

# US-LED OPERATION AND NATO'S FLAWED MISSION AND CANADA'S COMPLICITY

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US-LED OPERATION AND NATO'S FLAWED MISSION AND CANADA'S  
COMPLICITY

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The commander of US and NATO forces in Afghanistan has apologized for civilian deaths in

a coalition airstrike earlier this week.

## **(1) INVASION OF AFGHANISTAN WAS AN ACT OF REVENGE IN VIOLATION OF INTERNATIONAL LAW**

Through Canada 's increased integration with US policy and through Canada's continued support for ill-conceived/illegal US operations such as those in Afghanistan, Canada has lost whatever credible international reputation it may have had. Canada has abandoned its long-standing multilateral approach in its support of US unilateralism.

The serious irreversible human, environmental, health, psychological, economic and social consequences of war support the contention that under no conditions or circumstances is war legal or just, and that war must be de-legitimized as an option or even a last resort.

The seeds for de-legitimizing war have been planted through the Charter of the United Nations and through over 60 years of UN instruments. For years, member states have incurred obligations under the charter, treaties, conventions, and covenants, made commitments under conference action plans, and created expectations through UN General Assembly Resolutions and Declarations that would, if implemented and enforced, give substance to the de-legitimization of war. From these instruments peremptory norms, which further the rule of international law, can be extracted (Russow, Submission to the Senate of Canada, October 17, 2005).

Under the Preamble of the Charter of the United Nations the fundamental purposes of the Charter are delineated:

-to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind [humanity].

-to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

- to promote social progress and better standards of life in larger freedom.

Chapter VI, entitled "peaceful solutions of disputes", of the Charter of the United Nations, conforms to and upholds the fundamental purposes of the Charter of the United Nations, advances the de-legitimization of war, and promotes respect for the rule of international law through the International Court of Justice.

Under Chapter VI of the Charter of the United Nations, a number of provisions have been established to bring about the peaceful settlement of disputes:

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(i) The first provision is to counter conflict of interest in decision-making related to peaceful solutions of disputes.

Decisions under Chapter VI are constrained by Article 27, which reads that a party to a dispute shall abstain from voting. This provision, which is present in Chapter VI but is absent in Chapter VII, is consistently violated by the UN Security Council.

(ii) The second provision to bring about peaceful settlement of disputes is recourse, under article 36, to the rule of international law, through the International Court of Justice:

Article 36 reads: "legal disputes should, as a general rule, be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court".

Chapter XIV complements Chapter VI in outlining the role of the International Court of Justice:

Chapter XIV, Article 92, states that the International Court of Justice shall be the principal judicial organ of the United Nations...and, under Article 93, and all members of the UN are ipso facto parties to the statute of the International Court of Justice, and under Article 94, each member of the United Nations undertakes to comply with the decision of the International Court of Justice in a case to which it is a party and under Article 96 there is the provision for the UN General Assembly, UN Security Council and other organs of the UN to request the International Court of Justice to give an advisory opinion on any legal question.

Under the Charter of the United Nations there is an important principle - the principle of sovereign equality; this principle is violated by the UN Security Council and is respected by the UN General Assembly. The permanent members of the UN Security Council continually attempt to invoke Chapter VII of the Charter of the United Nations; unfortunately, under international law, an invasion of another state is deemed to be legal if the UN Security Council, under Chapter VII, deems that the necessary conditions required for a war to be "legal" have been met.

Chapter VII, however, of the Charter of the United Nations, contravenes the purpose of the Charter: to prevent the scourge of war.

Sadly, Chapter VII of the Charter of the United Nations continues to be used to justify military intervention, if supported by the UN Security Council.

It can be argued that Chapter VII not only violates the purposes of the Charter of the United Nations but also violates a fundamental Charter principle under Article 2 - the sovereign equality of states, because the Security Council blatantly defies this principle.

*thus*

to prevent the scourge of war and to remove the conditions which are claimed to support the

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legality of war, the global community must definitively concur that the conditions that have been used to declare war to be legal must be abandoned.

- Chapter VII, which condones conditional legitimization of war, in contravention of the purpose of the UN Charter itself, must be struck.

- Chapter VI of the Charter of United Nations must be strengthened and, in particular, the instituting of the mandatory requirement for states to appear before the International Court of Justice, to accept its jurisdiction and to act on its decisions, and for the panel to support the rephrasing of article 36 to read "legal disputes 'shall' rather than 'should as a general rule', be referred by the parties to the International Court of Justice..."

