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Legal Issues in Forming the Coalition

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“Tis our true policy to steer clear of permanent alliances, with any portion of the foreign world.”

George Washington, on leaving office, 1796.

“Personally I feel happier now that we have no allies to be polite to and to pamper.”

King George VI, on hearing Britain stood alone against Hitler, June 1940.

Unlike George Washington and George VI, those who contemplated military action in Afghanistan in 2001 were eager to be part of a broad, capable and committed coalition. As well as the obvious practical benefits in terms of additional military assets and the crucial staging and basing support, they wanted the Taliban and al Qaeda to know that the resolve to defeat them stretched across all continents and many governments. The attacks of September 11, 2001 were so extraordinary in both scale and ferocity that no nation was likely to hesitate in identifying a clear legal basis to come to the assistance of the United States.

In fact the earliest days of the coalition were characterized by general consensus among its members: consensus on the horror of the attacks of 9/11, consensus on the fact that they represented an armed attack for the purposes of Article 51,¹

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consensus that for those in NATO the Article 5 right to act in defense of the United States was triggered² and consensus that there was sufficient nexus between al Qaeda and the Taliban for an invasion of Afghanistan to be a proper response. Indeed, it is difficult to find much divergence of approach at this point among those who came to the support of the United States. United Nations Security Council Resolution 1373³ made it quite clear that the inherent right of individual and collective self-defense had been triggered.

The United Kingdom's position, set out in a letter to the United Nations Security Council on October 7, 2001,⁴ seems to have reflected the view of most of those who took part in the early stages of the Afghan campaign. It identified that the attack triggered the United States' inherent right of self-defense and the right of allies to act in collective self-defense. That said, the United Kingdom government did not rely solely on the attacks of September 11, 2001 as a basis for acting in collective self-defense of the United States. It referred also to the need to avert attacks from the same source in the future, and the continuing threat posed by al Qaeda. There was also reference to the August 7, 1998 attacks on the US embassies in Tanzania and Kenya and the October 12, 2000 attack on the *USS Cole* at anchor in Aden, for all of which al Qaeda had claimed responsibility. The United Kingdom wanted to make it clear it was not retaliation it contemplated, but self-defense in response to a campaign of international terrorist violence.

The German government, who had until 1994 been constrained from deploying troops outside Germany and retained a reputation for being cautious in its interpretation of the international law right to act in self-defense, had no doubt of the lawfulness of US actions. On September 19, 2001, Chancellor Schröder stated that

[t]he [North Atlantic] Council—like the Security Council—now also regards a terrorist attack as an attack on a Party to the Treaty. The attack on the United States thus constitutes an attack on all NATO partners. What rights do these decisions create for the United States? Based on the decision of the Security Council, the United States can take measures against the perpetrators, organizers, instigators and sponsors of the attacks. These measures are authorized by international law. And, under the terms of the resolution, which further develops international law, they can and may take equally resolute action against States which support and harbour the perpetrators.⁵

Similarly, there is no evidence that the connection between the perpetrators of the attacks and the government of Afghanistan troubled the coalition members for very long. Most, if not all, were satisfied that the Taliban were the de facto government of Afghanistan even if they were not recognized as the legitimate government by the United Nations. The generally held view was that the Taliban had failed over a period of two years to comply with Security Council resolutions⁶ following the

bombings of the embassies in Kenya and Tanzania and could be regarded both as inextricably linked with and sheltering al Qaeda. Certainly the Taliban did not seek assistance with removing al Qaeda from their territory, nor did they condemn it publicly. They were given a “last chance” by the United States to surrender Osama Bin Laden, which they refused.

