

Ireland, the Security Council and Afghanistan: Promoting or undermining the international rule of law?

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Ireland chaired the Security Council during the crucial month of October 2001, which saw the start of the US-UK military response to the criminal attacks on the US. This article examines the right to self-defence in international law and the Irish Government's position on this issue during its presidency of the Security Council. As it prepares for its second year on the Council Ireland has the opportunity to reflect on its role thus far. A disquieting gap between rhetoric and practice has emerged. Mindful of this gap the author discusses whether effective systems are in place to ensure that Irish foreign policy is in fact formed and informed by international law, including human rights law?²

Introduction

Ireland has been a member of the UN since 1955, and prides itself on its professional and impartial approach to this organisation, most notably perhaps through the contribution to international peacekeeping of its defence forces. Ireland campaigned vigorously for election to a two-year term on the Security Council (January 2001-December 2002) with the commitment that it would “work tirelessly to ensure that the Security Council remains the ultimate embodiment of international co-operation in the cause of peace and advancing the rights and dignity of all the peoples of our planet”.³ In the event, Ireland received an extraordinarily high vote from UN member states: 130 votes on the first ballot out of a potential 173, particularly from developing countries in Africa and the Caribbean.⁴

The Presidency of the Security Council rotates among Council members on a monthly basis. The position brings with it significant potential influence in shaping procedural matters such as the agenda for discussion. This is because a negative vote by any of the permanent members is sufficient to veto any resolution of the Council - this does not apply to procedural questions, such as when to meet and what to discuss. For these, the affirmative votes of any nine members of the Council are sufficient.⁵ Thus, as Noel Dorr, Ireland’s former Ambassador to the UN points out, the power of the Presidency depends on the personality, judgement and political skill of the diplomat tasked with the role, for instance in knowing when to convene meetings and how to shape the agenda.⁶

In turn, the way in which this role is carried out is key to the long term standing of the Security Council. Ireland’s current Ambassador to the UN, Richard Ryan, has noted that “Ireland, like most members, attaches huge importance to the authority of the UN as their recourse for problems and crises. At the heart of the UN is the moral, legal and political authority of the Security Council.” Ireland’s election to the Council represented a vote of confidence from its fellow UN members and the Taoiseach has acknowledged the responsibility this places on Ireland in relation to the wider UN membership.⁷

Thus, when the rotating presidency of the Security Council fell to Ireland for the month of October, the Irish Government’s efforts and statements were expected to reflect the commitments it made when seeking election to the Council, primarily to

maintain its legal and moral authority. This article does not review those aspects of Presidency. The dominant test of Ireland's commitments concerned the crisis of the 11 September attacks and the international armed conflict pursued in their aftermath.

Ireland committed itself to a multi-faceted response to international terrorism in the immediate aftermath of 11 September. The Taoiseach announced that Ireland would be a member of the international coalition pursuing a military response. He announced, without any parliamentary debate, that Irish airspace and landing facilities would be made available to the US for military purposes in attacking Afghanistan.⁸ It is this military response which has most clearly challenged Ireland's stated commitments to maintain the Council's legal and moral authority which is considered here.

The international legal framework: the right to self-defence

The fundamental rule from which any discussion of self-defence in international law must proceed is clear: the threat or use of force in international relations is prohibited. This rule protects the existence of small states such as Ireland from the militarily powerful. This principle is backed by the strongest of international legal rules, *jus cogens*, reflected in article 2(4) of the UN Charter, according to which:⁹

[a]ll members [of the UN] 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 the purposes of the United Nations.

There are only two recognised exceptions to this rule - one is the right of states under customary international law to use military force in self-defence. The UN Charter recognises this right, as did the International Court of Justice in 1986 in a case that arose from US mining of Nicaragua's ports.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the

Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right shall be immediately reported to the Security Council, and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

- Article 51, Charter of the United Nations

Customary international law regarding self-defence, before September 11 is encapsulated in the international response to the 1985 Israeli aerial bombing of the headquarters of the Palestine Liberation Organisation (PLO) in Tunisia. In explaining its action to the Security Council, Israel argued that the bombing constituted self-defence as Tunisia knowingly harboured terrorists who had targeted Israel. The Security Council voted 14–0, (with the US abstaining), under Resolution 573 to condemn “vigorously the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct”. The air raid was described as a threat to peace and security in the region, and Tunisia was said to have “the right to appropriate reparations as a result of the loss of human life and material damage”.

Three elements must be respected if the use of force, in the exercise of the right to self-defence, is to be lawfully exercised. Such use of force must be both necessary and proportionate to the attack experienced, (the use of force against another state for revenge, to punish or to reassure public opinion is unlawful). Thirdly, it is for the international community as a whole, particularly the UN Security Council, to assess whether these criteria of necessity and proportionality are met. International law requires that the answer as to whether these tests are met is a matter of objective assessment– it does not rely on a state’s own assessment of a situation. As existing customary international law, these criteria were expected to be central in guiding the stance taken by Ireland in framing its response to the terrorist attacks of 11 September.

The test of necessity

In the past the test of necessity has been met when there has been insufficient time for deliberation, for example because there is an

ongoing armed attack by one state on another. Thus as set out in the 1837 case of the *Caroline*, force is permitted due to the “necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation”.¹⁰ The definition of what is “necessary” in self-defence is strictly interpreted because of the central importance international law gives to “saving succeeding generations from the scourge of war” – the central purpose for which the United Nations was established. Thus, by definition, a crucial aspect of “necessity” is that force should not be used if other effective means of self-defence are possible. If peaceful means are available, force cannot be said to be necessary.

The 11 September attacks were criminal in nature and differed fundamentally from the classical inter-state conflict situation. Any threat of further attacks in the US would have been most directly addressed by criminal investigations, international judicial co-operation, (such as the prosecution/extradition of suspects in any of the dozens of states in which they are said to operate); the closure of terrorists’ financial and other support networks, increased internal security and co-operation on intelligence matters etc.

If the party suspected of the attacks is not the government of a state, is it lawful to use force against a state said to be harbouring a suspect? The proposition put forward by the US was that it had information suggesting that the principal behind the crime was a named suspect, Osama Bin Laden. While it described the information as insufficient to prove guilt before a court of law, it also suggested that such information was sufficient to justify bombing Afghanistan. However, none of the alleged terrorists were Afghan nationals, the planning of the attacks was said to have taken place in countries such as the UK and Germany, and the network (Al’Qaeda) to which those responsible for the attacks are said to belong is spread over 60 states. The main suspects were said to be in Afghanistan and to have training bases there. That information was shared with selected states. Some of it was made public by the UK government which also shared information with the Security Council.

