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ISTANBUL GELISIM UNIVERSITY
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Department of Political Science and Public Administration

**LEGITIMACY OF THE UNITED STATES WAR IN
AFGHANISTAN (2001-2021)**

Master Thesis

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Istanbul – 2025

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SUMMARY

The research, "Legitimacy of the United States War in Afghanistan," examined the legitimacy of the US war in Afghanistan from a legal perspective, grounded in international law, the United Nations Charter, and domestic legal frameworks. This comprehensive study sought to assess whether the actions taken by the United States and its allies adhered to the principles enshrined in international legal agreements and the mandates of the United Nations, particularly concerning the justifications provided for military intervention. Furthermore, the research explored the long- and short-term consequences of the US-led intervention in Afghanistan. It aimed to understand why, despite the significant investment by the Western hemisphere in governance, capacity-building, and the military capabilities of the Islamic Republic of Afghanistan (IRA), the Taliban were able to return to power. This return highlighted a paradox: the very measures intended to stabilize the country and eliminate extremist threats seemed insufficient to prevent the resurgence of the Taliban, creating conditions that favored their return to political power.

Additionally, the study analysed how the United States is managing its security objectives following the complete withdrawal of US forces in 2021. This withdrawal marked a significant shift in US foreign policy, emphasizing the use of over-the-horizon capabilities, such as reconnaissance operations and attack/lethal drones, to monitor and counter potential threats in Kabul and other provinces of Afghanistan. These capabilities are designed to address security challenges remotely, raising questions about their effectiveness, legality, and potential humanitarian consequences. The research combines library and field methodologies, using scholarly resources, legal documents, and insights from interviews with experts. A significant limitation is the reliance on secondary data and expert opinions, which may reflect diverse interpretations of international legal standards and the dynamic political environment surrounding the conflict. The legal focus restricts moral and broader political analyses. It relies on available data, such as international legal frameworks, expert interviews, and surveys, which may be incomplete or subject to bias. The complexities of Afghanistan's socio-political environment pose challenges to generalizing conclusions or fully understanding long-term impacts.

Despite this, research is organized into five chapters. Chapter One introduces the research problem, methodology, and objectives. Chapter Two traces the timeline of the US war in Afghanistan, highlighting the policies of various administrations and their strategic implications. Chapter Three provides a legal analysis of the invasion's legitimacy under international law. Chapter Four presents data analysis, including expert opinions on the consequences of the war. Chapter Five concludes with recommendations addressing international law, human rights, and future conflict resolutions. This research underscores the need for a nuanced understanding of international law in the context of military interventions and highlights the importance of addressing both legal and humanitarian considerations in evaluating the legitimacy of such conflicts.

Key Words: Legitimacy, Islamic Republic of Afghanistan (IRA), withdrawal, operations ,Humanitarian consequences,War

ÖZET

"Amerika Birleşik Devletleri'nin Afganistan'daki Savaşının Meşruiyeti" adlı araştırma, ABD'nin Afganistan'daki savaşının meşruiyetini uluslararası hukuk, Birleşmiş Milletler Sözleşmesi ve yerel yasal çerçevelere dayalı yasal bir bakış açısıyla inceledi. Bu kapsamlı çalışma, Amerika Birleşik Devletleri ve müttefiklerinin gerçekleştirdiği eylemlerin, özellikle askeri müdahale için sağlanan gerekçelerle ilgili olarak, uluslararası yasal anlaşmalarda ve Birleşmiş Milletler yetkilerinde yer alan ilkelere uyup uymadığını değerlendirmeyi amaçlıyordu. Ayrıca, araştırma, ABD liderliğindeki Afganistan müdahalesinin uzun ve kısa vadeli sonuçlarını inceledi. Batı yarımküresinin yönetim, kapasite oluşturma ve İslam Afganistan Cumhuriyeti'nin (IRA) askeri yeteneklerine yaptığı önemli yatırımlara rağmen Taliban'ın iktidara geri dönebilmesinin nedenini anlamak amaçlandı. Bu dönüş bir paradoksu vurguladı: Ülkeyi istikrara kavuşturmayı ve aşırılıkçı tehditleri ortadan kaldırmayı amaçlayan önlemler, Taliban'ın yeniden canlanmasını önlemek için yetersiz görünüyordu ve siyasi iktidara dönüşlerini destekleyen koşullar yaratıyordu.

Ek olarak, çalışma ABD'nin 2021'de ABD güçlerinin tamamen çekilmesinin ardından güvenlik hedeflerini nasıl yönettiğini analiz etti. Bu çekilme, ABD dış politikasında önemli bir değişimi işaret ederek, Kabil ve Afganistan'ın diğer eyaletlerindeki potansiyel tehditleri izlemek ve bunlara karşı koymak için keşif operasyonları ve saldırı/öldürücü insansız hava araçları gibi ufuk ötesi yeteneklerin kullanımını vurguladı. Bu yetenekler, güvenlik zorluklarını uzaktan ele almak, etkinlikleri, yasallıkları ve olası insani sonuçları hakkında sorular ortaya çıkarmak için tasarlanmıştır.

Araştırma, akademik kaynakları, yasal belgeleri ve uzmanlarla yapılan görüşmelerden elde edilen içgörülerini kullanarak kütüphane ve saha metodolojilerini birleştirir. Önemli bir sınırlama, uluslararası yasal standartların ve çatışmayı çevreleyen dinamik politik ortamın çeşitli yorumlarını yansıtabilecek ikincil verilere ve uzman görüşlerine güvenilmesidir. Yasal odak, ahlaki ve daha geniş politik analizleri kısıtlar. Eksik veya önyargıya tabi olabilen uluslararası yasal çerçeveler, uzman görüşmeleri ve anketler gibi mevcut verilere güvenir.

Afganistan'ın sosyo-politik ortamının karmaşıklıkları, sonuçları genelleştirme veya uzun vadeli etkileri tam olarak anlama konusunda zorluklar oluşturmaktadır.

Buna rağmen, araştırma beş bölüme ayrılmıştır. Birinci Bölüm araştırma sorununu, metodolojisini ve hedeflerini tanıtmaktadır. İkinci Bölüm ABD'nin Afganistan'daki savaşının zaman çizelgesini izleyerek çeşitli yönetimlerin politikalarını ve bunların stratejik etkilerini vurgulamaktadır. Üçüncü Bölüm işgalin uluslararası hukuk kapsamındaki meşruiyetinin yasal bir analizini sunmaktadır. Dördüncü Bölüm savaşın sonuçlarına ilişkin uzman görüşleri de dahil olmak üzere veri analizini sunmaktadır. Beşinci Bölüm uluslararası hukuk, insan hakları ve gelecekteki çatışma çözümlerini ele alan önerilerle sona ermektedir.

Bu araştırma askeri müdahaleler bağlamında uluslararası hukukun ayrıntılı bir şekilde anlaşılmasına duyulan ihtiyacın altını çizmekte ve bu tür çatışmaların meşruiyetini değerlendirirken hem yasal hem de insani hususları ele almanın önemini vurgulamaktadır.

Anahtar kelimeler: Meşruiyet, Savaş, Afganistan İslam Cumhuriyeti (IRA), geri çekilme, operasyonlar, İnsani sonuçlar

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ABBREVIATIONS

OEF	:	Operation Enduring Freedom
NATO	:	North Atlantic Treaty Organization
RIA	:	Islamic Republic of Afghanistan
UN	:	United Nations
ISAF	:	International Security Assistance Force
DOD	:	Department of Defense
SIGAR	:	Special Inspector General for Afghanistan Reconstruction
ISIS	:	Islamic State of Iraq and Syria
ICC	:	International Criminal Court
UNSC	:	United Nations Security Council
CIA	:	Central Intelligence Agency

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PREFACE

This research explores the legitimacy of the United States' war in Afghanistan, a conflict that lasted for two decades and profoundly impacted global politics, security, and human rights. The study investigates whether the U.S. intervention adhered to the principles of international law and the United Nations Charter, analyzing the legal, ethical, and practical dimensions of the invasion.

Drawing on both- library and field research, this thesis combines scholarly resources, legal documents, and expert interviews to provide a nuanced understanding of the justifications and consequences of the US-led intervention. It examines the long-term ramifications, including the resurgence of the Taliban, the implications for global counterterrorism, and the humanitarian challenges faced by Afghanistan post-2021.

The research aims to contribute to the ongoing discourse on military interventions and their alignment with international legal standards, emphasizing the necessity for nuanced responses to emerging security threats while upholding global human rights norms.

INTRODUCTION

The United States government dubbed the war in Afghanistan "Operation Enduring Freedom" (OEF) when it began on October 7, 2001. The invasion, according to the US government, was a response to the terrorist attacks in New York and Pennsylvania on September 11, 2001. The main reason for the invasion was the US president George W. Bush's asked that the Taliban deliver up Osama bin Laden to the United States.

Based on the reports and researchs of the US government and the United Nations Security Council Osama bin Laden was the founder and first general emir of Al-Qaeda from 1988 until his death in 2011. The United States believed that it could use military force to destroy Al-Qaeda and its network of support within the Taliban, even though the Taliban refused to take responsibility.

The invasion of Afghanistan was one of the longest contemporary wars involving an international coalition of military forces. It went on for 20 years, and resulted in Taliban return to power. In regards to the legality, lawfulness and legitimacy of the war, the United States and its coalition partners refer to the principle of 'Legitimate Defense with the Use of Force', which should be examined in international law on issues such as terrorism, use of force, invitation, etc. There are different opinions on this matter. Some international relations experts believe that this attack by the US was not in line with the standards of international law, neither in the beginning nor in the rest of the way and it violates the basic principles of international laws.

It is not known yet who was really responsible for committing the 9/11 attacks and so far there is no document that can be cited in international courts against Al-Qaeda and Bin Laden who are the main masterminds and executers accused. Therefore, from the point of view of international laws, it should be investigated, considering that in international relations, terrorist acts are a serious threat against all nations, and there should be effective international measures to prevent them. Considering the extreme importance of the threat of terrorism and the invasion of military forces and the subsequent reaction of governments, this research aims to answer the following questions regarding military operations in Afghanistan by referring to international law:

According to international law and the United Nations Charter, was the US intervention on Afghanistan a legitimate defence? If the answer is negative, do the resolutions issued by the Security Council of the United Nations (UN) provide permission to resort to force against Afghanistan? If the answer is not positive, in this case, has the Security Council, the main pillar of the UN to maintain world peace and security, performed its duty according to the charter? It is necessary to mention that this research is based on international law. Therefore, it is not intended to ignore the developments of customary international law that may occur in cases similar to the September 11 attacks.

This study holds significant importance, because it provides a comprehensive overview of the current legal framework governing legitimate defence. Furthermore, it is important to revisit the aforementioned matter and to take into account emerging security issues and the dynamics of international terrorist activities in view of legitimate defence as a standard legal response, and to find new legal and fair answers to new emerging questions in regards to the principle of self-defence until it clarifies and is enshrined in international relations and laws.

CHAPTER ONE

LAYOUT CHARACTERISTICS OF THE THESIS

1.1. Statement Of The Problem

The invasion of Afghanistan by the United States and its allies was the world's longest joined conflict of international military forces of the US and its allies, overthrowing the Taliban regime and establishing a new government with a democratic system.

The hegemonic power of America and the vital role of this country in the world as the creator of the new world order, and on the other hand, the strong presence of international coalition in Afghanistan during the last two decades, which ultimately led to a shocking retreat, which is considered as one of the most important and complex interventions both on the regional and international stages in the last two decades has a lot to learn from and demands comprehensive academic scholarship.

Even with the withdrawal of US military forces from Afghanistan and the return of the Taliban to power, the US drone strikes continue in Afghanistan. The leader of the Al-Qaeda jihdist group, Ayman al-Zawahiri, was killed by American drone attacks in 2022. Whether this US invasion of Afghanistan was legitimate according to international law and experts' opinions is the main focus of this research.

The invasion of the United States and the international coalition forces in Afghanistan has had various consequences, including casualties of Afghan civilians and international military forces, especially from the United States Army, and has had a heavy financial cost. Despite this, the Taliban returned to power in Afghanistan and human rights have been systematically and structurally violated by the Taliban since 15 August 2021, women and girls have been denied the right to work and to get an education. They have also been deprived of their lives by the Taliban. In this research, the legal dimensions and human rights consequences of the US invasion in Afghanistan will also be analysed and evaluated.

1.2. Research Questions

This research attempts to answer the following questions:

Was the invasion of America and its allies in Afghanistan based on international laws?

Was America's invasion of Afghanistan an attack for eradicating Al-Qaeda and the Taliban, or was it the occupation of a country?

What are the human rights and security consequences of the US invasion in Afghanistan?

1.3. Hypotheses

The US and its allies' attack on Afghanistan has violated the UN Charter and international laws.

After the US invasion, democracy was established in Afghanistan, and this country became the focus of the world's attention.

1.4. Methodology

The current research is a mixed type of both library and field research. The main research sources of the literature are scientific books, the United Nations Charter, international law and legal frameworks, journal articles, important articles and books related to the United States war in Afghanistan. The sources for the field research are credible subject-matter experts, Afghan and US lawyers, politicians and social activists of Afghanistan to seek their standpoints and views on the legitimacy or illegitimacy of the US war in Afghanistan. To collect data, books, international legal frameworks, conventions of international law and scientific articles were explored and studied first, thereafter, interviews and online questionnaires were created and carried out, and then data collection and synthesis were executed during the study. After completing the study and research, sheets were put together and, they were assessed, analysed and explained in detail.

1.5. The Necessity And Importance Of Research

On October 7, 2001, the US Air Force began attacking the Taliban regime in Afghanistan, marking the start of the Global War on Terror under the name Operation Enduring Freedom.

The important fact in evaluating the legitimacy of this war from the point of view of international law is that the September 11 attacks were an isolated incident

and were not part of a continuous series of attacks against the United States and its citizens. In relation to this point, was such a strong military response really necessary against the September 11 attacks? It can in disputably be argued that this war was not legitimate from the perspective of international law because the permission to start the war must be issued by the UN Security Council, and in this case, such permission was not given to the United States or other North Atlantic Treaty Organization (NATO) members.

Furthermore, the United States' reliance on Article 51 of the United Nations (UN) Charter, which refers to the right to self-defence, to justify the use of force against Afghanistan after the 9/11 attacks is unfounded. The concept of preventive or retaliatory legitimate defence has no place in the framework of international law. The US argument to justify this invasion has two fundamental problems: firstly, the country that the United States attacked was not the main base of Al-Qaeda, and secondly, the US an independent country that is trying to fight an organization that has never claimed to have links to the Afghan establishment.

These cases raise important questions about the authority of the United Nations and its performance as an international peacekeeping institution. If countries feel they can go to war without UN approval, then what legitimacy and power will this body have? It should be noted that international law clearly distinguishes between the use of force for revenge or punishment and self-defence. Governments, like individuals, should not play the role of caretaker. Also, in criminal law, legitimate defence is accepted only when there is an immediate threat of death or serious bodily harm. In general, the threat must be immediate, and the response must not exceed what is necessary to eliminate the threat. Hence, self-defence cannot justify physical retaliation against an attack that happened a few weeks after it occurred. This is a key issue, as the rhetoric from the US government's statements after 9/11 and just prior to the invasion attempted to make a direct connection between the terrorist attacks in New York and the impending attack on Afghanistan. However, international law does not allow a country to enter into war on the grounds of retaliation for prior acts. Moreover, such a feeble reason for going to war could be used by countless other countries too in order to justify an invasion that they consider legitimate.

1.6. Research Motivation

The event of September 11 brought a new change in the foreign policy of the United States of America. After that, the United States and the governments of the international coalition invaded Afghanistan. In relation to this invasion, lawyers and politicians have given different opinions; American officials, especially George W. Bush, the then president of the US, evaluated the September 11 event as a war and an armed attack and spoke of the right of Legitimate Defence to deal with it.

Goals such as the Legitimate Defence of the United States against terrorist acts with the slogan of fighting terrorism and establishing the country's hegemony over the international community. The main motive of this research is to explore and analyse data for legitimacy or illegitimacy of the US war in Afghanistan according to international law, international legal frameworks and conventions, the Charter of the United Nations and the American Constitution.

1.7. Research Purposes

This research aims to address the following topics:

1. Was the US intervention in Afghanistan and its subsequent presence (2001-2021) legal and legitimate based on the United Nations Charter and legal frameworks of international laws or not.

2. It will also try to explore the long and short-term consequences of the US intervention in Afghanistan.

3. The US invasion and intervention of Afghanistan under the pretext of fighting terrorism had been costly. What are the estimated financial cost of the war and the views surrounding it?

4. Despite the massive investment of the Western hemisphere in governance, capacity-building, civic and military capabilities of the Islamic Republic of Afghanistan, why the Taliban returned to power and conditions for this group's return to political power were favourable again for them?

5. How the US is managing its security objectives after the complete withdrawal of the US forces in 2021 through over the horizon capabilities such as reconnaissance and attack/lethal drones in Kabul and other provinces of Afghanistan.

1.8. Organization Of Research

This research is organized in five chapters. The first chapter deals with general explanation and research plan. An attempt is made to present theoretical underpinnings and prior research in the second chapter. In the third chapter, it's trying to recount a research problem and analyse the legitimacy or illegitimacy of the US war in Afghanistan. In the fourth chapter, research methodology, data analysis, the consequences of the United States invasion is analysed and evaluated and finally, the fifth chapter, concludes with recommendation and conclusion.



CHAPTER TWO

THE BEGINNING AND END OF THE AMERICAN WAR IN AFGHANISTAN

In 2001, the USA invaded Afghanistan in pursuit of the war on terror with the support of NATO and over 40 countries. For almost two decades, the USA has legitimized its military operations as 'Operation Enduring Freedom' 2001–2014 and 'Operation Freedom's Sentinel' from 2015–2021. At the beginning of this war, the United States only carried out airstrikes to suppress al-Qaeda and the Taliban in Afghanistan, and the USA's allies only provided it with military assistance, but in 2003, "NATO forces" were officially integrated alongside the US military in the Afghanistan war. Great Britain, Germany, Italy, Georgia, Romania, Poland, and Australia were the USA's main allies in the Afghanistan war. They stood with American military forces from the beginning to the end of this invasion.

