

# The International Criminal Tribunal for Afghanistan

## Indictment

### Introduction

On September 11, 2001, several passenger planes hit the landmark buildings in the United States, such as World Trade Center Buildings in New York and Pentagon in Washington D.C. and exploded, causing to victimize thousands of innocent people.

The United States President Bush (henceforth referred to defendant President Bush) engaged a war against Afghanistan in response, ignoring the voice of the world demanding peaceful settlement of the incidents. The war brought about another war, creating tensions of amounting anger, hatred, and misery in the war-torn countries as well as other part of the world. Our goal at this court is to try the defendant President Bush who is responsible for the illegal use of force in Afghanistan and his subsequent war crimes, which we hope, would cut off the endless chains of wars and their retaliations by the power of people.

The 9-11 incidents put Afghanistan suddenly under the spotlight. However, Afghanistan have long been forgotten and ignored before the incidents took place. This is one of the most poverty-stricken countries in the world where many people are on the verge of starvation. Yet many of us have been indifferent to their sufferings. We begin the indictment with the situation in Afghanistan.

### I. Climates, people, and history of Afghanistan

Afghanistan is an Islam nation with vast areas of 652,000 square kilometers in Central Asia. The three-fourth of the landlocked Afghanistan is steep mountains called natural fortress. Farming is possible only in 12% of the land, but farming has never been easy. The temperature difference between day and night is large and it hardly rains from June through October. The temperature goes up to 50 degrees centigrade or higher in summer, while it comes down to minus 30 degree centigrade or lower in winter. People of Afghanistan have endured and lived a hard life under such severe natural environment. Afghanistan has multi-tribal populations, including the largest like Pashtun, Turks, Tajik, Uzbek as well as a number of ethnic minorities living in the mountain ranges.

European countries were in a race for colonial control of the South Asia from the second half of the 18th century through the 19th century. Great Britain was trying to expand the hegemony from South Asia to Central Asia while Russia was heading south to have access to the sea. Two powers collided in Afghanistan, and were continuously fighting each other in the war called "the great game" for 100 year or more. It was only 1919 that Afghanistan finally won independence after the game was over.

Afghanistan was peaceful momentarily, during which time the Afghan monarch adopted the policy of being a nonaligned and neutral state, and tried to modernize the country by setting up a parliamentary system, an educational system including girls' schools and other reforms. They have progressed and developed to a certain degree.

## II. Civil Wars, the Soviet Invasion, and the Taliban Regime

1. However, Afghanistan again had to go through the time of conflicts and sufferings, which lasted until today. The Imperial Rule was abolished by 1973 coup d'etat. In 1978, the socialist, pro-Soviet radical party took power, forcing reform and modernization in disregard for Islamic culture. Afghan people responded to the radical reform by rebellions under the leadership of Moslem priests in many part of the country. In December 1979 the 100,000 Soviet military battalions invaded Afghanistan under the excuse of restoration of the socialist regime in Afghanistan, and gained control of the whole country.

To protect their country, almost all the men of Afghanistan took the weapons and resisted as combatants. United States as well as other Moslem countries such as Pakistan, and Saudi Arabia, supported Afghans' resistance by providing immense military aids to the rebels to prevent Afghanistan from becoming a communist country. The anti-Soviet militia group "Mujahedeen" was formed and fierce fighting lasted about ten years. During the civil war, about half of the farm villages were destroyed, while close to two million people were killed in Afghanistan. Six million refugees fled the country. The Afghan land was devastated, population was halved and agricultural industry received the destructive blow. Osama bin Laden was one of those anti-Soviet volunteer soldiers from Saudi Arabia who participated in the war.

2. In 1988, the Soviet Union finally signed a peace treaty with the Afghanistan rebels, and withdrew its military forces from the country when Soviet was no longer able to maintain the troops in Afghanistan. Yet, the Soviet withdrawal did not put an end to the civil wars as the U.S. and Soviet kept sending weapons to warring rival factions they had supported. In 1992, the U.S. and the Soviet concluded an agreement to suspend military aids to rivaling factions in Afghanistan, and the two powers finally pulled out of Afghanistan. Collapse of the communist regime ended the cold war and the Soviet Union. As soon as the Soviet Union fell apart, the U.S. lost interest and abandoned Afghanistan, as they did not see any strategic value in the country.

After the United States and Soviet were gone, Afghanistan was left alone with no central government, being unable to function as a unified nation. General Rabbani, Masood, Dostum, Gulbudin and other warlords arrived in Kabul, and established the "Mujahedeen coalition government" in April 1992. However, a new fight started only three months later when the coalition government split and started a new fighting among them to gain the control of the country. These "Mujahedeen" were all extreme Islamic fundamentalists, and during the years of civil wars, they committed worst atrocities imaginable, murdered, slaughtered many peoples, raped women, and destroyed much of cultural-heritage and educational institutions which Afghanistan has taken many years to build. People of Afghanistan were forced to endure the terror of being victimized by such atrocity, frightened and helpless in misery.

Meanwhile, many people fled to the neighboring countries such as Iran or Pakistan, creating refugee crisis.

3. Young students of the theological college of Pakistan formed a new armed group of the Islamic fundamentalism, which is called the Taliban. They advanced into Afghanistan in 1994, calling for the restoration of security and order and urging the public to return to work to make a living. They gained support mainly among Pashtun, one of the largest ethnic groups. Taliban conquered the capital Kabul and south Afghanistan in 1996. In two years they came to control 90 percent of the entire land. Taliban enforced extremely strict control on the people based on the traditions and the Islamic commandment. Although the Taliban rule was often harsh and intolerant, people came to enjoy the certain degree of stability and security for the first time in many years. As small it may be, peaceful and steady life returned to Afghanistan. Unfortunately, however, as Taliban were mostly young theology students who devoted their time to fighting and religious practice, they had no notion of financial administration or efficient management. Thus they were not prepared to develop industries or rebuild the national economy to support the life of ordinary people who had lost everything in the past civil war years.

### III. Sanctions against Osama bin Laden and Afghanistan

1. Taking advantage of lawlessness and general poverty, Osama bin Laden chose to build the "al-Qaeda" headquarters in Afghanistan. Osama bin Laden was stripped of the Saudi Arabia citizenship then. He returned to Afghanistan in May 1996 and offered financial support to the Taliban regime, which gave him the permission to build the training camps of al-Qaeda in several locations in Afghanistan.

2 On August 7, 1998, American Embassies in Kenya and in Tanzania were bombed and exploded almost simultaneously, causing the death of 234 people. Central Intelligence Agency of the United States (CIA) reported that Osama bin Laden was the mastermind of these bombings and the US military forces immediately launched retaliatory strikes by cruise missiles to training camps, training schools of Osama bin Laden in Afghanistan and Sudan. Although Clinton administration secretly discussed with the Taliban regime extradition of Osama bin Laden and the closing of training camps, there were no clear-cut reply from the Taliban. Then, Clinton Administration placed the matter into the hand of the U N Security Councils, which adopted the resolution to impose economic sanctions on Afghanistan including the freezing of the Osama Bin Laden's assets unless they hand over bin Laden in person to the U.S. or close down Al Qaeda's training camps completely.

It became very difficult to send relief goods to Afghanistan from abroad as a result of the UN sanction. Some of the international aid organizations stopped their activities and had to leave Afghanistan due to the shortage of monetary support in 1999. Then at about the same period, the worst drought of the 20th century hit the land mercilessly and remained there for three years. The land, which was already devastated by the civil wars, became fatally barren under the influence of drought. Many of farm villagers were subjected to starvation.

3 On October 12, 2000, the boat loaded with bombs hit the US Navy Aegis Cruiser anchored at a port in

Yemen, killing 17 U.S. soldiers. Being extremely suspicious of Osama bin Laden's involvement, U.S. Government had the U.N. Security Council adopt even stronger resolution of economic sanction. This time, the resolution requests that Taliban should demand Osama bin Laden to pull out of Afghanistan forever, close Al Qaeda's training camps within one month. Otherwise, arms' export to Taliban or military support for Taliban would be forbidden and all the assets and properties in the name of Taliban would be frozen. Despite the warning, Taliban refused to comply with the request of the Security Council. So in January 2001, severe economic sanctions were placed on Afghanistan by the United Nations.

4. Taliban blasted historical statues, the stone statues of Buddha in Bamiyan in March 2001. It was done to demonstrate their protest against the stronger economic sanctions imposed by UN. Although people of the world was shocked by senseless destruction and cried for protection of cultural and historical heritage, they never showed any concern to the sufferings and pains of the Afghan people caused by the sanctions although they were on the verge of dying from hunger across the land of Afghanistan, which images have never been shown on TV.

#### IV. Devastation and Privation of Afghanistan

1. In 2001, Afghanistan was already in the third year of extended drought and the crisis reached to the worst point. Many days passed without a drop of rain. Afghanistan has very limited farmland in the first place. The precious arable land has been devastated by the Soviet invasion and following 20 years of civil wars, which left the country with innumerable mines embedded. The extended drought dried up all water resource for agriculture, while underground water was drained and harvest was the minimum. According to a UN report, 40% of the farmland is abandoned, and people are suffering from the shortage of grain and drinking water. The food aid from neighboring nations has decreased sharply because they hated the unpopular policy of Taliban. The World Food Programme (WFP) was providing Afghanistan with 30 percent of the food she needed. However, since the distribution system was crippled, WFP were unable to deliver this small portion of food to every corner of Afghanistan. An international agency, which investigated the casualty of a drought, reported that at least seven million people were suffering from hunger. Also, United Nations Children's Fund (UNICEF) reported that 6% of the Afghanistan people have no access to safe drinking water.

2. The health care facilities of Afghanistan were also bad due to continued war devastation. In Afghanistan there is one doctor for 7,143 persons, and medical supplies were also insufficient. Many children were unhealthy because they suffer from malnutrition. As they have little resistance to disease, they easily become ill. They often suffered from respiratory diseases and infectious diseases such as pulmonary troubles, measles, tetanus, poliomyelitis, cholera and more. And due to insufficient medical service available combined with chronic shortage of medicines, many children died when they would have lived with a little more medicine or proper treatment. It is said that maternal death of

Afghanistan was the 2nd highest in the world, and, according to UNICEF, 17 of 1000 women died in childbirth or in immediately after the delivery of babies. Moreover, the infantile mortality rate for children under five is No.5 in the world, at 257 out of 1000 children.

3. Beside all these miseries, many people were forced to flee from Afghanistan to become refugees in 2001.

Internally displaced persons of Afghanistan were 500,000 just prior to September 11,2001 and one third of them lived in refugee camps. On the other hand, the refugees who crossed the border to the neighboring countries, such as Pakistan and Iran, amounted to 2,800,000 people.

It was speculated that the unprecedented drought would cause the worst of worst crisis in the winter of 2001. An international agency warned, "Without proper food aids and blankets in winter of 2001, one million or more Afghan people would starve to death or freeze to death." Aid workers had to fight against time to get the food and blankets to the people safely before hunger and cold strikes caused them to die. The on-going military operations of the US forces were very much in the way of aid workers hindering their activities of good will severely.

The U.S. forces attacked Afghanistan in retaliation for 9.11 terrorist attacks. The attack was actually an assault on the people who have been hungry and destitute from many hardships from foreign invasion, civil wars through drought as well by economic sanctions for decades. By the command of defendant President Bush, millions of the state-of-the-art bomb was dropped on the poorest country in the world. It was the Afghanistan War that killed people, ruined the devastated land beyond repair, produced more refugees, and left the people with deep wounds, from which people have not been able to recover.

## Chapter 1

### Profile of Defendant

Defendant Mr. President George Walker Bush (henceforth referred to as defendant Mr. President Bush) was born on July 6, 1946 in New Haven, Connecticut, the United States of America. He spent most of his boyhood in Midland, Texas, United States of America.

1968 Received a bachelor's degree on history from Yale University, and then served as an F-102 fighter pilot in the Texas Air National Guard.

1973 Entered Harvard Business School, Cambridge, Massachusetts.

1975 Moved back to Midland and began a career in oil business. In the West Texas, he started out as a "landman" who searched for prospective oil well and negotiated for land lease. Before long, he went into trading of mining-related interests and invested in drilling projects of prospective oil wells.

