Available Alternatives of War against Terrorism and US Response on 9/11

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Abstract:
The incident of 9/11 awoke the whole international community against the terrorism. All the nations, including the UN Security expressed their concern and willingness to fight against such type of terror across the territorial boundaries. However, the US preferred to take the arbitrary measures and started the war against terror unilaterally. US tried to give the dictation to other States and left no option for them. It pushed the international community towards an unending and undefined war. This war resultantly posed big threats and challenges to international humanitarian law as well as the UN. The belligerent parties on both sides badly violate the human rights. Such type of situation is a matter of concern for the international community concerned to uphold the human rights.

Keywords: International law, human rights, UN Security Council, war against terror, sovereignty.

I. Introduction
9/11 on one hand shook the whole world badly, while on the other hand put the effectiveness of a major part of humanitarian international law and law of war under test. Total international community including UN and other international organizations responded very positively with determination to punish the terrorists. This response was quiet spontaneous. However, United States reacted so violently and solely that the international institution were hardly allowed to play any meaningful role. Many innocent lives had been lost in this so called war against terrorism. Blind use of force in Afghanistan and the tribal and a few settled areas of Pakistan remain unchallenged. All the movements of human rights and efforts for the revival of humanitarian laws of the war apparently proved futile. The purpose of this paper is to discuss the roles which the UN and other international organizations could have played to rationalize the US reaction about 9/11 and keep it within the limits of humanitarian international law and minimize the human sufferings. The reasons are to sort out that why the US avoided bringing the matter, first at international forums and then adopting any reasonable diplomatic line of action. It is tried to highlight the US motives or apprehensions behind its efforts to avoid the use of UN platform or the other diplomatic channels available before going to start the so-called war against terrorism, a vague and subjective term easily applicable anywhere. Apparently it was an internal matter, and should have been resolved internally,
as the matter of bombing federal building in Oklahoma City was dealt rationally instead of bombing Middle East, as was suggested at that time by various circles.

According to the humanitarian international law the states are obliged to adopt amicable measures for the settlement of international dispute before using coercive measures. The Permanent Court of Arbitration was established by the 1899 Convention for the Pacific Settlement of International Disputes, concluded at The Hague during the first Hague Peace Conference. The 1899 Convention was revised in 1907 at the second Hague Peace Conference. The first Chapter of the Hague Convention 1907 (Article 1-36) explained the usage of the available amicable means in this regard.

The same was asserted in the Kellogg-Briand Pact 1928, also known as Paris Peace Treaty signed by the US and other European States. It says:

Art. I. The High Contracting Parties solemnly declare in the name of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Art. II. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means (Bishop, 1977, p.912).

The same spirit was endorsed in the international conventions on the similar subjects held in the following years:

The League of Nations re-confirmed the same spirit in its Covenant by saying:

“Should any member of the League resort to war in disregard to its covenant’s Articles 12, 13, or 15, it shall ipso facto be deemed to have committed an act of war against all Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of covenant-breaking State and the nationals of any other State, whether Member of League or not” (Bishop, 1977, p.914).

In the UN Charter the use of force for the settlement of international disputes before exhaustion of peaceful means is also strictly prohibited.

“The organization and its members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles…

a. All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

b. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with purposes of the United Nations”.

Chapter VI (Art. 33-38) of the UN Charter also emphasizes the member states for peaceful settlement of their disputes with other states. Chapter VII stress on use of force through the UN Security Council.

September 11, 2001 was the day when the terrorists, by attacking the World Trade Center in New York, shook the whole world. This incident actually put all international organizations, champions of human rights, all mentioned international treaties, declarations and the UN Charter into a very tough test. Mainly it was the time of trial of the faith and belief of the whole international community in humanitarian international law.

The entire humanity, including UN sincerely stood up with the United States. The expression of sympathy of the international community in the United States’ hour of agony was instantaneous, intense, overwhelming, and unanimous. On September 12, 2001, the very next day of the incident, the UN General Assembly and the Security Council adopted resolutions which strongly condemned the acts of terrorism, and asked the member states “urgently” to co-operate “to bring to justice the perpetrators, organizers, and sponsors of the outrages of September 11”, and in combating terrorism worldwide (Mani, 2002, pp.294-298). They stressed that “those responsible for aiding, supporting or harboring the propagators, organizers and sponsors of these acts will be held accountable.” (Mani, 2002, pp.294-298).