2.1 Objectives Of The US Military Invasion Of Afghanistan

The American invasion of Afghanistan following the September 11 attacks in late 2001 (October 2001) was also carried out in line with the American strategy aimed at regime change in the countries. This conflict is also known as the American war in Afghanistan. Its general objectives were to eliminate Al-Qaeda as well as its safe base of operations in Afghanistan by removing the Taliban from power. The war followed the 1996–2001 Afghan civil wars between the Taliban and Northern Alliance groups, although the Taliban controlled 90 percent of the country by 2001. The American attack on Afghanistan became the first stage of the war in Afghanistan (2001–2021).

The United States President George W. Bush called for the expulsion of Al-Qaeda and the surrender of Osama bin Laden. Since 1998, the Federal Bureau of Investigation (FBI) has sought Bin Laden. The Taliban refused to extradite him unless they presented what they considered convincing evidence of his involvement in the 9/11 attacks, and ignored requests to close terrorist bases and hand over other terrorist suspects besides Bin Laden (Meyssan, 2002).

On October 7, 2001, the United States and Great Britain began Operation Enduring Freedom (OEF) after rejecting the request as a futile delay tactic. Later,

additional forces, including those of the Northern Alliance, joined the two on the ground. By December 17, 2001, the United States and its allies quickly pushed the Taliban out of power and established military bases near major cities in the country. Most Al-Qaeda and Taliban members were not captured or fled to neighboring Pakistan or retreated to rural or remote mountainous areas during the battle. In December 2001, the United Nations Security Council established the International Security Assistance Force (ISAF) to monitor military operations in the country and train the Afghan National Security Forces. At the Bonn Conference in December 2001, Hamid Karzai was elected as the caretaker government of Afghanistan.

In August 2003, the North Atlantic Treaty Organization (NATO) entered the conflict as an ally and took over ISAF. Part of the American forces in Afghanistan operated under the command of NATO, and others were under the direct command of the United States. Taliban leader Mullah Omar reorganized this movement and launched an insurgency against the government and ISAF in 2002 that lasted until the fall of Kabul in 2021 (Ryan, 2009).

The United States of America stated the official reason for the war as the "meaningless delaying tactics" of the de facto Afghan government at the time in response to American requests, and launched an attack on Afghanistan in October 2001. The demands of the US government from the then de facto Afghan government at the time (Taliban) were handing over Osama bin Laden, dismantling Al-Qaeda bases in Afghanistan and ending 40 supporters for terrorists in Afghanistan. The Taliban government refused to comply with this request due to insufficient US evidence.

After the death of Osama Bin Laden (the founder and leader of Al-Qaeda) in 2011 and the news of the death of Mullah Omar (the founder and leader of the Taliban) in 2013, the United States of America had achieved its goals in Afghanistan. Bin Laden was no longer in Afghanistan, Al-Qaeda bases in Afghanistan had been dismantled, and there was a government in Afghanistan that did not support terrorists (Zachary, 2014).

In relation to the war on terror, the historic event of 9/11 was undoubtedly the worst act of terrorism to occur on US soil. However, subsequent events, including justifications for the war on terror, have been heavily criticized. In the wake of 9/11,

several attempts were made to convince Taliban members to hand over the terror suspects. Perhaps if they did, foreign intervention in South Asia would not have happened (Misra, 2004).

One of the most important goals of the war in Afghanistan and the subsequent war in Iraq was to export democracy to the Middle East in order to stop supporting terrorists. In September 2006, the then president of the United States of America promised to build an Afghanistan where extremists could not oppress people, and where it would be a haven for terrorists. In this way, since 2014, the mission of the United States in Afghanistan has become changing the values of the people and promoting democracy. After pull-out of all NATO military forces from Afghanistan in 2015, the Taliban started attacking government positions more intensely.

This time Al-Qaeda gives way to the Islamic State of Iraq and Syria (ISIS) and attacks on cultural and educational centers such as universities began. At the end of the American military presence in Afghanistan, the corruption in the government system, the lack of value creation in remote areas, and the dependence of the central government of Afghanistan on foreign aid, practically made the American military presence in Afghanistan ineffective and endless. The United States had two goals in Afghanistan (Werbner, 2008).

One was to eliminate the causes of the September 11 incident and the other was to develop the civil society in Afghanistan and make Afghanistan an ally in Central Asia. Whether America has achieved all of its goals from this 20-year offensive, the longest war in the history of the United States of America, is debatable. However, the results of civil development in Afghan society need time to show themselves. But the return of the Taliban to power in Afghanistan with an unpredictable speed showed that democracy is a time-consuming process and cannot be dictated from above (Vorkink & Scheick, 2006).

Evidently, the international community shared many motivations to pursue the War on Terror. Following 9/11, the enemy was unclear, alien, foreign and mysterious to a certain extent (Steuter & Wills, 2011).

Although countering Al-Qaeda was seen as a just cause, ambitions to topple the Taliban regime and fight a non-state terrorist organization seemed questionable.

In the early days after 9/11, public outrage prompted the Bush administration to react quickly and decisively to avoid criticism (Jacobson, 2010).

The world wanted revenge for the crimes committed, but the prolonged intervention in Afghanistan and the strategies used during the war on terror have raised more questions (Wilner, 2010).

2.2 The US Invasion Of Afghanistan From The President W. Bush To Joe Biden

The American invasion of Afghanistan began during the time of George W. Bush (Bush Jr.) in 2001 and ended with the departure of the last American soldier in 2021 under the administration of Joe Biden. Additionally, the administrations of Barack Obama and Donald Trump were involved in the war in Afghanistan. The war lasted longer than estimated, and it generated human and material costs the United States and its allies in Afghanistan (Ahmad, 2020).

In this part, the administration and policy decisions of these four presidents are analysed based on the Social Contract Theory and the Social Choice Theory in the Afghanistan war. Before that, the social contract theory and Social Choice Theory are briefly mentioned.

A. Social contract theory:

The social contract theory deals with the concept of government legitimacy and political power from an implicit agreement between the rulers and the people. This theory is attributed to philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, and according to it, the government is obliged to protect the rights and security of citizens (Rousseau, 1762).

B. Social choice theory:

The social choice theory analyses how governments make decisions based on collective preferences and their effects on social welfare. Such as debates about democracy, elections, and collective preferences and has been developed by economists such as Kenneth Arrow and Amartya Sen (Arrow, 1951).

2.2.1. Bush Administration Policy On Afghanistan:

Bush's strategy in the "War on Terror" was not a clearly articulated policy. Rather, it was designed to mobilize Americans and obtain formal authorization from Congress to use force against the suspected organizers of the 9/11 attacks. It was a declaration of war, in which the goal was not simply to punish terrorists but to destroy them. The officials who were close to the military establishment —especially Defense Secretary Donald Rumsfeld, his deputy Paul Wolfowitz, and Newt Gingrich, a member of Rumsfeld's Defense Policy Board—were central to the decision making and execution of this strategy, advocating for the withdrawal of U.S. troops from Afghanistan after removal of the Taliban from power (Draper, 2007).

Once it had become clear that the Taliban would refuse to comply with the demand to "hand over the terrorists," the U.S. military launched "Operation Enduring Freedom" in October 2001. In the early stage of this operation, only Central Intelligence Agency (CIA) officers and special-forces were deployed to establish targets for aerial bombing and also to assist the Northern Alliance, a loose alliance between anti-Taliban warlords, in capturing several key cities from the Taliban (Tenet, 2007).

Several key warlords in the Northern Alliance were bribed with money and weapons by the CIA to fight for the U.S. cause because the military establishment was refusing to commit a large number of U.S. troops. The U.S. adopted a strategy of deploying minimal ground troops. Defense Secretary Donald Rumsfeld, supported by his fellow neoconservatives, believed that a large conventional force was not in the interest of the U.S.; instead, using local forces loyal to the U.S. with aerial support was deemed to be sufficient to remove the Taliban from power (Wawro, 2010).

The military establishment believed that the U.S. should do "something that counts," but "bombing some caves" in Afghanistan would not demonstrate the full power of the US (Gingrich, 2001).

It is clear that the primary objectives of the "Operation Enduring Freedom" were to remove the Taliban and to capture Osama bin Laden and other key leaders of Al-Qaeda as quickly as possible. The military establishment did not have any plan for a prolonged war in Afghanistan. During the planning of the invasion, President

Bush gave broad power to the Department of Defense (DOD) and CIA to manage the invasion. (Woodward, 2011)

Bush's political approach in the Afghanistan war has resulted in positive and negative points.

Positive points:

- Efforts to restore security and counter terrorism; After the September 11 attacks, the Bush administration decided to invade Afghanistan and destroy the Taliban, which had sheltered Al-Qaeda. Referring to the principle of maintaining national security, a fundamental principle of the social contract, Bush presented a legal and moral justification for attacking Afghanistan. This action aimed not only to protect American citizens but also to enhance international security. According to Thomas Hobbes, the main task of government is to provide security and prevent chaos. With this justification, Bush fulfilled his duty to American citizens (Hayes & Sedra, 2014).
- Attracting international support; Bush was able to get the support of some allied countries for the war in Afghanistan and form an international coalition. Attracting NATO countries' support and forming an international coalition showcased the Bush administration's ability to use collective decision-making processes. This effort provided a form of international legitimacy to American military operations in Afghanistan, reflecting an understanding of the importance of cooperation and collective decision-making in addressing complex international issues.
- Establishment of a new government in Afghanistan; Bush tried to establish a new and democratic government in Afghanistan with the help of the international community. Supporting the establishment of a democratic and electoral government in Afghanistan was an effort to restore legitimacy to the Afghan government and build trust between the people and the government. These efforts to strengthen democratic and legal institutions in Afghanistan show commitment to the principles of social contract. John Locke emphasizes that the government should

protect the natural rights of people, and Bush's attempt to establish a democratic government in Afghanistan can be seen as an attempt to protect these rights. After the overthrow of the Taliban, the interim government led by Hamid Karzai was formed in 2001, which is an initial step to create a stable and democratic government system, indicating an attempt to restore public trust.

- Efforts to create government structures; The formation of Loya Jirgas (councils of elders) and the holding of elections in Afghanistan was a way of using social selection mechanisms to decide on the political future of this country. By supporting the creation and strengthening of democratic institutions such as the Loya Jirga, Bush sought to create a structure that would strengthen collective decision-making and popular participation. This action was an attempt to adhere to the principles of social choice, which emphasizes transparency and participation. These measures can be considered as an attempt to create a democratic platform and strengthen civil institutions, which is important in terms of social choice (Csiszer, 2020).

Negative points:

- Lack of full participation and general agreement; Attack on Afghanistan without the broad approval of the international community and the Afghan people can be seen as a violation of the principles of the social and international contract. Unilateral decisions can damage the legitimacy of the government. The lack of full consultation with the international community and the Afghan people before the attack led to creating sense of distrust and not giving legitimacy to the operation. This is a flaw in the decision-making process that is based on public consensus. Rousseau believed that laws and decisions should be based on public will, and Bush's unilateral decisions can be seen as a violation of this principle (Veres & Csiszer 2018).
- Civilian casualties and human rights violations; Extensive military operations led to high civilian casualties and human rights violations. Civilian casualties and issues related to human rights violations, such as

drone strikes and secret prisons, were some of the weak points of the Bush administration in the Afghanistan war. These measures led to the distrust of the Afghan people in foreign forces and the reduction of the legitimacy of the local government. This issue is especially worrying from Locke's point of view, which considers the natural rights of human beings (the right to life, liberty and property) to be fundamental.

- Lack of transparency and false information; False information about the existence of direct threats and the Taliban's connection with Al-Qaeda led to wrong decisions. Using false or incomplete information about threats led to widespread mistrust and lack of support. This defect in the transparency of information is one of the biggest challenges of social choice that affects correct and fair decisions. In addition, Kenneth Arrow emphasizes that correct and complete information is necessary for collective decision-making, and a deficiency in this case can lead to incorrect choices (Csiszer, 2020).
- Social and economic consequences of war; The war caused widespread destruction and many economic and social problems for the people of Afghanistan, which indicated the failure to pay attention to all aspects of collective decisions. Failure to pay attention to the long-term consequences of the war, such as the destruction of infrastructures, the displacement of people and economic crises, indicated a flaw in the decision-making processes (Csiszer, 2022).

Despite this, Amartya Sen says that decisions should lead to the improvement of human well-being, and not paying attention to the social and economic consequences of war shows a deficiency in this field (Sen, 2009).

2.2.2 Barack obama administration policy on afghanistan:

The policies of the Obama administration in the Afghanistan war include numerous decisions during his presidency from 2009 to 2017. Obama tried to change the US military approach from a broad war to a focused fight against terrorism. This change included the increased use of drones for airstrikes and targeting of terrorist leaders, especially Al-Qaeda and the Taliban. In 2011, US special forces operations led to the killing of Al-Qaeda leader Osama bin Laden in Pakistan. This strategy

helped the Obama administration reduce direct military presence while increasing pressure on terrorist groups (Cooper & Stolberg, 2009).

The positive and negative points of the Obama administration's political decisions in the war in Afghanistan have been analysed based on social contract theory and social choice theory.

- Positive points:
- Protecting basic rights; During the administration of the war in Afghanistan, Obama was able to strengthen the rights of women and children to a great extent. For example, the development of educational and health programs for women and children in different regions of Afghanistan, which improved their living conditions. These measures not only refer to the respect of the fundamental rights of these groups, but from the point of view of the social contract theory, it is also interpreted as an implicit communication to maintain the security and happiness of the people.
- Transparency and information; During the administration of the war, Obama tried to provide complete and transparent information about military objectives, military operations, and the consequences of his decisions to the Afghan people. This type of transparency can be considered as an example of respecting the social contract and strengthening public trust in the political system.
- Group decisions; Obama has been careful in his decisions and has tried to consider different opinions of different groups. For example, in some military decisions, he consulted with generals and military managers to reach the best decision that would protect the interests of society.
- Analysis of secondary consequences; Obama has paid attention to the analysis of the secondary consequences of his decisions and has tried to make decisions that have the least negative effects on the Afghan society. This example shows attention to social choice and trying to protect the interests of different groups.

Negative points:

- Inability to manage the crisis; During the war period, Obama was faced with several challenges that show that there was an inability to create a comprehensive and codified strategy for managing the war and rebuilding after it. Delayed decisions or failure to respond appropriately to sudden challenges such as Taliban attacks, which are perceived as a violation of the social contract and the expectations of the Afghan people.
- Deficiency in the analysis of side effects; Some of Obama's decisions during the war showed insufficient or incorrect analysis of their side effects, which led to increased problems for the people of Afghanistan, and there are many examples in this case. In 2009, Obama decided to increase the number of American military forces and increase the use of drones to carry out airstrikes against terrorist leaders in Afghanistan, but this decision led to an increase in conflicts and military operations in different regions of Afghanistan. As a result, civilian casualties increased and many areas of Afghanistan became more unstable due to war and insecurity. Also, the wider American military presence in Afghanistan provoked anti-American sentiments and increased support for the Taliban in some areas.
- Lack of a comprehensive and codified strategy; In some cases, Obama has been unable to create a comprehensive and codified strategy for managing the war and reconstruction after it, which can be seen as a violation of the principles of optimizing social decisions in social choice theory. For example, Obama tried to advance peace talks with the Taliban. However, these efforts did not achieve tangible results due to the lack of a clear and comprehensive strategy and the lack of full cooperation from the Taliban. The failed negotiations made the Taliban feel more powerful and able to continue their attacks instead of reducing violence. This situation caused more insecurity and instability in Afghanistan.
- Delay in responding to sudden challenges; Some of Obama's decisions have shown a delay in responding to sudden challenges and the inability to make quick and effective decisions. This may be considered

as a violation of the principles of group decisions based on the principles of social choice theory.

In 2014, Afghanistan faced a serious electoral crisis. The differences between Ashraf Ghani and Abdullah Abdullah, the two main presidential candidates, led to a political stalemate that could lead to further instability and even civil war.

The Obama administration's response to this crisis was slow and delayed. Obama and his team lost a lot of time to mediate and find a suitable solution to this crisis. Although a power sharing agreement was finally signed between Ashraf Ghani and Abdullah Abdullah, this delay caused the Afghan people's trust in the democratic process and elections to decrease and political instability in the country to increase.

This crisis showed that the inability to respond quickly and effectively to sudden challenges can lead to political and social instability. The delay in responding to this crisis caused the political situation in Afghanistan to be deadlocked for a long time and created more problems for the people of Afghanistan.

Nevertheless, during the Obama administration, the emergence of the ISIS (Islamic State of Iraq and the Levant) group in Afghanistan, especially in the eastern regions of the country, was a new and sudden challenge that required a quick and effective response. This terrorist group was able to control significant areas in a short period of time and threaten people's security.

The Obama administration was slow to respond to this new threat. The initial efforts to deal with ISIS in Afghanistan were insufficient and the necessary measures were not taken in time. The delay in dealing with ISIS in Afghanistan made this group able to strengthen its presence in the country and become a serious threat to the security and stability of Afghanistan. This issue also led to an increase in civilian casualties and massive displacement of people.

2.2.3. Donald Trump administration policy on Afghanistan:

Donald Trump's presidency was associated with different policies compared to the Afghanistan war. Trump, who was the US president from 2017 to 2021, initially took a more interventionist approach, but eventually turned to reducing the US military presence in Afghanistan and negotiating with the Taliban. According to the

theory of social contract and the theory of social choice, Trump's administration and politics include positive and negative points.

Positive points of trump's administration in afghanistan war:

Emphasis on peace talks; The Trump administration moved towards peace talks with various groups in Afghanistan, with the aim of reducing violence and reaching agreements that would lead to an end to the fighting. Trump and his team started direct negotiations with the Taliban in 2018. These negotiations, which were carried out through the mediation of Qatar, were aimed at reaching an agreement to end the war in Afghanistan and the withdrawal of American forces from this country. Finally, in February 2020, an agreement was signed between the United States and the Taliban, according to which the United States pledged to withdraw its forces from Afghanistan, and the Taliban also pledged not to allow Al-Qaeda and other terrorist groups to enter Afghanistan attack America and its allies (Jenkins, 2017).

