at cross-purposes with our mission to spread American democratic values.

We must remember that the real enemy is hatred, and hatred is not defeated on the battlefield. It is conquered in the hearts and minds of the people who harbor it. On September 11th, the hearts of most of the world, including the Islamic world, were with us. Now, the task is capturing the minds as well.<sup>46</sup> Today’s active, reinvigorated education together with multiple tangible demonstrations of empathy in place of yesterday’s sentiment of indifference and pervasive arrogance are essential components for attacking the real enemy. Such effort takes a different kind of mind-set on our part, and a more advanced strategy. I believe we’re up to the task. After all, we are America.

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45. Robin Toner, *Civil Liberty vs. Security: Finding a Wartime Balance*, N.Y. TIMES, Nov. 18, 2001, at A1.

46. John Kifner, *The New Power of Arab Public Opinion*, N.Y. TIMES, Nov. 11, 2001, at WK1:

It is on just this Arab—or, better, Islamic—street that President Bush must fight in his war against Osama bin Laden and his terrorists, a battleground for the public’s mood that may ultimately be more important than the mountains and deserts of Afghanistan.

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And in this battle, Mr. bin Laden has an edge in weaponry—the vocabulary with which to define the conflict. For what he seeks to do is to cast this as the cataclysmic clash of civilizations: Islam against the West, believer against infidel.

*Id.*

## AFGHANISTAN'S TURBULENT HISTORY

*As printed in Michael R. Gordon's article, A Month in a Difficult Battlefield*<sup>47</sup>

**13TH CENTURY**—Genghis Khan and his Mongol warriors gain control of Afghanistan, a trade crossroads between Europe and Asia.

**LATE 14TH CENTURY**—Afghanistan is the center of the empire of Tamerlane the Great, but later splits into fiefs.

**1747**—Ahmed Shah Durrani establishes a united emirate, marking the beginning of modern Afghan history.

**19TH CENTURY**—Russia and Britain fight for domination of Afghanistan. The wars of 1838-42 and 1878-80 leave Afghanistan unconquered but in the sphere of influence of Britain, which rules the neighboring Raj of British India. In 1842, when a British force of 4,500 troops and 12,000 dependents pulled out of Kabul, only one man survived the retreat.

**1919**—Afghanistan achieves full independence from Britain under Amanullah Khan, who proclaimed himself king in 1926. He was succeeded by Muhammad Nadir Shah (1929-33) and Muhammad Zahir Shah (1933-73).

**1973**—The monarchy falls to Zahir Shah's nephew, Muhammad Douad, who proclaims a republic.

**1978**—Muhammad Douad falls in a coup by pro-Soviet leftists.

**DECEMBER 1979**—Soviet troops push into Afghanistan.

**1989**—Soviet Union withdraws.

**APRIL 1992**—The pro-Moscow government that was left in place after the Soviets withdrew falls; rebels enter Kabul.

**1992-96**—Fighting for control of the country rages between rebel forces and those loyal to Burhanuddin Rabbani, the president of the recognized government.

**1996**—The Taliban gain control of Kabul and most of the country, leaving only slivers of territory in hands of Mr. Rabbani and the Northern Alliance.

**NOVEMBER 2001**—The Taliban are driven from Kabul by the Northern Alliance supported by American air strikes being conducted in military response to the September 11th terrorist attacks in the United States.

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47. Michael R. Gordon, *A Month in a Difficult Battlefield: Assessing U.S. Strategy*, N.Y. TIMES, Nov. 8, 2001, at A1.

