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Taking Stock Ten Years In: COIN, Casualties, and Costs in the Long War - An Introduction

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TAKING STOCK TEN YEARS IN: COIN, CASUALTIES AND COSTS IN THE LONG WAR — AN INTRODUCTION

Robert D. Sloane*

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I. DEFINING THE LONG WAR

On October 7, 2001, almost exactly a decade prior to the date of the conference from which the following symposium contributions derive, former President George W. Bush ordered airstrikes on Kabul and Kandahar,¹ inaugurating hostilities in what has become the longest war in U.S. history. By early December 2001, the Taliban had lost effective control over any significant part of Afghanistan's territory and with it any plausible claim to represent Afghanistan's government under traditional principles of international law.² President Bush formally declared victory on June 15, 2004, during a speech in which he praised Afghanistan's interim leader and now President Hamid Karzai.³ But in reality the armed conflict that began on October 7, 2001 (and according to some, much earlier),⁴ has continued without interruption to date; indeed, on the same day President Bush proclaimed victory, North Atlantic Treaty

* Associate Professor, Boston University School of Law. This essay is a slightly revised version of introductory remarks delivered at *Ten Years In: Appraising the International Law of the "Long War" in Afghanistan and Pakistan (Ten Years In)*, a conference held at Boston University School of Law on October 14, 2011, and cosponsored by the U.S. Naval War College and the American Society of International Law's Lieber Society on the Law of Armed Conflict. I acknowledge with gratitude the research assistance of Amber Charles.

¹ *Bush Announces Opening of Attacks*, CNN (Oct. 7, 2001), http://articles.cnn.com/2001-10-07/us/ret.attack.bush_1_qaeda-targets-al-kandahar?_s=PM:US.

² See Aguilar-Amory & Royal Bank of Canada Claims (Tinoco Case) (Gr. Brit. v. Costa Rica), 1 R.I.A.A. 369 (1923), reprinted in 18 AM. J. INT'L L. 147 (1924).

³ *Bush: Afghanistan is a Victory Over Terrorism*, CNN (June 15, 2004), http://articles.cnn.com/2004-06-15/us/karzai_1_hamid-karzai-afghanistan-afghan-government?_s=PM:US.

⁴ See, e.g., Hamdan v. Rumsfeld, 548 U.S. 557, 687-88 (2006) (Thomas, J., dissenting) (citing evidence dating the conflict back to 1996).

Organization (NATO) forces came under renewed fire in Kabul.⁵ What began as an international armed conflict therefore became, and remains, a non-international — or perhaps what should now be classified as a transnational — armed conflict;⁶ and the Taliban's soldiers, once Afghanistan's de facto state army, now constitute the chief insurgents with whom both the United States and the Karzai administration, at the time of this publication, appear anxious to engage in peace talks.⁷ The point of emphasis, however, is that hostilities continue unabated.

Even more importantly, for the United States, the war in Afghanistan is but one part of a broader conflict, and peace in Afghanistan will not end that conflict. The Bush administration found it rhetorically and legally expedient to refer to this as a "Global War on Terror,"⁸ or by similar phrases. That characterization struck many, myself included, as misguided and unhelpful at best, and probably even counterproductive.⁹ The Obama administration has since retired this appellation, but it persists colloquially, and the current administration's decision to avoid the phrase should not obscure the extent to which many (although certainly not all) of the most controversial practices adopted as part of the "Global War on Terror" by the Bush administration continue, or have even intensified, following the change in administration in the United States.¹⁰ Furthermore, apart from comparably problematic variations on "Global War on Terror," it remains difficult to describe the diverse mosaic of hostilities, law-enforcement activities, covert operations and other efforts to combat what some would characterize broadly as a global struggle against radical Islamist or jihadist transnational terrorism.¹¹ For this and other reasons, many now refer to the broader conflict as "The Long War," a phrase apparently first coined by General John P. Abizaid,¹² former head

⁵ See *Bush: Afghanistan is a Victory Over Terrorism*, *supra* note 3.