Early coalition contributions to the invasion of Afghanistan also reflected the generally held view that this was an international armed conflict. The deployment of forces and the details of their rules of engagement (ROE) were based on the premise that this was a conflict between the “coalition of the willing” on the one hand and Taliban forces, al Qaeda and the Afghan army on the other. That left no doubt that the four 1949 Geneva Conventions⁷ applied and, for those who were signatories, Additional Protocol I.⁸

Operation Enduring Freedom (OEF) began October 7, 2001, when President Bush made the following statement:

On my orders, the United States military has begun strikes against Al Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan. These carefully targeted actions are designed to disrupt the use of Afghanistan as a terrorist base of operations, and to attack the military capability of the Taliban regime. We are joined in this operation by our staunch friend, Great Britain. Other close friends, including Canada, Australia, Germany and France, have pledged forces as the operation unfolds. More than 40 countries in the Middle East, Africa, Europe and across Asia have granted air transit or landing rights. Many more have shared intelligence. We are supported by the collective will of the world.⁹

President Bush’s words set the scene for a coalition of broad international base and substantial military depth: the Afghan government had few friends in the international community. The coalition enjoyed rapid success and by November 2001 the Taliban had evacuated Kabul, melting back into the Pushtun populace in southern Afghanistan and the Pakistani tribal areas. With this short-term military objective complete, attention (particularly in Europe) turned to the form and purpose of an enduring presence in Afghanistan. It is at this point that the different understandings of the legal basis for presence, use of force, detention and other military activity begin to impact more noticeably on the conduct of operations.

***Operation Enduring Freedom and International Security Assistance Force:
Different Missions and Different Legal Frameworks***

The United States continued to consider its activities in Afghanistan as one front in its Global War on Terror. Although it is not suggested that this term is to be taken

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literally as an indication that the law of armed conflict applied to all responses to terrorism, it was clear the United States saw the pursuit of al Qaeda, both within and outside Afghanistan, as primarily a military mission. As such, OEF was presented to other militaries as part of a regional international armed conflict. A number of the nations that had supported the invasion continued to provide forces to OEF, including the United Kingdom, Canada and Australia, albeit they may not have (and certainly the United Kingdom did not) endorsed the concept of a Global War on Terror. The OEF mission not only covered all parts of Afghanistan, but stretched across the entire region, although most coalition partners limited their military activity to the territory of Afghanistan. President Bush had set out the following aims of the mission on October 7, 2001, and they remained the basis of mission directives and rules of engagement:

By destroying camps and disrupting communications, we will make it more difficult for the terror network to train new recruits and coordinate their evil plans. Initially, the terrorists may burrow deeper into caves and other entrenched hiding places. Our military action is also designed to clear the way for sustained, comprehensive and relentless operations to drive them out and bring them to justice.¹⁰

OEF activity included substantial air operations by forces based both in Afghanistan and elsewhere, along with operations on the ground. Certainly they extended across the whole of Afghanistan and were often similar in intensity to those that formed part of the invasion. The embryonic government in Kabul, which clearly supported efforts to eliminate remaining al Qaeda and Taliban forces, not least to secure its own position, was not in a position to supervise or approve the conduct of the military mission. It consented to OEF's continuation in principle, but had no veto or control of particular operations. The business of establishing a national democratic government for the first time in the nation's history did not allow for detailed involvement in OEF operational decisions. The extent to which it would have been consulted had it sought to be is not clear. The absence of direct involvement by the Afghan government in 2001–2 tends to support the premise that OEF remained the expression of an international armed conflict between the OEF forces and the remaining Taliban and al Qaeda forces, albeit the Taliban and al Qaeda were never capable of being high contracting parties for the purposes of the Geneva Conventions.¹¹

In parallel and following the Bonn conference in December 2001, the International Security Assistance Force (ISAF) was established by Security Council Resolution 1386.¹² On December 20, 2001, a UK general, Lieutenant General John McColl, took command of forces from nineteen nations, including the United States, the

United Kingdom, Canada and Australia, that were contributing to OEF. For many nations, including the United Kingdom and Canada, this was the point at which they may have judged that the international armed conflict had come to an end. The Taliban government had been replaced by one drawn from the Northern Alliance, which had itself fought alongside the coalition and was very much NATO's preferred replacement. That government had sought the assistance of the United Nations in establishing security in its country and provided forces from the Afghan National Army to fight alongside ISAF and against the remaining Taliban/al Qaeda, who wished to see it fail.