Efforts to reduce the military presence; The Trump administration decided to withdraw the US military forces from Afghanistan and moved towards reducing the military presence. This action was an attempt to respect the public interest and fulfill the social contract to end a long and costly war.

With the signing of the agreement in February 2020, the process of withdrawal of American forces from Afghanistan began. This process was supposed to be completed within 14 months, subject to the Taliban adhering to their commitments to reduce violence and cut ties with terrorist groups. However, until the end of Trump's presidency, the US military presence in Afghanistan remained, although it was significantly reduced (Wickett, 2017).

Support for local forces; The Trump administration emphasized the strengthening of local security forces in Afghanistan, to help them deal with armed groups. This was to respect the public interest and local sustainability. The Trump administration tried to reach an optimal decision by analysing multiple interests (US national security, cost reduction, Afghan sovereignty, interests of the Taliban and regional countries). This decision was taken according to different priorities and their influence on each other. Trump and his team sought to protect these benefits include:

A. America's national interests: National security: preventing terrorists from using Afghanistan to attack America. Reducing costs: reducing military costs through the withdrawal of troops.

Preserving credibility: showing America's ability to reach agreements and manage crises.

B. Afghanistan's interests: Security and stability: reducing violence and providing conditions for development and reconstruction. National sovereignty: strengthening the Afghan government and local security forces.

c. Taliban interests: Withdrawal of foreign forces: The main goal of the Taliban is to withdraw foreign forces from Afghanistan. Political identification: gaining international legitimacy and entering the political process.

D. Regional and global interests: Neighbour countries (such as Pakistan): ensuring that Afghanistan is not used as a base for attacks on neighbour countries.

The international community: fighting terrorism and preventing Afghanistan from becoming a haven for terrorist groups.

The negative points of the trump administration in afghanistan war:

Failure in peace talks; Trump's peace talks with the Taliban did not reach the desired results in some cases and the violence continued. This shows the violation of the social contract theory to achieve peace and security. Example: lack of agreement on the terms of negotiations and the continuation of Taliban attacks. Failure to control the internal situation in afghanistan after the military presence. After reducing the US military presence, the Trump administration could not succeed in ensuring stable order and security in Afghanistan. The increase in Taliban attacks and the inability of the local government to control the security situation after the reduction of the US military presence indicate the failure to control the internal situation in Afghanistan.

Failure to manage the humanitarian and economic crisis; The Trump administration has failed to manage the humanitarian and economic crisis in Afghanistan after the military presence. For example, the reduction of international aid and the inability to manage humanitarian crises such as lack of food and water in some areas of Afghanistan.

Ignoring the community's consent; In the analysis of Trump's policies in Afghanistan, several aspects can be examined as examples of ignoring the community's consent: Agreement with the Taliban without sufficient participation of the Afghan government and civil society: The agreement between the US and the Taliban, which was signed in February 2020, was largely carried out without the active participation of the Afghan government and civil society. This issue caused the dissatisfaction and concern of many Afghans who believed that this agreement has ignored their interests and demands.

Security and human rights concerns; Many members of the Afghan society, especially women and minorities, were worried that the agreement with the Taliban would lead to a return to the human rights situation during the Taliban regime. Not paying enough attentions to these concerns and not assuring the society about the protection of human rights increased mistrust and insecurity.

Decrease in trust in the government; The non-participation of the Afghan government in negotiations and decisions related to the future of the country caused a decrease in people's trust in the government. This decrease in trust can lead to the weakening of the constitutionality of the government and the government's inability to implement policies and provide security.

Consequences of ignoring community consent:

Failure to pay attention to the satisfaction and approval of society has resulted in the following consequences:

1. Decreasing the legitimacy of the government: Governments that make decisions without paying attention to the opinions and wishes of the people may face a decrease in legitimacy and an increase in public dissatisfaction. This can lead to protests, instability and even popular riots

2. Increasing insecurity: When people feel that the government does not pay attention to their concerns and demands, they lose their trust in government institutions. This can cause an increase in violence, the spread of illegal armed groups, and the weakening of public order.

3. Strengthening opposition groups: Ignoring the consent of the society can benefit opposition groups and rebels who use people's dissatisfaction to recruit and

increase support. In the case of Afghanistan, the Taliban could use these grievances to strengthen their position.

2.2.4. Joe Biden administration policy on Afghanistan:

Joe Biden's administration and his policy in Afghanistan, especially the decision to withdraw military forces from this country in August 2021, were accompanied by positive and negative points that had profound consequences for Afghanistan and the region.

The Biden administration's precipitous order to withdraw all US troops from Afghanistan, which was issued less than two months after President Biden entered office, was directly responsible for the collapse of the Afghan government and military and the Taliban's immediate takeover of Afghanistan. U.S. forces completed the withdrawal just four and a half months after the order was given, giving the Afghan government and military no time to reorganize to fight the Taliban alone. Once the withdrawal order was given, the US military, which played a critical role in keeping the Taliban at bay, focused exclusively on winding down its operations and safely getting its troops and assets out of country (Gordon, 2022).

Positive points of the Biden administration in the war in Afghanistan:

- Ending America's longest war; By deciding to withdraw American troops from Afghanistan, Biden ended the longest war in American history. This action showed his determination to end the military intervention that many Americans were tired of. The final pull-out of troops from Afghanistan in August 2021 led to the end of two decades of American military presence in this country. This action led to saving millions of dollars in military costs and human lives (killed and wounded soldiers).
- focusing on other domestic and international challenges; The Biden administration was able to direct its resources and attention to other domestic and international challenges after withdrawing from Afghanistan. This included domestic issues such as the economy, healthcare, and infrastructure, as well as external threats, including competition with China and Russia. The withdrawal of American forces from Afghanistan allowed the Biden administration to focus on

domestic policies such as infrastructure reconstruction programs and the fight against the Covid-19 pandemic.

The negative points of the Biden administration in the war in Afghanistan:

- The rapid fall of the Afghan government and the Taliban's rise to power; the swift overthrow of the Afghan government and the emergence of the Taliban were two of the main criticisms level at Biden's administration in Afghanistan. This incident caused a humanitarian and security crisis. After the withdrawal of American forces, the Taliban took control of Kabul within a few weeks and the government of Ashraf Ghani fell. This led to a great humanitarian crisis and thousands of Afghans were forced to leave the country.
- poor management of the evacuation process; The process of evacuation of the United States forces and Afghans who had cooperated with US faced serious problems. Images of chaos at Kabul airport, where thousands of people were trying to flee the country, became a symbol of the poor management of this exodus. In August 2021, Kabul airport witnessed a lot of chaos and violence. Thousands of Afghans tried to leave the country through military and civilian planes. This situation led to the death of a number of people and the wounding of many others.
- Weakening trust in America at the international level; The withdrawal of American forces from Afghanistan and the rapid fall of the Afghan government weakened the confidence in America's ability and commitment to its allies. Many of America's allied countries became worried about whether they could trust America's security and defence commitments in other regions. This issue was reflected especially among NATO countries and America's Asian partners
- Human crisis and human rights; The Taliban's return to power led to a human rights crisis. Many Afghans were in critical situations due to the fear of Taliban retaliation especially those who had cooperated with international forces. After seizing power, the Taliban began to impose strict Islamic laws that included severe restrictions on women's rights and civil liberties. This issue gave rise to widespread international

concerns about the human rights situation in Afghanistan .What are the consequences of the withdrawal of US military forces and their allies from Afghanistan in this country? Based on a survey conducted in this research, you can follow it in the fourth chapter of this research.

2.3. Governments And Organizations Allies Of The Us Military Attack In Afghanistan

America's main allies in the invasion of Afghanistan had been NATO member countries and allied governments of this organization (Australia, New Zealand, Azerbaijan, Jordan and Singapore). Just after one day following the attacks, NATO approved and launched at jet speed the Article 5 for the first time in its history which was referring that an attack on one of its allies would be considered an attack on all members (Rühle, 2017).

And multinational organizations, including the UN, placed counterterrorism at the top of their security agendas (Sadık, & İspir, 2021).

According to the reports of the American government and the NATO organization, in the first years, the number of American military forces and its allies in Afghanistan, among them, the United States had the largest share among ISAF forces with 15,000 troops (the US had about 28,000 troops in Afghanistan). 15,000 of which were under the command of NATO and the rest under the command of the US. After the United States, the UK with 7,800, Germany with 3,210, Canada with 2,500, and the Netherlands and France, with 1,650 and 1,515 respectively, were the largest forces. Among the ISAF forces in their five regional bases were roughly divided as follows: centre: 3,000 troops - North: 4,000 troops - West: 2,300 troops - East: 15,000 troops - South: 19,000 troops.

Initially, the ISAF/NATO forces had been responsible for establishing security in Kabul and its surrounding areas against the Taliban, Al-Qaeda and other fighters to prepare the ground for the establishment of the transitional government of Afghanistan headed by Hamid Karzai. In October 2003, the UN Security Council authorized the expansion of ISAF's mission to the whole of Afghanistan, and subsequently, NATO/ISAF military forces continued their mission throughout Afghanistan with US forces in military operations (Malkasian, 2021).

Türkiye is one of the NATO members whose military forces were present during the 20 years of the American war in Afghanistan, but they were non-combatant. In 2001 Türkiye took part in the International Security Assistance Force with 300 troops on the condition that it would not deploy its troops for explicit counterinsurgency or counterterrorist operations. It assumed the role of ISAF commander twice: first from June 2002 to February 2003 (ISAF II); and second from February 2005 to August 2005 (ISAF-VII).

During the first period Türkiye, which initially had only 276 personnel, increased its troop number to 1300. During the ISAF-VII term, Türkiye commanded 8,000 personnel from 30 countries, including 1,450 Turkish personnel. During this period it also operated the Kabul International Airport. In addition, the Turkish Armed Forces took over the Kabul Regional Command (the Regional Command Capital) on 1 November 2009, and their mission had been extended by one-year periods since then. Turkish military forces had a mission under the NATO organization in the training of Afghan military forces and security of Afghanistan (Kaya, 2014).

2.4. Groups And Networks That Fought With The Us And Its Allies In Afghanistan

The United States and its allied governments fought Al-Qaeda and the Taliban regime in Afghanistan. By November of the 2001, the Taliban regime was overthrown, but the American forces were still looking for Osama Bin Laden, and Bush was sending more troops to Afghanistan. In May 2003, the Pentagon announced that the main combat operations in Afghanistan had ended. From now on, America and its international partners focused on rebuilding Afghanistan and establishing a Western-style political system in Afghanistan. But the war did not end and America sent more soldiers to Afghanistan every day.

In 2004, at the beginning of Bush's second term, the number of American soldiers reached 20,000, and by 2009, at the end of Bush's presidency, the number of soldiers had increased from 1,000 to 30,000, and the war continued in a different form. The purpose of sending these troops was war operations against the resurgence of Taliban forces. The Obama administration wanted more cooperation with Pakistan after the relations between the Taliban forces of Pakistan and Afghanistan were

revealed. In December 2009, about 30,000 more soldiers were sent to Afghanistan (Ward, 2017).

This was in addition to the 68,000 soldiers already stationed in Afghanistan.

By August 2010, the number of American troops stationed in Afghanistan had reached 100,000. This was the largest number of troops that America had in the 2 decades of war in Afghanistan. In 2011, Obama announced that the US military and the agents of the United States Central Intelligence Agency (CIA) managed to find and kill Osama bin Laden - the mastermind of the September 11 attacks. Bin Laden was found and killed not in Afghanistan, but in Pakistan. After killing Osama bin Laden, America turned to diplomacy and once again, the US government focused its efforts on training and helping the Afghan security forces (Rogers, 2004).

2.5. The Reasons Of The Taliban's Return To Power In Afghanistan

Taliban militants retook Afghanistan almost two decades after they were driven from Kabul by US troops. Although Afghan security forces were well funded and well equipped, they put up little resistance as Taliban militants seized much of the country following the withdrawal of US troops beginning in early July. On August 21, 2021, Afghan President Ashraf Ghani fled the country, abandoning the presidential palace to Taliban fighters. Already, US officials have admitted that they miscalculated the speed at which the Taliban were able to advance across the country (Bergen, 2021).

2.5.1. Internal factors

The Afghan government lacked legitimacy. The two presidential terms of Ghani and Hamed Karzai were through fraudulent elections. A government that is undemocratic and needs external support cannot stand against militias when there is no external support.

The spread of corruption in the army corps, the lack of high morale among the army of the former Afghan government, the huge costs of the war, not cutting off the financial resources of the Taliban, tribal nationalism in the body of the former government, especially among the army, the support of the countries of the region to the Taliban under the title of conflict with ISIS, are the internal factors which led the Taliban to be back in power.

2.5.2. External factors

Strategy is the art of choice that binds means with objectives. It is the highest level of thinking about war, and it involves priorities (we will devote resources here, even if that means starving operations there), sequencing (we will do this first, then that) and a theory of victory (we will succeed for the following reasons) (Cohen, 2009).

But the American strategy was not clear regarding the outcome of the invasion of Afghanistan. After 20 years of war and military presence, the US government and its allies ended the longest war with a hasty and chaotic withdrawal of troops. And one of the main reasons for the failed US war in Afghanistan, the flawed strategy of the United States invasion of Afghanistan led to the fall of Kabul offers a key lesson: nations develop from within. By providing foreign aid to the Northern Alliance, America kept Afghanistan on a ventilator and maintained relative peace .

Also, leaving without reaching an acceptable peace agreement for the administration of Afghanistan was the main reason for the collapse of the Afghan army and the inability to maintain positions by Afghan military force. When America had a military presence in Afghanistan, the Afghan army could hardly manage half of Afghanistan (Dinstein, 2012).

However one spins it, the reality is that the US–Taliban peace deal of February 2020 enabled and empowered the Taliban in a major way. The deal was widely seen in Afghanistan and elsewhere too, as a pact highly advantageous to the Taliban. The reclusive Taliban supreme leader Mullah Hibatullah Akhundzada had declared the deal, “a collective victory of the entire Muslim and Mujahid [fighter] nation”—quite an exaggerated claim. Still, the Taliban had no intention of marching on Kabul anytime soon. It was also the failure of the poorly conceived intra-Afghan dialogue—the negotiations between the Ghani government and the Taliban after the US-Taliban deal—that paved the way for the Taliban’s return to power.

The Taliban were soon to reemerge as the sole arbiter of Afghanistan’s destiny. The one factor that had helped the Taliban more than anything else during the final phase of the insurgency was the release of roughly 5,000 of its fighters from prisons, including several hundred highly dangerous lawbreakers who were found to have been involved in murders, kidnappings, drug trafficking and even terrorism.

While Ghani attempted to resist, the Trump administration served as an ardent advocate for the Taliban's demand for prisoner release as per the deal. During a phone conversation, Mullah Abdul Ghani Baradar, a top Taliban leader also spearheading the negotiation team in Doha, asked Trump to intervene, complaining about Ghani, which triggered Trump to threaten Ghani by saying, "If there is a perception that the big picture is being sacrificed for small matters then we are ready to change our relationship." Ghani complied.

What went in the Taliban's favor was the fact that they had already done their part, with the timely release of around 1,000 Afghan security personnel in their custody in accordance with the deal. The release of Taliban prisoners unquestionably gave a boost to Taliban morale and aided them through the additional human resources made available for their various battlefronts at a crucial time.

On the intra-Afghan negotiation table, both sides stonewalled each other to the best of their ability. Zalmay Khalilzad, and more so his team, wanted the final US withdrawal to be conditional on the success of the intra-Afghan negotiations, but Trump insisted on sticking to the timeline. Biden followed that path even more rigorously. Those opposed to the Taliban were understandably more frightened now, seeing the Taliban resurgence unfold before their eyes, and many succumbed to pressure when the Taliban demanded obedience.

Their lives and those of their family members were at stake. The Taliban's military successes on the ground were swifter and more devastating as a result, even in the north which had never been their stronghold. The psychological impact of all this was visible and tangible; encouraging for the Taliban and depressing for their opponents. (Abbas, 2023)

2.6. Evaluating The Presence Of Al-Qaeda And Other Terrorist Groups In Afghanistan As A Result Of This War

The Taliban have kept up a close relationship with Al-Qaeda despite having pledged to stop cooperating with terrorist groups, permitting the militants to conduct training in Afghanistan and deploy fighters alongside its forces. The Taliban's association with Al-Qaeda has continued even though the insurgency signed an agreement with the U.S. that bans cooperation with or hosting of terrorist groups (Dilanian & Kube, 2021).

On February 29, 2020, the US and the Taliban finally signed the landmark “Agreement for Bringing Peace to Afghanistan” in Doha, with dozens of diplomat from across the world in attendance.

As part of the agreement with the U.S. government, the Afghan Taliban has pledged to break from Al-Qaeda and ban the use of Afghan territory for terrorism against other countries. When the United States withdrew from Afghanistan in August 2021, there was considerable uncertainty on the future of terrorist threats from the country and concern about the Taliban’s political direction. Two years after the U.S. withdrawal, some dimensions of the threat have crystallized: As a regime, the Taliban remain allied with various terrorist groups (Cronin, 2006).

The U.N. reported that Al-Zawahiri personally negotiated with senior Afghan Taliban leadership to obtain assurances of continued support. These talks appear to have been successful; the Afghan Taliban has neither publicly renounced Al-Qaeda nor taken any discernible action to crack down against it. Representatives of the Afghan Taliban who interact with the press also remain evasive when asked to clarify their position on Al-Qaeda. In select instances, the Taliban insist that there are no foreign fighters in Afghanistan and when the US government located Al-Qaeda leader Al-Zawahiri in Kabul, Afghanistan, before killing him in a drone strike. It is a fact that the Taliban had returned Zawahiri to Kabul, despite repeated assurances to U.S. negotiators both before and after the Doha agreement that they had distanced themselves from Al-Qaeda, significantly elevated concerns. Consequently, even in the face of major costs, important Afghan Taliban leaders, such as the Interior Minister of the Taliban, Siraj Haqqani and other members of the Haqqani Taliban network, remain sympathetic to Al-Qaeda (Abbas, 2023).