⁶ For a discussion of transnational armed conflict as a new classification of armed conflict, see Geoffrey S. Corn, Hamdan, *Lebanon, and the Regulation of Hostilities: The Need to Recognize a Hybrid Category of Armed Conflict*, 40 *VAND. J. TRANSNAT'L L.* 295 (2007).

⁷ See, e.g., Graham Bowley & Declan Walsh, *Afghan Officials Consider Own Talks With Taliban*, *N.Y. TIMES*, Jan. 30, 2012, <http://www.nytimes.com/2012/01/31/world/asia/afghan-officials-consider-separate-talks-with-taliban.html?pagewanted=all>.

⁸ Sanford Levinson & Jack M. Balkin, *Constitutional Dictatorship: Its Dangers and Its Design*, 94 *MINN. L. REV.* 1789, 1850-51 (2010).

⁹ See Robert D. Sloane, *Prologue to a Voluntarist War Convention*, 106 *MICH. L. REV.* 443, 447 & n.21 (2007).

¹⁰ See, e.g., Owen Fiss, Leary Lecture, *Aberrations No More*, 2010 *UTAH L. REV.* 1085, 1098-99 (2010).

¹¹ See W. Michael Reisman, *Aftershocks: Reflections on the Implications of September 11*, 6 *YALE HUM. RTS. & DEV. L.J.* 81 (2003).

¹² William Safire, *Clean Your Clock*, *N.Y. TIMES*, Mar. 12, 2006, http://www.nytimes.com/2006/03/12/magazine/312wwln_safire.html. But see JAMES JAY CARAFANO

of U.S. Central Command, and popularized by Benjamin Wittes's book *Law and the Long War*,¹³ among other recent works.

Ten Years In, like any conference exploring the emerging international law of the Long War, could not accurately be confined to the Taliban or Afghanistan. To understand how the law may be evolving, it must also take into account the broader conflict, including but not limited to, "those nations, organizations, or persons [whom the President] determines planned, authorized, committed, or aided, the terrorist attacks that occurred on September 11, 2001, . . . in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."¹⁴ For General Abizaid, among others, the idea of the Long War doubtless connotes the fact that not only is the United States involved in a long-term armed conflict in terms of time — by that measure, as noted, it is the longest war in U.S. history — but also that this war is unlike any other in our history in terms of the nature and scope of the enemy. Of course, that enemy includes the Afghani Taliban and al-Qaeda. But the Long War is not limited either by the identity of those initial enemies or by the territory of its initial battlefield — Afghanistan. It arguably extends to, among other organizations and persons, al-Qaeda in the Arabian Peninsula (Yemen), the Haqqani network (Pakistan), al-Shabaab (Somalia) and "lone wolf" terrorists, including U.S. citizens.¹⁵

And while Operation Enduring Freedom (OEF) began in Afghanistan, today, the Department of Defense defines active "Other Locations" in OEF to include Djibouti, Eritrea, Ethiopia, Jordan, Kenya, Kyrgyzstan, Pakistan, the Philippines, the Seychelles, Sudan, Tajikistan, Turkey,

& PAUL ROSENZWEIG, *WINNING THE LONG WAR: LESSONS FROM THE COLD WAR FOR DEFEATING TERRORISM AND PRESERVING FREEDOM* (2005).

¹³ BENJAMIN WITTES, *LAW AND THE LONG WAR: THE FUTURE OF JUSTICE IN THE AGE OF TERROR* (2008).

¹⁴ Authorization for the Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, 224 (2001).