The USA refused to provide the information implicating Al’Qaeda with the Taliban Government but issued the Taliban with an ultimatum to hand over the chief suspect – Bin Laden. The question arises then as to whether Afghanistan can be said to be knowingly harbouring this alleged criminal if the case he has to answer has not been produced to it?

If the UN High Commissioner for Human Rights' view is accepted, namely that the 11 September attacks in USA "crossed a line" to become crimes against humanity, these attacks are within the jurisdiction of the courts of any country of the world.¹¹ The individuals responsible should have nowhere to hide if intelligence services identify their whereabouts and if evidence as to their guilt is made available. In the past, the Security Council has worked to facilitate the surrender for prosecution of suspected terrorists. Sanctions were imposed against Libya to induce the surrender of suspects in the Lockerbie aircraft bombing. Two suspects were tried in a specially created international court in The Hague, the charges against one were not proven and he was released. In the domestic US context, the approach taken after 11 September can be contrasted with the aftermath of the Oklahoma bombing. The criminal attack by Timothy McVeigh was dealt with as a crime and pursued through the courts like any other prosecution. Military force was not used on Montana survivalists or others who may have been sympathetic to his motivation.

In 1999 sanctions were imposed on Afghanistan to pressure it to hand over Osama Bin Laden for the bombing of two US embassies in East Africa. However, cohesive and concerted international efforts were not taken at that time to secure the peaceful handing over of the suspect for trial on those charges. After 11 September, an international coalition was formed by the US to support its military attack on Afghanistan. Many countries had grave misgivings. There is little doubt that such a coalition would have been broader and more stable if it were formed to first of all exhaust all peaceful means to have Bin Laden handed over on these charges.

Both before and during the US attack on Afghanistan, the Taliban Government is reported to have requested assurances as to the safety of the any suspects should they be handed over, and to have offered to hand Bin Laden over for trial in a state other than the USA.¹² These requests were appropriate and reasonable of themselves. They were dismissed out of hand by the US. Indeed, an explicit threat of force accompanied the US request – itself in principle a violation of the express terms of Article 2(4) of the UN Charter. It is difficult to view an ultimatum couched in such terms as a genuine effort by the US to exhaust all means short of force. No counter-offer was made by the US-UK in negotiations, even when such negotiations were reportedly requested during the bombing, by the Taliban's Deputy Prime Minister.¹³ Ireland made it clear that it did not propose

negotiation and that it endorsed the position of the US in refusing to explore peaceful means to settle the Afghanistan dispute. The Minister of State at the Department of Foreign Affairs stated: "It is difficult to conclude from the reported comments of Taliban officials that such offers can be taken seriously",¹⁴ although she did not make clear the source of the information from which she drew such a far-reaching conclusion. The offer may have been insincere but an effort to negotiate might have been expected to strengthen the hand of those Taliban leaders seeking a non-military solution to the stand-off. Moreover, an effort to negotiate was arguably required by the principle of customary international law which states that force should only be used in self-defence when necessary – and particularly so, when millions of people were at risk from a disproportionate response, as was apparent even before the US-UK led bombing started.

In seeking to justify this stance, members of the Irish Government pointed out that Afghanistan was in violation of previous UN Security Council resolutions.¹⁵ Those resolutions included the request to hand over Osama Bin Laden for trial for alleged involvement in the bombings of the two US embassies.¹⁶ The Minister implied that, because the Taliban had refused to comply with those earlier resolutions, this had exhausted any obligation to find a peaceful solution to the 11 September crisis even though the earlier resolutions had related to a different crime. In any event, as set out above, non-compliance with a Security Council resolution does not automatically justify bombing another state. If it were so, Israel would be among the most vulnerable to such an outcome, being in repeated non-compliance with Security Council resolutions for far longer than the Taliban.

In an apparently contradictory position, Ireland was simultaneously highlighting the merits of negotiation. The Minister for Foreign Affairs told the General Assembly on 2 October 2001: "Negotiation, conducted on a basis of mutual respect, leading to a just and peaceful settlement that embodies the legitimate rights of the parties, is the only effective means of conflict resolution. ...Successful negotiation involves compromise, which all too often is misrepresented as appeasement or surrender....Our own experience in Ireland bears this out."¹⁷ Indeed the Taoiseach and the Minister for Foreign Affairs had specifically committed Ireland to bringing such a perspective to its membership of the Security Council when it had lobbied states for their votes during its election campaign at

the Millennium General Assembly.¹⁸

How did Ireland seek to justify its contradictory position on Afghanistan? The Security Council, in the immediate aftermath of the 11 September attacks unanimously agreed that bringing the perpetrators to justice and holding accountable any state that aids, supports or harbours suspects was the appropriate response. Resolution 1368 repeats the UN Charter's acknowledgement of the inherent right of all states to defend themselves – if necessary and proportionate as allowed for under customary international law. In addition, the Resolution expressly refers to the readiness of the Security Council to take “all necessary steps” to respond to the terrorist attacks of 11 September. At various times, that Resolution, 1368 of 12 September and Article 51 of the Charter, were cited by the Taoiseach and the Minister for Foreign Affairs as the legal justification for the military attack on Afghanistan.¹⁹ Yet, these statements have been, at best, incomplete because they refer only to the need for self-defence to satisfy the second test, proportionality. The reality is, whether the justification is sought under customary international law or under the text of the Security Council's Resolution – there is no lawful authority to attack Afghanistan if such an attack is not necessary to defend the US in the aftermath of the 11 September attacks.

In this context, Ireland's view of possible attacks by the US on other states is disquieting. In a letter to the Security Council, the US reserved the right, as the Secretary-General put it, “to go after other organisations and other states” as part of the 11 September response.²⁰ On the day the Nobel Peace Prize was awarded to the Secretary-General and the UN, this was interpreted to mean a possible invasion of Iraq causing a great deal of concern internationally. The UK distanced itself from the suggestion that the military campaign should be widened and the UN Secretary-General expressed his “anxiety” noting that suggestion had “disturbed some of us”. EU states were reported to be totally opposed to such a move. However, the Minister for Foreign Affairs was reported as echoing the position of the US: “If there were evidence to suggest that other regimes were a threat to international peace and security, such action would be admissible.”²¹ This statement would not appear to reflect the requirements of international law.