The said resolution asked on all the nations “to co-operate in bringing the perpetrators, organizers and sponsors of the attacks to justice and that those responsible for supporting or harboring the perpetrators, organizers and sponsors would be held accountable. The international community was called upon to increase efforts to suppress and prevent terrorist activities through co-operation and implementation of anti-terrorist conventions and Security Council resolutions, particularly Resolution 1269 (1999)” (Washington Post, September 13, 2001).

Resolution 1368 was concluded with the Council’s expression of its will for taking serious steps to counter the attacks and “combat all forms of terrorism in accordance with the United Nations Charter” (UN Security Council Resolution 1368 (2001) September 12, 2001).
The debates at the United Nations generally supported “action through the UN” against the 9/11 terrorists and those who harbored them. Countries like China and France and many others aired views to this effect (Mani, 2002).

Meanwhile the NATO also declared 9/11 attacks amounted to an armed attack against a member country of the Organization within the ambit of Art. 5 of the Treaty of Washington 1949, its basic constitution, and therefore, all other member states were entitled and obliged to respond as the Alliance might deem fit. The European nations through many of their common regional institutional mechanisms responded, initially accepting the possibility of military action, “provided that any such military action was approved by the UN Security Council, that it clearly defined its objectives, and that it avoided targeting civilians, and was generally conducted in conformity with international law. However, they were brought in line with NATO (Mani, 2002). This was of course expected because most of the prominent European states were members of the Alliance, and at any rate the United Kingdom had already committed itself totally to any action that the US might consider appropriate to meet the situation (Mani, 2002).

The US did not bother to wait for any initiative from the UN or any other international forum outside NATO. One is not sure whether there were any prior consultations with other countries outside the NATO, or if there were, how wide and how much, before the US set the agenda of the war, and initiated each step in pursuit of the agenda, leaving others merely to march behind the leader.

The presidential address of Mr. Bush immediately after the incident of 9/11 indicates that he had no firm belief in the available amicable means for settlement of this issue. He declared war on the 9/11 terrorists and those who harbored them. In his address to the joint session of the both houses of the Congress he said that investigations implicated Osama bin Laden and Al-Qaeda organization, which had also been responsible for the attacks on American embassies in Tanzania and Kenya. He declared, “The American Response to terrorism is being fought at home and abroad through multiple operations, including diplomatic, military, financial, investigative, homeland security and humanitarian actions” (Bush’s Address to Congress Sep 20, 2001). He then proclaimed: Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists”. Impliedly he did not left any option for the other countries except to follow the US in this so called war to be fought outside the orbit of the UN. In the end of the speech the President put across to Taliban five demands: (1) deliver to US authorities all Al-Qaeda leaders (2) release all foreign nationals held hostage (3) protect journalists, diplomats, and aid workers (4) close immediately and permanently all terrorist training camps, and (5) give the US full access to these training camps to make sure that they cease to operate. These demands were unilaterally determined by the US and not even open for any further negotiations.

“The Security Council, on September 28, 2010 passed a resolution demanding all the states to: (a) absolutely stop the financial support of terrorist activities, (b) declare unlawful and criminal all type of collection, by all means, of finances by their citizens or on their territories to be used for commission of terrorist activities, (c) immediately freeze accounts/funds and other financial or economic sources of individuals or groups who either commit or intend to commit terrorist activities or involve in or support the commission of such activities, and (d) strictly stop any person in their territories from
making any resources or services for the benefits of terrorists or those who abet them” UN Security Council Resolution 1373 (2001), September 28, 2001). It further had a provision for the formulation of a ‘Council Committee’ to monitor the implementation of the Resolution. All the member states were bound to submit the reports in this regard within three months. The Security Council also expressed “its determination to ensure the full implementation of the Resolution, in accordance to its responsibilities under the Charter” and decided to remain seized of this issue” (Mani, 2002).

It is worthy to mention here that the resolution was adopted by the Council acting under Chapter VII of the UN Charter. It empowers the Security Council to enforcement action against a threat to the peace, breach of the peace, or act of aggression. The Charter provides vide Article 25 read with Article 48 that decision of the council of this nature, taken in accordance with the Charter, shall be binding on all member states of the UN.

From all this discussion it can be safely concluded that the UN Security Council’s efforts were not entirely meaningless such as resolutions on Kashmir issue. The Council was determined to take effective measures for the implementation of the resolution and declarations passed in this context. A huge legal infrastructure was available to translate the resolutions into practical actions.