¹⁵ See, e.g., Charlie Savage, *At White House, Weighing Limits of Terror Fight*, N.Y. TIMES, Sep. 15, 2011, <http://www.nytimes.com/2011/09/16/us/white-house-weighs-limits-of-terror-fight.html?pagewanted=all>; Charlie Savage, *Secret U.S. Memo Made Legal Case to Kill a Citizen*, N.Y. TIMES, Oct. 8, 2011, <http://www.nytimes.com/2011/10/09/world/middleeast/secret-us-memo-made-legal-case-to-kill-a-citizen.html?pagewanted=all>; Saeed Shah, *Why Pakistan Supports the Haqqani Network: Fear for Its Own Security*, MIAMI HERALD, Sep. 28, 2011, <http://www.miamiherald.com/2011/09/28/v-print/2429811/why-pakistan-supports-the-haqqanis.html>; Scott Shane & Thom Shanker, *Strike Reflects U.S. Shift to Drones in Terror Fight*, N.Y. TIMES, Oct. 1, 2011, <http://www.nytimes.com/2011/10/02/world/awlaki-strike-shows-us-shift-to-drones-in-terror-fight.html?pagewanted=all>; see also *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010); Elise Labott & Carol Cratty, *Obama Administration Debates Releasing Awlaki Memo*, CNN (Oct. 10, 2011, 8:52 PM), <http://security.blogs.cnn.com/2011/10/10/obama-admin-debates-releasing-awlaki-memo/>.

Uzbekistan and Yemen.¹⁶ Pakistan, of course, has long been part of the equation, and many events — foremost among them the killing of Osama bin Laden by a U.S. Navy SEAL raid on his compound in Abbotabad, Pakistan, on May 2, 2011 — suggest that more terrorists actively planning assaults on the United States may now reside (and hide) in Pakistan than Afghanistan. Indeed, on April 15, 2009, former National Security Advisor James L. Jones remarked that “the al-Qaeda presence [in Afghanistan] is very diminished. The maximum estimate is less than 100 operating in the country. No bases. No ability to launch attacks on either us or our allies.”¹⁷

That said, John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, more recently reaffirmed,¹⁸ in a speech at Harvard Law School, that the United States regards itself as in a war with al-Qaeda, “but that it does not view [its] authority to use military force against al-Qa’ida as being restricted solely to ‘hot’ battlefields like Afghanistan”; rather, it “ha[s] the authority to take action against al-Qa’ida *and its associated forces* without doing a separate self-defense analysis each time.”¹⁹ He also stressed that the United States “reserve[s] the right to take unilateral action if or when other governments are unwilling or unable to take the necessary actions themselves,” although he hastened to add that this

[D]oes not mean that we can use military force whenever we want, wherever we want. International law principles, including respect for a state’s sovereignty and the laws of war, impose important constraints on our ability to act unilaterally — and on the way in which we can use force — in foreign territories.²⁰

Still, what precisely does the Obama administration’s legal position imply about the scope of the conflict and the direction of international law? Does it mean, as David Cole has suggested, that in theory Russia could

¹⁶ See *U.S. Casualty Status as of April 6, 2012*, U.S. DEP’T OF DEF., <http://www.defense.gov/news/casualty.pdf>.

¹⁷ Interview by Wolf Blitzer with Gen. James Jones, U.S. National Security Advisor (Dec. 15, 2009), available at <http://transcripts.cnn.com/TRANSCRIPTS/0912/05/sitroom.01.html>.

¹⁸ Legal Adviser to the State Department Harold Hongju Koh expressed much the same view in his speech to the American Society of International Law on March 25, 2010. See Harold Hongju Koh, Legal Adviser to the State Dept., Keynote Speech at the Annual Meeting of the American Society of International Law (Mar. 24, 2010), available at <http://harpers.org/media/image/blogs/misc/kohspeech.pdf>.

¹⁹ John O. Brennan, Assistant to the President for Homeland Sec. and Counterterrorism, Remarks at the Harvard Law School Program on Law and Security: Strengthening Our Security by Adhering to Our Values and Laws (Sep. 16, 2011) (*emphasis added*), available at <http://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>.

²⁰ *Id.*

start killing U.S. citizens with remote-controlled drone missiles based on a determination by Dmitri Medvedev or Vladimir Putin, in secret, that such citizens pose a threat to Russia's security? Surely Cole is right to doubt that the United States would be prepared to "calmly pronounce such actions compliant with the rule of law[.]"²¹ But how then should the boundaries of the emerging legal doctrine of targeted killing within a purportedly global battlefield be drawn?