The test of proportionality

The second element required for the lawful use of force in self-defence is proportionality. Thus, in past cases, this test required

that the aims of any military force be strictly confined to ending the armed attack being suffered. The key stated aim of the attack on Afghanistan, which Ireland endorsed, was to bring to justice the suspects accused of the 11 September attacks on US. Yet, during the first 24 days of the bombing of Afghanistan under Ireland's Presidency of the Security Council it does not appear that the Council discussed the modalities for the trial which would take place as and when suspects came into US custody through the military attack on Afghanistan. Such a debate might have contributed to underlining the parameters within which action in self-defence should be taken, thereby helping to keep the ongoing obligation to negotiate a peaceful solution on the agenda of the parties involved, and reinforcing the credibility of the UN as a body committed to the international rule of law.

However, the military action was not limited to that aim. The US position was set out in its 8 October letter to the Security Council in which it notes that the right of self-defence encompassed not only the bringing to justice of suspects for the actual attacks but a military campaign "designed to prevent and deter future attacks".²² As time passed, the US and UK made it clear that they were seeking to oust the Taliban Government and create a new regime in Afghanistan. To this end, they were arming and providing military advisors to the military opposition, the Northern Alliance. In the past it has not been generally accepted by states that the prevention of further or future attacks is a lawful use of force in self-defence. This is reflected in the view of the UN Secretary-General that any intervention in the Afghanistan civil war would be beyond the lawful parameters of either self-defence or what was authorised by the Security Council in Resolution 1368.²³ In principle, such intervention constitutes unlawful interference in the internal affairs of another state and some would argue that the attack constitutes a war of aggression, an international crime, albeit one whose definition remains controversial.

Over the past 20 years the US has proposed that its inherent right of self-defence can be triggered if a US national is attacked abroad. The US went a step further in 1993 when it attacked Iraq and argued that it could do so to protect a national abroad from a potential future attack. This suggestion has been described by a leading international jurist as a "gross misinterpretation" of Article 51 of the UN Charter which unequivocally limits the right of self-defence which existed in pre-Charter customary international law to the case of an "armed attack".²⁴ Another legal expert, writing in 1972, referred to

anticipatory self-defence and concluded that it “cannot be expected that the Security Council will ever accept this justification”.²⁵ Yet, under Ireland’s Presidency of the Security Council, that step appears to have been taken.

Silence from Ireland, such as when faced with the US bombing of Sudan and Afghanistan in 1999 in purported self-defence for the East African embassy terrorist attacks, can be taken as acquiescence in the violation of the express terms of Article 51.²⁶ The evidence which the US said it had at the time regarding those states’ complicity in the East Africa bombings was never produced to the Security Council. Ireland, among others, failed to insist that international law requires that evidence be made available in advance of the bombings or even if security considerations so required, within a certain time limit after these bombings had been carried out. One target was the El Shifa pharmaceutical plant which produces over 50% of Sudan’s medicines, (the WHO attended its opening in 1997). It has filed a claim against the US after a delegation, led by former US Attorney General Ramsey Clark, investigated the bomb site and concluded that the plant was used solely for manufacturing medicines.²⁷ The bombings are now widely seen to have been neither clearly justified nor effective in increasing US security. In fact they had quite the opposite effect given the lack of due process of law with which they were carried out and the resulting effects on public opinion in the regions concerned.

In legal and practical terms, to avoid being taken to support the US proposed version of what is lawful, Ireland would have to persistently raise its objections. Far from doing so, the Minister for Foreign Affairs stated that Ireland offered overflight and refuelling facilities to states whose forces were “seeking to prevent further” crimes such as 11 September. The Minister cited Council Resolution 1368 and 1373 (of 12 and 28 September respectively) as providing authority for so doing. Neither of these resolutions expressly authorises the use of force to bring suspects to justice or to hold states accountable for harbouring them – let alone authorises military force to prevent future attacks. To do so would arguably be a far-reaching change in customary international law.

In addition to ensuring adherence to a strictly limited aim, the principle of proportionality requires that once force is used the laws of war apply in the protection of non-combatants. This means, for example, as the International Court of Justice has made clear, that states do not have unlimited freedom of choice in the weapons they use. During October, international human

rights NGOs called for an end to the use of so-called cluster bombs—in effect air-borne landmines. Five per cent of these bombs are reported to fail to explode on impact. Instead, they kill and maim indiscriminately into the future. Their use has been questioned by the International Committee of the Red Cross and international human rights NGOs.²⁸ Conceding the danger posed to civilians by these weapons, on the last day of Ireland's Presidency, the US broadcast warnings to the people of Afghanistan that they should not confuse food parcels with the cluster bombs which it was also dropping—both being yellow in colour.²⁹

Direct civilian casualties of the US-UK bombing mounted during October, reportedly reaching hundreds, including the villages of Thori, Khorum and Chowkar-Karez. A clearly marked warehouse of the International Committee of the Red Cross was bombed on two separate occasions and four UN demining personnel killed.³⁰ Some of these attacks took place in areas where there was said to be no evidence of military targets.³¹ The need to learn from the lessons identified from the NATO air campaign in Kosovo was highlighted by Human Rights Watch. These included the need for “greater care in attacking mobile targets, better target selection, restrictions on certain daylight attacks”—in order to reduce the level of civilian harm during military operations. It also called on the US and its allies to “establish an independent and impartial body, competent to receive confidential information, that would investigate alleged violations of international humanitarian law, and recommend changes to targeting and bombing doctrine in order to ensure compliance with international humanitarian law”.³²

The effects of fear on the civilian population were evident from the moment the threat of force was issued against Afghanistan. One foreseen consequence was that several million people could become refugees or internally displaced in even greater numbers than was already the case in Afghanistan and around its borders. Immediately relevant to this scenario were aspects of the laws of war protecting civilians, as codified in the statute of the future International Criminal Court (ICC), included condemnation of the war crime of displacing populations through fear, causing great suffering and multiple deaths and injuries.³³ Particularly pertinent and regarded as reflecting customary international law, the UN Guiding Principles on Internal Displacement leave no room for ambiguity as to what the obligations of the military coalition, including Ireland, were: “All authorities and international actors shall respect and ensure respect for their

obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.”³⁴

On 24 September, the heads of six UN agencies jointly stated that they feared that between five and seven million Afghans would face starvation or being frozen to death if aid did not reach them. The UN Secretary General stated: “Innocent civilians should not be punished for the actions of their government...Those who deliberately withhold food supplies from starving people, and attack or impede humanitarian relief workers – whether local or international – should know that the international community will hold them responsible.”³⁵

