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**The Operation
Burnham Inquiry
Wellington.**

Consequences for New Zealand's military in the illegal US-led war on Afghanistan – international law & civilisation under threat

The Pacific Institute of Resource Management (PIRM) is a voluntary organisation founded in Wellington in 1984, dedicated to principles of peace, ecology, justice and sustainability. We make submissions to government on a variety of issues and have published a journal, *Pacific Ecologist*.

On Friday, 18 October, 2019, at the Operation Burnham enquiry, NZ military personnel and former Minister of Defence, Dr Wayne Mapp had great difficulty admitting under expert cross-examination by Q.C. Kristy McDonald that there were civilian casualties in a military operation in Afghanistan. The operation was undertaken by NZ forces in Afghanistan in association with the US military. We heard about the mysteriously mislaid International Security Assistance Force report of 2010, noting the possibility of civilian casualties, but providing no specific evidence. Inexplicably, this mislaid report does not appear to have been read properly or followed up by NZ military authorities or Dr Mapp.

During the day-long hearing, we repeatedly heard from military personnel and former Minister Dr Mapp that there was no evidence of civilian casualties. Except Dr Mapp did have a “fragmentary memory” of Colonel Blackwell telling him that although there was no evidence of casualties, it was possible there were civilian casualties during Operation Burnham due to a faulty gunship on the US helicopter. Dr Mapp did not recall the details of Colonel Blackwell's briefing, but said he had no reason to think he should take further action as there was no actual evidence civilians had been killed or injured.

We heard about the NZ's military's effort at the enquiry's earlier hearing this year to dismiss evidence as without foundation presented in Nicky Hager and John Stephenson's book *Hit & Run* about civilian casualties. A map in the book had some wrong details. However, by the end of the day on 18 October, Air Vice Marshall Kevin Short reluctantly admitted that it appeared a 3-year-old child, named Fatima was killed. Also, that although there was a mistake, the evidence presented in the book was substantively correct, including the name of the village and region where the incident occurred.

A persistent lack of interest shown by NZ's military in investigating the ISAF report on possible civilian casualties including children, speaks volumes about NZ's forces being drawn into lawless US “rules of engagement” in its wars, and a tragic lack of respect for

the people of Afghanistan. Does this reluctance to accept responsibility for killing innocent civilians, including the 3-year old girl in Afghanistan reflect negatively on the integrity of NZ's military? The US itself has a long practise of considering civilians killed in war as combatants. Thus, even when a targeted person who has not been found guilty of a crime in a court of justice is killed, other people accidentally killed with the targetted person are also considered, according to US rules, to be combatants. This is a violation of international law based on the Nuremberg Principles.

Lawless Afghanistan war leads to continuing human rights abuses

Given the hours-long avoidance of the truth on the 18 October 2019, after years of public focus on the human rights concerns expressed in the book, *Hit & Run*, published in 2017, seven years after this particular tragic event occurred in 2010, could it be that there's a problem negatively affecting the integrity of the entire US-led war on Afghanistan, which has drawn NZ's military inevitably into human rights abuses, coverups and deceptions?

Has NZ been drawn into the war and invasion of Afghanistan that should never have gained support, because it is contrary to international law and the United Nations Charter? This war quickly led to other countries also being attacked in a series of asymmetrical US-led wars that have directly killed **at least 6 million people in violent deaths** in the Middle East and North Africa over the past 19 years. ¹ As Nicholas J.S. Davies reports, millions more will have died of disease, injuries and starvation, as a result of the destruction of infrastructure, water, sanitation, food and hospitals. As a result of these wars in Afghanistan, Pakistan, Iraq, Libya, Syria, Yemen, and Somalia, countries have been destroyed, creating chaos, misery and millions of refugees that no country wants to be responsible for. This is the result of America's habitual wars related to its aggressive foreign policy, aptly titled "full spectrum dominance."

The war on Afghanistan came about soon after the infamous 11 Sept 2001 plane attack in America. **Nearly 3000 people were killed in that atrocity.** But this was not an attack by Afghanistan or any country on America. When the US launched their "wars on terror," starting with Afghanistan, it tried to justify them as a "war on terrorism." But no crime, however terrible, can justify wars on countries and people who were not responsible for the crime committed, as former Nuremberg prosecutor Ben Ferencz has explained.

Why is the rule of law important?