I do not mean to suggest that reasonable, legally defensible distinctions cannot be drawn; only that it remains a continuing challenge for the law of armed conflict in the twenty-first century, a challenge that international lawyers (and politicians) neither can nor should elide. New battlefields, as William C. Banks has said, speaking literally and figuratively, may indeed require the adaptation of old laws, both international and constitutional.²² In the midst of this process, it is critical that we remain mindful that how the United States delineates the contours of any new doctrine in the law of war — relative to the *jus ad bellum* or the *jus in bello* — may well be applied globally as well as, in future conflicts, equally against the United States in perhaps unforeseeable contexts. Areas of international law being shaped by state practice in the Long War include, among many others: (i) the authority to detain unprivileged belligerents and how to define the category of persons subject to this extraordinary deprivation; (ii) the rules and limits of interrogation in a conflict in which timely intelligence is of paramount importance; (iii) the nature and scope of the right to self-defense within the meaning of the U.N. Charter in the twenty-first century,²³ an issue that has long been a source of dispute because of the U.N. Charter's generally dysfunctional collective security system, but that contemporary technology and threats raise as never before; and (iv) the propriety of and process due in prosecutions brought against combatants and criminals before military commissions, national courts or both.

II. COSTS AND CASUALTIES

As context for the consideration of these and other diverse legal issues, a brief overview of the factual landscape will be helpful at this stage. Perhaps the proper place to begin, given the understandable focus in the United States and abroad on the economy, is the Long War gargantuan cost. For fiscal year 2012, about \$107 billion dollars has been allocated in

²¹ David Cole, *A Secret License to Kill*, NPR BLOG (Sep. 19, 2011, 5:30 PM), <http://www.nybooks.com/blogs/nyrblog/2011/sep/19/secret-license-kill/>; see also David Cole, *Killing Our Citizens Without Trial*, N.Y. REV. BOOKS (Nov. 24, 2011), <http://www.nybooks.com/articles/archives/2011/nov/24/killing-our-citizens-without-trial/?pagination=false>.

²² See generally WILLIAM C. BANKS, *NEW BATTLEFIELDS/OLD LAWS: CRITICAL DEBATES ON ASYMMETRIC WARFARE* (2011).

²³ U.N. Charter art. 51.

defense spending for the war in Afghanistan alone.²⁴ Assuming the Department of Defense receives this amount, cumulative monetary allocations for the War in Afghanistan to date will reach about \$557 billion, which is about half of the approximately \$1.415 trillion spent to date on the Long War, broadly construed.²⁵ Beyond military spending, the United States has provided, and continues to provide, development assistance to Afghanistan, having pledged nearly \$56 billion since 2002.²⁶ Indeed, international assistance has accounted for a staggering 75% of Afghanistan's gross domestic product in recent years.²⁷ Much of this ostensible "development assistance," regrettably, will in fact be allocated for security,²⁸ one indicium of the extent to which war persists and remains the foremost problem in much of Afghanistan.

Corruption, commonly described as "rampant"²⁹ or "endemic,"³⁰ also plagues Afghanistan. In 2010, one study found that one in seven Afghan adults paid a bribe, 28% of which were handed over for the provision of basic public services such as healthcare and education.³¹ The frequent enlistment of private contractors to complete development projects in Afghanistan also increases the difficulty of tracking the allocation and use of funds.³² As the United States prepares to transition out of Afghanistan, Admiral Mike Mullen warned of the dangers posed by the corruption in key offices of the Afghan government, stressing that "we know that some agencies and institutions vital to transition are infiltrated and subverted by criminal patronage networks."³³ In short, the cost of mili-

²⁴ Todd Harrison, *Analysis of the FY2012 Def. Budget*, CENTER FOR STRATEGIC AND BUDGETARY ASSESSMENTS vi (2011), available at <http://www.csbaonline.org/wp-content/uploads/2011/07/2011.07.16-FY-2012-Defense-Budget.pdf>.