The ISAF mission was much more narrowly drawn in both geographical and military terms. ISAF forces restricted their operations to Kabul and its environs:¹³ they saw their role as the provision of support to the new government in Kabul in its continuing internal armed conflict with Taliban, al Qaeda and others who sought to overthrow it. The ISAF mission was generally based on self-defense activity (including the collective defense of Afghan government forces), with only exceptional recourse to the use of offensive force under the law of armed conflict: in part this reflected fear of "mission creep." The characterization of the conflict as "non-international" also seemed to find favor with the International Committee of the Red Cross (ICRC), which, in June 2002, used the same description.¹⁴ Although positions on the legal basis for operations varied among ISAF contributing nations, most relied on a combination of the Security Council Resolution and the consent of the government of Afghanistan. In fact, many contributing nations were pleased to distance themselves from the US notion of the Global War on Terror, understanding it (rightly or wrongly) to be the concept of an international armed conflict against international terrorist organizations wherever they might be in the world. They judged counterterrorism to be a law enforcement issue and characterized those they engaged under the laws of armed conflict within the context of the non-international armed conflicts in Iraq and Afghanistan (and they had to be members of identified groups that were considered party to those conflicts) as insurgents.

In Afghanistan, the narrower mission of ISAF in supporting the fledgling government in Kabul, with its wide international support and Security Council resolution basis, was altogether more palatable for some of the European nations that had rarely engaged in expeditionary operations since 1945. It was also a crucial mission if that government was to survive. For some NATO nations, uncertainty remained as to whether the remaining operations in Afghanistan amounted to an armed conflict and, if so, whether it justified the scale of operations undertaken by OEF.

Beyond Security Council Resolution 1510: Caution and Caveat

In late 2003, Security Council Resolution 1510 vested command of ISAF in NATO and extended its remit beyond Kabul. “Stage 1 Expansion,” as it became known, began in the north and followed a request from the Afghan Minister of Foreign Affairs for assistance with security in the wider country. Notwithstanding that NATO had celebrated its fiftieth birthday some years before, the coalition was now engaged in the most complex operations in its history. As it became clear there was still substantial fighting to be done if the conditions for political and physical reconstruction were to be created, member States found themselves having to determine how far they were prepared to commit their militaries in a nation well outside the North Atlantic area and on a type of operation that had not been contemplated in 1949. The result was the steady emergence of policy, legal and capability constraints that have characterized ISAF operations (although not always hindered them) to this day.

Targeting

One of the first areas in which differing national appetites became obvious was in the targeting process. Although nations were very clear as to their duty to come to the collective self-defense of coalition troops who found themselves in contact with the enemy, their positions regarding preplanned targeting under the law of armed conflict were less consistent. ISAF remained a wholly self-defense mission until 2005, but OEF operated a formal target clearance process, designed to ensure that where force was contemplated against the enemy (“target sets” to use the military jargon) it was going to be used in accordance with the principles set out in the law of armed conflict.

The first issue that arose was identifying the enemy. Soldiers who target a person who does not present an imminent threat to their lives¹⁵ have to be satisfied that they are attempting to kill a person who falls within the definition of a combatant. In the context of a war between States, and in the early days of the Afghan campaign, this was a reasonably straightforward matter. The Taliban, al Qaeda and Afghan military were the combatants and tended to fight in conventional ways. But by 2003, it had become more complex. As well as the fighting elements of al Qaeda and the Taliban, there were other tribal groups that wished to see the government in Kabul fail. There were also groups that were apathetic toward the government but opposed to the presence of foreign troops. Finally there were others who appeared to enjoy the support of neighboring States or who had traveled to Afghanistan to fight. Different nations took different views of whom they were engaged with in an armed conflict, so coalition targeting arrangements had to ensure that the nation that owned the assets likely to be allocated to the particular target was

satisfied that the individuals they were likely to kill were within its own national understanding of who was a combatant. It is fair to say that the United States took a wider view of whom might legitimately be targeted than some of its European allies. The US approach reflected the widespread political and public support at home, while the European position reflected their more cautious national positions.