- The UN General Assembly - which upholds the principle of sovereign equality, must be strengthened, and for the UN Security Council, which contravenes the principle of "sovereign equality" - an intrinsic provision of the charter must be dismantled.

Given that the UN Security Council did not support the invasion of Afghanistan, under current international law the invasion of Afghanistan was in violation of international law.

In joining the US-led invasion of Afghanistan, Canada engaged in an illegal act because the invasion was not sanctioned by the UN Security Council.

There were other options that Canada could have advanced to the United States and Canada could have truly been perceived as a state that promoted peace;

1. To call for the peaceful resolution of dispute, under Chapter VI, and advocate that the United States should go to the international Court of Justice;
2. To call for the invoking of the 1951 Uniting for Peace resolution which provides for an emergency session of the United Nations General Assembly.

### **(2) MISINTERPRETATION OF ARTICLE 51-SELF- DEFENCE - OF THE CHARTER OF THE UNITED NATIONS**

In the case of Afghanistan, the United States misinterpreted Article 51- the self-defence clause- of the Charter of the United Nations. Under no circumstance could the invasion of Afghanistan be deemed to be a legal act; it was purely an act of revenge.

Canada also disregarded the Charter of the United Nations when it accepted the US misinterpretation of Article 51 as a justification of the US act of revenge. Under most state criminal law, the actions of the US invasion of Afghanistan could not fulfill the criteria of an act of self-defence. (See references in Canadian Criminal Code to the operative principles related to what would constitute an act of self-defence).

Since 2001, when the Liberal government and the Conservative opposition supported the invasion of Afghanistan, Canada has been a belligerent in Afghanistan. When there was a vote in Parliament on whether to join the US-led invasion of Afghanistan in 2001, the NDP and the Bloc voted against the invasion. The NDP responded to pleas from peace groups to call for

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support, not for the US act of revenge, but for the rule of international law and for the seeking of justice through the International Court of Justice.

When the appeal for Canada to urge the United States to go to the ICJ was made in Parliament, the Honourable John Manley, the then Minister of Foreign Affairs, either misinterpreted or misrepresented the call from the NDP and the Bloc, when Manley stated that the Court was not yet in place. It appears from his response that he was not aware of the International Court of Justice, which is an integral organ in Chapter VI- peaceful resolution of disputes- in the original Charter of the United Nations.

Since 2001, when the Liberal government and the Conservative opposition supported the invasion of Afghanistan, Canada has been, and has been perceived to be, a belligerent in Afghanistan.

### **(3) " OPERATION ENDURING FREEDOM" MISREPRESENTED AS AN INTERNATIONAL MISSION**

Since its inception, "Operation Enduring Freedom" Canada's participation in the US-led invasion and occupation of Afghanistan has been declared to be an international mission. The government of Canada has deluded the public into thinking that the Canadian involvement in Operation Enduring Freedom in Afghanistan was part of an internationally sanctioned mission. The UN Security Council did not pass a resolution authorizing the invasion and occupation of Afghanistan .

The UN Security Council did, however, give conditional support to the NATO mission, providing the mission complied with the Charter of the United Nations. (see section below on how NATO has failed to comply).

### **(4) INSUFFICIENT PERCENTAGE SUPPORT FOR EXTENDING CANADA'S INVOLVEMENT UNTIL 2009**

In promoting the two-year extension of Canada 's involvement in Afghanistan beyond February 2007, the Rt. Hon. Stephen Harper, Prime Minister of Canada, touted the international and multilateral aspect of the operation by proclaiming that NATO ISAF operation is under the AEGIS of the United Nations. He failed to reveal that there was, at best, only conditional support given by the UN Security Council, and that the conditions might fail to be met.

The decision to continue Canada's support until 2009 for the offensive mission in Afghanistan cannot claim all-party support because two - the Bloc and the NDP - of the four political parties voted against the extension, and over two-thirds of the Official Opposition party - the Liberals- voted against the motion extending Canadian participation in the occupation of Afghanistan.

The decision to go to war or to extend a war-making mission apparently is an executive, not a parliamentary decision. Ironically, the Conservatives, particularly the Reform wing, have always called for "parliamentary supremacy" when they decry the use of the Charter of Rights and Freedoms as an instrument of "judicial activism". Now, however, Harper even had the audacity to proclaim that if his motion were to be defeated he would proceed anyway to extend the operation for one year, in defiance of the will of parliament.