Al-Qaeda leader Ayman al-Zawahiri’s presence in Kabul before his death in a U.S. drone strike suggests that the movement’s leadership continued to see Afghanistan as a preferred location for its political central nerve as well as to continue leveraging long standing relationships with the Taliban. Earlier in 2022, U.S. intelligence assessed that the Taliban were still maintaining ties with Al-Qaeda’s senior leadership despite their stated commitments in the 2020 U.S.-Taliban Doha agreement to prevent international jihadists, including Al-Qaeda, from using Afghan soil to threaten the United States and its allies. When news broke publicly in August that Al-Zawahiri reportedly had been protected in a compound linked to the

Taliban Interior Minister Sirajuddin Haqqani, proof of Al-Qaeda's comfort in Taliban-ruled Afghanistan seemed all but certain.

Concerns that a stronger and more stable Taliban regime will provide greater opportunity for terrorists and incubate terrorist threats are well-founded. For one, despite their repeated stated commitment to not allow their territory to be used by terrorists against other countries, the Taliban remain supportive of several terrorist groups in the country, providing them both sanctuary and material assistance. This includes al-Qaeda senior leadership and al-Qaeda's South Asia arm, al-Qaeda in the Indian Subcontinent (AQIS); anti-Pakistan groups such as the TTP and the Hafiz Gul Bahadur group; Central Asian militants with political aims against Uzbekistan and Tajikistan such as the Islamic Movement of Uzbekistan (IMU), Katibat al Tawhid wal Jihad (KTJ), and Jamaat Ansarullah; and the anti-China Turkistan Islamic Party (TIP).

The Taliban's policy of supporting the range of these terrorist groups is not borne out of weakness or capacity constraints. The Taliban are a formidable political movement, and their top leader, Hibatullah Akhundzada, appears committed to the agenda of implementing an Islamic Emirate that protects his interpretation of the religion, prepares an army, and wages jihad.¹⁶ The Taliban also appear to align with the aspiration of their allies against their respective adversaries, even if they do not partake in their acts of violence at every turn, at least directly. The Taliban view jihadi foreign fighters as political dissidents with legitimate political causes who deserve their support.

There is the possibility that the Taliban see allied groups as a source of leverage for their own regional security and broader foreign policy objectives, though evidence on this being a motivation remains thin. Nevertheless, the Taliban see advancement of jihadi ideas through social and education policies as one of the main projects of their statehood. A stronger and more stable Taliban regime may thus lean into these logics and be emboldened into supporting various armed groups in the country instead of backing off from them (Rashid, 2002).

CHAPTER THREE

LEGITIMACY OR ILLEGITIMACY OF THE US WAR OF AFGHANISTAN

This chapter investigates the legality of the 2001 invasion of Afghanistan in light of international law. In essence, references will be made to both customary international law and the United Nations Charter. Since the objective of this chapter is to evaluate the conflict in a legal context, moral and pacifist considerations are not strongly relied upon. The opinions of legal experts and politicians will also be analyzed to determine the legitimacy of the war.

3.1. Definition Of Invasion/Intervention

An invasion is a military offensive consisting of all, or large parts of the armed forces of one geopolitical entity aggressively entering territory controlled by another such entity. The objective can be to conquer, liberate, or re-establish control or authority over a territory, altering the established government, or gaining concessions from said government, or a combination thereof. An invasion can be the cause of a war, be used as a part of a larger strategy to end a war, or it can constitute an entire war in itself. Invasions are large scale operations involving significant military forces and complex planning, as well as having significant impact on the territory and its people being invaded. Some of these consequences can be beneficial to those invaded, even if not immediately. On many occasions, cultural development occurred as a result of the interactions among invaders and invaded. Some invasions have unintended and unforeseen consequences.

The motivation of the invaders ranges from desire for control over an area for selfish reasons, to recapturing an area previously under their control, to the liberation of others from an oppressor. Thus, while violent conflict, which usually accompanies any invasion, can be judged as not an ideal way for entities to relate, invasions themselves are not necessarily the result of evil or self-centered motivation. And even when they are, the outcome may prove beneficial to the societies involved. There are many different methods by which an invasion can take place, each method having strengths and weaknesses. They include invasion by land, sea, or air, or any combination of these methods (New World Encyclopedia, 2004).

3.2. Legal Reviews Of Us And Nato Invasion Of Afghanistan

The US invasion of Afghanistan is one of the longest contemporary conflicts involving an international coalition of military forces. The legality of this invasion based on the United Nations Charter is explored and analysed.

3.2.1 The war on terror and just war theory:

Just war doctrines originated in Catholic moral theology from the Middle Ages, which is where the idea of just war first emerged. According to St. Augustine of Hippo and St. Thomas Aquinas, these teachings belonged to "holy warriors" and "religious pacifists" (Walzer, 2004).

In practice, just war theory is deeply problematic because it leaves too much room for self-serving arguments. The two main components of this doctrine are related to the decision or right of war (*jus ad bellum*) and conduct during war (*Jus in Bello*), which is explained in the framework of dispute resolution by Ramsbotham. Given the foreign intervention in Afghanistan, assessing whether the US has invaded just war criteria requires a brief examination of the right to war. Raines describes five main characteristics of *jus ad bellum*: (a) A legitimate reason for going to war must exist; (b) a legal authority must decide the matter. c) Only when absolutely necessary and as a last resort should force be employed; (d) There must be a reasonable hope of success, with peace as the expected outcome; and (e) the use of force must be proportionate and discriminatory.

A significant third element that pertains to post-conflict scenarios is *jus post bellum*, which views the end of war as one of its effects. (Ledwidge, 2013)

The importance of a just war is one of the numerous philosophical, legal, and political issues raised by just war theory. It is inevitable that war will involve the use of force, and many people will probably be killed (Walzer, 2006).

Therefore, in order to determine whether lethal force can be used with the proper intent and in ways that are morally acceptable in the eyes of the international community, it is imperative that intellectual efforts be made to understand legitimate uses of force in morally worthy pursuits. (Patterson, 2012)

In the context of the War on Terror, the most horrific act of terrorism to take place on American soil was without a doubt the historic global event known as 9/11.

The subsequent events, such as the defenses offered for the War on Terror, have drawn harsh criticism, though. There were multiple attempts to convince Taliban members to turn over terror suspects in the wake of 9/11 (Misra, 2004).

External intervention in South Asia might not have occurred if they had taken this action. However, the Taliban's lack of cooperation caused attempts at non-violent negotiations to fail at a crucial juncture when the United States did not want to fail and did not support cooperation with terrorists (Misra, 2004).

The USA's declaration of the War on Terror as an act of self-defense led to a swift turn to military action. Due to their resolve "to combat by all means threats to international peace and security caused by terrorist acts," the UN Security Council issued Resolution 1368, authorizing a "War on Terror" (The UN Security Council, 2001). Resolution 1368, however, makes no mention of legitimizing an invasion. As a result, the United States launched military strikes without consulting the Security Council (Cortright, 2011).

Additionally, in an attempt to legitimize the use of force, the 107th Congress passed a joint resolution known as "Authorization for Use of Military Force" (AUMF), which gave the President the right to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001" (Walsh, 2019).

The perceived threat of additional terrorist attacks grew more real in the days after 9/11, making military action to safeguard the global community unavoidable (Misra, 2004).

The strategies included fighting Al-Qaeda and the Taliban government, which provided sanctuary to terrorist groups like Al-Qaeda. Thus, the Bush Administration and the public viewed the combined goals of combating Al-Qaeda, overthrowing the Taliban government, and apprehending the 9/11 perpetrators as "just purposes" (Cortright, 2011).

The USA was right to hold the Taliban responsible at this time for permitting Al-Qaeda to establish a base in Afghanistan. Therefore, it is possible that the Taliban could also be held partially responsible for 9/11. Because defeating the Taliban would prevent the organization from operating, the external intervention was

therefore justified. However, it was never made clear if the Taliban were 'just an obstacle' to reaching Al-Qaeda or an enemy of the West (Carati, 2015).

Furthermore, until the United States started to occupy Afghanistan, the Taliban's primary adversary was never the West. In principle, the strong support for US military intervention in Afghanistan cannot be denied.

At the time, intervention in Afghanistan was an ideal way to punish Osama bin Laden and the Taliban for their actions. (Jacobson, 2010)

Additionally, Bush was seen as God's choice to lead the United States in a worldwide conflict between good and evil. Consequently, the public began to view the fight against terrorism as a religious obligation. (Jacobson, 2010)

There was growing global support for forcing democracy on countries that needed it, and President Bush adopted the concept of forced democratization to fight terrorism in the Middle East (McCauley, 2002).

However, the Bush administration never seriously considered an alternative to the war in Afghanistan. As mentioned, the United States saw little hope and opportunity for cooperation with the current system and preferred regime change in Afghanistan, which led them to pursue a war on terror rather than reconciliation. The United States of America, a sovereign nation and legal authority, has declared war on terrorism in a formal and public manner. This is consistent with the traits Raines (2002) outlined. Also, the pursuit of a 'Crusade', as former President George W. Bush described it in his speech, 'evokes images of a spiritual war originating not with governments but with God' (Stewart and Wills, 2011).

It was a mistake to give a strong ideological character to the war on terror (Corten, 2008).

The symbolic rhetoric used in this speech elevated the moral status and credibility of terrorists from murderers to soldiers (Cortright, 2011).

The Taliban unintentionally banded together Islamist terrorists in response to Bush's announcement in order to counter the immoral plans of the West (Misra, 2004).

The war on terror served as a rallying cry for the jihadists against the American crusaders (Kaldor, 2013).

According to early strategists, the intervention would likely last for months into the spring, but it would only last for a few weeks before winter (Rogers, 2004).

Maybe if someone knew that this intervention would last for decades, they would not have followed the military strategy. Obviously, the international community had many motivations to pursue the war against terrorism. But the question remains whether they were just. After 9/11, the enemy was somewhat undefined, alien, foreign, and mysterious (Sholtis, 2014).

It was not an identifiable entity as the armed invasion of Nazi Germany during World War II. Although fighting Al-Qaeda was viewed as a legitimate cause, the desire to overthrow the Taliban government and combat a terrorist non-governmental organization appeared dubious (Cortright, 2011).

3.2.2. Us invasion of Afghanistan under the legal framework:

The legitimate defense clause in Article 51 of the United Nations Charter is one of the substantive rights that were invoked to support the need for invasion. Self-defense, according to the United States, was the justification for its actions. This defense was employed because it was argued that additional terrorist attacks would take place in the US and other countries if Afghanistan was not restrained.

The Afghan people themselves, however, have the right to bring up the subject of self-defense as opposing NATO forces and their alleged aggression may be seen as both individual and national self-defense, rejecting the US belief in collective and national self-defense.

Additionally, it should be mentioned that a government working hostilely against the United States did not carry out the 9/11 terrorist attacks. These were the acts of a terrorist group that was not directly affiliated with any nation's government. Afghanistan might use this reasoning to claim that, since the 9/11 attacks cannot be clearly linked to Afghanistan, the reaction of Afghans who later joined resistance groups was reprisal for the US preemptive strike.

One may argue that, in terms of a nation against a non-state entity, Saudi Arabia would make more sense than Afghanistan if the United States were forced to launch a strike in order to destroy Al-Qaeda. This stems from a number of reports over the years that claim Saudi aid was used to create, finance, and train Al-Qaeda.

However, even though governments and international organizations strongly oppose the Taliban, regime change alone is not a compelling enough reason to allow an attack by another country.

Therefore, this justification for intervention by the occupying troops would not be seen as credible or permissible with international law; this defense of the occupying troops' action is deemed invalid and unacceptable. Furthermore, as the Taliban sought to rid Afghanistan of "warlords and bandits," the majority of Afghans first embraced them. For this reason, a different storyline developed following the invasion: NATO forces invaded Afghanistan as part of a humanitarian mission with the goal of freeing the Afghan people and establishing democracy by overthrowing the Taliban leadership.

Article 2(3), which declares that all conflicts must be settled amicably in order to maintain international peace and security, is another significant aspect of the Charter that should be brought up. This article suggests that not enough work has been done to ascertain whether or not this approach will accomplish the objectives that the United States sought from Afghanistan. The fact that former US President George W. Bush addressed the matter in a threatening manner, including granting the Taliban just two weeks to turn up suspected terrorists, demonstrates how this piece was totally disregarded.

Analysis is necessary of the contentious and compelling topic of a state's use of force against a non-state actor. The Taliban were the only government in Afghanistan at the time of the 9/11 attacks and the ensuing invasion, not Al-Qaeda. Therefore, it is possible to argue that the war in Afghanistan, which aims to eradicate a non-state entity, goes beyond the bounds of necessity and proportionality. This is because an invasion on Afghanistan to destroy the Taliban may be deemed excessive and, hence, illegal under the law because Al-Qaeda did not have the same level of power and authority there (Semple, 2020).

Another key issue that needs to be addressed here is the principle of government sovereignty. Afghanistan was invaded mainly because people the US considered terrorists linked to the 9/11 attacks and who were living in Afghanistan at the time were not extradited to the US. But it seems that instead of rushing to the conclusion that aggression is the only means for the US to achieve its goals, it could

have followed dialogue and diplomacy to reach an agreement. This is due to the fact that international law stipulates that prior to resorting to military action, alternative means of resolving conflicts must be explored. This is affirmed by Article 2(4) of the UN Charter, which states: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any country or in any way inconsistent with the purposes of the United Nations (United Nations, 1945).

But given the fact that the US government believed it was acting to prevent further civilian casualties from the Al-Qaeda heart in the future, such objectives might be viewed as humanitarian rather than territorial or political, as was done in Kosovo, which would make people think that such an operation was more acceptable than any other kind of conflict

.This gives the impression that this kind of operation is more acceptable than any other kind of warfare. But according to the United States and the United Kingdom, the strike was legitimate since it was carried out in accordance with Article 51's provisions on self-defense of the UN Charter.

This raises questions about the extent and authority of the United Nations as an international peacekeeping force. If nations believe they can wage war without the UN's approval, what authority and credibility does the UN actually possess? Furthermore, if governments can behave in such an aggressive way without suffering repercussions, what guarantees that another expensive and devastating conflict won't break out soon? It should be noted that international law must be clearly distinguished from the use of force for revenge or punishment; governments, like persons, must not act as vigilantes. Second, self-defense may be used under criminal law where there is an immediate risk of death or serious physical damage. In general, the threat ought to be there right away, and the reaction shouldn't go beyond what is practically required to neutralize it. Therefore, generally speaking, physical reprisal against an assault that has taken place weeks after it has occurred cannot be justified on the grounds of self-defense."This is a key issue, as the US administration's rhetoric after 9/11 and just before the invasion made a direct connection between the terrorist attacks in New York and the impending action in Afghanistan."

In reference to the punitive character of the invasion, international law expert Marjorie Cohen declared, "The bombing of Afghanistan by the United States and the United Kingdom is illegal." A nation cannot wage war in retribution for an earlier action under international law. Furthermore, countless other countries can defend what they consider to be legitimate aggression by using such a feeble excuse for war (khan, 2013).

3.2.3. Resolutions of the united nations security council:

The United Nations Security Council recently issued two resolutions in reaction to the 9/11 attacks, which included details on the proper course of action. Resolutions 1368 and 1373, which addressed "threats to international peace and security caused by terrorist acts," were the two resolutions that were passed. Neither resolution had any objectionable language that might be used to support military action, nor did it authorize military action on the ground in Afghanistan in response to these acts. Additionally, the new resolution affirms that the United Nations supports "international efforts to eradicate terrorism" and acknowledges that terrorism is a problem that has to be addressed, but it also professes its strong support for terrorism.

The efforts of the Afghan people to create a new and transitional administration that will lead to the formation of a government. None of this referred to the United States or other NATO members endorsing any military forces in Afghanistan (Filkins, 2009).

3.2.4 Under international law, operation Enduring Freedom (OEF):

An important fact to consider in evaluating the legality of the war in Afghanistan is the fact that the 9/11 attacks were a single, isolated incident and were not part of a continuing series of attacks against the US and its citizens. On a related note, was there really a need for such an aggressive response to the 9/11 attacks? Undoubtedly, it can be claimed that this war was not legal according to international law because the criterion that must be met for the legal conduct of war is the authorization of the UN Security Council. In this case, no such authorization has been given to the US, UK, or any other NATO member. Furthermore, the United States' claim regarding Article 51 of the UN Charter, which deals with self-defense,

that it had the right to use force against Afghanistan after the 9/11 terrorist attacks, is baseless. The concept of preventive self-defense or retaliatory self-defence has no basis in international law.

There are two main problems with America's reasoning for the invasion: first, the country it was attempting to attack was not the primary base of Al-Qaeda; second, the United States is an independent nation attempting to defend it-self. An organization that has never claimed to be related to the Afghan organization. So, according to the American way of thinking, the country to follow was Saudi Arabia. As mentioned earlier, this is because Saudi Arabia was funding Al-Qaeda and allowing Al-Qaeda to operate without any problems within its borders. Furthermore, like Saudi Arabia, Afghanistan had no direct connection to 9/11, as none of the 9/11 terrorists were Afghan nationals, but some were Saudi nationals (Rogers, 2004).

3.3. Exercising The Jurisdiction Of The Court Regarding The Crime Of Invasion-Intervention

3.3.1 International criminal court:

The International Criminal Court (ICC) started its work in The Hague, Netherlands in 2002 with the aim of helping to establish and maintain peace and security in the world. 123 countries accepted the statute of this court and Afghanistan joined it in 2003.

This court, which is the first permanent international court, was established to try those who commit the most serious crimes, including crimes against humanity and war crimes. The Hague International Court has jurisdiction over four serious crimes: genocide, crimes against humanity, war crimes and territorial aggression. Of course, the court's jurisdiction over the crime of territorial encroachment is currently suspended (Ardebili, 2018).