The application of Additional Protocol I to the conflict (and particularly its continued application once the conflict arguably ceased to be an international armed conflict in June 2002) is an issue that has exercised academic minds but had little impact on the conduct of operations. Those States that are signatories to Protocol I applied it throughout their targeting operations (because it applied as a strict matter of law or because it is their policy to apply it) and those who are not applied their own understandings on the customary international law framework relating to the use of force in offensive operations. The application of a uniform targeting practice throughout the period from invasion to the current day is for two reasons. First, as a matter of national policy, many nations will say that the principles set out for use in an international armed conflict, be they in Additional Protocol I or a body of similar customary international law, ought to be applied in any offensive operations. It is difficult to make an argument that those who find themselves at risk of collateral damage, for example, in a non-international armed conflict are entitled to less consideration than those in the vicinity of an international armed conflict. The second reason is a purely practical one. Targeting processes have to be carefully constructed to meet international law requirements and to allow lawful targets to be engaged as quickly and effectively as possible. Once a process has been put in place, it has to be rehearsed and personnel trained in their roles. To import a separate set of standards for a commander to apply (albeit advised by a military lawyer) is simply to overcomplicate the process. The better approach is to settle on the highest standards that can be said to be applicable (those for an international armed conflict) and use them for all kinetic targeting operations. Quite apart from the practical benefits of the latter approach, it made determination of the point at which the conflict changed from international to non-international irrelevant to the tactical commander.

Furthermore, the application of the principle of proportionality varied among States. NATO developed its own position on what was an acceptable level of collateral damage for the air campaign in Afghanistan but some nations took a more restrictive view than NATO. Not only did that mean that assets of those nations would not conduct the mission, but officers of those nations embedded in the targeting process might be barred from contributing to its success. Although NATO is a legal entity for contractual and other purposes and was created by treaty, it cannot set out a single position on public international law matters which are reserved

solely for States. NATO is not, nor can it be, a signatory to the Geneva Conventions, the Ottawa Treaty or other law of armed conflict treaties, but its member nations have individual treaty obligations which are reflected in the organization's planning and procedures.

The position was further complicated by the multinational staffs at ISAF headquarters (HQ) and regional HQs. Although brigade-level formations tended to be wholly or largely from a single nation, thereby making it obvious which national provisions would apply, HQ staffs were invariably mixed. At ISAF HQ, with officers of more than ten nations regularly involved in an operation, determining whose caveats applied was not straightforward. In fact, for the military lawyer, issues of State responsibility for the actions of others are some of the most complex that they encounter in coalition operations. The long-standing principle that a soldier will not assist a colleague from another nation to carry out an action he knows he is forbidden from doing himself is now reflected at the State level in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, notably at Articles 16 and 17.¹⁶ But even the publication of these Articles, which are not binding, did little to settle an approach to the issue. Officers of some States when asked to authorize a mission which their national policy or legal positions prevented their authorizing would take the view that they were required to prevent the mission from taking place, because in the view of their governments it was unlawful. Officers of other States, faced with the same issue, would choose to step aside and hand their roles to officers whose nations allowed them to assist. Although this approach reduced the number of operations that were thwarted, it required the reorganization of command structures depending on the nature of the mission and the nationality of the post holder. The operational lawyer and targeteer needed to understand not only which nations were barred from assisting, but also whether their officers would thwart the mission or merely abstain.

A related issue is the commander's responsibility for the manner in which those who are of another nationality, but under his command, carry out their mission. Putting aside the issue of command responsibility for war crimes, which has been well addressed elsewhere, there remains the issue of the extent to which a commander is obliged to scrutinize the means by which troops under his command conduct their mission to ensure they comply with his own national legal position. A useful illustration is the use of anti-personnel mines (APM) in respect to which many nations are signatories to the Ottawa Convention,¹⁷ although the use of this example should not be seen as an indication that any nation employed APM in Afghanistan. Is a commander whose nation has ratified the Ottawa Convention (noting particularly the requirement "[n]ever under any circumstances . . . [t]o assist, encourage or induce, in any way, anyone to engage in any activity prohibited

to a State Party under this Convention")¹⁸ obliged to ensure that those under his command do not employ them even if their own nations have not ratified the Convention?