US reaction on 9/11 and its war against terrorism is studied from four different angles: 1- the available legal framework for combating international terrorism; 2- legality of unilateral use of force by the US, backed by its allies; 3- The role of the UN Security Council in respect of the US action; 4- the machinery to bring the terrorists and their supporters before justice.

The available legal framework for combating international terrorism: in this section available legal infrastructure will be pointed out which could have been mobilized to counter the international terrorism instead of adopting the massacre in the Afghanistan and the neighboring areas.

Under general international law there are enough principles rendering international terrorism illegal and states swear by them, in spite of the reality that most of them have telltales in their skeletons in their cupboards. In the Corfu Channel (Merits) case 1949, the ICJ spoke of every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States (ICJ Reports 1949, p 4. 22) The UN General Assembly adopted by consensus at least four important resolutions, namely, the 1970 Friendly Relation Declaration (UN General Assembly Resolution 2625 (XXV), 1970), the 1974 Declaration on Definition of Aggression (Resolution 3314 (XXIX), the 1987 Declaration on the Enhancement of the Effectiveness of Principle of Non-use of Force (Resolution42/22) and Declaration on Measures to Eliminate International Terrorism (Resolution 4960, 1994), all of which prescribe all acts of international terrorism. The Friendly Relations Declaration stated the principle as under:

“Every State has duty to refrain from organizing, instigating, assisting or participating in … terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the
acts referred to in the present paragraph involve a threat or use of force.” (ICJ Reports 1986, p 14 at p 101)

This para of the referred resolution was confirmed by the International Court of Justice as part of general international law in the Nicaragua Case.

Through many such declarations and other resolutions, the international community of states recognizes a clear legal ban on international terrorism, and an obligation on the part of the states to endorse it into their respective domestic laws.

The treaty framework for combating terrorism is quite broad based. In this regard there are at least one dozen global treaties, seven regional treaties, and three related global treaties. Both Afghanistan and US are parties to the aviation terrorism treaties of 1963, 1970 and 1971. The later is a party to the first 10 of the 12 global treaties on terrorism referred above, but not to the 1998 Convention on Terrorist Bombing and the 1999 Convention on Terrorist Financing (negotiated at the initiative of the US).

II. Arbitrary Use of Force and International Law

Now the question is to assess the justification of unilateral use of coercion by the United States and NATO against Afghanistan, while on the other hand the UN Security Council was all out for it. As discussed earlier all threats or use of force is strictly prohibited in international law against the territorial integrity or political independence of any State. There are only two types of use of force allowed in the Charter: one, through the UN Security Council on behalf of the international community; two, the right of self defense of each State, either individually or collectively.

The right of self-defense in Article 51 of the UN Charter is provided only in case of armed attack. I must be, however subject to the principle of proportionality in reprisals, and the principles of International Humanitarian Law are to be observed in any case. Every action of reprisal is necessary to be reported to the United Nations Security Council. After receiving such report, the Security Council is duty bound to take further effective steps to restore the international peace, good order and the security.

However, in the present case the justification of the self-defence does not apply on the United States and the NATO countries. The reason is that this principle cannot be when the Security Council is already in action and has taken the initial measures. In deed the Afghan situation was already before the Council since 1993. So is the case of international terrorism being a threat to international peace and security.

In all of its resolutions the UN Security Council decided “to remain seized of the matter. Further, specifically in respect of the September 11 attacks, its resolutions repeatedly expressed determination to fulfill its responsibilities as mentioned in the Charter and its decisions to remain seized of the issue. Under such a situation the only legitimate course of action left for the US was to persuade the Security Council to fulfill its Charter responsibilities” (Mani 2002). Under Article 99 of the Charter the Security Council, is empowered to invoke its awesome powers of the use of force, either on its own or at the Secretary General’s initiative. However, the US and its allies bypassed the International Organization and opted for their own way. “They started carpeted bombing in Afghanistan exactly after less than three weeks after the September 12 resolution of the
Council, and a week after its September 28 ‘earth shaking’ resolution, falling in line with President Bush’s executive order on terrorist funds and support system” (Mani 2002).

Before starting the action or launching so called ‘war against terrorism’ US even did not wait any outcome of the various enquiries. The War in Afghanistan began on October 7, 2001, even before constitution of all the enquiries. This factor is enough to believe that the US administration had no faith in the diplomatic or legal channels available to solve this issue.

