

افغانستان آزاد – آزاد افغانستان

AA-AA

چو کشور نباشد تن من مباد بدین بوم ویر زنده یک تن مباد
همه سر به سر تن به کشتن دهیم از آن به که کشور به دشمن دهیم

www.afgazad.com

afgazad@gmail.com

European Languages

زبان های اروپایی

<http://www.commondreams.org>

Obama's Af-Pak War is Illegal

by Marjorie Cohn

12/21/2009

President Obama accepted the Nobel Peace Prize nine days after he announced he would send 30,000 more troops to Afghanistan. His escalation of that war is not what the Nobel committee envisioned when it sought to encourage him to make peace, not war.

In 1945, in the wake of two wars that claimed millions of lives, the nations of the world created the United Nations system to "save succeeding generations from the scourge of war." The UN Charter is based on the principles of international peace and security as well as the protection of human rights. But the United States, one of the founding members of the UN, has often flouted the commands of the charter, which is part of US law under the Supremacy Clause of the Constitution.

Although the U.S. invasion of Afghanistan was as illegal as the invasion of Iraq, many Americans saw it as a justifiable response to the attacks of September 11, 2001. The cover of *Time* magazine called it "The Right War." Obama campaigned on ending the Iraq war but escalating the war in Afghanistan. But a majority of Americans now oppose that war as well.

The UN Charter provides that all member states must settle their international disputes by peaceful means, and no nation can use military force except in self-defense or when authorized by the Security Council. After the 9/11 attacks, the council passed two resolutions, neither of which authorized the use of military force in Afghanistan.

"Operation Enduring Freedom" was not legitimate self-defense under the charter because the 9/11 attacks were crimes against humanity, not "armed attacks" by another country. Afghanistan did not attack the United States. In fact, 15 of the 19 hijackers hailed from Saudi Arabia. Furthermore, there was not an imminent threat of an armed attack on the United States after 9/11, or President Bush would not have waited three weeks before initiating his October 2001

bombing campaign. The necessity for self-defense must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation." This classic principle of self-defense in international law has been affirmed by the Nuremberg Tribunal and the UN General Assembly.

Bush's justification for attacking Afghanistan was that it was harboring Osama bin Laden and training terrorists, even though bin Laden did not claim responsibility for the 9/11 attacks until 2004. After Bush demanded that the Taliban turn over bin Laden to the United States, the Taliban's ambassador to Pakistan said his government wanted proof that bin Laden was involved in the 9/11 attacks before deciding whether to extradite him, according to the *Washington Post*. That proof was not forthcoming, the Taliban did not deliver bin Laden, and Bush began bombing Afghanistan.

Bush's rationale for attacking Afghanistan was spurious. Iranians could have made the same argument to attack the United States after they overthrew the vicious Shah Reza Pahlavi in 1979 and the U.S. gave him safe haven. If the new Iranian government had demanded that the U.S. turn over the Shah and we refused, would it have been lawful for Iran to invade the United States? Of course not.

When he announced his troop "surge" in Afghanistan, Obama invoked the 9/11 attacks. By continuing and escalating Bush's war in Afghanistan, Obama, too, is violating the UN Charter. In his speech accepting the Nobel Peace Prize, Obama declared that he has the "right" to wage wars "unilaterally." The unilateral use of military force, however, is illegal unless undertaken in self-defense.

Those who conspired to hijack airplanes and kill thousands of people on 9/11 are guilty of crimes against humanity. They must be identified and brought to justice in accordance with the law. But retaliation by invading Afghanistan was not the answer. It has led to growing U.S. and Afghan casualties, and has incurred even more hatred against the United States.

Conspicuously absent from the national discourse is a political analysis of why the tragedy of 9/11 occurred. We need to have that debate and construct a comprehensive strategy to overhaul U.S. foreign policy to inoculate us from the wrath of those who despise American imperialism. The "global war on terror" has been uncritically accepted by most in this country. But terrorism is a tactic, not an enemy. One cannot declare war on a tactic. The way to combat terrorism is by identifying and targeting its root causes, including poverty, lack of education, and foreign occupation.

In his declaration that he would send 30,000 additional U.S. troops to Afghanistan, Obama made scant reference to Pakistan. But his CIA has used more unmanned Predator drones against Pakistan than Bush. There are estimates that these robots have killed several hundred civilians. Most Pakistanis oppose them. A Gallup poll conducted in Pakistan last summer found 67% opposed and only 9% in favor. Notably, a majority of Pakistanis ranked the United States as a greater threat to Pakistan than the Taliban or Pakistan's arch-rival India.

Many countries use drones for surveillance, but only the United States and Israel have used them for strikes. Scott Shane wrote in the *New York Times*, "For the first time in history, a civilian

intelligence agency is using robots to carry out a military mission, selecting people for targeted killings in a country where the United States is not officially at war."

The use of these drones in Pakistan violates both the UN Charter and the Geneva Conventions, which prohibit willful killing. Targeted or political assassinations-sometimes called extrajudicial executions-are carried out by order of, or with the acquiescence of, a government, outside any judicial framework. As a 1998 report from the UN Special Rapporteur noted, "extrajudicial executions can never be justified under any circumstances, not even in time of war." Willful killing is a grave breach of the Geneva Conventions, punishable as a war crime under the U.S. War Crimes Act. Extrajudicial executions also violate a longstanding U.S. policy. In the 1970s, after the Senate Select Committee on Intelligence disclosed that the CIA had been involved in several murders or attempted murders of foreign leaders, President Gerald Ford issued an executive order banning assassinations. Although there have been exceptions to this policy, every succeeding president until George W. Bush reaffirmed that order.

Obama is trying to make up for his withdrawal from Iraq by escalating the war on Afghanistan. He is acting like Lyndon Johnson, who rejected Defense Secretary Robert McNamara's admonition about Vietnam because LBJ was "more afraid of the right than the left," McNamara said in a 2007 interview with Bob Woodward published in the *Washington Post*.

Approximately 30% of all U.S. deaths in Afghanistan have occurred during Obama's presidency. The cost of the war, including the 30,000 new troops he just ordered, will be about \$100 billion a year. That money could better be used for building schools in Afghanistan and Pakistan, and creating jobs and funding health care in the United States.

Many congressional Democrats are uncomfortable with Obama's decision to send more troops to Afghanistan. We must encourage them to hold firm and refuse to fund this war. And the left needs to organize and demonstrate to Obama that we are a force with which he must contend.