1977 Married

1978 Ran for a seat of the U.S. House of Representatives from Midland unsuccessfully. Formed an oil company, Arbusto Energy, Inc. (Arbusto is Spanish for Bush), later changed its name into Bush Exploration, which ended in failure.

1981 Twin daughters were born.

1984 Established Spectrum 7 Energy Corporation, an Ohio oil exploration company, by merger of a few independent enterprises and became CEO.

1986 Harken Energy, Inc. acquired Spectrum 7 and Bush worked as a consultant to Harken Energy for some years.

1988 Father George Bush was elected 41st President of the United States

1994 Elected Governor of the State of Texas

1998 Re-elected Governor

2000 Elected 43rd President of the United States

## Chapter 2

# Individual Criminal Responsibility

This International Criminal Tribunal for Afghanistan (henceforth referred to as 'ICTA') shall pursue the individual criminal responsibility of defendant Mr. President Bush for his crimes related to the Afghan war.

Individual criminal responsibility for the said crimes is based on the narrow definition of the criminal responsibility of an individual as well as responsibility of a commander or a superior as provided in the Statute of ICTA.,

### I. Narrow Definition of Criminal Responsibility of Individual

Statute of the ICTA provides under Article 6(1) that a person shall be individually responsible for crimes defined as follows in the Articles 2, 3, and 4.

- A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 and 3 of the present Statute, shall be individually responsible for the crime.

In this respect, defendant Mr. President Bush has been the President of the United States of America since January 1, 2001, and has the power to command and order to Armed Forces of the United States (henceforth referred to as U.S. Forces).

Defendant Mr. President Bush directed and commanded U.S. Forces to carry out military action against Afghanistan including attacks against civilian populations since October 7, 2001 with his power and authority as President of the United States.

Hence, defendant Mr. President Bush committed the crime of aggression, war crimes and crimes against humanity by having ordered and carried out the military operation in Afghanistan on and after October 7, 2001 whereas criminal acts shall be elaborated later in more detail.

Therefore, defendant Mr. President Bush is directly responsible for the crime of aggression, war crimes and the crimes against humanity.

### II. Responsibility of a Commander or other Superiors

The Statute of ICTA provides under Article 6 (3) that a superior shall be responsible for the criminal acts referred to in Article 3 and 4, in the following cases.

- if the supervisor knew or had reason to know that the subordinate was about to commit such acts or had done so ;
- when the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

And, with regard to war crimes, stated at the end of paragraph, defendant Mr. President Bush controlled U.S. Forces as the President, namely, the Supreme Commander of U.S. Forces, and thus, he knew or should have known that the forces committed or were about to commit such crimes. However,

he failed to take necessary and rational measures to prevent U.S. Forces from committing war crimes or to punish perpetrators of war crimes in due course. These acts of war crimes shall be described later in more detail.

Therefore, defendant Mr. President Bush is responsible for his criminal acts of war crimes as the Supreme Commander of U.S. Forces.

### III. Accomplices who are not indicted in this case

It should be noted that defendant Mr. President Bush is not the sole person who committed war crimes in this case.

We shall indict just defendant Mr. President Bush on this occasion. However, Dick Cheney, Vice President of the United States, Donald Rumsfeld, US Secretary of Defence, Colin Powell, Secretary of State, Tony Blair, the UK Prime Minister, and Junichiro Koizumi, Prime Minister of Japan are also accomplices to the war crimes.

In other words, defendant Mr. President Bush ordered Cheney, Rumsfeld and Powell to prepare for and execute the military action against Afghanistan by the power and authority vested in the presidency and the three exercised their respective power and authority to proceed to the war in Afghanistan.

Defendant Mr. President Bush urged Prime Minister Blair, who has the authority to command and order Royal Military Forces of the United Kingdom (“UK Forces”), to cooperate and participate in the military operations in Afghanistan. And Prime Minister Blair responded to the request by directing and commanding the military operations against Afghanistan to assist U.S. troops.

Defendant Mr. President Bush requested Prime Minister Koizumi to cooperate with U.S. Forces in the military operation in Afghanistan as he has the authority to command and order Japan’s Self-Defense Forces (“SDF”). Prime Minister Koizumi, in response to the request, cooperated and abetted the military action by allowing U.S. troops to fly directly to Afghanistan from the military bases in Japan as well as by dispatching SDF support vessels and escorting vessels to the Indian Ocean for the logistical support of refueling.

Hence we note that Cheney, Rumsfeld, Powell, Prime Minister Blair, and Prime Minister Koizumi are also co-principals and accessories to the war crimes. In addition, Cheney, Rumsfeld and Powell are responsible for and liable for the crimes in the same manner as defendant Mr. President Bush.



## Chapter 3

# The Crime of Aggression

### I. Crime of Aggression

On October 7, 2001, defendant Mr. President Bush, in response to the 9.11 strikes, ordered U.S. Forces to attack Afghanistan for the purpose of eradicating the group of al Qaeda. This resulted in violation of a sovereign State, military occupation of cities in Afghanistan, overthrowing of the Taliban regime, as well as the securing of oil and minerals interests sovereignty. Since then, U.S. Forces have continuously carried out aerial bombing to kill large numbers of the Taliban as well as innocent civilians. Additionally, on November 13, 2001, Kabul, the capital of Afghanistan, fell under attack by the Northern Alliance, an Afghan military power supported by U.S. Forces. The Northern Alliance successfully destroyed the Taliban regime. After the pro-American interim government was formed in conjunction with the Northern Alliance, U.S. Forces continued to occupy the land and conduct the military operation in Afghanistan under the excuse of extermination of the Taliban as well as an investigation of Al Qaeda members still on the loose. Therefore, defendant Mr. President Bush committed the crime of aggression as explained in full detail in the following sections.

### II. Development in Afghanistan

#### 1. Situation of Afghanistan as of September, 2001

The Northern Alliance had control over local Afghanistan while the Taliban regime controlled Kabul and other major cities.

#### 2. Decision to Attack Afghanistan

On September 11, 2001, two passenger jets hit the World Trade Center in the U.S. city of New York, destroying the buildings and damaging much of the area around them as well as the lives of the people inside the buildings.

On the same day, defendant Mr. President Bush asserted “It is terrorism’s attack”, and declared that U.S. Forces would keep strict guard against terrorists in and outside the U.S.

On September 12, 2001, defendant Mr. President Bush declared “we do not distinguish those who planned terrorism, and those who shelter a terrorist”, and said, “the attacks were acts of war” after the meeting with cabinet members.

The United Nations Security Council (henceforth referred to as “UN Security Council”) adopted Resolution 1368 on the same day.

At the interview on September 15, 2001, defendant Mr. President Bush expressed his view that Osama bin Laden was the main suspect of the “9.11 incidents”. In an interview on September 17, 2001, defendant Mr. President Bush avoided answering the question “Do you want bin Laden dead?” He then said, “And there’s an old poster out West, I recall, that said “Wanted Dead or Alive” in the Western film I saw as a child”. This remark seems to suggest his firm decision to pursue Bin Laden thoroughly to

every corner of the world as well as his indirect admission that there is a possibility that bin Laden may be killed in the future retaliatory military operation without restraint of capturing him alive.

Later, Press Secretary Fleischer said that the executive order prohibiting United States official from engaging in assassinations remained in effect. However, he quickly added that the rule does not limit the United States' ability to act in "self-defense under war". He made clear that there would be no legal complication in the event that bin Laden was assassinated.

On September 20, 2001, defendant Mr. President Bush addressed a joint session of Congress for the first time since September 11, 2001. He pointed out the name of Osama bin Laden as an important suspect, and demanded the Taliban regime deliver all terrorists including said person. Moreover, he asked the nation to be resolved and patient about the war against terrorism which would be carried out over a long period of time and asked U.S. Forces to prepare for military retaliation.

In the first part of his speech, defendant Mr. President Bush said that the evidence they had gathered all pointed to affiliated terrorist organizations known as al Qaeda. He then condemned the Taliban regime by warning "By aiding and abetting murder, the Taliban regime is committing murder" and demanded that they extradite every al Qaeda member in Afghanistan. Moreover, he demanded that the governments of the world make a decision. He said, "Every nation in every region now has a decision to make : Either you are with us or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime."

On September 24, 2001, Secretary General Annan addressed the general assembly of the United Nation saying, "No effort should be spared in bringing the perpetrators to justice, in a clear and transparent process that all can understand and accept". He further said, "Let us prove by our actions that there is no need to despair; that the political and economic problems of our time can be solved peacefully"

On September 26, 2001, Gary, chief of a CIA work team codenamed "Jawbreaker" infiltrated into the village near an airstrip at about 100km north of Kabul. Gary met Muhammed Arif, the Alliance's intelligent chief, and offered a half million US dollars to improve and strengthen the Northern Alliance forces and promised its commitment to them in the future. Gary carried out his mission by the order of defendant Mr. President Bush (1) to give financial support to the Northern Alliance and (2) to find and kill Osama bin Laden.

On September 28, 2001, U.N. resolution 1373 was submitted at the UN Security Council.

On October 1, 2001, defendant Mr. President Bush visited the headquarters of the Federal Emergency Management Agency in Washington, and reported "progress on many fronts" in the battle against terrorism, saying authorities around the world had frozen \$6 million in bank accounts linked to terrorist activities. He emphasized that some 29,000 American military personnel have been mobilized around the Middle East to counter terrorism. Defendant Mr. President Bush revealed that the military was ready now that they had deployed 29,000 military personnel and two carrier battle groups, as well as an amphibious-ready group and several hundred military aircraft. He further mentioned that they had called about 17,000 members of the Reserve to active duty. According to the White House, 349 aircrafts were also deployed.

On October 2, 2001, defendant Mr. President Bush met with U.S. congressional leaders to discuss a range of issues. After that, he spoke briefly to reporters about terrorism. He said that there is no timetable for the Taliban just like there are no negotiations to be made. He made it clear that the U.S. is ready to

launch a retaliatory action whenever the U.S. thinks it as appropriate.

Defendant Bush reiterated his demand that the Taliban must extradite Osama bin Laden and al Qaeda members living in Afghanistan and to destroy the terrorist training camps there. He said, “There’s no negotiations. There’s no calendar. We’ll act on our time. And we’ll do it in a manner that makes the freedom in the world more likely to exist in the future.”

### 3. Air Campaigning Launched by U.S.-UK Coalition Forces

Before the dawn of October 7, 2001, the U.S.-UK coalition forces launched aerial bombing on Afghanistan. Their targets included 31 major cities, such as capital Kabul, Mazar-e-Sharif in the north (the war front against the Northern Alliance), Jalalabad in the east, Kunduz, Farrar (military bases of the Taliban, training camps of al Qaeda.), Kandahar in the south (Headquarters of the Taliban forces), and Herat’s airport.

Intense air raids were continuously directed to the above-mentioned cities while bombings were more concentrated on Kandahar, the base of the Taliban regime, and Kabul every day until Kabul finally fell on November 13, 2001.

The training camps of al Qaeda under Osama bin Laden in Tora Bora, in approximately 35 kilometer south of Jalalabad, were also major targets.

On the first day of the aerial bombing campaign, defendant Mr. President Bush spoke to the nation from the White House.

The summary of the televised address is as follows. “The U.S. military started strikes against al Qaeda terrorist training camps and military installations of the Taliban regime in cooperation with UK Forces. These operations are designed to disrupt the use of Afghanistan as a terrorist base and to attack the military capability of the Taliban regime. Canada, Australia, Germany, and France have pledged forces also. In addition, more than 40 countries have granted air transit or landing rights. Many more have shared intelligence.

More than two weeks ago, I gave Taliban leaders a series of clear and specific demands : Close terrorist training camps. Hand over leaders of the al Qaeda network, and return all foreign nationals, including American citizens. None of these demands were met. And now the Taliban will pay a price. By destroying camps and disrupting communications, we will make it more difficult for the terror network to train new recruits and coordinate their evil plans. Initially, the terrorists may burrow deeper into caves and other hiding places, our military action will eventually drive them out and bring them to justice. The oppressed people of Afghanistan will know the generosity of America and our allies. As we strike military targets, we will also drop food, medicines and supplies to people in Afghanistan. The U.S. is a friend to Afghan people, and we are the friends of almost a billion Muslims in the world. Today we focus on Afghanistan, but the battle is broader. Every nation has a choice to make. In this conflict, there is no neutral ground.”