²⁵ Amy Belasco, CONG. RESEARCH SERV., RL 33110, *THE COST OF IRAQ, AFGHANISTAN, AND OTHER GLOBAL WAR ON TERROR OPERATIONS SINCE 9/11*, at 3, 10 (2011). It should be noted, however, that the estimated total cost of \$1.415 trillion includes the war in Iraq, even though it is both unclear and controversial as to whether or not that conflict qualifies as part of the Long War.

²⁶ INTERNATIONAL CRISIS GROUP, *AID AND CONFLICT IN AFGHANISTAN: ASIA REPORT N°210 – 4 AUGUST 2011*, at 1 n.10 (2011).

²⁷ *See id.* at 1.

²⁸ *See id.* at 2 n.11.

²⁹ *Id.* at 8.

³⁰ Sayed Salahuddin, *Analysis: Why Can't Afghanistan Tackle Corruption?*, REUTERS, Sep. 8, 2010, <http://www.reuters.com/article/2010/09/08/us-afghanistan-corruption-analysis-idUSTRE6871KP20100908>; *see also* Helene Cooper & Jeff Zeleny, *Obama Warns Karzai to Focus on Tackling Corruption*, N.Y. TIMES, Nov. 2, 2009, <http://www.nytimes.com/2009/11/03/world/asia/03afghan.html>.

³¹ INTERNATIONAL CRISIS GROUP, *supra* note 26, at 14.

³² *See id.* at 19 ("U.S. Ambassador Zalmay Khalilzad warned that wastage associated with using contractors is 'now beginning to interfere with the credibility of the U.S. Mission in Afghanistan.'").

³³ Admiral Mike Mullen, Commander, Joint Chiefs of Staff, Address to the Troops at International Security Assistance Force Headquarters Kabul (July 31, 2011),

tary and other operations in Afghanistan alone remains extremely high, and it will almost surely prove unsustainable if, as seems likely, the U.S. and global economic recessions persist for years to come.

Furthermore, dollar amounts do not, of course, begin to convey the true cost of the Long War. To date, over 1,800 U.S. service members have died in Afghanistan alone.³⁴ Of these, 306 took place in non-hostile situations, and the balance represent casualties.³⁵ More than 15,500 soldiers have been wounded in action, often severely.³⁶ Hundreds have required (sometimes multiple) amputations.³⁷ While reliable records of civilian casualties prove more difficult to come by, one estimate put the number of Afghan civilians who have died from the conflict since 2007, thus excluding the first six years of the conflict, at 10,000. Of these deaths, 2,723 have been attributed to pro-government forces and 6,269 to anti-government forces.³⁸ The year 2010 saw the highest civilian death toll in Afghanistan since 2006, a 28% increase from 2009.³⁹ The war has also taken a severe psychological toll on the U.S. armed forces. The Department of Veterans Affairs estimates that 10-18% of returning service members suffer from post-traumatic stress disorder, and many others suffer from mental health problems, alcoholism and drug abuse.⁴⁰

III. *CASUS BELLI* — THEN AND NOW

These financial and human costs compel us to revisit the Long War's *casus belli* and its rationale(s). Most agree that it started with a clear and legal objective. Al Qaeda launched a large-scale attack on the United States, killing more than 3,000 civilians, from its former host state of Afghanistan. Subject to determining the source of the attack, the United

available at <http://www.isaf.nato.int/article/transcripts/uso-tour-commander-of-the-joint-chiefs-of-staff-address-to-the-troops.html>.

³⁴ DEP'T OF DEF., *supra* note 16.

³⁵ *Id.*

³⁶ *Id.*

³⁷ David Brown, *Amputations and Genital Injuries Increase Sharply Amongst Soldiers in Afghanistan*, WASH. POST, Mar. 4, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/04/AR2011030403258.html>.

³⁸ Simon Rogers & Ami Sedghi, *Afghanistan Civilian Casualties: Year by Year, Month by Month*, THE GUARDIAN DATA BLOG (Mar. 10, 2011, 11:45 AM), <http://www.guardian.co.uk/news/datablog/2010/aug/10/afghanistan-civilian-casualties-statistics>.