A parallel example from the maritime environment is the exercise of the right of visit. Some nations take the view that the right to visit in the absence of one of the legal bases set out in Article 110 of the 1982 Convention on the Law of the Sea¹⁹ requires the specific permission of the flag State in each instance. Others consider that consent to board can be given by the ship's master. If a naval commander from a nation that requires specific flag State permission wants to have a vessel boarded but is unable to obtain the consent of the flag State, he could direct a vessel of a nation that permits boardings on the basis of a master's consent to conduct the boarding on that basis. Alternatively, on what might be called the restrictive view, he might seek assurances from all vessels under his command that they will adopt the flag State consent approach for the duration of the time they are under his command. Each nation will reconcile these matters in a different way, but one approach that was seen in the ISAF structure was for the commander simply to ensure that any mission or direction he gives is capable of being carried out within his own nation's legal commitments and interpretations. Hence, an order by a commander from an Ottawa Convention signatory nation to troops from a non-signatory nation to lay APM would not pass the test, while an order to a ship to conduct enforcement and search operations in a particular sea area might do so: it does not presuppose an activity which the commander is not allowed to carry out himself.

Detention

The second area in which significant divergence in approach became evident was in respect to detention. Prior to June 2002 (the period in which all coalition nations agreed that the conflict was international in nature), those who were detained might have expected their custody to be governed by the 1949 Geneva Conventions. Combatants other than members of the armed forces of Afghanistan may have been entitled to prisoner of war status under Geneva Convention III, and the expectation was that this issue would be resolved by way of Article 5 tribunals. The ICRC persists to this day in the view that the Taliban were not *de facto* prisoners of war but ought to have had their status properly determined. Those who were determined not to have been entitled to prisoner of war status ought to have been prosecuted. In practice, significant numbers of those captured on the battlefield by US forces were adjudged to be unlawful combatants and held at US facilities in Afghanistan or elsewhere.

From June 2002, although the United States continued with the use of the "unlawful combatant" categorization, the other coalition members moved swiftly to a

model which they considered better fit the recategorization of the conflict as a non-international armed conflict. Many ISAF nations were extremely uneasy about becoming involved in any kind of detention operation, and to this day will not arrest or detain Afghan nationals. Others accepted that the campaign would require some detention element if it was to succeed and settled on short-term detention on behalf of the Afghan government as the preferred concept. In practice, this involved detention for short periods (days rather than weeks) to facilitate transfer to the Afghan National Police or other law enforcement agency. The legal basis for detention was, like the basis for presence itself, considered to be the relevant Security Council resolutions and the consent of the government of Afghanistan. Although there has never been an explicit authority to detain in the resolutions, the term “all necessary means,” notably in Resolution 1510²⁰ and subsequent resolutions, was considered to give the requisite authority for detention for the purposes of self-defense and mission accomplishment. The Afghan government supported ISAF detention operations, both in political and practical terms, by cooperating with arresting units and providing Afghan National Police to ISAF missions that included a detention element. Despite these two firm legal bases for detention, many ISAF nations were reluctant to take part in detention operations.

In terms of the legal framework that was judged to govern the detention arrangements, Common Article 3 of the 1949 Geneva Conventions, certain aspects of customary international law and applicable human rights law were most often cited. For most European nations that meant giving consideration to the application of the European Convention on Human Rights,²¹ a regional human rights treaty widely ratified by European States.

The extent of application of the European Convention on Human Rights to deployed operations was (and remains) not entirely clear, but what was clear from the start was that some nations considered that it had a bearing on detention operations. So far as can be determined, no signatory State took the view that human rights law was suspended during an armed conflict. They took the position that human rights law, while only capable of binding the State (it does not for example bind al Qaeda), certainly continues to apply to some extent during armed conflict, a position subsequently approved by the International Court of Justice.²² In fact, the Convention concerns appear to have been a factor in dissuading some States from taking any part in ISAF detention operations. The better view,²³ it is submitted, is that the “all necessary means” provision in the Afghan resolutions²⁴ gives an implied authority to conduct detention operations for the purposes of accomplishing the mission. That implied authority does not set aside obligations under applicable human rights law but it does give a basis for detention that is not defeated by

human rights treaties. What the Afghan resolutions certainly did not give was a power of internment such as those in respect to Iraq had given.²⁵

In any event, if detention remains for as short a period as necessary in order to effect a transfer to the Afghan authorities, those nations who take part in ISAF detentions may hope that by limiting their operations in such a way they are mitigating the risk of challenge under human rights law.