Benjamin Ferencz in an interview in 2018 said: "*At the Nuremberg Trials in 1946, the waging of aggressive war was indelibly branded as "the supreme international crime..Nuremberg concluded that aggression was no longer a permissible heroic act. It was an international crime, and should be punished as a supreme international crime. I believe that. I was a combat soldier in World War II. I am always guided by my supreme commander. General Dwight D. Eisenhower, when he became President of the United States, declared: 'The World can no longer rely on force. It must rely on the rule of law, if civilization is to survive.'*"²

Ferencz continues: "*The main principles of the Nuremberg trials were affirmed by the UN General Assembly and have been accepted as binding principles of international law. Among those principles are the conclusion that crimes are committed by individuals, that the law must apply equally to everyone, that heads of state are liable, that there is no excuse for crimes despite your rank, and fundamentally that crimes*

which are so offensive as to shock the conscience of humankind should be condemned as crimes against humanity. These principles seem to me to be very sound then, and they continue to be very sound.

“War should be punishable universally as a crime against humanity, as genocide is condemned. The illegal killing, that is the killing of large numbers of innocent people without it being in self- defence or without it being approved by the Security Council of the United Nations—is a crime. It is a supreme international crime of aggression. Since aggression seems to be stalled, in that nations hesitate to give the International Criminal Court the jurisdiction to act on it, it should be condemned as a crime against humanity, which is punishable under many domestic statutes. We should study those national jurisdictions, which accept responsibility for holding accountable those leaders who are committing genocide whatever it’s called, whether it be a crime against humanity or terrorism or anything else. These are improvements we have to make in the law, and, hopefully, we will be able to move in that direction as well. Putting it into more national laws will take us a big step forward.”²

Widespread revulsion at the loss of life inflicted by warring nations at the end of World War 2 created the climate for agreement among all world leaders of the day to commit to preventing future catastrophes of this sort through creating the United Nations. **Their commitment is enshrined in the UN Charter, which in Article 2(4) prohibits the “threat or use of force against the territorial integrity or political independence of any state.”** As investigative journalist Nicolas J. S. Davies points out: “Exceptions to this are when the security council authorises military action, or when it is in self-defence under article 51 of the charter. None of the U.S.’s post-9/11 wars were authorized by the UN Security Council, as the UN Charter requires, so they, violate either the UN Charter, as Secretary General Kofi Annan admitted in the case of Iraq, or violate explicit terms of UN Security Council resolutions, such as UNSCR 1973’s mandate for an ‘immediate ceasefire,’ a strict arms embargo and exclusion of “a foreign occupation force of any form” in Libya in 2011.”³

Bombing Afghanistan: illegal acts of aggression

Writing a month after the start of the attack on Afghanistan, Marjorie Cohn, a professor of law at California’s Thomas Jefferson School of Law and former president of the US National Lawyers Guild, described the US and British attack as “a patently illegal use of armed force.”⁴ The bombing was not a legitimate form of self-defence under article 51 for two reasons, according to Cohn. Firstly, “*the attacks in New York and Washington DC were criminal attacks, not ‘armed attacks’ by another state.*” Secondly, “*there was not an imminent threat of an armed attack on the US after September 11, or the US would not have waited three weeks before initiating its bombing campaign.*” Professor Cohn wrote in November 2001: “*By bombing Afghanistan, the United States and the United Kingdom are committing acts of aggression, which is prohibited by the U.N. Charter The universal desire is to feel safe and secure. The only path to safety and security is through international law, not vengeance and retaliation.*”⁴

Jan Ziegler, Special Rapporteur on the Right to Food to the United Nations High Commission for Human Rights warned on 15 October 2001: “*The bombing has to stop right now. There is a humanitarian emergency. Relief agencies left Afghanistan in the wake of the bombing. The arrival of winter is imminent when up to 7.5 million Afghans internally displaced by the bombing will be beyond the reach of humanitarian aid.*

Routing chief suspect Osama Bin Laden from his cave with bombs is like finding a needle in a haystack while mass starvation is inevitable.”⁴

This is surely the case today. Eighteen years after the illegal war on Afghanistan began, the US and its allies are still in Afghanistan, killing civilians and causing misery. The US-led western alliance has reverted to the most primitive of activities, betraying international law and its own values, using devastating power with combined military forces from many countries not only in the war on Afghanistan, but in other countries in the Middle East and North Africa that have never attacked the US or UK.