Substantive law that was used to justify the need for the invasion includes Article 51 of the UN Charter, which deals with the issue of self-defence. The United States believed its actions were justified on the grounds of self-defence. The argument was based on the idea that additional terrorist attacks will take place in the US and other countries if Afghanistan is not restrained. However, the Afghan people themselves can bring up the subject of self-defence as opposing NATO forces, and

their alleged aggressiveness might be interpreted as individual self-defence and a rejection of the US claim of national and communal self-defence.

Furthermore, it is critical to keep in mind that no antagonistic government carried out the 9/11 terrorist attacks. They were the acts of a terrorist group that was not directly affiliated with any nation's government. Since the 9/11 attacks cannot be clearly linked to Afghanistan might use this reasoning to claim that Afghans who later joined resistance forces did so in reprisal for the US preemptive action. One may argue that, in terms of a nation against a non-state entity, Saudi Arabia would make more sense than Afghanistan if the US were forced to launch a strike in order to destroy Al-Qaeda. This is due to the fact that several reports throughout the years have implied that Saudi Arabian assistance was used to organize, fund, and train Al-Qaeda. This is affirmed by Wikileaks cables that mention this fact (Frank, 2004).

Thus, regime change alone is not a strong enough justification to permit an assault by another nation, notwithstanding the governments and international organizations' overwhelming opposition to the Taliban. As a result, international law does not accept this defence of the occupying troops' participation as legitimate or acceptable. At first, the majority of Afghans embraced the Taliban since they sought to rid the country of "warlords and bandits." This is why, after a while, a different storyline surfaced, which claimed that NATO's invasion of Afghanistan was a humanitarian effort. Additionally, the mission's goal was to end the Taliban's control in Afghanistan in order to free its citizens and establish democracy (Kriang, 2001).

Another important part of the Charter that needs to be mentioned is Article 2(3), which states that all disputes must be settled in a peaceful manner to ensure global peace and security. Considering this article, it seems that not enough effort has been made to determine whether the goals that the United States wanted from Afghanistan to be achieved in this way. Former US President George W. Bush's menacing tone when addressing the issue, including giving the Taliban only two weeks to hand over suspected terrorists, shows that this article was completely ignored.

Analysis is necessary in the contentious and compelling area of the use of force by a state against a non-state actor. During the 9/11 attacks and the invasion of Afghanistan, the Taliban was the sole government in Afghanistan, but Al-Qaeda

wasn't. Thus, it is possible to argue that the war in Afghanistan, which aims to eradicate a non-state entity, goes beyond the bounds of necessity and proportionality. An assault on Afghanistan to destroy the Taliban may be deemed excessive and, hence, illegal under the law because Al-Qaeda lacked the Taliban's level of authority and control in that nation.

In this context, the notion of government sovereignty is another important problem that must be addressed.

The major reason the US attacked Afghanistan was because individuals who were residing there at the time and whom the US believed to be terrorists connected to the 9/11 attacks were not extradited to the US. However, it appears that America might have reached a consensus via discussion and diplomacy rather than jumping to the conclusion that force is the only way to accomplish its objectives. This is due to the fact that international law stipulates that before resorting to armed action, other means of settling conflicts must be explored. The UN Charter's Article 2(4), which declares that "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 the purposes of the United Nations," further supports this.

3.3.2 The United States' opposition:

US administrations have long criticised the ICC, arguing its soldiers could become the subject of political lawsuits. President Bill Clinton signed the treaty, establishing the court before the end of his term in office, but Congress never ratified it.

In 2002, the US Congress passed a bill that authorized the president of the country to use all options to prevent the trial of US citizens by the criminal courts. National Security Adviser John Bolton also threatened the ICC with sanctions if they pursued cases against US citizens (Azami, 2019).

3.4. Limitations Of The Court Regarding The Crime Of Invasion-Intervention

The International Criminal Court in April 2019 dropped a possible war crimes investigation in Afghanistan, saying the United States and others would not

cooperate in the conflict. The court's chief prosecutor has long sought authorization to launch a formal inquiry into civilian killings, torture, and other abuses in the Afghanistan war, including alleged crimes by US forces. But a panel of court judges concluded that the difficulties of obtaining evidence and witness testimony outweighed the benefits of prosecution with a low likelihood of conviction. The Trump administration applauded the decision, which followed Secretary of State Mike Pompeo's announcement that Washington would refuse visas to judges and court employees who prosecute or sentence American citizens in war crimes cases. At the same time, the State Department confirmed that the US visa of Fatou Bensouda, the court's chief prosecutor, had been revoked.

But the judges' decision, which took nearly 18 months, stunned lawyers and rights activists, who said the court, had caved in to what they called intimidation and pressure from the Trump administration and it undermined the credibility of the court. "With this decision, the International Criminal Court sends a dangerous message that bullying wins and the powerful will not be held accountable," said Catherine Gallagher, a senior constitutional lawyer in New York.

According to a court notice, the judges determined that "an investigation into the situation in Afghanistan at this stage would not serve the interests of justice" because of the difficulties in gathering evidence and gaining cooperation. Although the judges stated that the court had jurisdiction and that there was a "reasonable basis" to conclude that crimes had been committed, they also noted that "the current circumstances of the situation in Afghanistan are such as to make the prospects for a successful investigation and prosecution extremely limited."

The White House released a statement from Trump that praised the ruling and reiterated the long-standing American stance that the International Criminal Court lacks the authority to bring charges against any American, even those who served in Afghanistan or abroad. According to the court's judgment, pursuing a successful investigation and prosecution would be a waste of the court's resources because of the lack of cooperation thus far from all sides, including the Taliban, the Afghan government, and the United States (Crawford, 2004).

Human rights advocates, however, criticized the ruling as a dramatic turn away from the court's mission to give victims of war crimes a way to pursue justice. The

language of the court's decision, according to some, hid what was effectively a surrender to the United States. "It is outrageous that victims of war crimes are much less likely to receive justice for well-documented atrocities due to the Trump administration's authoritarian efforts to sabotage an investigation before it could even get started," said Jamil Dakwar, Director of the Human Rights Program at the American Civil Liberties Union. According to Dakwar, the government was "playing a dangerous game" that had severe implications for other prosecutions by the court. "No one except the world's most brutal regimes win when we weaken and sabotage international institutions established to fight impunity and hold human rights abusers accountable," he said.

The retreat in Afghanistan exacerbates the failures the court has faced. Burundi and the Philippines have withdrawn from the treaty that created the court nearly two decades ago. In November 2017, Bensouda asked the judges for permission to open a formal investigation into possible war crimes and crimes against humanity that began after the US invaded Afghanistan in early 2002 to eliminate Al-Qaeda plotters in the September 11, 2001 attacks. Taliban rulers who had given them shelter. While Bensouda's investigation focused mostly on widespread crimes against civilians attributed to the Taliban and Afghan government forces, it also looked into allegations of abuse by the Central Intelligence Agency (CIA) and US military personnel, including operations at secret CIA detention facilities in Afghanistan, Poland, Lithuania, and Romania.

In a clear reference to the black sites included in the justices' decision to drop the investigation, they wrote that Bensouda wanted to examine how the CIA officers "mistreated" prisoners "for allegedly coercing confessions, obtaining information, or retaliating" for the 9/11 attacks. Prosecutors, they wrote, argued that "there is a reasonable basis to believe that since May 2003, members of the United States armed forces and the CIA have committed war crimes of torture and cruel treatment, indecent assault, sexual assault, and other forms of sexual violence, according to a policy approved by US authorities (Gharavi, 2016).

The judges wrote that prosecutors relied on studies by the Pentagon and Congress, particularly by the Senate Intelligence Committee, an apparent reference to the public section of the Senate torture report that studied the CIA's black site program. Although the United States is not a member of the International Criminal

Court, which was established nearly two decades ago, American governments have cooperated, or at least not interfered, with some of the court's work in other investigations. Americans suspected of committing crimes in member states of the court are potentially subject to prosecution. Afghanistan, Poland, Lithuania, and Romania are all members. Param Preet Singh, assistant director of the international justice program at Human Rights Watch, called the court's decision a devastating blow to the victims. "The judges' reasoning effectively allows governments to renege on their obligation to cooperate with court investigations," he said. "It sends a dangerous message to criminals that they can get away with the law just by not cooperating.

In an apparent allusion to the public portion of the Senate torture report that examined the CIA's black site operation, the judges stated that prosecutors relied on studies conducted by the Pentagon and Congress, specifically by the Senate Intelligence Committee. The International Criminal Court was created about twenty years ago, and while the United States is not a member, American administrations have cooperated—or at least not interfered—with some of the court's work in previous cases. Americans who are accused of committing crimes in one of the court's member states may face legal action. Members include Afghanistan, Poland, Lithuania, and Romania. "The court's ruling is a devastating blow to the victims," said Param Preet Singh, associate director of Human Rights Watch's international justice program. "The judges' reasoning effectively allows governments to renege on their obligation to cooperate with court investigations," he said. It sends a dangerous message to criminals that they can get away with the law just by not cooperating.

The court's ruling, according to Swiss academic Guenael Mettraux, who has also appeared before international tribunals in The Hague, was counterproductive. "Judicially, this is the closest thing to suicide," he stated. "This is a misguided and disastrous abdication of responsibility that is being painted as a landmark victory by the United States government and held up by others as a model for court resistance." He pointed out that the justices have essentially backed up the opponents' claim that the court only files charges against those who are too helpless to fight it. Nonetheless, some legal experts claimed that the judges made a wise choice since they foresaw dissatisfaction and the failure to pursue a case in which not all of the main parties were collaborating. Alex Whiting, a Harvard Law School professor and

former U.S. attorney during the trial, stated: "The justices are practical, but it appears that the court listened to Washington (Morgan, 2009).

The court should concentrate on instances where it can triumph, he added, based on lessons acquired from prior mistakes and unsuccessful court cases. "The prosecution has already reached this issue and now the judges have also reached this issue." The withdrawal was a significant win since the court has been described as a supranational organization that infringes on American sovereignty by former national security advisor to the president John R. Bolton. Bolton spearheaded the push for the United States to "repeal the signing" of the Rome Statute, which established the court, during the George W. Bush administration. He subsequently referred to this as his "happiest day in government" (Smith & Thorp, 2010).

CHAPTER FOUR

RESEARCH METHODOLOGY DATA ANALYSIS

4.1. Research Resign

This research is a mixed type of both library and field research. In the first step to collect data, books, international legal frameworks, conventions of international law and scientific articles were explored and studied.

In the second step, through field research, survey and semi-structured interviews were created and carried out, and then data collection and synthesis was done during the study. After completing the study and research, they were assessed, analysed and explained in detail.

4.1.2. Target Population:

The study population in this research includes the following sections from Afghanistan:

Conducting interviews with experts, politicians and lawyers

Survey participants of this research are females and males of different sectors of Afghanistan. The target distribution of the questionnaire was for 80 people, but the participating population was 100 people. There are several factors that could contribute to the increase in the number of participants in the questionnaire based on this research.

1. Broad Distribution Channels: Using a variety of distribution channels expanded the reach of the questionnaire. This is involve sending the questionnaire to different email lists, sharing it on multiple social media platforms, posting it on online forums or community groups.

2. High Interest in the Topic: The research topic resonated with a wide audience more people were motivated to participate.

3. Follow-up and Reminders: Sent follow-up emails and reminders to potential participants encouraged those who have missed the initial invitation to take part in the survey.

4. Collaborations and Partnerships: Collaborating with other institutions and organizations had expanded the network of potential participants, leading to more responses.

4.1.3. Data gathering procedure:

Data collection was done through semi-structured and in-depth interviews with 5 experts, lawyers and politicians in order to ask their opinion on the legitimacy or illegitimacy of the US war in Afghanistan.

In addition, this research has conducted a survey using the distribution of questionnaires, which is the best way to collect information according to the nature of this research. This data is about the impacts of the invasion and withdrawal of the US and its allies of Afghanistan and also current situation in this country. The questionnaire was created through an online form, and it was delivered and collected from respondents.

4.1.4. Limitations of Data:

The data is from the period of the invasion of the United States and its allies until the withdrawal of international military forces of Afghanistan (2001 to 2021).

It mostly focuses on the security situation, freedom of speech, education and job opportunities, ups and downs. This research is in English, but the survey questionnaires were distributed in English and Farsi/Dari languages.

4.1.5. Ethical Considerations:

The issue of ethics is very important in research. Despite the high value of knowledge gained through research, knowledge cannot be pursued at the expense of human dignity. (Oso & Onen, 2008)

The data does not expose the participants to risk, and this is considered in the questionnaire. Also, the data is collected ethically and is committed to its confidentiality. Before distributing questionnaires and collecting data, the ethics committee forms were requested from the university and they have accepted it. Data is collected based on ethical standards and commitment. The participants received detailed explanation of the research content and objectives before the administration of the instrument.

4.2. Data Analysis

In this section, data analysis is done based on research questions as well as research objectives. It is divided into two parts the first part is the characteristics of the respondents. The second part is data analysis based on questionnaire research.

The survey questionnaire of this research has been distributed among 100 Afghan people the participants are from 18 to 70 years old. Their education level is from high school to PhD and more than 45% of the respondents are females.

4.2.1 Bio Data/ Personal information of the respondents:

Table 1. The Gender of the Respondents

Valid	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
Female	49	49	49	49
Male	51	51	51	100.0
LGBTQ	0	0	0	
Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.1 this table shows that the majority of the respondents 51(51%) were males, 49(49%) were females.

Table 2. Age of the Respondents

	Age	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
Valid	18-25	11	10.9	10.9	10.9
	25-40	66	66.3	66.3	77.2
	40-70	23	22.8	22.8	100.0
	Total	100	100	100.0	

Source: Primary Data

Table 4.2.2 describes that the majority of the respondents 66(66.3%) were aged between 25 – 40 years old, 23(22.8%) between 40–70 years old and 11(10.9%) were 18 -25 years old.

Table 3. Educational Level of the Respondents

Valid	Educational Level	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	PhD	8	7.9	7.9	7.9
	Master	29	28.7	28.7	36.6
	Bachelor	59	58.4	58.4	96.00
	High school	4	4.1	4.1	100
	Total	100			

Source: Primary Data

Table 4.2.3 indicates 100 contributors that the majority of the respondents, 59(58.9%) were Bachelor degree, 29(28.7%) were Master, 8(7.9 %) were PhD and 4 (4.1%) were High school.

4.2.2. Data analysis based on research objectives:

Table 4. Are you satisfied with the departure of the United States military forces and its allies from Afghanistan?

Valid	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	No	74	73.3	73.3	73.3
	Yes	26	26.7	26.7	100.0
	Total	100	100.0	100.0	

Source: Primary Data

The US withdrawal completed a minute before midnight on August 30, 2021, came as the Taliban swept to power after a 20-year war against US-led forces who invaded Afghanistan following the September 11, 2001, attacks on the United States.

Table 4.2.4 a significant majority, 73.3% (74) of the respondents are dissatisfied with US military forces and its allies who left Afghanistan. But on the other hand, 26.7% (26) are satisfied with the implementation of this decision by the US.

Table 5. Was the withdrawal of the US and its allies from Afghanistan the reason for the fall of the Islamic Republic of Afghanistan?

Valid	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	Yes	73	73.0	73.0	73.0
	No	27	27.0	27.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.5 survey of this research, 73% of the respondents believe that the main reason for the Islamic Republic of Afghanistan is the withdrawal of America and its allies from Afghanistan. But 27% of the other respondents chose no answer.

The Islamic Republic of Afghanistan (IRA) ended on 15 August 2021. That afternoon, President Ashraf Ghani fled the capital city by helicopter to Uzbekistan. Just days earlier, he had sworn never to leave and said that he would die before abandoning his people. With Ghani gone, the Taliban offensive, which had captured dozens of provincial capitals in the preceding weeks, easily entered Kabul. Within hours, the insurgents sat comfortably at Ghani's desk (Murtazashvili, 2022).

Why did the Afghan republic collapse completely and so quickly, spurring tens of thousands of desperate people to run to the Kabul airport in hopes of escaping the Taliban's harsh rule and potential retribution?

As a result the Afghan government failed to recognize that the United States would actually leave. Over nearly 20 years and three U.S. presidencies, the United States had vacillated on the issue of military withdrawal. Even as the United States officially expressed its desire to exit Afghanistan in the years leading up to its departure, contradictory messaging by U.S. officials undermined efforts to convey the seriousness of U.S. intentions to Afghan officials who optimistically believed that alternative scenarios were possible. The result was that the Afghan government was fundamentally unprepared to manage the fight against the Taliban as the United States military and its contractors withdrew (Semple, 2020).

Table 6. How do you assess the security situation of Afghanistan after the withdrawal of American military forces and its allies from Afghanistan?

	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
Valid	Better	8	7.9	7.9	7.9
	Good	17	17.8	17.8	24.9
	Bad	18	17.9	17.9	42,7
	Worse	57	56.4	56.4	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.6 indicates that 56.4% (57) of the respondents reported that the security situation worsened after the withdrawal of US troops and its allies from Afghanistan and also 17.9% (18) of the respondents believe security under the Taliban rule is bad. In contrast, 7.9% (8) contributors mentioned security is better and 17.8% (17) of the other respondents chose good answer.

Afghanistan still confronts grave security challenges, including the Islamic State – Khorasan Province and other terrorist groups active in the country, factionalism within the Taliban, the potential for armed resistance to the Taliban government, organized criminal networks, and thousands of warriors and militia.

After the withdrawal the US military forces and its allies from Afghanistan, Taliban elements and other actors have carried out extrajudicial killings, including of former government officials and human rights defenders. Furthermore, of greatest concern to the outside world is that foreign militant groups that in the past relied on the Taliban for safe haven remain in the country, as shown by the 31 July U.S. strike that killed Al-Qaeda leader Ayman Al-Zawahiri in Kabul. Still, outsiders should resist any temptation to return to proxy wars or routine drone strikes. They should instead press the Taliban to honour their security commitments and, despite well-founded mistrust, offer modest collaboration on discrete issues. As for the Taliban, who bear primary responsibility for Afghanistan's security, they must professionalise their forces, abandon collective punishment, and enforce their policy offering

amnesty to officials and security forces of the government they overthrew (Drevon, 2022).