On 12 October, during the Irish Security Council Presidency, Mary Robinson, the UN High Commissioner for Human Rights appealed for a focus on the civilian population and expressed the hope that there would be a pause in the attack on Afghanistan by the US: “The desperate urgency now is to use this window until about the 15 or 16 November when the snows will prevent access, and the people will starve and freeze to death, because they will have neither food nor shelter.”³⁶ The call for a pause was endorsed by many international NGOs including Irish development agencies. The International Committee of the Red Cross, Oxfam, and Doctors Without Borders also took the view that the military airdrops of food put their staff in danger. “If one side of the conflict perceives that the other is using humanitarian aid as a weapon of war, we could be perceived as the enemy and therefore our staff could be targeted.”³⁷ In similar vein, the UN Special Rapporteur on the right to food called on the US to stop using warplanes to drop food.³⁸

The High Commissioner likened the current situation to that of Rwanda in 1994. Then, the Security Council and the US in particular avoided using the correct legal term for what was happening, genocide. Later they argued that they did not know the nature of what was occurring. In that context, the legally appropriate options for action to respond to genocide were not presented to the Security Council. After the deaths of up to one million people, this is now conceded by the UN to have been an “error of judgement”. Unlike Rwanda, with Mary Robinson’s statement, it does not seem possible for the Security Council to plead ignorance of the fact that US-UK military action was contributing to the humanitarian crisis facing Afghans.

The situation in Afghanistan remained on the agenda of the Security Council, with weekly briefings by senior UN political and humanitarian officials during the Irish Presidency.³⁹

However, Ireland did not make specific proposals as to how to ensure the US, UK and the coalition as a whole, would meet their legal responsibilities to the civilian population. Neither did Ireland invite the UN High Commissioner for Human Rights to address the Council as to the concerns she raised or otherwise publicly respond on the issue.⁴⁰

Under the French Presidency, preceding Ireland's, the Security Council sought a briefing by the UN Legal Counsel, Hans Corell, on the issue of terrorism. Corell updated the Council on the 12 relevant conventions in existence.⁴¹ However, it does not appear at any stage that he was asked to brief the Council on the parameters of lawful self-defence. Yet, the appeals for a pause highlighted the limits of what is lawful in self-defence. Whatever about the lawfulness of action to that date, if US-UK military action continued, with foreseen and avoidable civilian deaths resulting in part from its preventing the delivery of effective humanitarian aid, this would arguably take the military campaign beyond what is permissible in self-defence. Such deaths would not be necessary or proportionate to the defence of the US from the 11 September attacks. On the level of individual criminal responsibility, such civilian suffering could comprise war crimes or crimes against humanity. This does not mean that the US and UK political and military decision-makers must be shown to have intended to target civilians.⁴² It may be sufficient that, if contributing to placing millions at risk, the coalition knew the likely consequences of their planned actions. The credible appeals made to the coalition for a pause, and its express refusal to countenance one, can contribute to proving the mental element required for war crimes.

The appropriate response to fulfilling these legal responsibilities was set out by Amnesty International. It called on "all parties, including the USA-led coalition, the Taliban and Northern Alliance forces, to refrain from attacking or otherwise preventing workers from delivering aid. All the parties should immediately assess the impact of military operations on the provision of humanitarian aid and take appropriate measures to facilitate delivery."⁴³

Ireland joined the US and UK in refusing to consider the proposal for a pause in the bombing. As Security Council President, Ireland made three statements on its behalf emphasising its concern at the humanitarian situation, encouraging the international community to respond "financially" but naming one actor as having responsibility for the impending catastrophe: the Taliban. These statements risked

implying that the US and UK were not responsible for the foreseen consequences of their own actions – a missed opportunity to help deter possible war crimes, prevent a potential disaster, and underline the commitment of the UN to the impartial application of the international rule of law. Yet, echoing the Secretary-General's words that it must be the rule of law which distinguishes us from terrorism, Ireland's Minister for Foreign Affairs had emphasised to the General Assembly that the "Afghan people...are not to blame for the actions of the Taliban and must not suffer the consequences of the Taliban's defiance".⁴⁴

In replying to Dáil questions on day 10 of the bombing of Afghanistan, the Minister for Foreign Affairs stated that the Security Council had been addressed by the US-UK coalition and "they made it clear that the bombing was being directed against military targets."⁴⁵ Without expanding further, this misleadingly implies that not targeting civilians satisfies their legal obligations. It does not appear that Ireland called on the US-UK coalition to investigate the reported possible war crimes outlined above, such as direct attacks on civilian targets or indiscriminate attacks or that it called for the prosecution and punishment of those responsible. Moreover, Ireland has not publicly called on the US-UK coalition to desist from using cluster bombs, which risk violating the prohibition of indiscriminate attack under international humanitarian law.

The positions taken by Ireland do not appear to be consistent with its stated commitments to the need for "all states to comply strictly with their obligations under international law...They must observe international instruments providing for humanitarian access as an inviolable right of those adversely affected in conflict situations.....Those who commit grave offences under international humanitarian and human rights law must be brought to justice."⁴⁶

Ireland shares responsibility for such matters, both as a member of the coalition responsible for the military action (through the availability of its airspace and other statements) and, as a member of the Security Council, which has primary responsibility under the Charter for international peace and security. Furthermore, its position does not appear to reflect the commitment of the people of Ireland to a human rights approach in their foreign policy – voiced earlier this year when they voted to ratify the statute of the International Criminal Court.

On Ireland's Security Council watch: some implications

The role of the Security Council

Clearly, the rule of international law requires that no one should be judge in their own cause otherwise it is the law of the powerful which prevails. This is the third element of lawful self-defence. In 1946, the lawyers for the Nazi defendants at the Nuremberg Tribunal had argued that Germany had the authority to determine for itself the parameters of the actions it could take in self-defence.⁴⁷ They argued that the Second World War was an act of self-defence by Germany. This was rejected by the Tribunal reiterating the principle that what is self-defence can only be determined by reference to international law.