In the throne speech, Harper made a commitment to take to parliament the positions that Canada would be endorsing internationally; the assumption was that he would respect the

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decisions of parliament.

Harper gave parliament six hours to discuss the vote on the motion to extend Canada's involvement in Afghanistan. One parliamentarian after another lamented the fact that they were being asked to vote without the proper or the complete information, and how the Netherlands took about ten months to discuss the implications of continuing the mission.

In Parliament there are 308 elected members. On May 17, 2006 for the vote on the motion to extend Canada 's involvement in Afghanistan, there were 294 present, and the vote was 149 to 145 in favour of the Motion. One hundred and forty-nine represents 47% of the total number of members of parliament. There was not all-party support, and just barely 50% of the members present voted in favour of the motion. The NDP and the Bloc party voted against the motion as well as over two-thirds of the Liberal party.

At that time, in a poll in Canada, the current mission in Afghanistan was opposed by over 55%. This opposition will be rising because of the outrage among the population over the six-hour-forced-debate-and vote, and over the disregard that Harper demonstrated for the parliamentary process.

NATO should take note of the very shaky support that this offensive military engagement has with the general public in Canada, and with the three opposition parties.

### **(5) INTERNATIONALLY, DECISIONS RESPECTING INTERNATIONAL PEACE AND SECURITY INVOLVE AT LEAST A 60% VOTE, NOT A SIMPLE MAJORITY**

When there are decisions related to international peace and security more than a simple majority is required. Internationally, under the United Nations, the UN Security Council requires a vote of 9 out of the 15 members. In the UN General Assembly the following is required:

"Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include recommendations with respect to the maintenance of international peace and security,"

Internationally, decisions respecting international peace and security involve at least a 60% vote, not a simple majority in the UN General Assembly

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### **(6) CONDITIONAL SUPPORT BY THE UN SECURITY COUNCIL FOR NATO MISSION**

ISAF, NATO mission in Afghanistan received only conditional support from the UN Security Council.

In promoting the two-year extension of Canada's involvement in Afghanistan beyond February 2007, the Rt. Hon Stephen Harper, Prime Minister of Canada, gave the impression that there was unconditional support by the UN Security Council of the ISAF and other anti-terrorism operations in Afghanistan.

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In the preamble to UN Security resolution 1444 in 2002, related to anti-terrorism and ISAF operations, there was conditional support given to these operations:

There was a conditional sanctioning by the UN Security Council of a NATO's International Security Force which operated under the US-led "Operation Enduring Freedom". This force, often described as a peacekeeping force, was sanctioned in UN Security Council resolutions only if the force's actions were in keeping with the Charter of the United Nations. Under the UN Charter, one of the purposes of the United Nations is the following:

"To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,..."

There was only a conditional sanctioning by the UN Security Council of a NATO's ISAF operating in conjunction with the US-led "Operation Enduring Freedom". This force, often described as a peacekeeping force, was sanctioned in UN Security Council resolutions only if the NATO force's actions were in keeping with the Charter of the United Nations. Under the UN Charter, one of the purposes of the United Nations is the following:

"To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,..."

### **(7) THE NATO MISSION HAS VIOLATED THE CONDITIONS OF UN SECURITY COUNCIL SUPPORT.**

The US, in its US-led Operation Enduring Freedom, has been found to have violated the Convention against Torture, [with at least 600 credible complaints having been filed] and has yet to be assessed on its violation of the Geneva Protocol II on banned weapons systems such as depleted uranium and on its violation of environmental instruments.

#### *VIOLATION OF THE FIRST FOUR GENEVA PROTOCOLS*

It could be demonstrated that the US-led Operation Enduring Freedom, through its use of weapons that would fall under prohibited weapons systems, particularly in its continued use of land mines, cluster bombs and depleted uranium, has violated the first four protocols of the Geneva convention. Similarly, ISAF has been using these weapons. (See relevant conventions).

The Fifth Protocol has recently come into force, but the US has failed to ratify the protocol. This protocol is significant because it calls upon states to be responsible for the removal of weapon systems that are not self-destructible. The US should be called upon to sign and ratify the protocol, and all belligerent states, including all the NATO states, should be responsible for immediate removal of these prohibited weapons, which have contributed to insecurity within Afghanistan.

#### *VIOLATION OF THE CONVENTION AGAINST TORTURE*

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#### *VIOLATION OF THE PROTOCOL II OF THE ICCPR*

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