Table 7. How are the job and employment opportunities after US left Afghanistan compared to the time United States had presence in Afghanistan?

	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
Valid	More	3	2.2	2.2	2.2
	The same	5	5.0	5.0	7.2
	Fewer	30	31.0	31.0	38.2
	Nothing	62	62.0	62.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.7, 62% (62) of the respondents mentioned that nothing the opportunities after the US left Afghanistan than the US had presence in this country. Moreover, 31.0% (30) reported fewer but 2.2%(3) of the respondents chose more and 5%(5) they said it is the same.

After the withdrawal of the US and its allies from Afghanistan hundreds of thousands of people have become unemployed in this country especially female employment levels in Afghanistan have fallen steeply since the Taliban administration took over in 2021.

The Taliban authorities have imposed a slew of restrictions on Afghan women, including banning them from many government and NGOS jobs. They have banned women from working for the United Nations (UN) organization and domestic and international aid groups.

Furthermore, the complete withdrawal of international forces from Afghanistan, the closure of private companies and foreign institutions is considered one of the main reasons for the increase in unemployment in this country because thousands of Afghans were working with international forces and in these institutional (David Kilcullen Mills, 2019).

Table 8. How do you assess the opportunity and chances to get an education after the withdrawal of America and its allies from Afghanistan for young people?

Valid	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	More	1	1.0	1.0	1.0
	Medium	3	3.0	3.0	4.0
	Fewer	28	28.0	28.0	32.0
	The least	68	68.0	68.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.8, 68% (68) of the respondents stated that the opportunity and chances to get an education after the withdrawal of the US and its allies from Afghanistan at the least and also 28% (28) mentioned fewer. Conversely, 3% (3) reported medium and 1% (1) has chosen more.

The Taliban takeover of Afghanistan triggered a decline in the overall access to and quality of education in the country. In September 2021, the Taliban issued education policies that included banning girls from secondary education, mandating gender segregation in schools, and restricting women teachers to girls' primary schools. Afghanistan is only country in the world where girls are prohibited from going to school beyond the primary level.

Since the Taliban's August 2021 takeover, the group has sought to marginalize women and girls and erase them from virtually every aspect of public life. After a September 2021 ban on high school education, the Taliban also barred women from attending universities.

Afghan female students, school teachers, and university are worried the terrible toll the Taliban's actions have taken on their mental health (Ahmadi & Sultan, 2023).

Table 9. Were there equal educational opportunities for men and women during the presence of the US military and its allies in Afghanistan?

Valid	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	Yes	89	89.00	89.00	89.00
	No	11	11.0	11.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.9evident that 89% (89) of the respondents stated that educational opportunities for men and women were equal during the US forces and its allies were presence in Afghanistan. But 11% (11) contributors mentioned the educational opportunities are not equal for females and males in this time.

During the presence of the military forces of the United States and its allies in Afghanistan, all young people, especially women, had access to educational opportunities and more females than ever before were able to go to school, including schooling beyond the 6th grade, and many women were able to earn college degrees.

In this time, Afghanistan had more than 49 colleges and universities, most of which accepted female students before the arrival of the Taliban. These institutions include Kabul University, which was closed during the first period of Taliban rule between 1996 and 2001 and reopened in 2002. Before the Taliban took over in 2021, Kabul University had a significant number of female students, with 24,000 students (Fontan, 2024).

Since 2015, Kabul University has offered the first master's courses in gender and women's studies. Other universities included the American University of Afghanistan, which is sponsored by the US government; Kabul Polytechnic University; Nangarhar University in Jalalabad; and Herat University in Herat. In total, Afghanistan had 17 public universities and 2 private universities, most of which were open to female students before the re-establishment of Taliban rule in 2021. The American University of Afghanistan, which was located on the grounds of the American Embassy due to security issues, had 763 students, 44% of whom were

women, and 42 full-time faculty members, 31% of whom were women (Fontan, 2024).

Table 10. What is the state of freedom of speech after America's withdrawal from Afghanistan?

	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
Valid	Good	3	3.0	3.0	3.0
	The same	5	5.0	5.0	8.0
	Bad	17	17.0	17.0	25.0
	Worse	75	75.0	75.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.10 demonstrates that 75% (75) of the respondents reported the state of freedom of speech after America's withdrawal from Afghanistan worse and according to 17% (17) it is bad.

However 3% (3) of them believe that it is good and also 5% of the respondents emphasized the freedom of speech is good under the Taliban rule.

After the withdrawal of the United States and its allies from Afghanistan, the space for freedom of expression was severely limited because the Taliban created an environment full of fear and forced many media outlets to close. Journalists faced severe restrictions for criticizing the Taliban, including arbitrary arrests, illegal detentions, and torture, leading many to self-censor. During the arrests, journalists faced beatings and other types of torture, and many were forced to flee the country. Female TV reporters were also forced to cover almost their entire faces. The Afghanistan Independent Human Rights Commission (AIHRC) remained closed, and the space for civil society organizations to document and report on human rights was severely reduced. Independent human rights groups also did not have the necessary freedom to operate.

The Taliban arrested and illegally detained those who criticized the group on social networks, especially Facebook. The Taliban also destroyed any space for peaceful gatherings, demonstrations, or gatherings. Using excessive and unnecessary force, the Taliban police arbitrarily arrested, detained, and tortured peaceful protesters and forcibly disappeared some of them. The arrested protesters were

subjected to physical and mental torture. The freedom of gathering was further restricted when some family members forbade their relatives' women from protesting out of fear of the potential repercussions (Amnesty International, 2022).

Table 11. Has the withdrawal of the US and its allies caused the human rights crisis, especially the gender apartheid in Afghanistan?

Valid	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	Yes	96	96.0	96.0	96.0
	No	4	4.0	4.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.11 reveals 96% (96) of the respondents believe that the withdrawal of the US and its allies caused the human rights crisis, especially the gender apartheid in Afghanistan. Conversely, a small number of 4% (4) chose No answer.

Since the Taliban's takeover in August 2021, Afghanistan has experienced a serious and continuing deterioration in its human rights situation. Widespread violations include massive oppression of women's rights, persecution of ethnic and religious minorities, enforced disappearances, extrajudicial killings, arbitrary detention, torture and a crackdown on the media and any form of dissent, including peaceful protests by women (Rollett, 2023).

Afghanistan is the only country in which girls are barred from secondary school and women from university. The ongoing turmoil has also exacerbated a humanitarian crisis, with lack of access to essential resources like food, water, and medical supplies. Vulnerable individuals, such as children and the elderly, are especially at risk. The Taliban's return to power has reversed the progress towards enjoyment of basic human rights and liberties achieved over the past two decades. The situation demands on going attention to monitor and address the human rights challenges in Afghanistan, while continuing to deliver humanitarian aid and urging the de facto authorities to change their policies and meet the state's responsibilities under international human rights treaties ratified by Afghanistan to ensure the

protection of human rights and equality for all Afghans (Human Rights Watch, 2024).

Table 12. Is the return of US military forces to Afghanistan necessary to change the current de-facto government (Taliban regime)?

Valid	Answers	Frequency	Per-cent	Valid Per-cent	Cumulative Per-cent
	Yes	62	62.0	62.0	62.0
	No	38	38.0	38.0	100.0
	Total	100	100.0	100.0	

Source: Primary Data

Table 4.2.12 shows that 62% (62) of the respondents believe for change the current de-facto necessary to return of US military forces to Afghanistan. On the other hand, 38% (38) of them chose the answer no, and it is mentioned that it is not necessary to return the US forces to Afghanistan to change the current situation.

The US attention appears to decrease on Afghanistan after its troops left this country, but Afghanistan remains the subject of congressional engagement as some Members seek to account for the evident failure of U.S. efforts and grapple with the reality of the Taliban's renewed rule. Congressional oversight of Afghanistan has been robust. Congressional committees held several hearings specifically on Afghanistan after the Taliban's takeover. In the Congress, two House committees have sought further information from the Administration related to the U.S. military withdrawal from Afghanistan and related contingency plans (Council on Foreign Relation, 2023).

Additionally, the Republican senator predicts a clash between the Taliban and Islamic State will force Washington to re-engage. Sen. Lindsey O. Graham (R-S.C.) says he believes the United States "will be going back into Afghanistan" despite the recently declared end of nearly two decades of American military presence in the country. He said that Afghanistan "will be a cauldron for radical Islamic behaviour," presenting the United States with only two options: "You can say that's no longer my problem or hit them before they hit you" (Loyn, 2021).

But the reports of the US government show that there is no policy for this government return to Afghanistan.

4.3 Opinions

As mentioned in the first chapter, the basic questions of this research were:

1. Was the invasion of America and its allies in Afghanistan based on international laws?
2. Was America's invasion of Afghanistan an attack for uprooting and eradicating Al-Qaeda and the Taliban, or was it the occupation of a country?

To get the research answers, in the first and basic step, it was tried to analyze and explore the previous studies and the library, which the previous chapter (chapter three), the results of the research and studies were analyzed and evaluated. Now, in the current season, we are trying to perspectives and analyze of credible experts on Afghanistan will be assessed and explored by posing the following questions:

Q1. In your opinion, was the invasion/intervention of the US and its allies in 2001 in Afghanistan based on international law and relevant conventions?

Q2. In your opinion, if the US and its allies' attack in 2001 on Afghanistan violated international law and the United Nations Charter, what international measures are there to prevent terrorist attacks like the terrorist attack of September 11, 2001?

Q3. Do you think, the US invasion of Afghanistan was a violation of international law? Does the International Criminal Court (ICC) have the jurisdiction to examine the case of the US invasion of Afghanistan? Why hasn't this file been examined?

Q4. Was America's invasion of Afghanistan in 2001, an attack for uprooting and eradicating Al-Qaeda and toppling the Taliban regime, or was it the occupation of a country?

Q5. What do you think that America's war and intervention in Afghanistan have failed?

Interviews of both the critics and supporters of the above questions were sought to seek expert and subject-matter experts' views.

4.3.1 Opinions of supporter:

Dr. Rangin Dadfar Spanta, National Security Advisor to the former Afghanistan Government;

In primary legal terms, the US intervention and its allies are not in themselves a violation of international law, but in the course of their actions, especially the murder of civilians, the use of non-conductive force, arbitrary arrests, torture, deliberate murder of civilians indicate that in some cases war crimes and blatant human rights violations have taken place. In the aftermath of 9/11, I think the US intervention policy was more determined by two main elements:

1. Revenge and spontaneous reaction and demonstrating the invulnerability of the US;
2. The missionary policy and this notion of defending the world and the values of the "free world".

It is quite well known that at that time, Iraq and Iran were more on the priority list for US intervention. I am of the opinion that the USA has failed on all levels in Afghanistan. The current efforts of US diplomats to continue to have influence in Afghanistan are based more on the minimalist policy of "save what can be saved" and nothing more. It does not mean that the US does not have a following within the Taliban leadership.

Said Tayeb Jawad, Senior Diplomat and Ambassador of the former Afghanistan Government to America, the UK and Russia;

The US presence in Afghanistan was to punish those who carried out the terrorist attack. It was the Afghan people, it was the Afghan government that demanded that US get engaged in processes such as building a state, fighting criminal elements that existed in Afghanistan, building a political system is sure and certain that is the demand of the Afghan people. The US got involved and engaged in processes to build a state in Afghanistan which did not exist, so the United States was not interested. I was there in Afghanistan in 2003, 2004. United States was really not interested to get involved and engaged actually in building state institution, even security institution in Afghanistan because they thought their mission was limited to punish the terrorists so it was not US plan to occupy Afghanistan or to bring democracy as they said in Afghanistan. It was the demand of the Afghan people for

the US to stay engaged and help building a state and security institutions in Afghanistan.

The US intervention in Afghanistan failed because they did not have adequate partner to build an institution in Afghanistan and also the Afghan people showed that they did not have the interest, the courage to support a political process that was initiated by the United States, except for the courageous Afghan women that they should be given credit, small number of very courageous Afghan women, but the majority of other Afghans, they stay on the side lines or they try to cut deal with the Taliban.

Dr. Mustafa Omid, international relations expert;

The US presence in Afghanistan was a counter-terrorism, humanitarian and nation-building mission not an occupation of the country. I don't believe to the United States war in Afghanistan was a violation of international law. ICC doesn't have the mandate and jurisdiction to examine the US invasion because the US invasion was based on international law with the full support of the international community, the UN and the neighbours of Afghanistan. Despite the huge costs and losses in blood and treasure for the US and its allies, I think that this has not been a failed US intervention. However, the blurred objectives of the US mission in Afghanistan were a mistake and can be interpreted as costly and unfruitful strategy which was not set realistically from the outset, which inflicted huge costs to the US and its credibility. Although the people of Afghanistan initially benefited a lot from the US intervention and their lives were changed in every facet and layer of life, in the end, they have been the real losers of this story and have come full circle to where they were when the US invaded Afghanistan.

4.3.2 Opinions of critics

Maryam Karimi, former member of the Independent Human Rights Commission in Afghanistan;

It is clear that the US attack on Afghanistan is considered an aggression based on Article 51 of the United Nations Charter and has no legal basis. According to Article 5 of the Statute of the International Criminal Court, it deals with four groups of crimes against natural persons, which are described as "the most serious crimes from the point of view of the international community as a whole", genocide, crimes

against humanity, war crimes and rape crimes. However, in relation to the powers of the International Criminal Court, one should take a look at Article 15 of the ICC Statute. Firstly, based on this article, the US attacked Afghanistan in 2001, which means before the amendment of the constitution was approved in 2017. Secondly, this exercise of the court's jurisdiction regarding the crime of rape faces serious limitations. On the one hand, if the aggressor state has not ratified the statute, even if a crime is committed against a member state and in the territory of a member state, the perpetrators and agents responsible for the crime of aggression cannot be prosecuted in court. Even if both governments are member of the court, but the perpetrator has not ratified the reforms, still the jurisdiction of the court cannot be prosecuted against the nationals of this country or on the basis of a crime committed on the territory of this country. Since it became a member of the International Criminal Court in 2003, but the United States is not a member of this database, it is a bit of a reflection. Also, the United Nations Council has not assigned the case of US aggression to Afghanistan to this court.

Jamshid Nikjo Azizi, Lecturer at Afghanistan University;

There are various ways that can be applied and tried to control terrorist or countries that support terrorism, and war can be the last option on the table. These tools include all kinds of sanctions, blocking their financing ways, cutting off their support and financing from outside the borders and internal sources, and the like. In the event that the country sponsoring terrorism is not restrained and endangers the interests of other countries and there is no other way to control it, the affected country or countries have the right to take military measures to protect and protect their territory and interests, provided that during the war international standards should be observed and not exceed the criteria of appropriateness and need.

4.4. Analysis of opinions (Critics and supporters)

The legitimacy or illegitimacy of the US war in Afghanistan is a complex issue with valid arguments on both sides. While the self-defense rationale and international support lend legitimacy, the absence of clear UN authorization, reports of human rights violations, and a lack of accountability challenge this legitimacy.

According some interviews in this research the US-led invasion of Afghanistan in 2001 was justified under the right to self-defense following the 9/11 attacks.

Article 51 of the UN Charter allows for military action in response to an armed attack until the Security Council can take measures to maintain international peace and security. Resolutions 1368 and 1373, passed after the 9/11 attacks, acknowledged the right to self-defense and called for international cooperation against terrorism. These resolutions provided a legal framework for the US and its allies to conduct military operations in Afghanistan. In addition, the Taliban regime in Afghanistan harbored Al-Qaeda, the group responsible for the 9/11 attacks. The US invasion aimed to eliminate this safe haven, reducing the threat of future terrorist attacks.

The US-led coalition received backing from many countries and international organizations, indicating broad support for the intervention. This support lent legitimacy to the war effort. Beyond counter-terrorism, the US intervention aimed to rebuild Afghanistan, promote human rights, and establish democratic institutions. These humanitarian goals added to the perceived legitimacy of the war.

However some opinions of critics in this research argue that the self-defense justification was stretched, as Al-Qaeda was not a state actor. The invasion's legality is questioned because the Taliban government did not directly carry out the 9/11 attacks, raising doubts about the proportionality and necessity of the US response.

Although the Security Council passed resolutions acknowledging the right to self-defense, it did not explicitly authorize the US-led invasion. This absence of clear authorization raises concerns about the war's legality. Reports of civilian casualties, torture, arbitrary arrests, and other violations during the US-led operations suggest that the war involved acts that contradict international humanitarian law and human rights norms, undermining its legitimacy.

The US pursued a largely unilateral approach in Afghanistan, often disregarding international cooperation. Additionally, the US's non-recognition of the International Criminal Court (ICC) and its limited accountability mechanisms raise questions about holding those responsible for violations accountable.

The war's initial focus on counter-terrorism evolved into broader goals of nation-building and establishing democracy. This shift, coupled with blurred objectives and high costs, suggests a lack of clear purpose and legitimacy.

4.5. Evaluation Data and Opinions

The survey results and interview responses align in depicting a bleak post-US withdrawal landscape in Afghanistan. The Taliban's take over of Afghanistan significantly impacted education, gender equality, employment, and freedom of speech. The failure to effectively manage the transition following the US departure led to a humanitarian crisis and diminished prospects for Afghan women and girls. Meanwhile, the legality and success of US intervention remain subjects of debate, with differing perspectives on whether US actions were justified or constituted violations of international law.

Overall, the comparison between survey results and interview insights shows a convergence of views on the negative impacts of the US withdrawal, with a shared understanding that the abrupt departure triggered a cascade of adverse outcomes in Afghanistan. Here's a summary of key findings and a comparison of results from the survey and interviews:

2.5.1. The US Withdrawal and the Collapse of the Afghan Republic:

According to the Survey result 73.3% of respondents were dissatisfied with US military forces and its allies who left Afghanistan, while 26.7% were satisfied. Similarly, 73% believed the US withdrawal was the main reason for the collapse of the Islamic Republic of Afghanistan.

Interviews indicated that the Afghan government did not expect the US to leave leading to their unpreparedness to manage security and combat the Taliban. The interviews supported the survey findings, attributing the swift collapse to the US departure and the inability of Afghan authorities to manage without US support.