"The international community as a whole, and specifically the Security Council must assess what is "necessary" or "proportionate. Article 51 of the UN Charter requires that measures taken by the US in self-defence "shall be immediately reported to the Security Council" and that this shall not diminish the responsibility of the Council to take any action it deems necessary for international peace and security". It was for the US to bring evidence as to how all the above actions, and their foreseen consequences, were necessary to the defence of the US and how they were proportionate to the criminal attack it suffered on 11 September. The day after the start of the bombing, "Ireland convened a session of the Security Council to enable members to be briefed by US and British representatives."⁴⁸ The statement made by Ireland as President of the Council noted the appreciation of the Council for the "briefing" but neither it, nor the Minister's Dáil statement, mentioned that this was an express legal requirement of the UN Charter.⁴⁹

As reflected in its role under Article 51 of the Charter, the maintenance of international peace and security is the "primary responsibility" of the Security Council. Thus, during its Presidency, Ireland bore a key responsibility to ensure that role was fulfilled. Yet many argued that the military action was not in fact increasing the security of the US – quite the opposite. Factors for this included the Al'Quaeda network being dispersed internationally and the polarisation of opinion in support of Osama Bin Laden in several countries. The continued bombing

and the humanitarian situation posed a fresh threat to international peace and security on several fronts with the destabilisation of Afghanistan's nuclear neighbours illustrated by armed confrontations in Kashmir and some 4,000 armed men trying to cross from Pakistan into Afghanistan to aid the Taliban.⁵⁰ Indeed, drawing on the precedent of the "humanitarian intervention" by NATO in Kosovo, an unnecessary or disproportionate US-UK attack on Afghanistan would trigger that state's right of self-defence. Other states would have been lawfully entitled to join it in collective self-defence against such military action. Thus the requirements of necessity and proportionality must continue to be satisfied throughout any military campaign. Despite all this the Minister for Foreign Affairs stated that he would "not question the continued bombing of Afghanistan" in Ireland's final days chairing the Security Council.⁵¹

The promotion of the rule of international law

The UN Secretary-General described the attacks of 11 September as "an attack on the rule of law – that is, on the very principle that enables nations and individuals to live together in peace, by following agreed rules and settling their disputes through agreed procedures....Let us uphold our own principles and standards, so that we can make the difference unmistakable, for all the world to see, between those who resort to terrorism and those who fight against it."⁵²

International law, if respected, and seen to be respected, contains mechanisms to punish the individual perpetrators of terrorist acts, the potential to deter such acts in the future and to address their root causes. Ireland's role on the Security Council at this time of crisis had implications not only for many innocent lives, but for the future legal order. Yet, both the Taoiseach and the Minister for Foreign Affairs have made crucial policy announcements couched in loose and inaccurate language implying scant regard for the international law which it is in Ireland's national interests to defend. It is not the case, as one Department of Foreign Affairs official suggested to this author, that incomplete statements of the law by the Taoiseach and the Minister are due to them speaking "politically" and by implication, without legal effect. The development of international law is cumulative and evolves mainly through state practice. There is little doubt of the practical implications and demonstrable effect on other countries of the precedent to which

Ireland has contributed. If the 11 September version of self-defence is allowed to stand it can change the parameters of international law. Indeed, during October 2001, the Prime Minister of Israel called on Yasser Arafat of the Palestinian Authority, using similar words to President Bush's ultimatum to the Taliban, to "hand over" suspects in the murder of the Israeli Minister of Tourism within seven days, with the threat of force to follow. Inaccurate language has the potential to erode the rule of international law and could undermine the universal system of collective security under the Charter. Under Ireland's watch the parameters of what is a lawful use of force may well have expanded to create a dangerous precedent for international peace and security.

The content of Ireland's foreign policy – rhetoric or real commitment to human rights?

As the UN Secretary-General stated back in 1998: "Today's human rights violations are the causes of tomorrow's conflicts."⁵³ It is only when these are addressed that a long term solution to terrorism can be found. Ireland's Minister for Foreign Affairs has stated that he shares this realisation that the root causes of terrorism lie in human rights violations, including poverty. For instance the repressive regimes of the Arab world encourage their anti-American and anti-Israeli press, stoking the fires of extremism to divert attention from their internal repression. The US record of support for Israel's continuing security "non-solution" to its security crisis - which includes Israeli attacks on civilians, impunity for crimes such as the massacres at the Sabra and Chatila refugee camps in Lebanon - all directly fuel Islamic extremism, which leads to terrorism and undermines the security of the US and the wider world. The aftermath to 11 September indicates a plethora of ways to give effect to this realisation of the causes of terrorism. These range from the need to address the widespread risk that states clamp down on human rights defenders in "tackling terrorism" to ensuring justice in the international financial and trade system and go well beyond the scope of this article.⁵⁴

Ireland should advocate combating terrorism through the

international rule of law. On 25 September 2001, the US administration set out its support for the American Service Members Protection Act then before Congress. This legislation is designed to ensure that no US Government entity co-operates with the future ICC, no investigations can take place on its soil, and, should any US national be in the custody of the ICC, it would authorise military action to “rescue” them.⁵⁵ “[I]n its effect, it would do little to protect American service members, while it would inadvertently do much to protect foreign war criminals....It is premised not on any well-founded fear of persecution of American military personnel, but on an extreme ideological suspicion of international law and institutions of international cooperation.”⁵⁶

The Irish Government should make clear to the US its understanding that the attacks of 11 September, as crimes against humanity, demonstrate the priority which should be given to the rapid establishment of an ICC.⁵⁷ Since 1998, 139 states have signed the treaty which would establish the Court. Pakistan and Afghanistan are not among them. Convincing these countries and the US to become parties should be an urgent priority for Ireland and the Security Council. The US demanded that Afghanistan hand over Osama Bin Laden. If the permanent ICC had already been operating, it might conceivably have made this a more palatable option for Afghanistan by providing the prospect of a fair trial - difficult to achieve in the US in the current climate.

One of the most under-funded functions of the UN is its work to help prevent and address human rights violations, the basis for true international peace and security. Practical investments Ireland Aid can make to strengthen the international rule of law include the effective integration of human rights into all aspects of its development co-operation efforts, and actively contributing to current discussions in the EU and UN as to how this can best be achieved. Priority areas for such investments would include supporting the role of the UN Office of the High Commissioner for Human Rights as the lynchpin for such integration, while further increasing her Office’s core and other funding resources to enable it to effectively and fully carry out its mandate.⁵⁸ Ireland can also provide practical support for the rationalisation of the work of the major UN human rights treaty-monitoring bodies, which serve as essential mechanisms for holding states to account to the international human rights and humanitarian standards to which they have agreed.