At the press conference on the same day, Press Secretary Fleischer stated that (military) action shall be continued even after Osama bin Laden ceased to exist. His remark suggested that the attack was designed not only to get Osama bin Laden but also to overthrow the Taliban regime.

On October 11, 2001, defendant Mr. President Bush had a press conference in the White House and reported the smooth progress of military operations as well as the United Nation’s initiative to develop the framework of a new Afghan government.

On October 15, 2001, defendant Mr. President Bush ordered two sets of anti-guerrilla Spector gunship AC130 of Air Force Special Unit into flight for the first time. More than one hundred warplanes including those from the aircraft carriers together with 5 rounds of cruise missile attacked 12 different locations. It was the largest operation since the air strike started on October 7, 2001.

On October 18, 2001, US-UK coalition forces had established control of the air over Afghanistan after days of continuous aerial bombing. They started to focus on anti-ground strategy, in which they drop bombs on military units traveling on the ground from one place to another by spotting them from above. Since the beginning of the war, more than 2000 bombs and missiles were dropped on Afghanistan.

On the following day, October 19, 2001, U.S. Forces started ground operations.

#### 4. Military Support to the Northern Alliance

From the night of October 21 to October 22, 2001, U.S. Forces repeatedly performed heavy aerial bombing on the battlefield of Taliban near the fortress of Jablsarajhi north of Kabul and areas annexed to Bagram Airport located about 25 kilometers north of capital Kabul. This campaign was designed to assist the Northern Alliance which had difficulty in advancing the troops into Kabul because the Taliban had deployed its elite unit in those areas to hold back the Northern Alliance.

Moreover, targets hit most violently by U.S. Forces were the provinces of Uruzgan and Helmand, where Osama bin Laden had several military bases in close proximity of Kandahar. Also, in the north, U.S. Forces dropped a huge number of bombs on the Taliban bases in the provinces of Samangan and Balkh, which are close to Mazar-e-Sharif where the Northern Alliance engaged in ground battle with Taliban forces.

On November 6, 2001, Defense Secretary Rumsfeld confirmed that the number of U.S. Special Forces troops in Afghanistan increased 2.5 times compared with the prior week, and he declared his intention to continue reinforcement. He also added "The air campaign has been going along quite well. We have ranged from low of 60 sorties up to 120 more recently."

Before the dawn of November 10, 2001, the Taliban forces withdrew from Mazar-e-Sharif, the hardest-fought city north of Afghanistan, at which point the Northern Alliance took control of the city. Within a few hours, a B52 bomber dropped 15 bombs on the Taliban's former entrenchment, 25 kilometers north of Kabul.

#### 5. The Fall of the Taliban Regime, and Inauguration of an Interim Government

On November 13, 2001, the Northern Alliance gained control of the capital Kabul. It was a conquest of the capital with virtually no actual battles. Taliban forces pulled out by moving their tanks and military vehicles to their stronghold, Kandahar. Pillage and looting had already started in the buildings formerly occupied by the Taliban regime.

Also in Kabul, war lords of the Northern Alliance divided the city and occupied the zone of their choice claiming their respective ascendancy.

Despite the Northern Alliance's control over these major cities, Defense Secretary Rumsfeld stated the U.S. decision to continue air strikes, saying "The war is not over yet." At the same time, he confirmed his commitment to send more of Special Forces in Afghanistan, adding that more of Special Forces troops have been assigned already to Kabul and the airport of Mazar-e-Sharif.

On November 14, 2001, Vice-President Cheney admitted that the Taliban was no longer in control and

reiterated that attacks on Afghanistan would be continued. Thus, the aerial bombing continued dropping bombs on headquarters of the Taliban in Kandahar.

November 16th is an important day for Muslims, as it is the first day of Ramadan. Department of Defense spokesman stated that aerial campaign in Afghanistan would continue during Ramadan and that U.S. Forces would not change war plans because of Ramadan.

From the night of November 16, 2001 to the dawn of the next day, U.S. warplanes bombarded the city of Khost in the east of Afghanistan, targeting the residence of Hakkani, the Taliban Minister of Border and a nearby seminary.

On November 22, 2001, 70 U.S. fighter jets performed intense air strikes on Kandahar and Kunduz.

On November 30, 2001, U.S. warplanes bombed intensively Kandahar airport, which was the last fortress of the Taliban. It was thought to be the largest and heaviest aerial campaign since October 7, 2001, when U.S.-UK coalition forces dropped the first bombs in Afghanistan.

From November 30th to December 2nd, 2001, U.S. Forces conducted intense an intense bombing campaign in the area surrounding Jalalabad, striking many civilians and bases of anti-Taliban forces which were friendly to U.S. Forces causing many deaths.

On December 4, 2001, defendant Mr. President Bush, during an interview on the American ABC television network, said that attacks were very important and that there was a possibility that U.S. Forces would have to fight somewhere else other than Afghanistan. The statement seemed to indicate his plan to expand the attacks in other parts of the world for the second time.

On December 5th, 2001, the four factions of anti-Taliban forces signed an agreement about the interim administration for the transitional government organ in Bonn, Germany. Although each of the four groups submitted a list of names for the possible cabinet-members, the final list of names did not match the recommendations. It is believed that U.S. interfered with the process.

On December 22, 2001, Hamid Karzai was sworn in as head of Afghanistan's interim government (officially called Afghanistan Islamic Transitional Government). Nevertheless, U.S. Forces were still continuing aerial bombing in the area where members of the Taliban or al Qaeda were thought to be hiding, especially in the east of Afghanistan.

## 6. Ongoing Military Operations of U.S. Forces in Afghanistan

On December 28, 2001, speaking from his Texas ranch, defendant Mr. President Bush once again expressed the view that U.S. Forces would be in Afghanistan for a long time and that U.S. Forces would continue bombing until they complete the mission. It is said that the Afghanistan interim government demanded that the U.S. stop its bombing.

On the same day, U.S. Forces scattered multitudes of leaflets around Khost in the east of Afghanistan from the aircraft, warning "Do not give shelter to an al Qaeda soldier. Or U.S. Forces will drop bombs on you wherever you are". The leaflet had an additional comment, "You cannot complain about bombing."

On December 30, 2001, one US fighter plane, one B52 bomber, and two air-raid helicopters dropped bombs on Nijajikara village in the province of Paktia in the east of Afghanistan.

During the night of January 11, 2002, U.S. Forces resumed massive air campaigns on Zawar, in the suburbs of Khost in the eastern Afghanistan. To protest the resumed air strikes, the local assembly consisting of representatives from four districts around Khost issued a statement to oppose bombings by

U.S. Forces on the same day. These local assemblies demanded that U.S. Forces as well as the Karzai interim government stop bombing and conduct a careful investigation, saying “There is no al Qaeda or Taliban. If you are in doubt, you should make thorough investigation in the area.”

On January 23, 2002, the Bush Administration revealed an increase of the defense budget for the fiscal year of 2003 by 48 billion dollars, which is more than 15% more of the previous year. The increase shall cover the 10 billion dollar war chest and the cost of purchasing new weaponry and missile defense system. The U.S. defense budget in the fiscal year 2003 will total 380 U.S. billion dollars.

On January 24, 2002, Defense Secretary Rumsfeld stated that U.S. Forces will be stationed in Afghanistan at least until June, 2002, saying “We have responsibility to participate in the process of reconstructing Afghanistan and to support their efforts”.

From the dawn of March 1 to March 2, 2002, U.S. Forces started the most intense and extensive air strikes and the ground battles since the air-strikes started on October 7, the previous year. The city of Galle-de-Dis and its suburbs in the province of Paktia in eastern Afghanistan, were bombed heavily, and an unprecedented number of U.S. army troops were thrown in to fight the al Qaeda soldiers who were supposedly hiding somewhere in the said district. The operation was codenamed Anaconda (big snake) Operation. It clearly sends out the message that U.S. Forces were there to stay for a long time.

On March 3, 2002, U.S. Forces made the first use of thermobaric bombs for air strikes in the suburb of Galle-de-Dis. A B-52 dropped two of them. When the thermobaric bomb explodes, it emits explosives into the air producing extremely high temperature and strong shock waves. It is considered to have very powerful destructive and lethal power.

On March 8, 2002, defendant Mr. President Bush made a speech in the state of Florida, pointing the possibility that more U.S. soldiers may be killed in days to come, and appealed for the support of the nation for continuation of extended air strikes and the ground war in Afghanistan.

As of June 30, 2003, U.S. Forces are still stationed in Afghanistan by the order of defendant Mr. President Bush.

### III. Definition of the Crime of Aggression

1. Aggression is the use of armed force by a person who has the power or authority to direct or execute political and military action of a State against the sovereignty with the purpose of threatening or attacking territorial integrity or political independence of another State, or human rights of its citizens or in any manner inconsistent with the UN Charter, subsequently depriving the people of its self-decision, freedom and right to independence.

#### 2. Use of Armed Force that Constitutes Aggression

- (a) The invasion or attack by the armed forces of a State against the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State ;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State ;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State ;

- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement ;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third state ; which permits using it in the domain of own country which can use a foreign country freely in order that the foreign country concerned may commit the act of aggression to the 3rd country ;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein ;

### 3. Burden of Proof

In the order of international law where wars are illegal or prohibited, stringent conditions should be satisfied so that the exceptional use of force, which does not violate the UN Charter, is to be accepted. The party which first used the force bears the burden of proof.

## IV. The acts of defendant Mr. President Bush constitute the crime of aggression.

### 1. Examination of Requirements

Description in Chapter 3 (II) of the indictment confirm the following facts,

- (1) Defendant Mr. President Bush is President of the United States of America, who has authority and power over political as well as military actions.
- (2) As previously stated, U.S. Forces bombed the territory of Afghanistan, attacked the armed forces of the Taliban regime, invaded the land, and occupied or gained control of major cities by military force, such as capital Kabul, Mazar-e-Sharif, Jalalabad, Kunduz, Farrar, Kandahar, Herat, and Qala-I-janghi. (Statute of ICTA, Article2 (a), (b), and (d)).

Meanwhile, as long as the crime of aggression questions whether or not foreign people are deprived of their self-decision, freedom, and the right of independence as the result of the defendant's acts, a State in this crime shall be construed as political power and its domain in its entirety, infringement of which would brings about the loss of basic human rights of population in the territory.

In this respect, the Taliban regime controlled the above-mentioned cities, main roads, and other aspects of the country as well as the population under the administration system. Therefore, Afghanistan should be considered as a sovereign State of Taliban, which should be protected from the crime of aggression.

- (3) The capital city of Kabul fell to US Forces who overthrew the Taliban regime. Even after the new interim government had been established, one which the U.S. accepted, U.S. troops remained stationed in the country, depriving the Afghan nationals of self-decision, freedom, and the right of independence by continuing military operations there.

Defendant Mr. President Bush emphasized the problematic control of the Taliban regime as well as its violation of human rights before he started the war. However, it is the right of the Afghan people to determine whether or not the Taliban regime should be overthrown. Therefore, a foreign government or governments should not be permitted to interfere with domestic affairs to overthrow

the government.

Article 1(2) of the UN Charter defines the purpose of the United Nations as follows ; “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace” ;

International Covenant on Civil and Political Rights defines the right of people in the Article 1(1), “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.

However, the Afghan people were not given the opportunity to determine their political status freely and pursue their economic, social, and cultural development due to the attack by U.S. Forces and their military occupation.

- (4) Although treatment of al Qaeda is a matter which should be dealt with by the sovereignty of Afghanistan, it was obvious that U.S. Forces had intended to settle the matter by the use of military force. Moreover, when we consider President Bush’s statement that U.S. Forces would not distinguish between a terrorist and a country which shelters a terrorist and the fact that U.S. Forces destroyed the function of the Taliban regime through a repeated aerial bombing campaign and subsequent military occupation of the country, it is reasonable to believe that Bush had a plan to overthrow the Taliban regime from the beginning. In view of the past U.S. strategy concerning the Middle East oil interest, it is not unreasonable to think that the United States infringe on the sovereignty of Afghanistan to secure petroleum resources. When we look at the fact that the United States, having infringed upon the sovereignty of the Taliban regime, having slaughtered people in violation of personal sovereignty by military force, we conclude that defendant Mr. President Bush intended to violate national sovereignty, territorial rights, and political independence of a State.