Both survey and interview results align on the dissatisfaction with the US withdrawal and its role in the collapse of the Afghan government. There's a consensus that the abrupt withdrawal led to the rise of the Taliban and the destabilization of Afghanistan.

4.5.2. Education and Gender Equality:

Survey Results: 68% of respondents reported fewer opportunities for education after the US withdrawal, with 28% indicating fewer opportunities and 89% suggesting educational opportunities were more equal for men and women during US

presence. The survey revealed significant barriers to education, especially for women and girls, after the Taliban took power.

Furthermore, Interviews confirmed that the Taliban's policies restricted education for women, with bans on secondary education and restrictions on female teachers, leading to a severe decline in educational opportunities for women and girls. The previous equality in educational opportunities was largely attributed to the US presence.

The surveys and interviews indicate a significant decline in educational opportunities and a worsening gender gap in education after the US withdrawal. The Taliban's policies and restrictions on women's education were key factors in this decline.

4.5.3. Employment and Freedom of Speech:

In the Survey have mentioned, 62% of respondents that fewer employment opportunities after the US left, with a focus on women's employment. Additionally, 75% reported a worse state of freedom of speech, with increased restrictions on media and arbitrary arrests. Interviews echoed these findings, describing severe restrictions on women's employment and freedom of speech. The Taliban's policies limited women's job opportunities, particularly in government and NGOs, and imposed strict controls on civil society and media.

There is a high degree of agreement between surveys and interviews regarding the decline in employment opportunities, especially for women, and the deteriorating state of freedom of speech after the US withdrawal. The restrictive policies of the Taliban were a common theme.

4.5.4. Security and Legal Perspective:

In the Survey 56.4% of respondents reported a worsening security situation after the US withdrawal, while 17.9% found the security under the Taliban bad. In contrast, 7.9% believed security had improved, and 17.8% thought it was good. The legal perspective on US intervention varied, with some views suggesting it was not in violation of international law, while others indicated potential violations.

Interviewees described the Taliban's harsh security measures, but some noted that the initial purpose of the US intervention was to counter terrorism, not to occupy

Afghanistan. The legal opinions ranged from supporting the legality of the US presence to suggesting it violated international norms due to civilian casualties and human rights abuses.

Finally, the survey and interview results highlight a mixed view of security under the Taliban, with most respondents indicating a worsening situation. The legal perspective on US intervention remains complex, with different interpretations on its legality and ethicality.

4.6. Impact, Implication and Ramifications of the US Invasion of Afghanistan

The political, economic, cultural doctrine and at the top of America's security strategy for a decade implied the suppression and eradication of terrorism and the toppling of the first Taliban regime from Afghanistan. For the next decade, this policy was a tactical withdrawal from the Afghan field to allow the Taliban group, which was supposed to replace America in the region and overshadow the existing security and political order. After the withdrawal of the United States troops and its allies from Afghanistan, the republican system collapsed in Afghanistan, and the Taliban became the absolute ruler of Afghanistan.

The consequence of this absolute sovereignty for the Taliban, which has taken place as a result of a tactical withdrawal by the US, is to turn Afghanistan into epicentre of instability for the region and promote new terrorism. Currently, Afghanistan has become the epicentre of terrorism, drugs, arms trafficking, the breeding ground of extremists and religious terrorist groups, the epicentre of instability and lawlessness, the central point of separatism and the creation of ethnic tensions in the region.

4.6.1. The Positive Impacts of the US and its Allies Invasion of Afghanistan:

4.6.1.1. State Building in Afghanistan:

Afghanistan went through the state-building processes based on the resolutions of the 2001 " Bonn" summit, and based on the democratic values, the people of Afghanistan were given a political role and chance to elect their representatives in

the parliament, provincial councils and the president of the country. The constitution was designed, enacted, illustrated and to some degree implemented.

The Afghan National Army (ANA) was formed. Afghanistan was saved from the state of statelessness or bankrupt state that existed before 2001, and the central government, which was respected internationally and domestically, ruled the country. As this government consisted three pillars: executive, judicial and legislative, and acted based on the constitution.

4.6.1.2. Economic Growth:

Afghanistan's economy grew astronomically despite its well-founded structural problems. The destructions caused by the previous wars were slowly rebuilt. Economic indicators such as export, import, and Gross Domestic Product (GDP) had gradually taken an upward trend, and people's tables, which were spread with tea and bread before 2010, were colored with more diverse foods and with more calories. At the same time, the currency of Afghanistan was accepted internationally and enjoyed relatively good stability.

4.6.1.3. Freedom of Speech:

After the toppling of the first Taliban de-facto regime, freedom of opinion and speech were practiced to some extent in Afghanistan, so that with the publication of various publications and the implementation of the relevant legislations, and with the approval of the Constitution and the Right to Information Law, its legalization was confirmed and until the collapse of republic on 15 August 2021, with all the ups and downs, were enshrined and practiced, and culture and cultural values were emphasized and promoted by the leaders of the previous governments.

4.6.1.4. Reopening Academic and Centers for Education:

With the establishment and adoption of democratic system in Afghanistan, universities and schools were reopened in 2002. These centers provided educational opportunities for boys and girls with all its shortcomings and problems. Many young people were educated and were able to go to universities around the world by getting scholarships.

4.6.1.5. The Role of Women in Society:

Significant gains were achieved by the Afghan women and girls in the political, security, economic, social and cultural fields. Although a symbolic role was given to women in politics and in the security sector, they were able to make good use of educational and work opportunities. Their talents were enhanced and developed during this period, and many Afghan women were able to become economically independent and not dependent on their families.

4.6.1.6. The Return of Refugees to Afghanistan:

More than three million immigrants have had returned to their homes to revive their lives in their motherland. This, along with the significant reduction of ethnic tensions and civil movements, strengthened the belief among the Afghan people that their country is progressing and rebuilding.

4.6.1.7. Security and Stability:

Despite the instabilities in remote areas, Afghanistan had become more stable than at any time in the last three decades, almost all of faction-based military training camps in Afghanistan were destroyed. Civil wars decreased compared to the past, a kind of general disarmament took place, and some of the scattered weapons were collected from people and groups.

4.6.2. The Negative Impacts and Implications of the US invasion of Afghanistan:

In addition to positive impacts, NATO's interventions in Afghanistan had also negative effects on the Afghan society, which includes:

- The Taliban group and other opposition groups involved in conflict against international and Afghan military forces were not completely eradicated, and the Taliban controlled more than half of Afghanistan, mostly districts in the years before the NATO troops. These areas were outside the control of the former Afghan government and foreign coalition forces, and international aid workers did not feel safe in these areas and were attacked many times.

- Despite the establishment and authority of the central government in Kabul, the main power in the provinces was in the hands of warlords and local commanders. These commanders gave a kind of verbal support to the Kabul government, but secretly and sometimes overtly kept their militia forces and held meetings with them constantly. From this point of view, the previous government could not take action for changes in different departments without getting the consent of the main local commanders in the provinces.
- Despite the positive trend, the disarmament program remained incomplete. Various types of weapons were in the hands of irresponsible people and groups and were not collected.
- The formation and function of national army and national police were considered as important steps in the process of unity, state building and nation-building. But they were struggling with structural problems and corruption such as corruption in salary and clothing, procurement and logistic, military equipment, preference of group, party and individual loyalty to national loyalty.
- Although the civil wars in Afghanistan had decreased, the people of Afghanistan were facing other problems, such as the low level of delivery and access to health services, education, judicial services etc.
- Administrative corruption, and especially the widespread bribery, and because of this, millions of dollars of international aid were wasted in Afghanistan. Mafia groups in Afghanistan took more political power.
- Addiction, suicide, depression, consumerism and such things have become common among people in recent years, which are the effects of cultural invasion and a mindset for a western lifestyle.
- Casualties of civilians: Although the casualty of civilians is one of the negative consequences of any war, the casualty of civilians in Afghanistan has always become a serious problem for the invading forces because the Westerners are more aware of human rights and humanitarian laws due to their enshrined and adopted legislations and codes of conduct by their relevant countries. They are also more aware

of the international legal regimes that protect human life and property, and finally, due to the possession of advanced war technologies, Westerners should have had less chance of making mistakes in targeting, but despite this, the killing of civilians in Afghanistan increased day by day. Killing civilians is a key and vital issue among the public in Afghanistan and is a clear violation of the law of war.

- During the presence of NATO military forces in Afghanistan, despite the millions of dollars of aid to combat drug cultivation in Afghanistan, poppy cultivation had increased significantly. Opium markets were established and the price of opium tripled in Afghanistan.

4.6. The Impact and Implication of the US-led Intervention in the Region and the World

During the two decades of interventions by America and its Allies in Afghanistan, the country was turned into a center of politics and conflict in the region. The regional security powers around Afghanistan, such as South (Pakistan and India), North (Central Asian countries and Russia), West (Iran) and East Asia (China), each with a specific security view and separate political and geopolitical order interest, except to India, opposed the Western presence in Afghanistan.

4.6.1. Afghanistan, the Epicentre of Great and Regional Power Competitions and Proxy Wars:

At the beginning of the presence of the United States in 2001, the countries of the region and Afghanistan's neighbours cooperated and laid the groundwork for the invasion of the United States, and at the same time with the strategic goals of the United States to be present in this geography they began to recruit soldiers from Afghanistan. Iran, Pakistan, China, Russia, Saudi Arabia, Central Asian countries, Qatar, India, the European Union (EU) and the United Arab Emirates were the founders and formers of Afghanistan's representative groups in government.

These proxy groups and individuals, which were partners in the political and security structure of Afghanistan, had power within the system and gained enormous wealth, and those groups who were actually fighting against it outside of the American government, became powerful actors and gained popularity among some

segments of people, feeling let down by the western supported government in Kabul. They became instruments and were role-playing. On the other hand, the great powers, the region and the neighbours continued their bloody and violent competition by using pressure levers and having these proxy groups.

For twenty years, thousands and thousands of Afghans were killed, maimed or became homeless. The infrastructures that were destroyed during the wars of the past years and decades were not rebuilt, the country's economy was dependent on foreign aid, drug trafficking, and its trade became more prosperous. More individuals and groups emerged stronger than the law and political system of Afghanistan.

4.6.2. Drug Trafficking:

For several years in a row, Afghanistan has taken the title of the largest source of production of drugs, drug trafficking and the main source of its cultivation. Terrorism, as the main arm of the development of the drug trade, facilitated its traffic from Afghanistan to Iran, Turkey and Europe, as well as from Central Asia to the Russian Federation, Europe. The amount of income illegally gained from this lucrative business for extremist and armed groups in Afghanistan, America, and the countries of the region shows a staggering volume. This money was used by domestic actors to keep the flames of war burning in Afghanistan, America, too, for giant arms profitable business and to pay for its presence in Afghanistan, and neighbouring countries to advance its security policies and proxy wars. In any case, America's invasion was the cause of this terror in Afghanistan and encouraged others to also take part in these dirty games.

4.6.3. Arms Smuggling:

After the collapse of the former Afghan government and the return of the Taliban to power on August 15, 2021, the Taliban obtained large stocks of weapons left by the Afghan government and American forces. The amount of weapons left for the Taliban regime is more than seven billion dollars, which has increased the war capability and the creation of terror and terror by this group, which is in collusion with others global terrorist groups.

The remaining American weapons in Afghanistan are bought and sold in the markets of insecure areas, and the arms trade is also flourishing in Afghanistan, just

like terrorism. In addition to completing the American plan based on the regional strategy of instability and insecurity, this business has also become a good source of financial income. American weapons that are traded in illegal arms markets in Afghanistan, Pakistan and some other countries include night vision goggles, sniper rifles, automatic assault weapons and ammunition related to these weapons. From this angle, the Taliban get a huge amount of money and a platform is paved for the generalization of the Taliban's ideology at the regional level. The entire region will be ignited by the fire of terrorist violence.

4.6.4. Hotspot of Extremism and Promotion of Terrorism:

Although the American government repeatedly criticized Pakistan and emphasized on forcing that country to fight terrorism seriously, the government of Pakistan still played a prominent role in supporting the armed opponents of the Afghan government (Taliban). Now it seems that after the return of the Taliban to power, this group has become a source of inspiration for all the terrorist networks. Taliban send small arms to their like-minded extremists to inspire their victory; especially to their neighbours, Tehreek-e-Taliban Pakistan (TTP) in the tribal areas of north western Pakistan and separatists in Baluchistan, who use American-made weapons to kill police forces and soldiers in order to intensify the war with the Pakistani government. The presence of at least twenty terrorist groups in Afghanistan shows the depth of the crisis in this region. The Taliban group has turned Afghanistan into a hotbed of extremism and terrorism.

The Taliban are ideologically model after these terrorist groups, and in terms of war, in the last twenty years, they have received a wide range of capabilities from these groups, such as war tactics and operational advice. Meanwhile, in the last twenty years, these groups have fought side by side with the Taliban against foreign and Afghan forces and have become an important force with enormous combat and operational experience.

4.6.5. Promotion of Ethnic Nationalism Tensions and Separatist Groups:

A few months after the Taliban took over Afghanistan, American weapons were seen in different parts of Pakistan and India in the hands of militants fighting against the governments of these two countries. The photos that were published of the fighters of Tehreek-e-Taliban Pakistan, Baluchistan Liberation Army and active

militants in Kashmir also show that they have also obtained American weapons left in Afghanistan. In addition, the re-emergence of the Taliban in power has been a source of inspiration for other separatist groups who today seek the formation of separate territories under the protection of the Taliban and through military and violent means. (Nurzad, 2023)

Before the American intervention in Afghanistan, this country was severely isolated and isolated under the rule of the Taliban. At that time, Afghanistan had no friends in the world. The government of Taliban was not recognized by any country, except UAE, Pakistan and Saudi Arabia, and the people of Afghanistan were severely isolated. But after the American intervention in Afghanistan between 2002 and 2005, this country became an unprecedented bed of intimacy and cooperation between regional and extra-regional countries. Despite their political differences, many nations from the region and other continents have united in recent years to work toward the shared objective of freeing Afghanistan from the grip of terrorism and guaranteeing peace, security, and prosperity (Mehrdad, 2020).

Politically, Afghanistan is located at the crossroads of Central Asia, South Asia, Far East Asia and the Middle East. In terms of security, Afghanistan is among the security structures of Central Asia, South Asia, and the Persian Gulf, but it does not have an active presence in any of them, and none of them alone can cover or provide Afghanistan's security (Bird & Marshall, 2011).

From an economic point of view, Afghanistan is at the point of convergence of ECO, SAARC, Kirk and Shanghai regional economic organizations, which is a member of the first three organizations and is still an observer in the fourth organization.

Despite these developments, the effects of disrupting this space due to distrust and regional and global competition were evident and day by day it challenged the security and political stability of Afghanistan.

In those days, there was a serious need for an active and innovative diplomatic system to build trust in coordination with international allies in the region and to ensure that the presence of foreign forces is for Afghanistan's ability to fight terrorism and beyond that there is nothing else on the agenda. But unfortunately,

corruption, ethnocentrism and personal preferences did not allow the necessary reform and refinement in the diplomatic and wider system (Crawford, 2015).

There is no doubt that the painful incident of September 11th in America and sympathy for the victims of terrorism in Afghanistan, as well as the unity and concerted efforts of Afghan politicians, played a key role in creating such an atmosphere. An atmosphere that once again revived the spirit of Afghanistan's policy of neutrality and non-secession with an active diplomacy (Reinhart, 2019).

But unfortunately, all these achievements two years ago on August 15, 2021, then the collapse of the republican government and the establishment of the Emirate's Taliban, Afghanistan has returned to isolation and has no friends in the region and the world. No country has recognized the Taliban's rule for two years now.

4.7. Financed and Funded of the US invasion in Afghanistan

Since the United States war in Afghanistan in 2001, the US government has spent \$2.313 trillion on political interventions and military attacks, including operations in Afghanistan and Pakistan. This cost does not include the funds that the US government is obligated to pay for the lifelong care of American veterans of this war, nor does it include future interest payments on money borrowed to finance the war. This \$2.313 trillion spent on the invasion of Afghanistan is a fraction of the total estimated cost of post-9/11 wars.

Those headline numbers include \$800 billion in direct war-fighting costs and \$85 billion to train the vanquished Afghan army, which folded in the weeks since the Pentagon's sudden closure of Bagram Air Force Base, eliminated the promise of air support against the advancing Taliban. U.S. taxpayer had been giving Afghan troops \$750 million a year in payroll.

Between 2010 to 2012 when the US for a time had more than 100,000 troops in the country the cost of the war grew to more than \$100bn a year, according to US government figures. As the US military shifted its focus away from offensive operations and concentrated more on training up Afghan forces, costs fell sharply to about \$45bn in recent years. According to the US Department of Defence, the total military expenditure in Afghanistan (from October 2001 until December 2020) was \$825bn, with about another \$130bn spent on reconstruction projects. That brings the total cost, based on official data, to about \$955bn between 2001 and 2020 - close to

the lower \$1tn estimate given by Biden. The US has been helping with reconstruction efforts in Afghanistan. The \$2tn figure referenced by President Biden is based on a recent study by Brown University, which includes interest on debt used to finance the war and expenses such as veterans' care.

This study also includes spending in Pakistan, which the United States had used as a base for Afghanistan-related operations, and which continued through fiscal year 2021, according to the money requested. It found that costs of the war (and future commitments) in Afghanistan from 2001 to 2021 amount to \$2.3tn. The UK and Germany - who had the largest numbers of troops in Afghanistan after the US - spent an estimated \$30bn and \$19bn, respectively, over the course of the war. (Tucker & Helman, 2021)

4.8. The amount of Military and Civilian Casualties of the US Invasion- Intervention of Afghanistan

From 2001 to 2021, more than 241,000 people have died as a direct result of the US war in Afghanistan, including at least 71,000, according to data from the Costs of War Project at Brown University, which documents the hidden costs of post-9/11 wars. This overall statistic does not include deaths from disease, lack of access to food, water, infrastructure or other indirect consequences of war. According to United Nations statistics, this war also forced two million and 700 Afghans to flee abroad, most of them went to Iran, Pakistan and Europe. Another four million people have been displaced inside Afghanistan (Carnegie Corporation of New York. 2023).