When the Taoiseach announced that Ireland was associating itself with the US led military response this decision was taken without debate in the Dáil, and without informed public debate. It is understood that it may be the subject of a constitutional challenge regarding the apparent failure to respect the constitutional role of the Dáil in making such decisions.⁵⁹ This occurred four months after the proposed European Treaty of Nice was rejected by the people of Ireland in a referendum.⁶⁰ Analysts have suggested that a major reason for this rejection was the lack of public information about the real effect of the proposal and the sense that politicians were taking public acquiescence for granted. Once the endorsement by Ireland of the military action was announced, the government concentrated in the ensuing weeks on publicly defending the military action. Repeatedly, the Taoiseach and the Minister for Foreign Affairs stated that the US-UK action was allowed for under international law – but gave incomplete statements of the legal tests to be satisfied. Ireland in effect endorsed the treatment of an international crime undertaken by individuals, the 11 September attack, as an act of war by Afghanistan while no evidence was available showing its government had any prior knowledge of the attack, let alone that it had been complicit in it.⁶¹

It was implicit in statements made to the Irish public that military action was not merely the only option, but a requirement for Ireland: “We have obligations and responsibilities as a member of the international community and to take on those responsibilities does not involve cowering before the threat of terrorism”.⁶² This echoed President Bush’s ultimatum to the rest of the world that they had to choose to either support the US action, or be seen as supporting terrorism. Given Ireland’s recent history and its stated commitment to international law, the government might have been expected to reject such flawed and dangerous reasoning. Instead, the Taoiseach told the Dáil without any reference to the test of necessity, that “It would be naïve to believe that dialogue and discussion are realistic options in the face of terrorism which is intent on savage and destructive assaults on innocent people.”⁶³ By omitting reference to the first test, the Taoiseach and the Minister’s statements in effect discouraged discussion of whether peaceful means of bringing the alleged perpetrators to justice existed.

Ireland associated itself with a military campaign around which there was a near complete absence of independently verified

information – and over which it had no decision-making control.⁶⁴ Daily bombing raids were carried out while arming and advising opposition forces with an appalling human rights record similar to that of the Taliban's.⁶⁵ How has Ireland ensured that it is not assisting in an unlawful attack on another state (by using either unnecessary or disproportionate actions)? How has it ensured that war crimes were not carried out in its name? In several aspects of the law discussed in this article, the threshold under which the US was required to comply was set lower than previously allowed for under international law.

Several other options could have been explored by the government, from offering Ireland as an impartial venue for a credible trial of suspects, to strongly advocating in support of the proposal by the UN Special Rapporteur on Afghanistan that a strategy be sought to invite ordinary Afghans inside and outside the country, particularly women, to contribute their creativity to the coalition against terrorism: "This would not only contribute to the effectiveness of the international coalition, but also pave the way to a transition from war to peace".⁶⁶

A common thread running through the issues raised here is a structural one: how is Irish foreign policy formed and informed? Ireland's track record in international relations at the UN has set high expectations regarding its role. For instance one can look to the role played by the late Frank Aiken as Minister for External Affairs and the diplomacy of Conor Cruise O'Brien which provided creative ideas on non-proliferation at a time of superpower rivalry. Decades later, Ireland had a responsibility to protect innocent lives, and an historic opportunity to help ensure that the international law, which states have themselves created to govern their conduct, was strengthened and to highlight the link between arbitrary exercise of power and terrorism. However, Ireland associated itself with a military response without clearly requiring compliance with international law. This has undermined Ireland's international reputation as a neutral state, impartial in the application of, and unequivocal in its support for, international law, a key factor leading to its election to the Security Council. An independent and creative role was ruled out for Ireland – one of the few states that might have had the credibility to do so. The implications are potentially far-reaching for Ireland's reputation and standing in the world.

The White Paper on Foreign Policy (1996) emphasises that human rights are a cornerstone of Irish foreign policy.⁶⁷ In a statement at the UN in June 2001 Ambassador Richard Ryan spoke of the "self-evident" benefits of conflict prevention as well

as the “devastating consequences of failure to prevent conflict, of tardy reactions to situations where lives are already in danger or being lost”.⁶⁸ This commitment to human rights as the means to conflict prevention is oft-repeated by government representatives.

A typical view of Irish foreign policy was aptly expressed by a former Minister for Foreign Affairs as follows: “As a small, neutral nation, without the taint of past imperialism and with an excellent reputation in the areas of peacekeeping and development aid, we have a real chance now to undertake a reforming, progressive role in the Security Council”.⁶⁹ Yet, the principled independence of mind necessary to give such commitments meaning was lacking. This was amply demonstrated in the early UN diplomacy of the state. However, it was not made apparent during Ireland’s Presidency of the Security Council in relation to the Afghan crisis. A disquieting gap has appeared between the rhetorical commitments of the government and the actions taken in the name of Ireland and the Irish people to give them effect.

Conclusion

For some, Ireland’s record will be judged by history - depending on the outcome of the military action in Afghanistan. This is not the correct measure. The act of knowingly risking untold innocent lives and suffering beyond imagination cannot be justified by argument now or in the future with the benefit of hindsight. In Ireland’s name international conflict has been conducted which risks creating new “conflicts and injustices on which terrorism preys”.⁷⁰ Notwithstanding the possibilities, and indeed the merits, of quiet diplomacy, the maintenance of the Security Council’s standing requires accountability to the wider UN membership as well as to the Irish public, regarding the policies being pursued in their name. The key domestic mechanism for such accountability is a constitutional one, namely, that the government shall be accountable to the Dáil for the conduct of foreign policy. In this case, Ireland militarily associated itself with the waging of international armed conflict and despite the express constitutional requirement covering that situation, this decision was not first of all debated in the Dáil.⁷¹

It remains unclear how the decisions of the Irish Government

discussed here were reached and how it weighed up the various options regarding Ireland's potential strategic contribution to international peace and security in this crisis. Were these decisions reached due to insufficient human resources within the Department of Foreign Affairs or due to a lack of appreciation of the importance of international law in the delivery of our foreign policy? The reality is no doubt a combination of many factors. However the resources would be found, if the political priority were allocated to it.

With the up-coming publication of the Ireland Aid Review, the recent establishment of a Human Rights Commission and with the Department of Foreign Affairs-NGO Standing Committee on Human Rights planning to review the effectiveness of its own role in contributing to that foreign policy, it is timely to reflect further on the future human rights dimension of Ireland's foreign policy. And it is crucial that Ireland's stance during its Presidency of the Security Council is examined to review the process by which Irish foreign policy is made. Ireland will be a member of the Council until the end of 2002. Afghanistan will no doubt remain on the agenda throughout and Ireland can still play a key role in promoting the rule of international law, including human rights standards concerning impunity and the rights of women in particular. One such opportunity is the debate concerning the future of Afghanistan. There is a great deal to learn from the errors of past peacebuilding efforts which have thus far not succeeded in their objectives in countries such as Cambodia, Sierra Leone and Angola. As Amnesty International has noted, the international community must ensure that human rights are not just on the agenda, but that "human rights are the agenda".