2. As mentioned above, defendant Mr. President Bush committed the crime of aggression by directing and commanding U.S. Forces to attack Afghanistan.

## V. Argument to Expected Defenses (Use of Armed Force in Violation of the UN Charter)

In the event that defendant Mr. President Bush argues that the use of armed force in Afghanistan was not in violation of the UN Charter, our arguments are presented as follows :

1. U.N. Charter Prohibits the Use of Armed Force in Principle.

The development of international law points to the way of making a war illegitimate means for the settlement of conflict starting with the League of Nations Covenant after World War I, the Pact of Paris of 1929 (Kellogg-Briand Treaty) through the United Nations Charter after the World War II. Article 2(4) of UN Charter prohibits the threat or use of force against the territorial integrity or political independence of any State, and Article 2(3) requests all member nations to settle their international disputes by peaceful means. Only exceptions are Article 42, which permits the member nations to demonstrate, blockade and sanction and Article 51 provides the inherent right of individual or collective self-defense.

Acts of reprisal involving the use of force is prohibited as provided in the annex of UN General



Assembly Resolution 2625 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/8082) dated October 24, 1970.

## 2. Not Justifiable as “Exercise of Right of Self-defence.”

Article 51 of the UN Charter says, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

In light of the principle that the use of force is prohibited, exercise of the right of self-defence should be strictly defined based on the Article 51 of the UN Charter and international customary law. We shall elaborate on our arguments as follows :

(1) The “9.11 incidents” are not the “use of force” as provided in the UN Charter.

a) The “9.11 incidents” do not constitute the “armed attack” to which a State is entitled to exercise the right of self-defence as provided in Article 51 of the UN Charter.

The exercise of right of self-defence requires the use of force by the regular military forces of a sovereign State or involvement of a State substantially equal to the use of force. (International Court of Justice (“ICJ”) Judgment on the Nicaraguan case). However, it has not yet been established that the incidents of 9.11 were the use of force by a sovereign State.

Therefore, it should have been investigated as acts of crime based on domestic criminal law, such as hijacking, destruction of structures, and homicide. For example, in the case of the Pan American Airlines bombing incident in 1988, the case was tried based on the law of Scotland where the incident took place at a court in the Netherlands for the sake of neutrality and fairness.

b) Furthermore, it is impossible to claim that Afghanistan has been involved with the execution of the attack substantially equal to the use of force.

Firstly, it has not been established that the 9.11 incidents were the acts of Osama bin Laden and al Qaeda.

The letter to the Chairman of the UN Security Council which the United States sent on October 7, 2001, and another letter which the United Kingdom sent on October 4, 2001, and the videotape which the U.S. Department of Defense released on December 13, 2001, are all inadequate as evidence. This means that adequate evidence has never been brought forward to prosecute and punish Osama bin Laden and members of al Qaeda for criminal activity.

Presumably, members of al Qaeda committed the crimes that occurred on 9.11 under the direction of Osama bin Laden. Even if such is the case, Afghanistan should not be subjected to the use by the U.S. of its right to self-defence only because it sheltered them in its territory.

That is, the substantial involvement of a sovereign State in an armed attack is the case where the State in question controls and orders the group which committed the crime or the case where such State recognizes and employs the group as part of its organization, or the case where such State itself is involved in the criminal acts. (Refer to ICJ “the Nicaraguan case judgment”, the “Teheran case judgment”, and the “Final Draft of an Article about State Responsibility”).

In this case, the fact that the Taliban regime tolerated the activity of al Qaeda and Osama bin Laden would be the most that Afghanistan can be accused of. There is no proof that the Taliban regime controlled, ordered, recognized or employed the above group.

(2) Non-applicability of the case of “if an armed attack occurs” (urgency requirement).

With the background of the historical development for making a war illegitimate, Article 51 of the UN Charter specifies the condition for the use of right-of-self-defense. It says, “Nothing in the present Chapter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations”. The part “if an armed attack occurs” should be interpreted as the case where the armed attack is continuous.

Meanwhile, the 9.11 incidents ended on the day they occurred. They were not continuous acts of military operations. On the other hand, attack by U.S. Forces against Afghanistan ordered by defendant Mr. President Bush took place on October 7, 2001, four weeks later. Four weeks’ time is too long or too late for the attack of U.S. Forces to be acknowledged as the use of right of self-defense when the armed attack is still going on in the United States.

Along with this point, some argue that the U.S. has the right of pre-emptive self-defense to prevent the future occurrence of terrorists’ act to rationalize the military action on Afghanistan.

It is impossible, however, to formulate the right of pre-emptive self-defense from the interpretation of the Article 51 of the UN Charter. Article 31 of the Vienna Convention on the Law of Treaties of 1980 says, “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

Keeping in mind the intent behind the development of international law and why certain acts of war are considered illegal, it is clear that “the right of pre-emptive self-defense” was not intended interpretation of Article 51 of the UN Charter. This interpretation is customarily accepted by the U.N. For example, the Security Council condemned Israel when it bombed the nuclear facility in Iraq as an act of pre-emptive self-defense in 1981.

(3) The Requirement of No Available Alternative Measures is Not Satisfied.

The sentence, “Nothing in the present Chapter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations” in the Article 51 of the UN Charter is followed by the sentence, “until the Security Council has taken measures necessary to maintain international peace and security”. From this sentence as well as the historical development of international law, two conditions should be introduced as pre-requisite to limit the use of right-of-self-defense. They are, when it is impossible to take the necessary measures provided in the UN Charter or when there is no alternative to the use of right of self-defence.

However, as elaborated in detail later, UN Security Council adopted two resolutions, the Resolutions 1368 and 1373, based on which United States could have taken appropriate measures.

Therefore, the United States would have been well within its rights to demand that a specific country, Afghanistan in this case, to hand over criminals just as they did in the case of the Pan American Airline bombing of 1988, also known as the Lockerbie Disaster, through the Security Council. If the country did not comply with the demand, the United States could have asked the Security Council to adopt a resolution for economic sanctions on the country.

We also point out that the United States of America had been negotiating with the Taliban regime for several years. It is possible that they could have settled the matter peacefully by continuing diplomatic efforts further.

As explained above, alternative measures other than the use of force were amply available. Therefore, defendant Mr. President Bush does not satisfy the condition of no alternative before

launching the military operations on Afghanistan.

(4) Lack of Proportionality.

In pursuit of the use of the right of the self-defence, use of force is limited to what is necessary and proportionate. This is widely accepted in customary international law as described in the advisory opinion of ICJ on Legality of the Threat or Use of Nuclear Weapons dated July 8, 1996, as follows ;

“41. The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law.”

Certainly, the 9.11 incidents delivered a serious blow to American society. However, military operations of U.S. Forces against Afghanistan affected population covering much wider areas, disabling and killing more civilians, destroying incomparable number of personal properties and private sector facilities, depriving civilians of the means to make a living while the mass exodus of civilians created a refugee crisis. Taliban prisoners of war were mistreated and slaughtered en masse, which will be elaborated in the following chapter. Proportionality is clearly lacking in this case.

3. There is No Resolution Which Permits the Use of Force.

Article 42 of the UN Charter says, “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”.

As described above, UN Security Council adopted two Resolutions 1368 and 1373 before defendant Mr. President Bush ordered U.S. Forces to launch an aerial bombing campaign in Afghanistan in response to the 9.11 incidents.

(1) The Summary of the Security Council Resolution 1368,

“Reaffirming the principles and purposes of the UN Charter, the Security Council is determined to combat by all means threats to the international peace and security caused by terrorist’s acts. It recognizes the inherent right of individual or collective self-defense in accordance with the Charter. It calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harboring the perpetrators, organizers and sponsors of these acts will be held accountable. It calls also on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 of 19 October 1999. It expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism.”

(2) The summary of Security Council Resolution 1373

The Security Council Resolution 1373 is summarized as follows :

Acting under Chapter VII of the UN Charter, all the States shall prevent and suppress the financing of terrorist acts and freeze funds and other financial assets of terrorists. The States shall refrain from providing any form of support, active or passive, including shelters. The State shall exchange information to prevent the commission of terrorist acts. The States decide to establish a Committee of the Security Council to monitor implementation of this resolution.

(3) However, neither of the above two resolutions grant defendant Mr. President Bush the authority or power to order an attack against Afghanistan as explained below.

a) Article 42 of the UN Charter says, “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate...” This means that measures not involving the use of armed force come first. Further, it is worthy to note that provisional measures provided in Article 40 or recommendations provided in Article 39 shall proceed. Let us consider each resolution from this perspective.

b) Resolution 1368 says, “its readiness to take all necessary steps to respond to the terrorist attacks of 11 September, 2001”. On September 24, 2001, when Secretary-General Annan addressed to the UN General Assembly, he was calling for “reaffirmation of the rule of law”, and “uphold our own principles and standards” and it is very clear that the use of force is not included in the meaning of “all necessary means”.

Moreover, when we ask who in the Resolution is going to take all necessary steps, the answer is the UN Security Council. Therefore, the resolution does not authorize each member State to take all necessary measures. Much less, it does not give a specific country, such as the United States, authority to execute what was agreed in the Resolution.

Furthermore, Afghanistan is not mentioned anywhere in the Resolution. In the case of the Pan American Airline bombing incident, a resolution was adopted for imposing non-military sanction on Libya only after Libya failed to hand over the suspected criminals. So it is obvious that Resolution 1368 has not reached this stage.

c) Resolution 1373 aims to reinforce the international cooperation in combating terrorism. No decision was made about the use of force as a way to bring justice to the perpetrators. Consequently, it does not give any State to attack Afghanistan.

d) In addition, in the preambles of Resolutions 1368 and 1373 the inherent rights of individual or collective self-defence are recognized. However, as preambles are not legally binding, and they only confirm the provision in Article 51 of the UN Charter, they do not endorse the attack on Afghanistan on the basis of the right of self-defence.

(4) Consequently, Resolutions 1368 and 1373 do not allow the use of force against Afghanistan on the basis of Article 42 of the UN Charter.

#### 4. Conclusion

As explained above, it is clear that the use of force by the United States against Afghanistan is not justified under international law as well as the UN Charter. In conclusion, defendant Mr. President Bush is guilty of committing the crime of aggression.

## Chapter 4 War Crimes

### I. Attacks on Civilians

#### 1. War Criminality of Attacks on Civilians

(1) Due to the air bombardments conducted by U.S. Forces starting from October 7, 2001, U.S. Forces had caused great damages to the civilians=noncombatants in Afghanistan. Professor Marc Herold of New Hampshire University in the USA made public the report on the investigations he conducted to determine the number of civilian casualties, time, and place of the attacks.

As for the method of tabulation, only those publicly acknowledged dead based on reports published in newspapers during the period between October 7, 2001 and March 2002 were included in the statistics, and in the first report on December 23, 2001, “the number of civilian casualties due to the airstrikes between the period from October 7 to December 6, 2001 was listed as no less than 3,767 persons,” and in the second report of 6 January 2002, “the number of civilian casualties in Afghanistan due to the air attacks from the first air campaign up to December 19, 2001 had reached more or less 4,000 persons.”

However, the truth was that these casualties were the only ones accounted for in the 9 weeks of the air campaign from the start to December 10, 2001 based on information provided by U.S. Forces to the media, thus, making the reported statistics of those who died and lost their lives in the air attacks unreliable and should be subject to more careful scrutiny and investigations, for the truth was that there could be more casualties than what U.S. Forces would want us to believe.

(2) The attacks on the civilians in connection with this US military offensive constitute “a premeditated murder” (Statute of ICTA, Article 3 (1)(a)), “intent to inflict serious pain and injury on the physical bodies and health of the victims or causing severe injuries” (Statute of ICTA, Article 3 (1)(b)), “intentional attacks against ordinary residents or private citizens who are not directly involved in the hostilities between warring parties” (Statute of ICTA, Article 3(2)(a)), and “indiscriminate use of weapons and other ammunition of war that are even in violation of international law in the nature of causing excessive injury or unnecessary pain and agony or pertaining to armed conflict” (Statute of ICTA, Article 3(2)(o)).

#### 2. Massacres of Civilians through Indiscriminate Bombings

U.S. Forces had massacred many civilians in Afghanistan through indiscriminate bombings with conventional weapons of war.