The National Commission on Terrorist Attacks Upon the United States (also known as the 9-11 Commission), an independent, bipartisan commission created by congressional legislation and the signature of President George W. Bush in late 2002, was chartered to prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. On July 22, 2004, three years after the war, the report was released (www.9-11commission.gov/press/911report_cover_HIGHRES.jpg).

III. Why US did not depend on UN and other diplomatic channels?

It is said that if the US could not, in law, resort to the right of self-defence, then NATO’s claim for legitimacy of collective self defence would automatically fall through. Added to this, NATO congenially suffers from a doubtful legality of status. Because, a regional organization is not legally competent to resort to force except with the prior approval of the UN Security Council vide Article 53 of the Charter.

Iran’s President, Mahmoud Ahmadinejad, said in July 2010 that the terrorist attacks in the United States on Sept. 11, 2001, were “a big fabrication,” wrote to the United Nations secretary general, Ban Ki-moon, on Tuesday to ask him to open an investigation into the events of that day. In a letter to the secretary general, Mr. Ahmadinejad asked him to “form an independent fact-finding committee trusted by regional countries on major elements behind the September 11 attack which was carried out as the main pretext to attack the Middle East and Afghanistan. (New York Times Dated: Aug, 1, 2010).

A known American writer Chomsky criticized the US attitude towards United Nations as its subservient institution. According to him the US led war in Iraq went forwarded without UN backing. Washington acted in line with National Security Strategy that the Bush administration announced in Sep 2002, which asserted the US right to used force without, unilaterally if necessary against a perceived enemy (Chomsky, 2007).

“Even when The US army failed to discover Iraqi weapons of mass destruction, the administration shifted its stance from ‘absolute certainty’ about the existence of the weapons and argued that the United States is entitled to act against any nation that has even intent to develop weapons of mass destruction. Lowering the bar for the resort to force is the most significant consequence of the collapse of the proclaimed rationale for the invasion” (Chomsky, 2007, p.11).
In September 2002, the most powerful State in history announced a new National Security Strategy asserting that it will maintain global hegemony permanently. Any challenge will be blocked by force, the dimension in which the United States reigns supreme (The National Security Strategy of the USA is a document prepared periodically by the executive branch of the government of the United States for Congress which outlines the major national security concerns of the United States and how the administration plans to deal with them).

Consistently, when the UN fails to serve as a US instrument, Washington dismisses it. Chomsky gives in this regard. “In 2002 the UN Committee on Disarmament and International Security adopted a resolution that called for stronger measures to prevent the militarization of space, and another that reaffirmed the 1925 Geneva Protocol against the use of poisonous gases and bacteriological warfare. Both resolutions were passed unanimously, with two abstentions; the United States and Israel. In practice US abstention amounts to veto” (Chomsky, 2007). This incidence shows US attitude of ignoring UN as well as international law for its so called national interests.

It is further criticized by Chomsky that even such type of reaction from United States had no rationale at all. In an interview he was asked a question “If bin Ladin planned the actions (of 9/11), and especially if popular fears of more such actions to come are credible, what is the proper approach to reducing or eliminating the danger. What steps should be taken by the US or others, domestically or internationally”. Chomsky, while answering, used the analogy of British deal with IRA. It did not send the RAF to bomb the source of their finances, or commandoes to those suspected of involvement in such financing and kill them. He pointed out another possibility; it was to consider realistically the background concerns and grievances and to remedy them, while at the same time following the rule of law to punish the criminals. That would make a lot more sense; one would think (Chomsky, 2002, pp. 62-63).

IV. Public reaction: another reason of bypassing the international forums

When the US started so called war against terrorism, a strong reaction from international public opinion was expected. Such reaction could have created hurdles in the US war against Afghanistan. Hence the implementation of its planned actions regarding 9/11 incident might have been jeopardized. It might have to face opposition at international forums including UN. Resultantly it preferred to initiate the reprisals at its own, and invite its allies to participate later on.

The demonstrations against the US invasion in Afghanistan started immediately on the same day. The New York Times reported that more than 10,000 people came out in New York City on Sunday, October 7 to demonstrate against the so-called war on terrorism of the Bush administration. “The demonstration, which had been planned for several weeks by a coalition of pacifist and activist groups, was expected to draw only a few thousand but grew in size as word spread that the US had begun bombing Afghanistan” (New York City on Sunday, October 7 2001).