For instance, Ireland has "strongly endorsed" the Secretary-General's call on the Security Council "to give greater attention to gender perspectives in conflict prevention and peace-building".⁷² In the Afghan context this means, for example, that Ireland should promote the broadest possible participation of civil society in peace negotiations, with specific measures to facilitate women's access and participation. Similarly, Ireland should seek to ensure that those entrusted with leadership must be persons of integrity committed to the human rights protection of all.⁷³ Indeed, on the last day of Ireland's presidency of the Security Council on 31 October 2001, the UN celebrated the first anniversary of a groundbreaking Security Council resolution on women, peace and security which, among other things, committed governments around the world to involve women in

peace negotiations.⁷⁴ The empowerment of women has long been understood as a pre-condition to effective development strategies – it is also a pre-condition to peacebuilding strategies though it has yet to be adequately reflected in UN post-conflict peacebuilding.⁷⁵ Ireland should work to ensure a decision-making role for Afghan women in shaping the reconstruction aid interventions undertaken by Ireland, the EU, the UN agencies and the international community as a whole.⁷⁶

The role of Ireland as an impartial voice for peace through the promotion of human rights around the world can, and should, be more than mere fond perception. The hopes of many depend on Ireland and other states playing a creative and principled role. The essential foundation for that role is impartiality in holding all states accountable to international law. Where human rights are for all, so too must be internationally agreed legal standards. The Irish Government would do well to take on board this lesson arising from its experience during the first year of its current tenure on the UN Security Council and apply it fully during year two.

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The International Law Commission’s draft articles on State Responsibility which will be presented to the General Assembly to consider a possible treaty based on the draft, <http://www.ejil.org/journal/new>

On existing anti-terrorist international conventions see <http://www.jurist.law.pitt.edu/terrorism.htm>

For a survey of the international legal framework see “Keep the response legal” by Malcolm Shaw, Professor of International Law, University of Leicester, at <http://news.bbc.co.uk/hi/english/uk/newsid>; “Responding to September 11: the framework of international law” by Helen Duffy, Legal Director of Interights, <http://www.interights.org>; “Judging Terrorist Crime, Taliban Guilt, Self-Defence and Western Innocence” by Mark A. Drumbl at <http://jurist.law.pitt.edu/terrorismdrumbl.htm>; Alex Ramsbotham of the United Nations Association’s conflict resolution department, “War view: Is this war lawful?” BBC 9 November, 2001 http://news.bbc.co.uk/hi/english/uk/newsid_1645000/1645564.stm; Professor Mary Ellen O’Connell, Ohio State University, “Lawful responses to terrorism” *Jurist Forum*, <http://jurist.law.pitt.edu/forumnew30.htm>

Footnotes

- 1 This contribution is given in the author's personal capacity.
- 2 This article focuses only on Ireland's role within the Security Council in relation to the crisis in Afghanistan and is limited to events before 1 November 2001. Various internationally critical situations were on the agenda of the Security Council during October including developments in Burundi, East Timor and Somalia but these are not discussed here.
- 3 "Ireland's impact modest so far on UN Security Council", *The Irish Times*, 4 July 2001.
- 4 A country requires two-thirds of the votes of the participating states in the General Assembly to be elected to a seat on the Security Council.
- 5 Distinguishing between procedural and non-procedural questions has sometimes been a matter of controversy. Suffice to say that under the Council's Rules of Procedure, if the President of the Council rules that a matter is procedural and is supported by nine members' votes, it is so resolved; see Malcolm Shaw, *International Law*, 4th edition, Cambridge University Press, 1997, p.826.
- 6 Noel Dorr, interviewed on "Today with Pat Kenny" RTE Radio programme, 28 September 2001
- 7 Speech by the Taoiseach on the occasion of his visit to the Islamic Cultural Centre, Clonskeagh, 1 October 2001, <http://www.irlgov.ie/taoiseach/preec/current/01-10-2001.htm>
- 8 The US had not requested the use of such facilities. The Minister for Foreign Affairs formally conveyed the offer to the US Secretary of State on 26 September 2001, Dáil Debates, 16 October 2001.
- 9 Contemporary international law, codified in the Vienna Convention on the law of Treaties (Articles 53 and 64). As *jus cogens*, it is accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a norm of general international law having the same peremptory character.
- 10 In 1837, British subjects had destroyed the Caroline in an American port—arguing that it had been supplying American nationals who had conducted raids into Canadian territory; British Foreign Service Papers, p.1137; see also Malcolm Shaw above.
- 11 UN daily press highlights, 18 October 2001
- 12 Including a reported offer from Afghanistan's Deputy Prime Minister, Haji Abdul Kabir "we would be ready to hand him over to a third country", one that would never "come under pressure from the United States", *The Irish Times*, 15 October 2001, p.1.
- 13 "Allies launch second week of bombing raids", *The Irish Times*, 15 October 2001
- 14 See, e.g., the Minister of State at the Department of Foreign Affairs addressing the Seanad, 17 October 2001, <http://www.gov.ie/debates-01/s17oct/sect2.htm>
- 15 The Minister of State at the Department of Foreign Affairs addressing the Seanad, stated that military action should be a last resort but that the Taliban had been "given every opportunity to respond to the demands of the Security Council", 17 October 2001, <http://www.gov.ie/debates-01/s17oct/sect2.htm>
- 16 See Security Council resolutions 1368(2001), 12 September 2001, and resolution 1373(2001), 28 September 2001. Earlier resolutions such as 1333, 19 December 2000 had called for the closure of training camps, an end to the provision of sanctuary and a ban on military assistance to Afghanistan.