##### (1) Start of the Air Campaign

At predawn on October 7, 2001, U.S. Forces began its air bombardment of Afghanistan, and targeted mainly 31 principal Afghan cities such as Kabul, Mazar-e-Sharif, Jalalabad, Kunduz, Farah, Kandahar, and Herat.

Even with the limited reports, it was determined that seven residential areas suffered damages due to air bombings, and between October 7 and October 8, 2001, the number of dead civilians rose to

49~50 people.

Among the buildings damaged in Kabul was a maternity clinic (a facility with 400 hospital beds), and as a result of the air attack, 13 women (or 19 persons) died. Likewise, approximately 20 persons fell victim to the bombings in the residential areas of Kabul near the Kasbah Kahn Airport and near the Mar hill, where there was a radio station that was hit by cruise missiles.

## (2) Attacks on Civilians

U.S. Forces, even when they realized that the bombings from the start had caused great damaged and civilian casualties, continued almost every day in doing what they termed as “friendly fires.” Based even just on the available information, we know that there were nearly 130 cases of such attacks targeting civilians up to December 10, 2001 resulting in approximately 41~47 deaths of civilians per day.

The following are the statistics of such casualties of so-called “friendly fires” through attacks on civilians by the US military :

### a) October 2001

- (a) On October 9, 2001, U.S. Forces targeted Kabul and eight other districts such as Kandahar, Herat, Jalalabad, Mazar-e-Sharif, and others. In Kandahar alone, about 20 civilian residents died due to the bombings conducted in broad daylight.
- (b) On October 10, 2001, Kabul, Kandahar and Jalalabad were heavily bombarded from the air, and many women and children died when missiles directly hit their residences. At Kandahar, over 30 civilians died and 35 persons were injured because of the bombings conducted from October 10 to October 11.
- (c) On October 11, 2001, the small village down the mountain approximately 30 km. west of Jalalabad and the village of Kharam were indiscriminately bombed resulting in the destruction of about 60 civilian houses made of mud, and death of 160~200 civilians.  
Note that there was not one Taliban soldier in the village of Kharam.
- (d) At predawn on October 13, 2001, a FA18 bomber of the US Navy targeted the Kabul Base and dropped a massive type of satellite simulated bomb weighing approximately 900 kilos. The US Department of Defense acknowledged that one of the bombs missed its target but the other hit a residential area about 1.6 km. away resulting in a great number of civilian casualties.
- (e) On October 17, 2001, 40~47 people died during the air attacks on a civilian residential district and a shopping center in the heart of Kandahar. At Mirzafmad village in the suburbs of Kandahar, two clinics were bombed by U.S. Forces, eight people died and 20 were wounded. At the outskirts of Kandahar, two trucks were directly hit, and seven refugees died. Other than these, 12 people died when a house was hit by air bombings in the Chanoi region, and at the Bagepur region, 13 people died.
- (f) In the air attacks conducted by U.S. Forces on October 20, 2001, 60-70 civilians in Herat, and 50 civilians in Kandahar were killed. On the same day, the US military deployed F14 bomber planes to attack Kabul, but the US Department of War admitted that the F14 bomber plane strayed 2.4 km away from the target to a residential area which it “mistakenly fired at.”
- (g) On October 21, 2001 at Tarin Kawt, civilian refugees on a tractor and a trailer were air bombed resulting in the death of 20 people including 9 children.

On the same day, at Herat, cluster bombs were dropped on a hospital and a mosque, both of

which were destroyed, killing 100 people.

- (h) On October 22, 2001, a hospital in Herat was bombed and 100 people died. On October 23, 2001, a facility for the aged was bombed and over 100 people died.

On the same day, the village of Chouka-Khariz in the province of Kandahar, was bombed at night by several AC130 gunner planes, wiping out the entire village, killing 52-93 people.

- (i) On October 24, 2001, on the road of Tarin Kawt, a US military plane bombed a group of civilian refugees and 20~30 people were killed. On October 25, 2001, at Kandahar, a large bus that was loaded with passengers was attacked by a helicopter bomber resulting in the death of more than 10 persons, and on October 27, 2001, at Ghanihil village northeast of Kabul that was under the control of the Northern Alliance, a civilian house was hit by a missile, and 10 civilians were killed while 19 persons were seriously injured.
- (j) On October 31, 2001, at about 4 a.m. an F18 bomber bombed a Red Cross Clinic inside the city of Kandahar, killing 10 civilians and seriously injuring 25 people.

#### b) November 2001

In November, U.S. Forces changed their strategy from bombing the military targets with guided bombs to carpet bombing using B52 strategic bomber planes, and on consecutive days, conducted the carpet-bombing of Kabul, Kandahar, Mazar-e-Sharif. During these military operations, many civilians were either killed or seriously injured.

Hereunder is a list of the bombings that resulted in more deaths (by conventional weapons) of civilians.

- (a) On November 5, the village of Ogupurukku, which is 70 miles south of Mazar in the province of Baruk, was bombed and 36 people died.
- (b) On November 10, 2001, three villages, which were 70 km northeast of Kandahar, were bombed, killing 133~300 people.
- (c) On November 17, 2001, a seminary school in Kawt was bombed, killing 62 people, and on the same day, the Zani-keru village in Kawt was bombed and 28 people including a family of 19 died, and on the same day, Maywando, 70 km away from Kandahar, was bombed, killing 42 people also.
- (d) On November 18, 2001, villages in Kaabad, 10 miles away from Kunduz, were carpet-bombed, killing 100~150 people. Others in the Kunduz area were also carpet-bombed and it is estimated that there were 800 casualties there.
- (e) On November 25, 2001, the city of Kandahar was subjected to air bombardment, killing 92 people including 18 women, and 7 children.
- (f) At an unknown period in November, a Taliban village near Kabul was subjected to air bombardment, killing 69 people.

#### c) From December 2001

December came, and the bombings were intensified. The carpet-bombings of the civilian residential districts also resulted in more casualties. In particular, a number of civilians were massacred in the Tora Bora district of the province of Nangahar and Paktia province in the eastern part of Afghanistan. The massacre of civilians continued even after the Taliban regime was overthrown.

- (a) On December 1, 2001, the village of Qama-ad, which was 30 miles south of Jalalabad, was bombed by B52 bombers, and 30 houses were destroyed, killing 50-200 people.

On the same day, U.S. Forces launched a more massive air operation thus far directed to the surrounding areas of Kandahar. In particular, they targeted and indiscriminately bombarded anything running along the arterial highway from Kandahar along the border of Pakistan, and as a result of such bombing operations, 5 buses and 4 tractors running along the highway were bombed, killing more or less 30 people.

- (b) In the mountainous part of the Tora Bora district, the death toll due to the B52 bombings was 58 on December 3, 2001, 42 on December 4, 2001 and 8 on December 5, 2001 and on December 6, 2001, the number of casualties due to US military air attacks at the village at the clough in the suburbs of Tora Bora was 80, and they were all civilians. Between December 2 and December 6 alone, 115 people were killed by B52 bombers.
- (c) The air assault and carpet bombings were conducted in the district of Tora Bora consecutively on December 7, 8th, 9th, and 10th, and on December 10th alone, there were more than 80 such assaults by F18S, B-52S, and in addition to the B52s, the carpet bombings were aggressively pursued with jet planes. It is not clear how many people died during this period, but one can safely assume that these bombings caused a large number of casualties.
- (d) On December 30, 2001, U.S. Forces conducted a massive air attack on the Niajikara village in eastern Paktia province, killing 52 people.

Later, Stephanie Bunker, a spokesperson for the Islamabad-based UN Coordinator for Afghanistan, said in a press conference that there were no Taliban or Al Qaeda militants in that village.

- (e) On January 3, 2002, U.S. Forces deployed B1 bomber planes, FA18 combat planes, and AC130 gunner planes, and ordered the intensive air bombings of the whole region of Zavar. As a result of the consecutive attacks, 32 residents died, and more than 10 people were injured on January 4, 2002.

U.S. Forces, on January 6th, 7th, sent a total of 118 planes including B52 bombers, B1 bombers, and carrier-based aircrafts to conduct massive air attacks at the eastern Khost suburbs. On January 9, 2002, U.S. Forces concentrated air attacks on Chewer in southwest Khost of the southern part of the province of Paktia. On January 11th, 2001, a massive air attack targeted the Zavar region of eastern Khost suburbs. And on January 14, 2002, a much more intensive air attack was conducted in the Zavar region resulting in great number of casualties.

- (f) Even with the entrance of the new year 2002, the bombings of U.S. Forces were continued and intensified on the eastern part, and from March 1, 2002 on, a massive air and land offensive called “Anaconda Operation” was launched, and naturally, the number of casualties also increased.

- (3) Through the investigations conducted by the investigative team of ICTA, names of the victims can now be verified, and the time and death or details of the injuries can now be established with the number of witnesses now willing to give concrete statements. Testimonies about 59 victims were obtained, and combined with field researchers’ statements given at several public hearings, detailed information about the injuries and death of total 126 victims have been established.

Listed below are cases of the most special nature :

- (a) At the residential area on the northern slope of Mt. Bemar located north from the heart of the city of Kabul, during the air bombings conducted by U.S. Forces from October 8 to October 9,



2001, Arifa (33 years old, female) testified that out of 15 members of her family, eight were killed by the in the air bombings. The victims were her husband, Gur Ahmad, her eldest son, one of Gur's other wife and five of her children (one of them was named Sedika Grawmad, 18 years of age, female).

Arifa's second son (14 years old) sustained injuries in the eyes and head, and had suffered shell shock.

In the same air attack, the house of their neighbor, Sahid Dado (38 years old, male), was destroyed, and his daughter, Fureshta Shagad (9 years old), and son, Ali Shagad (1 year old), died.

(b) On October 10, 2001, in the air bombing on Nyupuroshe district of Kabul and Hashmatra confirmed that nine people died including his elder brother.

(c) On October 17, 2001, in the air bombing on Aldomakuyoran district of Kabul, Najira (6 years old), the daughter of Abdulla Basil (34 years old, male), was killed.

(d) On October 21, 2001, the house of Guru Makai (40 years old, female) who lived in the town of Kali Kana northwest of Kabul was destroyed by US military bombs, and her daughter, Sarudaru (20 years old) was buried under the rubbles and died. Hanifa (28 years old), who lived nearby, was buried under the rubbles of her house that was destroyed by bombs, and her mother, Ajiza, died, and she herself was blinded on the left eye. The houses of Guru and Hanifa were 4 to 5 hundred meters away from the long- abandoned Taliban homebase.

(e) On 14 November, in the B52 bombings of the Moftehashim region of the province of Kondoz, the wife of Abdul Hamid (male), Bibi Kimia, and their daughters, Shugofa and Nebera, and sons, Abdol Majid and Abdol Sami died.

In the same bombings, the wife of Ramadula (male, 35 years old), Hanifa, wife, Rayhan, son, Kudoratra, son, Neamatora, daughter, Arifa, daughter, Mariam, the wife of an older cousin, Nafesa, totaling 7 persons in all, died (there is discrepancy in the family structure and number of persons in what was written in the 4th compilation of the public hearing).

In the same bombing, the daughter and son of Guru Aga (male), the wife of Guru Aga's elder brother and her children, totaling 5 persons, died.

In addition, the mother of Sale Mohammad (50 years old, male), Bibi Sharifa Mo (70 years old), wife, Faresheta (42 years old), 5 daughters, Afghani (22 years old, Shala (19 years old), Raqeba (16 years old), Halima (9 years old), Afshan (3 years old), and son, Naser (12 years old), totaling 8 persons, also died.

(f) On November 15, 2001, Nawabad Choga of Kunduz was bombed, and Ba Hemat (35 years old), the son of Bibi Aisha (70 years old, female), his wife, Saleha (about 20 years old), Rahmatullah (3 years old), the couple's son, Mango (5 years old), their daughter, and an 8 1/2 month unborn child, totaling 5 persons, died. In the same bombings, Bezant Nesa (50 years old), the mother of Naim Kahn (16 years old, male) died.

Bibi Nadera (50 years old), the mother of Ishmael (35 years old, male), his younger sister, Bibi Said (20 years old), his younger brother, Said Rahman (12 years old), his younger sister, Farazia (7 years old), his wife, Bibi Said Ala (20 years old), their daughter, Mahboba (5 years old), their son, Qodaishak (3 years old), totaling 7 persons, died.