³⁹ *Id.*

⁴⁰ *Mental Health Effects of Serving in Afghanistan and Iraq*, U.S. DEP'T OF VETERANS AFF. <http://www.ptsd.va.gov/public/pages/overview-mental-health-effects.asp> (last updated Dec. 20, 2011). For information regarding treatment rates of soldiers with PTSD, indicating that in some studies only 20-30% of respondents who tested positive for a mental disorder sought treatment, see Charles W. Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 NEW ENG. J. MED. 13-22 (2004).

States could, according to most (though, again, not all) participants in the international legal system, engage in self-defense under Article 51 of the U.N. Charter, as it did with the support of NATO and the apparent international legal countenance of the U.N. Security Council. The Council passed several extraordinary resolutions that, *inter alia*, affirmed that the attacks, despite originating from non-state actors, triggered the U.S. right to individual and collective self-defense under the Charter.⁴¹ In 2002-2003, however, the Bush administration complicated legal matters (and international sympathies) by bringing Iraq into the picture. Whether by error or, as the evidence suggests, deception in the service of extraneous political and ideological objectives, it is now clear beyond a doubt that Iraq under the dictatorship of Saddam Hussein had no connection — before the 2003 war at any rate — to Al Qaeda or the Taliban, nor possession of weapons of mass destruction.

What, then, is the contemporary *casus belli* for the Long War, broadly conceived? As noted, in Afghanistan today, fewer than 100 active Al Qaeda members remain, with no plausible capacity to plan and carry out attacks from the state.⁴² Yet troop levels in Afghanistan have increased from about 38,000 to 100,000 since 2009, in large part because of the Obama administration's decision, in December 2009, to approve a 30,000 service-member troop surge.⁴³ Congress passed a bill funding the surge, at a price of \$33 billion, in June 2010.⁴⁴ It is unclear that a troop surge of the sort that has, accurately or not, been valorized in the context of Iraq will be effective in Afghanistan. Critics note that the apparent similarities between Operation Iraqi Freedom and Operation Enduring Freedom are few and far between. To cite one prominent example, the success of the troop surge in Iraq has been attributed to what some would describe as the serendipitous coincidence of that surge with the "Sunni Awakening," while nothing commensurate has developed or seems likely in Afghanistan.⁴⁵ The continuing instability in Afghanistan has already led some to conclude that the Afghanistan surge has failed. The chief reason, some argue, is that, again in contrast to Iraq, there has not been a broad-based civilian "buy-in," in large part because of the widespread percep-

⁴¹ See S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sep. 12, 2001); S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sep. 28, 2001).

⁴² See *supra* note 17 and accompanying text.

⁴³ Barbara Starr, *Obama Approves Afghanistan Troop Increase*, CNN (Feb. 17, 2009), http://articles.cnn.com/2009-02-17/politics/obama.troops_1_afghanistan-troop-increase-troop-levels?_s=PM:POLITICS; Kent Klein, *Obama Cuts US 'Surge' Troops in Afghanistan*, VOA NEWS (June 22, 2011), <http://www.voanews.com/english/news/asia/Obama-Orders-Cuts-in-Surge-Troops-from-Afghanistan-124391954.html>.

⁴⁴ CHIP REID, *House Passes Afghan Troop Surge Bill*, CBS NEWS, July 27, 2010, <http://www.cbsnews.com/stories/2010/07/27/world/main6718896.shtml>.