Wars incentivise recruitment to extremism

A further consequence from the illegal US-UK led wars on Afghanistan, Iraq, Libya, Somalia, Pakistan and Yemen, is the understandable hatred they generate in countries they attack, where people see their families and friends killed, year after year by invading forces. This is shown in studies such as The People’s Perspective: Civilian Involvement in Armed Conflict, which in 2015 reported on interviews with 250 people who joined armed groups in Bosnia, Somalia, Gaza and Libya. They concluded: *“The most common motivation for involvement, described by interviewees in all four case studies, was protection of self or family.”⁵*

Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment is another report published in 2017 by the U.N. Development Program (UNDP).⁶ It’s based on 500 interviews with militants across Africa. Interviewers questioned militants specifically on the *“tipping point”* that made each decide to join an armed group. A great majority, 71 percent, reported it was some kind of *“government action”*, like *“killing of a family member or friend”* or *“arrest of a family member or friend,”* that finally pushed them from civilian life to guerrilla war and/or terrorism. Religious ideology was usually not the main factor in their decision.

The report concludes, *“State security-actor conduct is revealed as a prominent accelerator of recruitment, rather than the reverse.”* In a section on *“Policy Implications”*, the report added, *“The Journey to Extremism research provides startling new evidence of just how counter-productive security-driven responses can be when conducted insensitively.”⁶* These studies confirm that U.S. policy justifying military operations actually turn civilians into combatants, fuelling an ever-increasing cycle of global violence and chaos.

Recent deaths in Afghanistan

An update on the continual violent deaths of civilians in the Allies’ war on Afghanistan, includes a report in September 2019, that a US drone strike aiming to hit an Islamic state redoubt, killed at least 30 civilians resting after a day’s labour in the fields, the attack also injured 40 people after accidentally targeting farmers and labourers just after they had finished collecting pine nuts in the mountainous region of Wazir in Eastern Nangarhar province.⁷ Also, the UN Assistance Mission in Afghanistan (UNAMA) on 20 July 2019 reported more civilians were killed by the US and allied forces than by the Taliban and other militant groups in the first half of 2019.⁸ The UN has urged forces in Afghanistan to immediately *“reduce the terrible harm being inflicted”* on civilians in the 18 years-long war.

Combining estimates of deaths in Afghanistan and Pakistan Nicholas J.S. Davies reports

about 1.2 million people have been killed in Afghanistan and Pakistan since the invasion in 2001.⁹ But this is only an estimate, the real figure will be far higher as many attacks are not investigated or are unreported, as Operation Burnham illustrates. Also, these statistics only represent direct violent deaths in the war, there is no accounting for deaths from disease or starvation caused by destroyed infrastructure, or of those who die later from injuries and lack of hospital facilities, many destroyed in bombing attacks.

Threats to civilisation, international law & justice

Recently this year in 2019, the U.S. threatened International Criminal Court judges with travel bans because of ICC efforts to investigate American war crimes in Afghanistan where US-led forces have been deployed since 2001.¹⁰ German Judge Flugge resigned after these threats, the ICC has now abandoned efforts to investigate war crimes in Afghanistan saying it would be impossible without cooperation. This is tragic for justice for Afghanistan's people who have suffered greatly from this long illegal invasion and attacks since 2001 with many war crimes being reported and the US preventing any investigations. What will happen to New Zealand's inquiry into allegations of war crimes in Afghanistan? The US has declared it won't accept war crime investigations of its forces or its allies' forces.

A world without justice, or the rule of law, is a world of unending hopelessness and violence that is spiralling out of control, violating human rights and the United Nations Charter. Other terrible dangers lie in what US officials now term low-yield "usable" nuclear weapons on U.S. submarines, which have two to three times the impact of the nuclear bombs that destroyed Hiroshima and Nagasaki.¹¹ For both New Zealand and the world's security, New Zealand should withdraw from all the "wars on terrorism" and support the United Nations. Sadly, being part of the attacking coalition in Afghanistan has drawn NZ's military inevitably into human rights abuses, deception and dishonour, because of the illegality of the war and its modus operandi. Dwight D. Eisenhower's words ring loud and clear. When he became President of the United States and was helping create the United Nations Charter he said, "*The world can no longer rely on force. It must rely on the rule of law, if civilization is to survive.*"

Te Aroha Te Whakapono Me Te Rangimarie Tatou Tatou E:
Love, Truth and Peace be with us all

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