Since the war against the Taliban began from 2001- 2021, there had been 2,443 American troops and 1,144 allied troops had been killed, and 20,666 U.S. troops injured. Afghans, meanwhile, have faced an even greater toll. At least 66,000 Afghan troops had been killed. More than 48,000 Afghan civilians had been killed, and at least 75,000 had been injured since 2001—both likely significant underestimations.

Also 444 aid workers and 72 Journalists were killed. The casualties of the Taliban and other opposition fighters against the US military, its allies and the (Kilcullen & Mills, 2021).

During the time, invasion of the US, NATO members and other international actors in Afghanistan in 2001–2021, the country saw mass war crimes killing and

injuring Afghan civilians, crippling the national economy and infrastructure, and causing environmental damage. The most outrageous and deadly acts include the US airstrikes on the wedding ceremonies in Uruzgan province on July 1, 2002 (48 civilians killed, 117 injured), and Nangarhar province on July 6, 2008 (47 killed, 11 injured, including women and children); the mistaken airstrikes by the US and Germany, respectively, against the civil population in Herat province on August 22, 2008 (killing between 78 and 92 civilians) and Kunduz province on September 4, 2009 (74 civilians killed); the bombing by the US Air Force of the Doctors Without Borders' (Médecins Sans Frontières) hospital in Kunduz province on October 3, 2015 (42 dead and 43 injured, the hospital building seriously damaged).

One should not forget the deadly consequences of acts by the international coalition, which felt by the common people of Afghanistan. For instance, the use by the US military of the "Mother of All Bombs" in the Afghan province of Nangarhar on April 13, 2017, has led to an increased incidence of dangerous diseases in local communities, degradation of the environment and lower land productivity in the region. It should be noted that this research does not mention a vast number of cases of torture and abuse against prison detainees at the hands of US and NATO military personnel, as well as of inhumane treatment and desecration of corpses of the armed opposition's militants – acts that are yet to receive a proper impartial assessment.

This research does not seek to expose all the crimes committed by the US and NATO military personnel in Afghanistan. Reputable international organizations did not start keeping the official systematic records of such crimes until 2009. This is one of the reasons why there are considerable divergences in the number of incidents reported in different years.

In fact, in most cases, perpetrators of mass killings of civilians, including women and children, in the 2001–2021 hostilities, escaped responsibility for their actions, which had often been clearly intentional. It should be noted that the Afghan governments then in office, which directly depended on Western financial and military support, did not, and could not, give the investigations into alleged crimes by the American military on the Afghan soil the importance they deserved. The proxy administration in Kabul limited itself to issuing populist commentaries following new tragic deaths of Afghan non-combatants.

The thorough and impartial international investigation into the unlawful acts of the US and NATO military personnel was being hampered by an unprecedented pressure of several successive US administrations on the International Criminal Court (ICC) in The Hague, which had tried to get started with the collection of relevant documentary proof. Washington does not recognize the ICC jurisdiction; moreover, in 2002, the United States passed an act on the protection of American military personnel that authorized the use of military force to set free nationals of the US arrested in third countries on ICC warrant.

In March 2020, following the ICC-mandated full examination of the causes of the violations committed by the American military contingent in the territory of Afghanistan, the US authorities cancelled the visa of the Court's Prosecutor, F. Bensouda, and imposed economic sanctions against her and other employees. Acting on the orders of Biden administration, on September 27, 2021, the puppet new Prosecutor of the ICC, British, K. Khan, announced his intention to resume the investigation and stated that he would focus on reviewing the activities of ISIS terrorists and the armed opposition in the face of the Taliban Movement, and not on the alleged offences of the American military and local residents collaborated with them in Afghanistan. On October 31, 2022, the ICC Pre-Trial Chamber granted the Prosecutor's Office's request, but emphasized that the investigation must be resumed in respect to all crimes and their alleged perpetrators.

CONCLUSION AND RECOMIDATION

The drawn-out of the United States invasion has led to much skepticism about the legitimacy of the war in Afghanistan, and generated a lot of debate. Supporters of the war claim it was a necessary operation to ensure US interests, and critics claim the war is illegitimate and was never justified to start with. There is also much scholarly debate about the war, focusing largely on the legal and moral base of its justification.

As to the question of whether the Afghanistan war could truly be considered justified according to just war theory, two topics often cause disagreement among scholars. Namely the legality of the war and the US making no distinction between the Taliban and Al-Qaeda. The United States did not have any mandate from the United Nations to invade Afghanistan. While the UNSC passed the September 28 resolution 1373, none of the proposed policies expressed included military invasion (Smith & Thorp, 2010).

Instead, the United States and the UK justified their actions according to article 51 of the UN charter. While this claim to self-defense was widely accepted by the most nations, it is again the opinion of many just war theorists that declarations of war should be backed by the UNSC. As to whether it was legitimate to attack the Taliban, the official justification at the time relied on the fact that the Taliban had ignored the UNSC in their demands that they stop providing sanctuary for Al Qaeda terrorists (Dinstein, 2012).

Therefore in the aftermath of 9/11, it was considered legitimate by the UN that the Taliban were indirect accomplices, even if debates persist about the extent to which the Taliban were aware of the upcoming attacks (Vorobej, 2009).

The US invasion in Afghanistan is aslo opposite with many other key rules of international law. While combating terrorism should be one of the primary objectives of the international community, and it is indeed a well-established principle in international law that every state has a duty to refrain from organizing, assisting, or participating in terrorist acts against another state and should not even allow such activities to be prepared on its territory, the methods used to combat terrorism should not themselves contravene international law.

At the time of the terrorist attacks, international law lacked effective tools to deal with non-state actors and groups. However, with the entry into force of the Rome Statute of the International Criminal Court (ICC), there are now legal avenues for addressing such issues. Based on the United States criminal law, a legal response to the criminal acts of September 11 could be justified, but given the international nature of the incident, international criminal law must also play a role. Within the international community, even preemptive self-defense against an imminent attack is not unconditionally accepted. Therefore, the claim that the U.S. resorted to military action to prevent future terrorist attacks is questionable. Similarly, if the U.S. attacks are considered retaliatory, international law disapproves of retributive or retaliatory actions.

The Security Council, in its Resolution 188 dated April 9, 1964, deemed such operations contrary to the purposes and principles of the United Nations. While the Taliban's later support for terrorist operations could result in international responsibility, international responsibility does not necessarily justify self-defense. Though some states and international organizations supported U.S. operations against Al-Qaeda, a non-state entity, indicating a potential shift in the interpretation of self-defense, if U.S. military operations create a precedent in international law, opportunistic states might use this to undermine the principles of international law, leading to anarchy.

Despite efforts in the 1970s and 1980s by the United Nations to provide a comprehensive definition of terrorism, no definitive document exists that precisely defines the term. Since the mid-1990s, the UN has made significant efforts to combat terrorism, resulting in the 1997 Convention for the Suppression of Terrorist Bombings, known as the "Bomb Convention," which came into force in 2001, though neither the U.S. nor Afghanistan are signatories. However, acts occurring within a country's territory without involving foreign nationals and acts carried out by armed forces in armed conflicts are not covered by this convention .

During the drafting of the Rome Statute for the International Criminal Court, the inclusion of terrorism as a category of crimes against humanity was considered but ultimately removed due to definitional ambiguity and opposition from certain countries, including the U.S. Today, the concept of "terrorism" remains so ambiguous that it could transform organized efforts to combat it into endless warfare

in international relations. The September 11 attacks and subsequent events might eventually lead to a document that provides a relatively agreed-upon international definition of terrorism. Without a doubt, the path to eliminating terrorism should involve the cooperation of all countries, not illegal warfare. If nations, even in response to inhumane attacks like those on September 11, adhere to international law, this law will gain more legitimacy in protecting everyone.

However, given the division among countries regarding military operations, such as the U.S. invasion of Iraq, and U.S. missile strikes on Sudan and Afghanistan in 1998 in response to embassy bombings in Kenya and Tanzania, and considering various factors, especially technological advancements in nuclear weapons, a new look at Article 51 of the Charter and the emergence of a new concept of self-defense is required. Therefore, the United Nations General Assembly, in accordance with paragraph (a) of Article 13 of the Charter, should request the International Law Commission, which works towards the progressive development and codification of international law, to comprehensively define and present the precise concept of self-defense and its governing principles in the framework of modern international law.

Recommendation:

According to the studies that were done in relation to the US and its allies' attack in 2001 on Afghanistan and achieving justice for the victims of September 11 without resorting to war, along with preventing similar terrorist events in the future. After the data are collected, discussed, and closed up, this research recommends the following:

- Legal Prosecution and Bringing Perpetrators to Justice: Identifying and prosecuting individuals and organizations responsible for planning and executing the September 11 attacks is crucial. This can involve international cooperation to track down suspects and ensure they face justice through domestic or international courts.
- Compensation and Support for Victims and Families: Providing compensation to the families of those affected by September 11 is essential for justice. This support can be financial, psychological, or in other forms that help victims and their families recover from the trauma and loss.

- **Strengthening International Cooperation on Counterterrorism:** Developing robust international partnerships is critical to preventing terrorist attacks. This includes intelligence sharing, joint operations to disrupt terrorist networks, and collaborative efforts to prevent the funding and movement of terrorists.
- **Implementing and Enforcing Anti-Terrorism Laws:** Strengthening domestic and international anti-terrorism laws helps ensure effective prosecution of terrorist acts and those who support them. This can involve updating laws to address evolving terrorism tactics and enhancing law enforcement training.
- **Addressing Root Causes of Terrorism:** To prevent future terrorist events, it's crucial to address the underlying factors that contribute to radicalization and terrorism. This might include promoting education, reducing poverty, resolving political conflicts, and improving governance in regions prone to extremism.
- **Promoting Human Rights and Social Justice:** Ensuring that counterterrorism measures respect human rights is essential for achieving justice without exacerbating tensions. Promoting social justice and equity can help reduce the appeal of extremist ideologies.
- **Improving Border and Immigration Controls:** Strengthening border security and immigration controls can help prevent terrorists from moving across borders undetected. This involves better screening, monitoring of travel documents, and preventing the use of false identities.
- **International Collaboration and Treaties:** Strengthening international agreements and treaties that address terrorism is essential. This includes adopting conventions against terrorism and ensuring all countries are committed to preventing and prosecuting terrorist activities.
- **Promoting Peacebuilding and Conflict Resolution:** Encouraging peaceful resolution of conflicts and reducing global tensions can help create an environment less conducive to terrorism. Peacebuilding

efforts can contribute to long-term stability and reduce the appeal of violent extremism.

- Furthermore, there are more measures that require international cooperation to prevent terrorist attacks across the world including sanctions of terrorist groups to deprive them of capacity and free-roaming, conventions on joint efforts and intelligence sharing on terrorist groups, preventing money-laundering that will help terrorist groups to acquire finances and funds from their sympathizers and supporters from across the world, freezing assets of terrorist groups or states supporting terrorism.
- In addition, under international law, every State has the 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 commissions of such acts.

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APPENDIXES

A: Questionnaire

Survey for Master Thesis

Title of Thesis

Legitimacy of the United States war in Afghanistan

Gender, جنسیت

Male, مرد

Female, زن

LGBTQ, ترانجسیتی

Education, تحصیلات

PhD, دکتورا

Masters, ماستر

Bachelor, لیسانس

Other, دیگر

Age, سن

18-25

25-40

40-70

1. Are you satisfied with the departure of the United States and its allies from Afghanistan?

آیا از خروج نیروهای نظامی آمریکا و متحدانش از افغانستان راضی هستید؟

Yes, بلی

No, نخیر

2. Was the withdrawal of the US and its allies from Afghanistan the reason for the fall of the Islamic Republic of Afghanistan?

آیا دلیل سقوط جمهوریت خروج نیروهای آمریکایی و متحدانش از افغانستان بود؟

Yes, بلی

No, نخیر

3. How do you assess the security situation of Afghanistan after the withdrawal of American military forces and its allies from Afghanistan?

وضعیت امنیتی افغانستان را پس از خروج نیروهای نظامی آمریکا و متحدانش چگونه ارزیابی می کنید؟

Better, خوبتر

Good, خوب

Bad, بد

Worse, بدتر

4. How are the job and employment opportunities after US left Afghanistan compared to the time United States had presence in Afghanistan?

پس از خروج ایالات متحده چقدر فرصت های شغلی نسبت به زمان حضور نیروهای نظامی آمریکا و متحدانش در افغانستان مساعد شده است؟

More, بیشتر

The same, مشابه

Fewer, کمتر

Nothing, هیچ

5. How do you assess the opportunity and chances to get an education after the withdrawal of America and its allies from Afghanistan for young people?

فرصت های تحصیلی را پس از خروج آمریکا و متحدانش از افغانستان برای جوانان چگونه ارزیابی می کنید؟

حداقل, The least کمتر, Fewer متوسط, Medium بیشتر, More

6. Were there equal educational opportunities for men and women during the presence of the US military and its allies in Afghanistan?

آیا در زمان حضور نظامی آمریکا و متحدانش در افغانستان فرصت های تحصیلی و آموزشی برابر برای زنان و مردان وجود داشت؟

Yes, بلی No, نخیر

7. What is the state of freedom of speech after America's withdrawal from Afghanistan?

وضعیت «آزادی بیان» پس از خروج آمریکا از افغانستان چگونه است؟

Good, خوب The same, مشابه Bad, بد Worse, بدتر

8. Has the withdrawal of the US and its allies caused the human rights crisis, especially the gender apartheid in Afghanistan?

آیا خروج آمریکا و متحدانش باعث بحران حقوق بشری به ویژه آپارتاید جنسیتی در افغانستان شده است؟

Yes, بلی No, نخیر

9. Is the return of US military forces to Afghanistan necessary to change the current de-facto government (Taliban regime)?

آیا بازگشت نیروهای نظامی ایالات متحده به افغانستان برای تغییر دولت فعلی (رژیم طالبان) ضروری است؟

Yes, بلی No, نخیر

Thank you very much for taking part in this survey. Your honest and thoughtful answers will help to explore and understand the Afghanistan crisis for informing policy and to effect positive change. Your participation in this survey is much appreciated.

از اینکه در این نظرسنجی شرکت کردید متشکرم. پاسخ های صادقانه و دقیق شما به کشف و درک بحران افغانستان برای پالیسی سازی و تغییرات مثبت کمک خواهد کرد اشتراک شما در این نظرسنجی قابل تقدیر است.

B: Questionnaire

Interview Questions for Thesis

Title Thesis

Legitimacy of the United States War In Afghanistan

Interviewees: Afghan and US lawyers, politicians and social activists of Afghanistan

Q1. How do you define the legality, lawfulness and legitimacy of the two decades of the US war in Afghanistan? Was the invasion/intervention of the US and its allies in 2001 in Afghanistan based on international law and relevant conventions? If so, which specific law do you refer?

Q2. If the US and its allies' attack in 2001 on Afghanistan violated international law and the United Nations Charter, what international measures are there to prevent terrorist attacks like the terrorist attack of September 11, 2001?

Q3. Was America's invasion of Afghanistan in 2001 an attack for uprooting and eradicating Al-Qaeda and toppling the Taliban regime, or was it the occupation of a country?

Q4. If you believe the US invasion of Afghanistan was a violation of international law. Does the International Criminal Court (ICC) have the jurisdiction to examine the case of the US invasion of Afghanistan? Why hasn't this file been examined?

Q5. Many experts believe that America's war and intervention in Afghanistan have failed. What do you think? Did it win or fail in the two-decade-long intervention?

Interview subjects

Dr. Rangin dadfar spanta; Rangin Dadfar Spanta is a politician in Afghanistan who last served as National Security Advisor of President Hamid Karzai. Prior to that he served as Foreign Minister from April 2006 to January 2010. He was appointed to that position by President Karzai during a cabinet reshuffle on March 21, 2006, and approved by the 249-seat lower house on April 20, 2006. He was previously the Senior Advisor on International Affairs to President Hamid Karzai. In 2017, Spanta published a memoir called 'Afghanistan Politics: A Narrative from Within' in Dari. The book included reflection on President Hamid Karzai's administration.

Dr. Said Tayeb Jawad; Said Tayeb is an Afghan politician, businessman, academic and diplomat. He is the Chief Executive officer of Capitalize LLC, as well as Global Political Strategist and Senior Counselor at APCO Worldwide, and the Chairman of the American University of Afghanistan, a prominent private, liberal arts, not-for-profit, Co-education University. He was the ambassador of Afghanistan to Washington, London & Moscow.

Dr. Mustafa Omid; Dr, Mustafa Omid was a community-based worker in Afghanistan, working for a few organisations, while in the country. His latest work in the country was leading Afghanistan's Strategic Studies Team on Counter-Terrorism and Counter-Violent Extremism, which won the worldwide Facebook Global Digital Challenge Award, gaining worldwide recognition for its community-based initiatives to counter extremist narratives propagated by extremists. He has been living in the UK since September 2018 and oversees the political development of Afghanistan. He is a staunch advocate for social justice and a democratised Afghanistan, where justice and rules prevail over tribal conduct of politics in Afghanistan.

Maryam Karimi; Maryam is lawyer and human rights activist Education. She has a Master degree in criminal law and criminology. She has worked on more than ten researches for the Independent Human Rights Commission of Afghanistan, such as the shortcomings of the regulation prohibiting violence against women, the rights of minorities, freedom of expression and the government's obligations, the rights of sexual minorities.

RESUME

Personal Information

Surname, name : Somaia Walizadeh
Nationality : Afghanistan

Education

Degree	Education Unit	Graduation Date
Master	political science and public administration	2025
Bachelor	Journalism	2013
High School	Mehry High school, Herat Afghanistan	2008

Work Experience

Year	Place	Title
2022- Up to present	Kite Runner project	co-coordinator of the Afghan Female Journalist group
2022- 2024	Faraz media production in England	Researcher and coordinator
2017-2021	Herat province	Investigative journalist and producer at Killid Radio

Foreign Language: Persian, English and Germany

Publications

Hobbies: Study, listen to podcast and Traveling