(g) On November 17, 2001, U.S. Forces dropped 12 bombs at the town of Ahamgaran (a small town

populated by 15 families) in the city of Qanabad in Kunduz province, and 4 of the bombs directly hit the house of Amina (8 years old). When Amina's house was destroyed, his mother, his seven brothers, grandmother, the wife of his elder brother and her children, five persons in all, were killed in a split second.

(h) On November 10, 2001, in the vicinity of the marketplace of the residential area at Darwaze Torjikorkan district, southeast of Blue Mosque in the heart of Mazar-e-Sharif, U.S. Forces dropped bombs, and Ali Mohammad (15 years old, male), who was then on his way to the market, died instantly when a fragment of the bomb pierced his throat. Near the marketplace, many people were reported to have died or severely injured.

At about 4 p.m. on November 11, 2001, U.S. Forces once again dropped bombs in the same district, and Khail Mohammad was directly hit. He was so severely injured in both legs that they both had to be amputated as a result.

On the road in the Poli Emon Mukri district, 30 km away from Mazar-e-Sharif, a bomb landed on a truck that was running along it, killing the driver, Munil Ahmad (22 years old, male) and over 30 other crews and passengers. Munil Ahmad's father, Shad Mohammad (60 years old, male), who dashed to the scene, was so stricken with grief that he suffered a heart attack and died on the spot.

#### (4) War Criminality of Attacks on Civilians

a) The massacres of civilians constitute "premeditated murder" (Statute of ICTA, Article 3(1)(a)), "intent to inflict serious pain and injury on the physical bodies and health of the victims or causing severe injuries" (Statute of ICTA, Article 3(1)(b)), and "intentional attacks against ordinary residents or private citizens who are not directly involved in the hostilities between warring parties" (Statute of ICTA, Article 3(2)(a)).

#### b) The Principle of Distinction and Military Objectives

The principle of distinction, which requires that all parties involved in a military dispute should distinguish civilian population and civilian objects from combatants and military objectives, is a fundamental principle of the International Humanitarian law (Article 48 of the First Protocol Additional to the Geneva Convention). This principle of distinction prohibits the direct attacks on civilian population and civilian objects. Attacks are limited to combatants and military objectives (doctrine centering on military objectives). In Article 50 of the Optional Protocol, it is stipulated that anyone not affiliated with any military organization should be considered a civilian, and should there be any doubt as to whether a person is a civilian or not, it is prescribed that the person in question be considered a civilian, and Article 51 of the same protocol, defines that "the nature, situation and use or application regarding military objectives are matters that contribute to the military activities, and should be limited to bringing about definite military advantage under conditions at the time of some general or partial destruction, usurpation or invalidation," and stipulates that "attacks should be strictly limited to military objectives."

The advisory opinion of the ICJ regarding the use and menace of nuclear weapons in 1996 reaffirms the fact that the principle of distinction of civilian population and civilian objects is an international customary law.

In this case, it is very clear that other than military objectives, residential districts, where civilians lived, were targeted for attacks, civilians were actually attacked, and it is evidently a criminal act of

war.

c) U.S. Forces, regarding the damages these bombings may inflict on civilians, has stated that these are not deliberate but “friendly fires.”

(a) In the war on Afghanistan, 60 percent of the bombs used by the US military were precision-guided weapons. As for the remaining 40 percent, the bombs that were dropped hit not just military targets but civilian targets, and the US military, while fully aware of this, daringly used iron bombs called “Dumb Bombs.”

(b) No matter how precise and accurate the fixed target of the precision-guided bombs (Tomahawk Missiles and JDAM) may be, because of their destructive capability of such bombs is powerful enough, more often than not, non-military installations, such as private homes, that are located near the targets of military offensives also get destroyed in the attacks. In the case of the GBU-31B, one of the precision-guided weapons called “JDAM (Joint Direct Attack Munitions),” which were greatly used in the Afghan war, when it explodes, aside from a strong blast with a range of 120m radius, it also emits an intense heat of 8500 degrees. A crater is created, and fragments of debris weighing over 4500kgs are scattered by a violent force and even within a 365m radius, the chance of avoiding injury is practically nil. In other words, even when one is not directly hit by the bomb, he can be flown and battered against the wall, his body pierced with countless number of fragments of bomb shells, glass splinters, fragments of debris here and there that can result in death and injury. Accordingly, this precision bombing, from the point of view of citizens who live near the targets of these bombings, is nothing but indiscriminate bombing attacks.

Likewise, even precision-guided bombs, for example in the case of JDAM, the target range can be from 13m to 30m. Accordingly, in case the target building is small, width is narrow, or is like a tower, there is the danger of the bomb going astray and missing the target by some 10 meters. In such cases, the bomb that misses its target will most likely fall somewhere several hundred meters farther beyond. This is how private houses and civilian establishments, which are fairly far away from targeted military installations, also get hit.

U.S. Forces knew beforehand the possibility of civilians being victimized by these bombings even from the beginning of the military offensive, but nonetheless, even when they were aware of the growing number of civilian victims, they still continued the attacks.

(c) In addition, regarding the offensive from December, Tora Bora, Paktia and other areas were subjected to intensive carpet bombings, and to a totally indiscriminate attack. These damaged regions were hamlets that were a long distance from the urban areas, and the poverty-stricken peasants, who lived in these villages and had no economic means to take measures to seek refuge elsewhere, had no recourse but to remain in their villages only to fall victims to the indiscriminate bombings of their villages. U.S. Forces knew all along that civilians lived in the regions where they conducted carpet bombings, and that the civilian villagers had not left to take refuge elsewhere, but still, they continued to carpet bomb those villages.

(d) From the above-mentioned points, it is very clear that these US military offensives were deliberate indiscriminate bombing attacks, and that there existed a criminal intent to attack, kill and injure civilians, and that they evidently can be classified as war crimes.

### 3 Attacks on Civilians with Cluster Bombs

(1) On October 10, 2001, B52 and B1 of U.S. Forces, with the strong intention to kill and inflict severe injuries, started dropping two kinds of cluster bombs, the “CBU87” and “CBU103.” These cluster bombs were each loaded with 202 BLU-97 bomblets.

The US military, in Afghanistan, between October 2001 and March 2002, dropped 1228 cluster bombs in 232 missions, and diffused a total of 248,056 of BLU97 small type of bombs over a wide range of area in all lands occupied by the Afghans.

(2) Civilians as Targets of Weapons of Indiscriminate and Large Scale Genocide

There are two types of cluster bombs used in Afghanistan, the CBU87 and CBU103, both having 202 individual sub munitions BLU97 bomblets contained in container (parent bomb) called “TMD (Tactical Munitions Dispenser).” This mother bomb explodes in the sky at a height of approximately 300~400 feet above ground, and disperses 202 bomblets in small parachutes that detonate upon touching the ground. The bomblets are the same size of soda cans and have a bright yellow color, but are produced to break into 300 small sharp metal fragments upon detonation, and the fragments then travel at an extremely high velocity within a range of 152m. Naturally, countless pieces of these fragments can kill or cause serious injuries to the people within the vicinity of the explosion. They are so powerful enough to damage and destroy light armor vehicles and trucks within a vicinity of 15m.

Cluster bombs can be diffused over extended areas, causing the indiscriminate death and injury to people by their shell splinters. The purpose of manufacturing these bombs is to murder and injure as many people as a bomb can.

(3) Sustained Damages

Moreover, it is said that the rate of misfiring cluster bombs is relatively high, 5% according to U.S. Forces, and 22% according to landmines disposal experts. The cylinders of the bombs resemble cans of drinking water, and because the packages of the relief goods that are dropped from the sky have also the same yellow color, the unexploded bomblets are oftentimes mistaken for the food bags, thus, causing many residents, mostly children to die or get injured when they try to pick them up.

Also, when these bombs fall on soft tillage farms, in most cases the impact is so weak that the bombs oftentimes fail to explode, and some, opened like parasols, get caught by twigs of trees and misfire. These unexploded bomblets eventually ended up with the farmers who have to till and tread upon these lands, or those who go to gather firewood in the forest. The growing number of casualties is caused by these unexploded bomblets of the cluster bombs. They have become land mines, endangering the lives of many people.

(4) Attacks of Civilians with Cluster Bombs

a) Death and Injury by Cluster Bombs

There are too many cases of attacks on civilians with cluster bombs. Tora Bora, Herat, and Shomaly Plateau are the places that received the most number of airstrikes with cluster bombs, and in five weeks, over 600 cluster bombs were dropped at the Shomaly Plateau alone. The following are based on the statistics gathered by Prof. Marc Herold on the direct casualties of the cluster bombs:

(a) On October 21, 2001, cluster bombs were dropped at a military hospital and a mosque at Herat ; both buildings were destroyed, killing 100 people.

On October 22, 2001, nine people died by cluster bombs at Sheka Khara in the outskirts of

Herat, and also on October 24, 2001, eight to nine cluster bombs were dropped on the village in Ishak Sulaiman and a mosque in the western part of Herat, killing 9~20 people. On October 15, 2001, cluster bombs were dropped again at Shakar Khala village, killing nine people.

- (b) On October 29, 2001, at Jebrael Village on the western side of Herat, 12 people were killed by cluster bombs, and on the following day, one child picked up a bomblet and was killed.
- (c) When November came, the exact date is unknown, but at Jalalabad, many people were reported dead after cluster bombs were dropped there.
- (d) On November 21, 2001, one person was killed when cluster bombs were dropped at Herat, and on November 25th, 2001, 70 people were killed by the cluster bombs dropped on Kunduz.
- (e) Also on November 27, cluster bombs were dropped on Zhar Khalez on the southern part of Kandahar. On the same day, at the Shamshad village in the province of Nangahar province, three children died and 7 were wounded when a cluster bomb (unexploded bombs) detonated.
- (f) Ishak Sulaiman, a town with a population of 12,000 northeast of Herat, was bombarded with cluster bombs for one week from October 31, 2001.

#### b) Damages by Unexploded Bombs

Damages inflicted by unexploded bombs are serious and have semi permanent effects, and they are most damaging when children are involved.

The most unforgivable style of bombing used by U.S. Forces has been the use of cluster bombs with bomblets looking very much like the food packages that US military airdrops. At Herat, a group of children picked up these cluster bombs thinking that they were food packages, and 30 were killed and 25 were wounded. At Wajir Akhbar Khan Hospital, the children's ward there is occupied by children who sustained injuries by cluster bombs.

- c) Through testimonies in public hearings conducted by ICTA, and investigations made by Human Rights Watch, the damages and massacres caused by these cluster bombs were concretely established and are now very clear. The following are the cases that merit special attention:

- (a) On October 31, 2001, U.S. Forces dropped two cluster bombs on a private house located at the edge of a northeastern town, and one of those bombs killed 55-year-old Jamagur, the owner of the private house, and 35-year-old Ajima, who lived in the neighboring house, was injured. The other bomb fell on the neighboring house of the Ahmad family and the 55-year old father and 19-year-old son, who attempted to escape, were killed. The Ahmad family's house was destroyed and many of their domestic animals were killed. Two days after, in the afternoon, a cluster bomb was dropped at a pastureland of a southeastern town, and two shepherds, Kalipfa Hussein (80 years old) and Bismula (20 years old) were killed instantly. The following day, a 12-year-old boy, Maruf, who was walking at the pastureland, became a victim of an unexploded bomb.

Three days after these attacks, one cluster bomb was dropped this time in the middle of the town, where an shop owner, Hajim Mohammed (55 years old), who was in front of his shop, Karim (55 years old) who was on the road, and Gur Aga (21 years old), who was in another shop, died instantly. Also, at the same time, another cluster bomb was dropped outside of the western side of the town, but there was not one casualty. However, four days later, in the morning, two shepherds who went out to the plains to feed the sheep with grasses, Rajic (43 years old) and Goseudin (37 years old) stepped on an unexploded bomb and died instantly. A

month after this incident, in the same area, a 61-year-old father died because of an unexploded bomb, and his 8-year-old son was wounded. (Report by Human Rights Watch).