The demonstrators were gathered at Union Square, which had been the site of an outdoor memorial to the victims of the 9/11 attacks. Ruben Schaffer, was included among the speakers. His grand-son, Gregory Rodriguez was one of the victims of the collapse of World Trade Center. He read a letter of Mr. Rodriguez’s parents which was addressed to
President Bush: “Your response to this attack does not make us feel better about our son’s death. It makes us feel worse. It makes us feel that our government is using our son’s memory as a justification to cause suffering for other sons and parents in other lands.” (New York City on Sunday, October 7 2001) Rita Lasar’s brother was died at the same place. She was staying at the stage supporting a wheelchair-bound friend. She also spoke at this occasion to criticize the government policy.

“Heeding the call of the organizing coalition, a number of marchers were wearing the white dress and carrying white dove-shaped placards. It was a symbol of mourning but desire for peace at the same time. However, the majority of people showed up in regular street-clothes, indicating a broad participation by layers not close to the usual radical activists” (New York City on Sunday, October 7 2001).

“The participants covered their way up Broadway, at one point stretching out for about 15 blocks. They stopped in the south of Times Square. The rally included a number of delegations of students from the University of New York and the Hunter College, among. Slogans were as: ‘New York, not in our name; Islam, Arabs and immigrants are not the enemy; Our grief Is not a cry for War’ Speakers at the rally on Broadway included two Nobel Peace Prize winners, Adolfo Perez Esquivel from Argentina and Mairead Maguire from Ireland. Passersby flashed peace signs in support of the marchers, while one small group of counter-demonstrators heckled” (New York City on Sunday, October 7 2001).

The intention of the organizers of this demonstration was restricted to appeals to the Bush administration as well as the Democrats to void the military action, and calling for bringing the terrorists before a new, specialized international tribunal with jurisdiction over terrorist crimes (New York City on Sunday, October 7 2001)

This protest was significant as it showed the active opposition of the masses to the American army’s one sided aggression against the terrorists. It is of worth to mention that the protesting city was the same which mainly affected by this terrorist activity, even in the face of patriotic media frenzy. This march was followed by a series of anti-war rallies in other major cities of US and the Europe. For example a protesting march of 5,000 people was organized in Paris from the Place de la Republique to the Place de Nation to condemn the US military action. It also included a rally of 20,000 people in the Capital Hill of the United States on September 29.

“The American Public Health Association had adopted a statement opposing the war in Afghanistan as an ‘undertaking that runs counter to the health and wellbeing of our populations’. The statement specifically condemns the intentional killing of civilians as a crime against humanity and endorses efforts to bring terrorist attackers to justice. The association's annual meeting also called on Congress and the Bush administration to commit $10bn (BP 6.5bn) to help public health authorities to respond to acts of biological terrorism over the next five years” (Marwick, C, 2001, p.1086).

“Mainstream media coverage of the protests has been minimal to nonexistent, compared to endless reports on every aspect of the war drive, including one retired
general after another appearing as commentators. Despite repeated claims that there is widespread support for war, even the New York Times was forced, in its front-page news analysis October 8, to acknowledge the shakiness of popular support for the bombing with the headline ‘Home Front: Edgy Sunday, Nagging Uncertainty About Consequences’. Indeed, as the consequences of US military adventurism become apparent, so will the split between millions of working and middle class Americans, on the one hand, and the ruling elite and their media mouthpieces on the other.” (New York Times dated October 9, 2001).

V. Conclusion

The instantaneous, intense, overwhelming, and unanimous response of the total international community over 9/11 incident was even beyond the expectations of the US. The UN Security Council and other international organizations expressly indicated their determination to take the effective measures against the incident. Many declarations and resolutions were passed to this effect. However, unilateral, arbitrary, and dictatorial actions of the US did not allow international community to adopt such effective and peaceful measures for elimination of the terrorists. US demands left little options for the allied countries as well as the UN in this regard. The US demanded from the concerned countries to be either “with the terrorists or us” in the so called war against terrorism. It left no third option for other countries. War against terrorism could not even be defined properly and meaningfully. The US arbitrary steps and dictatorial decision/demands indicate its lack of confidence in international law and the institutions. It did not even bother about its international treaty obligations regarding human rights and essential adoption of peaceful measures before the use of coercive measures. One factor behind the quick and spontaneous reaction of the US was its fear of opposition from other global powers such as Russia, China, or the Muslim World against this blind use of force. Uprising of the human rights organization internally and externally might have also added to this opposition. Hence the US preferred to not wait for the materialization of the UN resolutions and started action immediately.

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