⁴⁵ David Sanger, *Similarities to Iraq Surge Plan Mask Risks in Afghanistan*, N.Y. TIMES, Dec. 4, 2009, <http://www.nytimes.com/2009/12/05/world/05policy.html>.

tion among Afghan civilians of corruption in the Karzai government.⁴⁶ Another significant factor appears to be the depth of civilian anger over deaths and injuries caused by the war, even though most civilian casualties have been caused by the Taliban, insurgents, road accidents and other causes, not U.S. troops or government forces.⁴⁷

IV. WINDING DOWN, SHIFTING TERRAIN

As of June 6, 2011, the International Security Assistance Force (ISAF) under NATO command in Afghanistan included almost 133,000 forces from some 48 countries in addition to the United States, but only a few of these states — Australia (1,550), Canada (2,922), France (3,935), Germany (4,812), Poland (2,560) and the United Kingdom (9,500) — have troops in Afghanistan that number in the thousands.⁴⁸ The United Kingdom, the largest contributing ally, has only about a tenth as many troops as the United States. In March 2010, President Obama announced a plan to begin withdrawing troops from Afghanistan in July 2011,⁴⁹ and in an effort to adhere to that deadline, on June 22, 2011, President Obama announced the planned withdrawal of 10,000 troops by the end of 2011 and an additional 23,000 by the end of 2012.⁵⁰ But it must be borne in mind that because of the earlier troop surge, even if all goes as planned, the net number of U.S. troops in Afghanistan will be the about the same at the end of the administration's first term as it had been when President Obama took office.

Current plans indicate that the transition of power to the Afghan Army should be complete by 2014.⁵¹ Some members of Congress have called for an accelerated withdrawal, citing the cost of the war and significant gains against enemy forces in Pakistan.⁵² Others caution that withdrawing too quickly may enable the opposition to regroup and mobilize for a renewed insurgency.⁵³ Nevertheless, especially in light of the continuing economic downturn, at this point the withdrawal has taken on an air of

⁴⁶ John Wendle, *The Limits of the Surge: Petraeus' Legacy in Afghanistan*, Time, Aug. 8, 2011, available at <http://www.time.com/time/world/article/0,8599,2087064,00.html>.

⁴⁷ *Id.*

⁴⁸ *International Security Assistance Force: Key Facts and Figures*, NATO, July 26, 2011, [http://www.isaf.nato.int/images/stories/File/Placemats/Revised%2026%20June%202011%20Placemat%20\(Full\).pdf](http://www.isaf.nato.int/images/stories/File/Placemats/Revised%2026%20June%202011%20Placemat%20(Full).pdf).

⁴⁹ *Obama: U.S. Can Start Withdrawing Troops from Afghanistan in July 2011*, CNN (May 12, 2010), http://articles.cnn.com/2010-05-12/politics/us.afghanistan.karzai_1_president-karzai-afghan-governments-afghanistan?_s=PM:POLITICS.

⁵⁰ *Id.*

⁵¹ Klein, *supra* note 43.

⁵² Mark Landler & Helene Cooper, *Obama to Announce Plans for Afghan Surge Pullout*, N.Y. TIMES, June 20, 2011, <http://www.nytimes.com/2011/06/21/world/asia/21policy.html>.

⁵³ Klein, *supra* note 43.

inevitability. Following President Obama's announcement, several of the states with the largest ISAF troop contributions, including the United Kingdom, Canada and France, publicly announced plans to withdraw their own forces.⁵⁴ Yet in the final analysis, the withdrawal of U.S. troops from Afghanistan may well be no more than symbolic, for the Long War seems poised to continue unabated, and it has even intensified elsewhere, including, in particular, in Yemen, Pakistan and Somalia.⁵⁵ A paramount question for international law is whether an indefinite state of war — indefinite in its territorial scope, temporal boundaries, nature and scope of the enemy, indicia of "victory" and so forth — can be accommodated by the existing laws of war, and, if not, what changes liberal states might consider in the long term to deal on a continuing basis with what looks less and less like a discrete war and increasingly like a pervasive feature of the global security environment in the twenty-first century.

⁵⁴ See, e.g., *Britain, Germany, France All Plan Afghan Troop Withdrawals*, VOA NEWS (June 23, 2011) <http://www.voanews.com/english/news/europe/Britain-Germany-France-All-Plan-Afghan-Troop-Withdrawals-124409819.html>.

⁵⁵ See, e.g., Jeremy Scahill, *The CIA's Secret Sites in Somalia*, THE NATION, July 12, 2011, <http://www.thenation.com/print/article/161936/cias-secret-sites-somalia>.