- (b) On November 6, 2001, Isanura (a 9-year-old boy), who resided in Kabul, suffered a serious injury to his left foot when he exposed himself to the bomblet picked up by his cousin, and as a result his leg was amputated and he can no longer walk.
- (c) On November 15, U.S. Forces dropped cluster bombs at De Wayron village in the province of Kunduz, killing at least 9 people.

On the following day of the aerial bombing, the 16th, an 11-year-old girl, Shimin, picked up a bomblet, and it exploded, and she was injured in the left hand, and at the same time, her 10-year-old friend who was with her, Abdul Rashid, lost both his eyes as an effect of the bomblet explosion. On the day before the dropping of the cluster bombs, U.S. Forces dropped relief goods with the same yellow color of the cluster bombs, and this Shimin picked up, and must have thought that the cluster bomb was the same as relief goods when she picked it up.

#### (5) War Criminality of the Use of Cluster Bombs

- a) The dropping of cluster bombs is very clearly “a premeditated murder” (Statute of ICTA, Article 3(1)(a)), “intent to inflict serious pain and injury on the physical bodies and health of the victims or causing severe injuries” (Statute of ICTA, Article 3(1)(b)), “intentional attacks against ordinary residents or private citizens who are not directly involved in the hostilities between warring parties” (Statute of ICTA, Article 3(2)(a)), and “indiscriminate use of weapons and other ammunition of war that are even in violation of international law in the nature of causing excessive injury or unnecessary pains or pertaining to armed conflict” (Statute of ICTA ,Article 3 (2)(o)).

#### b) Ban on Indiscriminate Weapons of War

The “Principle of Distinction,” which requires that all parties involved in armed conflicts should distinguish civilian population and civilian objects from combatants and military objectives, is a fundamental principle of the International Humanitarian law (Article 48 of the First Protocol Additional to the Geneva Convention). By this principle, with regard to weapons that have an indiscriminate nature of not being able to distinguish a legal target (combatant and military objectives) from an illegal target (civilian population and civilian objects), their use shall be prohibited. The advisory opinion of the ICJ in 1996 confirms the fact that the international customary law shall be applied to all kinds of weapons of war including weapons developed after the Geneva Convention was established, and even the provisions of the International Criminal Court clarify the prohibition of the indiscriminate weapons of war.

#### c) Ban on Weapons of War that Cause Unnecessary Pain and Agony

Weapons of war that cause unnecessary pain and agony, was advocated in the full text of the St. Petersburg Proclamation of 1868, and reaffirmed in accordance with Article 35 of the First Protocol Additional to the Geneva Convention

The provision of “unnecessary pain and agony” is understood to offer means of “avoiding hazard in order to achieve lawful military objectives is much more hazardous.” (1996 Advisory Opinion of ICJ).

- d) It is quite evident that cluster bombs do not limit their target to military installations, and that their use is to kill a great number of civilians in vast areas. It is very clear that cluster bombs are weapons that cannot distinguish the legal target from illegal one, and therefore, fall under the category of

indiscriminate weapons of war. In September 2000, the International Red Cross petitioned for an international ban on cluster bombs.

U.S. Forces, however, has ignored this protest, and despite its being familiar with the nature of cluster bombs as an indiscriminate weapon of war, it continues to use them, deliberately violating the ban against the use of indiscriminate weapon of war.

A B52 bomber plane can load up to 40 of these cluster bombs (8,080 bomblets). Accordingly, speaking theoretically within this premise, when these B52 bombers conduct their carpet bombings with cluster bombs, they can cover a region with the circumference of 176,000,000 cubic yard the size of 27,500 football stadiums in their bombardment.

And granting that the rate of not exploding is 5 percent, that mean over 12,400 duds, and if the rate is 22 percent, we can calculate nearly 54,600 duds. This exceedingly large number of unexploded bomblets, even after the end of the war, will continue to be “an indiscriminate bombing” of the inhabitants. By this it is very clear that the use of these weapons of war have caused “unnecessary pain and agony” as the dropping of cluster bombs have left many victims among the citizens, and their damaging effects will linger even when the war is over.

U.S. Forces is fully aware of the nature of devastation of the indiscriminate use of these cluster bombs and the damages on the civilians even when the war is over, and as mentioned above, has recognized the fact that a widely large number of cluster bombs have been diffused, and have caused widespread damages to civilians, and that the unexploded bombs can cause more devastations.

Accordingly, the use of cluster bombs, and the activities of U.S. Forces, which in reality, have caused death and injury to people, is “premeditated murder” (Statute of ICTA, Article 3(1)(a)), intended “to inflict serious pain and injury on the physical bodies and health of the victims or causing severe injuries” (Statute of ICTA, Article 3(1)(b)), “intentional attacks against ordinary residents or private citizens who are not directly involved in the hostilities between warring parties” (Statute of ICTA, Article 3(2)(a)), and “indiscriminate use of weapons and other ammunition of war that are even in violation of international law in the nature of causing excessive injury or unnecessary pains or pertaining to armed conflict” (Statute of ICTA, Article 3(2)(o)),

#### 4. Use of Daisy Cutter Bombs

##### (1) The Truth of the Bombardment

U.S. Forces used special large scale bombs [BLU-82] (nicknamed “Daisy Cutter”) ; the world’s largest, as conventional weapons of war in Afghanistan.

- a) On November 4, 2001, U.S. Forces dropped two [BLU 82] bombs near Mazar-e-Sharif. General Pace, Vice-Chairman of the US Joint Chiefs of Staff, at the press conference on November 6, 2001, officially acknowledged that during the airstrikes at the northern part of Afghanistan on November 4, 2001, two [BLU-82] (nicknamed “Daisy Cutter”) bombs were dropped. General Pace stated that “They were dropped from the back of a C130 transport aircraft with parachutes, and exploded at about 90 cm above ground. When it exploded, it would be like hell. The purpose is to kill people.”
- b) Also, on November 23, 2001, US Military Central Command Spokesman Rowell acknowledged that “on November 1, Daisy Cutters were dropped at the southern part of Kandahar.”
- c) Moreover, on December 10, 2001, the US Department of Defense clarified that Daisy Cutters were

used during the bombings of caves in the region of Tora Bora.

#### (2) Indiscriminate and Mass Destruction by Daisy Cutter

The Daisy Cutter has a diameter of 1.56m, length of 5.3m and its weight, as a conventional bomb, is 15,000 lbs (approximately 6,800kgs) thus making it the largest bomb in the world.

It has a shape of a cylindrical tank with slurry blasting agents (a mixture of nitric acid ammonium, aluminum powder gelatinized with water) deposited in it. Attached to one side of the cylindrical-shaped tank is a parachute, and on the other side, a cylindrical cone-shaped windshield, and furthermore, attached to the apex of the windshield is a 1.24m long fuse probe.

After being dropped, the parachute opens, the fuse probe goes under and the bomb descends. The fuse probe causes the bomb to explode as it touches the ground, and creates a shockwave of 73 kgs. Per 1 square centimeter, and the targeted object on the ground is destroyed by the shockwave and heat of the explosion. One bomb that is dropped has a destructibility that can make a crater the size of 5 American football stadiums with one stroke.

In the war on Afghanistan, weapons of mass destruction and psychological warfare have been used, and they have the capacity to destroy with one stroke a target within a radius of about 300~900 ft. and create a crater, and from the hypocenter, any person or living thing within a radius of about 300~900 ft can be indiscriminately killed.

The Daisy Cutter kills all people within a radius of about 300~900 ft. Like nuclear weapons, which are defined as weapon of mass destruction, they are definitely indiscriminate weapons of war by the fact of its capability to massacre people present within their range regardless of whether they are civilians or not.

#### (3) Civilian Casualties of Daisy Cutters

The scale of the damages on civilians by Daisy Cutters is not clear, but because these weapons of mass destruction had been used in such regions where there were civilians such as the southern part of Kandahar, the vicinity of Mazar-e-Sharif, it is most likely that there has been a large number of civilian casualties.

Refugees have testified that there are 1000 people killed by Daisy Cutters dropped at the Tora Bora region.

#### (4) War Criminality of the Use of Daisy Cutters

Daisy Cutters, when used once, can kill all those, who are within 300~900 ft radius from the hypocenter regardless of whether they are civilians or combatants. And as stated above, they had been actually used in regions where there were people. Accordingly, the use of Daisy Cutter very clearly indicates that U.S. Forces have had the intention to massacre civilians.

The use of Daisy Cutters, therefore, is clearly evidence of “premeditated murder” (Statute of ICTA, Article 3(1)(a)), “intent to inflict serious pain and injury on the physical bodies and health of the victims or causing severe injuries” (Statute of ICTA, Article 3(1)(b)), “intentional attacks against ordinary residents or private citizens who are not directly involved in the hostilities between warring parties” (Statute of ICTA, Article 3(2)(a)), and “indiscriminate use of weapons and other ammunition of war that are even in violation of international law in the nature of causing excessive injury or unnecessary pains or pertaining to armed conflict” (Statute of ICTA, Article 3(2)(o)).



## II. Attacks on Civilian Facilities

### 1. War Criminality of Attacks on Civilian Facilities

According to the Principle of Distinction and Military Objectives that are the basic rules of the International Humanitarian Law, it is unforgivable to attack civilian facilities. Statute of ICTA clarifies that “a deliberate attack on civilian objects, or in other word, objects that are not supposed to be military targets” is a crime (Statute of ICTA, Article 3(2)(b)), and “the intentional attacks “on buildings used for religious purposes” “like hospitals where there are wounded and sick people (Statute of ICTA, Article (2)(c)), and attacks on facilities of the United Nations Organizations or the Red Cross (Statute of ICTA, Article 3(2)(c)) are specifically prohibited as war crimes.

### 2. U.S. Forces had deliberately attacked civilian facilities during the air bombings of Afghanistan.

(1) Of the civilian facilities bombed by U.S. Forces, hereunder are some of the special cases that have been reported.

(a) On October 7, 2001, a maternity hospital (with 400 beds) in Kabul was bombed

(b) On October 8, 2001, at Kabul, at least 4 bombs in all, 2 bombs at the airport, 2 at some TV tower that was on high ground, were bombed to topple them, and immediately after the attacks, there was an outage, and all the lights in the town went out.

On the same day, the office of an NGO promoting the dismantling of landmines was bombed, killing four staff. As a result, the work to dismantle landmines, estimated 10 million bombs left during airstrikes, was stopped, and pinpointing places where the landmines were had become difficult as the equipment used for dismantling the landmines were destroyed and such task had become dangerous.

On the same day, a mosque was destroyed during the airstrikes by U.S. Forces at Karaba in Afghanistan.

(c) The Red Cross Hospital in the city of Kabul was bombed twice on October 16, 2001, despite the big red cross written on the roof of the hospital.

On the same day, an FA18 combat plane of the US Navy carrying 1000 bombs bombed the warehouse of the International Committee of the Red Cross.

(d) On October 21, 2001, cluster bombs were dropped at a military hospital in Herat with 200 beds and a mosque; both buildings were destroyed, killing 100 people died. At Herat, on October 22, 2001, another hospital was attacked, and on October 23, 2001, a home for the aged was bombed.

(e) At predawn on October 26, 2001, high efficiency laser guided missiles of 2000 pound value were each fired from two FA18 combat planes targeting a warehouse borough of the International Committee of the Red Cross. Again, within a lapse of 8 hours, at 8 a.m. on the same day, two B52 strategic bombers planes each fired 3 shots of high efficiency laser guided missiles, and bombed the neutral International Committee of the Red Cross. According to the Office of the International Committee of the Red Cross in Islamabad, the Red Cross lost three warehouses due to the aerial bombings, and the food that they were supposed to distribute to the people around Kabul vanished.

(f) On 31 October, 2001, the Red Cross hospital in the city of Kandahar was bombed and more or less 11 people died. The Pentagon, however, was quoted as saying that they “were targeting

legitimate terrorists” in attacking medical clinics, and that “they intentionally carried out their attacks.” There is no doubt indeed that by doing this, U.S. Forces has deliberately and intentionally violated the provision of the Geneva Conventions.

(g) Moreover, on November 12, US Military Forces bombed the radio and television networks in the city of Kabul operated by the sole Arab television network, the Al Jazeera TV that broadcasted actual conditions there at that time with a 500-pound bomb, destroying them.

(h) US Forces again bombed and destroyed various civilian facilities such as the Kajakai Dam, and others like electric power plant, telephone company, radio stations, and others.