- 17 Minister for Foreign Affairs' statement to the UN General Assembly 2 October 2001
- 18 Address by the Taoiseach to the UN Millennium Summit, 6 September 2000, and statement by the Minister for Foreign Affairs to the fifty-fifth session of the General Assembly of the United Nations, 14 September 2000, <http://www.nn.int/ireland/ga4.htm>
- 19 As the Minister stated in the Dáil: "Ireland will continue to support proportionate and targeted action by the US and others pursuant to Article 51 of the UN Charter and Security Council Resolution 1368. The offer by the government of Irish airspace and airports, in this regard, is fully consistent with our obligations under the UN Charter", Dáil Debates Official Report, 16 October 2001, <http://www.gov.ie/debates-01/16oct/sect6.htm>. Similarly the Taoiseach did not refer to the test of necessity in his address to the Dáil on 3 October 2001 "in regard to the US situation" but said that military action in self-defence should be "based on clear evidence and be proportionate, measured and focused on the pursuit of justice and the sources of terrorism", <http://www.irlgov taoiseach/press/current/03-10-01b.htm>; The Taoiseach also addressed the Dáil on 18 September 2001 without referring to the on-going need to fulfil the test of necessity, <http://www.irlgov.ie/raoiseach/press/current/18-09-01.htm>.
- 20 Transcript of press conference by Secretary-General at HQ, 12 October 2001
- 21 Cited in Phoenix magazine, 26 October 2001
- 22 See international scholars' debate in "US campaign enters new legal territory", *San Francisco Chronicle*, 4 November 2001; questions and answers on the legal issues arising have been posted by Human Rights Watch at <http://www.hrw.org/campaigns/september11/ihlqna.htm>. Note: this article does not consider the available anti-terrorist conventions. See, for example, American Society of International Law Insights, <http://www.asil.org/insights/insigh77.htm> contributions by Professor Frederic L. Kirgis and replies.
- 23 Secretary-General's statement on the adoption by the Security Council of resolution 1368 on 12 September, which referred to states being "held accountable" if they harboured suspects of the 11 September attacks. Note: the legal assessment of whether the Afghan conflict was international or non-international at various times prior to 11 September is not considered here. See for example the level and nature of past military support by Russia and Iran to the United Front/Northern Alliance: "Crisis of impunity: the role of Pakistan, Russia and Iran in fueling the civil war in Afghanistan", Human Rights Watch, <http://www.hrw.org/reports/2001/afghan2>
- 24 This point has been well made in the Kosovo context by Bruno Simma, Professor of International and European Community Law, Ludwig-Maximilians-Universität, "NATO, the UN and the Use of Force: Legal Aspects", <http://www.ejil.org/journal/Vol10/No1/ab1.html>
- 25 Bowett, J., *American Journal of International Law*, 1972.
- 26 Ireland's view is not known on the possible argument that US embassies were US territory for this purpose.
- 27 Reported in *The Washington Post*, 16 February 1999. The attack has itself been described as a "war crime", see articles by Richard Becker, Sara Flounders and John Parker, *Covert Action Quarterly*, Winter, 1999
- 28 Human Rights Watch Report, "Ticking time bombs: NATO's use of cluster munitions in Yugoslavia" "<http://www.hrw.org/reports/1999/nato2/>"
- 29 Andrew Buncombe, *The Independent* (UK), 30 October 2001, " 'Don't confuse food parcels with bombs' warns US"

- 30 Agence France Presse, "Red Cross demands explanation after US bombs hit aid depot", 27 October 2001; *Human Rights Watch*, "Afghanistan: US bombs kill 23 civilians" 29 October 2001; Amnesty International news release, "Afghanistan: accountability for civilian deaths", 26 October 2001.
- 31 See "New civilian deaths due to US bombing", *Human Rights Watch*, 30 October 2001; "Pentagon should explain civilian deaths in Chowkar", *Human Rights Watch*, 1 November 2001
- 32 Open Letter to NATO Defence Ministers, "International humanitarian law issues and the Afghan conflict", 17 October 2001
- 33 The US, UK and Afghanistan are all parties to the four 1949 Geneva Conventions. The Conventions, together with their two 1977 Protocols and other international treaties constitute the main body of international humanitarian law. See also <http://www.legal.coe.int/criminal/icc>
- 34 Principle 5.
- 35 Unicef, WFP, UNHCR, UNDP, OCHA, OHCHR: "Up to 7.5 million Afghans will need outside aid if crisis worsens, UN reports", 25 and 26 September 2001, <http://www.un.org/News/dh/latest/page2.html>.
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- 45 Dáil Debates, 16 October 2001, note 19 above.
- 46 Statement by Ireland, on the Secretary-General's report on the protection of civilians in armed conflict, 23 April 2001, <http://www.un.int/ireland/scsstatements/sc7.htm>
- 47 Under Germany's attitude to the Kellogg-Briand Pact 1928.
- 48 Dáil Debates, 16 October 2001, note 19 above.
- 49 Press Statement by the President of the Security Council, 8 October 2001. The Minister of State at the Department of Foreign Affairs did accurately describe it addressing the Seanad, 17 October 2001, <http://www.gov.ie/debates-01/s17oct/sect2.htm>
- 50 See for example, "US airstrikes spur refugee surge towards Pakistan's tribal areas: tension builds as UN prepares border camps", *The Washington Post*, 10 October 2001.
- 51 *The Irish Times*, 30 October 2001, <http://www.ireland.com/special/usaattack>
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- 53 Statement by Kofi Annan, UN Secretary-General to the opening of the fifty-fourth session of the Commission on Human Rights, Geneva 16 March 1998
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- 55 See the Coalition for the International Criminal Court, www.iccnw.org.
- 56 Letter of 25 July 2000 to Benjamin Gilman, Chairman, Committee on International Relations, US House of Representatives, Washington, D.C. 20515, from UNA-USA President and Chairman William H. Luers.
- 57 As the UN High Commissioner stated on 25 September 2001: <http://www.un.org/News/dh/latest/page2.html>
- 58 For its potential role, see "Learning to integrate human rights", a report of The International Human Rights Trust, <http://www.ihrtr.org>.
- 59 A motion placed on the Dáil Order Paper by Joe Higgins TD condemned the 11 September atrocity and demanded that Irish airports should not be used by US military waging a war on innocent Afghan people. This was not debated on 3 October as the Ceann Comhairle (speaker) stated that the order of business had already been agreed: <http://www.gov.ie/debates-01/3oct/sect3.htm>
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- 62 "Cowan prepares for his toughest political test yet", *The Irish Times*, 1 October 2001.
- 63 <http://www.ir.gov/taoiseach/press/cnrent/03-10-01b.htm> 3 October 2001.
- 64 UN staff, NGOs and foreign journalists did not have access to Taliban-held areas, while information provided by US and UK military sources and Al Jazeera TV could not be independently verified.
- 65 "Amnesty International's position on arms transfers and military aid to Afghanistan", *AI Index* ACT 30/033/2001.

- 66 Statement by the Special Rapporteur on Human Rights in Afghanistan to Commission on Human Rights, Geneva, 25 September 2001, <http://www.unhchr.ch/huric>. See also the work of Noeleen Heyzer, Executive Director of the UN Development Fund for Women (UNIFEM) with women peace leaders from countries including Afghanistan. The leaders were to meet with the Security Council in an "Arria formula" discussion on 30 October 2001, <http://www.un.org/News/ossg/hilites.htm>
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