Conclusion

Given the extraordinary speed with which an ad hoc coalition was formed to invade Afghanistan in October 2001 and the wide range of nations that contributed to the mission, conflicts in legal positions appear to have been few. Perhaps it is to be expected that an attack such as that on September 11, 2001 will cause governments to set aside concerns about the strict interpretation of the UN or NATO Charters. Certainly the militaries of coalition nations, which concern themselves chiefly with *in bello* rather than *ad bellum* issues, were left in no doubt that they were taking part in an international armed conflict against Afghanistan. Once it became clear that ISAF, on the one hand, and OEF, on the other, had different visions for the nature of operations subsequent to the installation of the Northern Alliance in June 2002 as the governing body of Afghanistan, international law positions on a number of issues began to diverge. There were concerns then, and there remain concerns now, that operating two separate missions at two different tempos in the same country in an attempt to suppress the same enemy is a recipe for a conflict of laws, but the nations that contribute to both missions have generally learned to reconcile the legal differences to ensure they do not prejudice success.

Notes

1. Both S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sept. 12, 2001) and S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001) expressly authorized the right of self-defense at a time when it seemed certain that the attacks were not the direct actions of a State.

2. The North Atlantic Council issued a press statement on September 12, 2001 stating that the attack met the requirements of Article 5 of the Washington Treaty and would be considered an attack on all signatories.

3. S.C. Res. 1373, *supra* note 1, “*Reaffirming* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001).”

4. Letter dated October 7, 2001 from the Chargé d’affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2001/947 (2001).

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5. Deutscher Bundestag, Plenarprotokoll (Stenographischer Bericht) (BT-Pl.Pr. 14/187), Sept. 19, 2001, at 18302.

6. See S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999), S.C. Res. 1333, U.N. Doc. S/RES/1333 (Dec. 19, 2000) and S.C. Res. 1390, U.N. Doc. S/RES/1390 (Jan. 28, 2002), in which the Security Council obliged all member States to freeze the assets; prevent the entry into or the transit through their territories; and prevent the direct or indirect supply, sale and transfer of arms and military equipment with regard to individuals and entities belonging or related to the Taliban, Osama Bin Laden and the al Qaeda network.

7. Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31 [Geneva Convention I]; Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 [Geneva Convention II]; Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135 [Geneva Convention III]; and Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 [Geneva Convention IV]; all *reprinted in* DOCUMENTS ON THE LAWS OF WAR (Adam Roberts & Richard Guelff eds., 3d ed. 2000) at 197, 222, 244 and 301, respectively.

8. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3, *reprinted in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 7, at 422.

9. President George W. Bush, Address to the Nation (Oct. 7, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/10/20011007-8.html>.

10. *Id.*

11. See Geneva Convention I, *supra* note 7, art. 2.

12. S.C. Res. 1386, U.N. Doc. S/RES/1386 (Dec. 20, 2001).

13. As they were required to do by S.C. Res. 1386, *id.*

14. International humanitarian law and terrorism: questions and answers, <http://www.icrc.org/web/eng/siteeng0.nsf/html/5ynlev> (last visited Jan. 15, 2009).

15. The lawfulness of the use of self-defense is a matter for domestic law but this expression broadly reflects the position in most NATO nations.

16. Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its Fifty-third Session, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001), *available at* http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

17. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, *reprinted in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 7, at 648.

18. *Id.*, art.1.1.c.

19. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3.

20. S.C. Res. 1510, S/RES/1510 (Oct. 13, 2003).

21. Convention for the Protection of Human Rights and Fundamental Freedoms, Apr. 11, 1950, 213 U.N.T.S. 221, *available at* <http://www.pfc.org.uk/node/328>.

22. Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 116 (Dec. 19).

23. And the one adopted by the European Court of Human Rights in *Behrami v. France*; and *Saramati v. France, Germany and Norway*, Apps. Nos. 71412/01 and 78166/01, 45 Eur. Ct. H.R. 41 (2007), *available at* <http://www.echr.coe.int/echr/en/hudoc>.

24. Including S.C. Res. 1386, *supra* note 12; S.C. Res. 1390, *supra* note 6; S.C. Res. 1419, U.N. Doc. S/RES/1419 (June 26, 2002); S.C. Res. 1510, *supra* note 20; and those that extended ISAF to the present day.

25. See S.C. Res. 1546, U.N. Doc. S/RES/1546 (June 8, 2004) and annexed letters.