Other than these attacks on civilian facilities, the airstrikes in Afghanistan day in and day out, night and day must have resulted in many casualties that are just too many to account for.

(2) U.S. Forces not only bombed these civilian facilities but also caused many casualties aside from the fact that the inhabitants were deprived of facilities essential to their livelihood such as electricity, medical treatment, media, dam and even civilian homes, and worse yet, their normal lives were disrupted

For these attacks on the civilian facilities, U.S. Forces, as mentioned above, made it clear and even admitted that the airstrikes were intentional. From the beginning of the airstrikes, they would not even take into consideration the fact that they were attacking civilian facilities, nor do they care that the attacks had become daily and frequent, and had caused a lot of casualties. Aside from that, they admitted that they were aware of the situation and acknowledge their actions as intentional.

The attacks on the civilian facilities is an intentional act against targets that are civilian facilities or in other words facilities that are not supposed to be military targets (Statute of ICTA, Article 3(2)(b)), and the attacks on mosques and hospitals are intentional attacks against “buildings used for teaching religion,” “against hospital as well against the sick and the wounded who are interred there (Statute of ICTA, Article 3(2)(i)) and the attacks against the facilities of the United Nations Organization and the Red Cross moreover fall under the Statute of ICTA Article 3(2)(c), and it is very clear that whichever of these cases are war crimes.

## 6. Responsibility of the Commander

Defendant Mr. President Bush, in light of the fact that he is the Commander-in-Chief of the U.S. Forces, assumes full power over the military operations, and is in a position by virtue of the powers vested in him to authorize and give orders.

Defendant Mr. President Bush was fully aware of the above-mentioned war crimes being committed from the beginning of the offensive. However, he not only failed to adopt a policy to prevent and investigate the causes pertaining to the abovementioned war crimes, but even ordered the continuation of the aimless airstrikes.

Moreover, defendant Mr. President Bush took active participation in the adoption of the concrete plan of action for the aerial bombing of Afghanistan, and was fully aware of and decided on which region and whether or not to drop in full scale cluster bombs, Daisy Cutter bombs, and which region they should conduct carpet bombing. Accordingly, he was aware, and if not, at least should have foreseen, that in executing the said plan, he would be committing war crimes.

Thus, he ordered and commanded the commission of such war crimes, and took it for granted that any negligence on his part in the performance of his duties and responsibilities would result to commission

of such war crimes, and also, he neglected taking punitive measures against those who have in fact committed such war crimes, and this is a reflection of his own guilt for committing the above war crimes as the Commander-in-Chief.

## 7. Conclusion

Thus, defendant Mr. President Bush is responsible for the use of not only conventional weapons of war but also indiscriminate and barbaric weapons such as cluster bombs, depleted uranium shells, Daisy Cutter bombs, etc., and airstrikes against civilians in Afghanistan, and the destruction of civilian facilities such as the Red Cross Clinic in the city of Kandahar, and 4 other hospitals, etc., the killing of Freshuta Shagad (9 years old) and others number at least 3,766 people, and causing people like Abdul Rushed and numberless others to lose their sight or sustained serious injuries.

## III. War Crimes against Prisoner of War

### 1. Definition of Prisoner of War

The Geneva Convention relative to the Treatment of Prisoner of War of 12 August 1949 defines Prisoners of War (henceforth referred as POWs) as persons who have fallen into the power of the enemy, in the following categories, (a) members of the armed forces of a Party to the conflict as well as members of militias for volunteer corps forming part of such armed forces (Article 4(1)) or (b) members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power (Article 4(3)).

The Geneva Convention is based on the fundamental principles that even wars should have limits so as to avoid unnecessary losses or excessive suffering and that captured combatant and civilians must be protected against all acts of violence or reprisal.

According to the above provisions, members of Al Qaeda may not be members of regular armed forces, but they are members of militias or volunteer corps forming part of the Taliban forces, which have been in conflict with the US-led armed forces and which were the targets of aerial bombing. Therefore, captured members of Al Qaeda in the custody of the US armed forces must be regarded as POWs under Article 4, 1.

Nevertheless, U.S. Forces caused the death of POWs including members of al Qaeda in large number as described in the following.

### 2. Murder of POWs in Qara-i-Jhangi

In northern Afghanistan, the Northern Alliance set up the POW camp in Qara-i-Jhangi, where more than 4000 POWs are interned including Taliban soldiers, members of al Qaeda and foreign volunteer soldiers who had surrendered in Kunduz. Between the 13 hour of November 25, 2001 and the 15 hour of November 27, 2001, a group of POWs started an uprising from their anger and desperation triggered by the presence of CIA interrogators. In order to suppress the riot, US warplanes dropped bombs on the camp and the US Special Force machine gunned down the inmates, killing about 400 prisoners and injuring more of them. (Statute of ICTA, Article 3(a) (c))

In so doing, defendant Mr. President Bush deprived them of the right to a regular and fair trial with thorough investigation on the cause of the above rebellion, or on those who initiated the riot and who

were responsible. (Statute of ICTA, Article 3(f)).

Defendant Mr. President Bush shall be criminally responsible for his failure to act within the jurisdiction because he failed to take all necessary and reasonable measures within his power as the supreme commander of U.S. Forces to minimize losses and damages caused by the riot.

### 3. Prisoners Suffocated to Death in Cargo Containers

Between November 29 and November 30, 2001, US troops jointly with the Northern Alliance, captured 1000 men including soldiers of the Taliban as well as members of al Qaeda, who surrendered in Kunduz, and transported them to Qala Zeini. One hundred to two hundred men were in a single cargo container approximately 40 feet long. The prisoners were transported to Sheberghan in the sealed container with no air and no water (Statute of ICTA, Article 3(b)). As a result, majority of the POWs suffocated to death in the containers. (Statute of ICTA, Article 3(a)).

Furthermore, U.S. Forces and the Northern Alliances shot at the containers on the excuse of making holes for air, which killed several hundred prisoners inside the containers. (Statute of ICTA, Article 3(a)).

By such inhumane treatment of POWs (Statute of ICTA, Article 3(f)), defendant Mr. President Bush deprived the prisoners of their right to fair and regular trial. (Statute of ICTA, Article 3(f)).

At the time, defendant Mr. President Bush had the Northern Alliance under his command. As defendant Mr. President Bush failed to perform his duty of advising and directing the Northern Alliance Forces to observe appropriate procedure established in the Geneva Convention of holding the prisoners in captivity, he is responsible for the war crimes.

### 4. Inhumane Treatment of POWs at the Sheberghan Prison Camp

3000 prisoners transported as described above were held in the Sheberghan camp, where Northern Alliance soldiers were keeping guard. Although each cell had the capacity of 10 to 15 occupants, the cell was packed with 80 to 110 inmates. (Statute of ICTA, Article 3(b)). This particular prison is known for its poor conditions, such as inadequate amount of food with little nutrition, unsanitary waterways, and virtually no hygiene control while the prisoners were scantily clothed.

The walls were weather-beaten and they offered no protection to the inmates from rain and storm. Inmates were unattended and had virtually been abandoned. (Statute of ICTA, Article 3 (b)).

Jaundice caused by dysentery and hepatitis as well as pneumonia (Statute of ICTA, Article 3 (c)) were widespread in the prison, and many of the inmates died (Statute of ICTA, Article 3 (a)) of these diseases.

The Northern Alliance was primarily in charge of keeping the prison under control. However, it was CIA personnel who interrogated the prisoners at this prison and who made all the arrangement for sending them to the Kandahar airport, and then on to the US military base in Guantanamo, Cuba. U.S. Forces, therefore, were the major administrator of the prison.

At that time, being the supreme commander of U.S. Forces with the authority and power to control and direct Northern Alliance Forces, defendant Mr. President Bush was in a position to make the prison guards aware of appropriate procedure before they took in prisoners. Since Bush failed to take such measures, he shall be liable for the war crimes stated throughout this document.

## 5. Mistreatment of Former Al Qaeda Soldiers and Transfer of POWs to Guantanamo Base in Cuba.

U.S. Forces mistreated POWs, who had been members of al Qaeda before they surrendered as specified in the following :

- (1) In the camp at the Bagram airport in the suburb of Kabul, U.S. Forces blindfolded former al Qaeda soldiers with black hoods and placed them in the cargo containers, then illuminated them with strong halogen lights for 24 hours, depriving them of sleep. CIA interrogation was violently conducted by torturing the POWs inside the containers. POWs never received medical care for their injuries. U.S. Forces continued these practices everyday since November, 2001. (Statute of ICTA, Article 3(b)).
- (2) In the middle of December, 2001, U.S. Forces confined the former al Qaeda POWs in unheated solitary cells, made of bellows-like barbed wire in the former warehouse of the Kandahar airport. Prisoners were blindfolded with the hands and feet bound and the mouth gagged. They were chained to each other in a long line, being tortured by deprivation of sleep due to strong halogen lights directed at them for 24 hours. (Statute of ICTA, Article 3(b)).
- (3) From January 10 through January 23, 2002, U.S. Forces transported 158 former soldiers of al Qaeda by an air force C 17 transport airplane from Kandahar Airport to Guantanamo Bay in Cuba. Being suspected of terrorists, all the prisoners were handcuffed and fettered with their heads and faces covered with goggles, masks or hoods. During the flight, the guards were pointing the high-voltage electric guns at them. (Statute of ICTA, Article 3(g)).
- (4) On February 7 of the same year, approximately 140 former members of al Qaeda were transported to Guantanamo in the same manner as described above. (Statute of ICTA, Article 3(g)).
- (5) Including those described in (3) and (4), approximately 650 prisoners continue to be in 1.8m x 2.4m quarters enclosed only by barbed wires. Among these POWs, at least three of them were under the age of 18. Children from 13 years-old to 15 years-old have been held. The rate of suicide is eight times higher among children confined together with grown-ups than that of grown-ups. 25 cases of attempted suicide have already been reported. This constitutes inhumane treatment of children under the Statute of ICTA, Article 3(b)).
- (6) U.S. Forces Claim that some of the prisoners are suspected terrorists. Yet they kept them in detention without ever giving them access to regular trials by a court. So long as U.S. Forces continue to restrain these POWs in such a manner, the U.S. is depriving the right of these prisoners to a fair and regular trial. (Statute of ICTA, Article 3(f)).
- (7) Defendant Mr. President Bush, the supreme commander of U.S. Forces, did not fulfill his duty to make sure that POWs be treated humanely in accordance with the Geneva Convention. On January 11, 2002, when Defense Secretary Rumsfeld insisted that the Geneva Convention for the Protection of War Victims should not apply to these prisoners, because they were merely suspected terrorists, defendant Mr. President Bush did not make any corrective statement. On the contrary, defendant Mr. President Bush defended the treatment of the POWs by U.S. Forces. Furthermore, he urged the media to stop broadcasting the images of POWs on TV in spite of the fact that inhumane conditions of POWs remained unchanged. Defendant Mr. President Bush shall be responsible for the acts of war crimes that he directed in his capacity as supreme commander. He also neglected his duty to prevent the war crimes, which he could have foreseen and failed to punish those who actually committed war crimes.

Consequently, he shall be responsible for the war crimes as a superior.

## Chapter 5

# Crimes against Humanity

### I. Introduction

American air strikes created masses of refugees who fled from the bombing and the battle to search for safety in remote areas. In Afghanistan, there were already close to 3.7 million refugees before the start of the Afghanistan War due to the invasion of the Soviet forces in 1979, subsequent civil wars and political disputes over the next ten years. Defendant Mr. President Bush could easily have expected that if air strikes were launched against major cities in Afghanistan, more refugees would naturally result.

Defendant Mr. President Bush drove hundreds of thousands of citizens away from their homes by the end of 2002 through the air campaigns on Afghanistan he ordered. The Afghan refugees flooded into the borders of neighboring Iran as well as Pakistan. In Afghanistan, there are also hundreds of thousands of domestic refugees who are referred to as internally displaced persons, wandering around the country for food because they had to abandon their homes in the mist of aerial bombing by the US-UK coalition forces.

### II. Causality of Aerial Campaign by US-UK Forces and the Genesis of Refugees

#### 1. Start of the Aerial Campaign and Refugees

Early in the morning of October 7th, 2001, defendant Mr. President Bush ordered the US-UK coalition forces to launch air strikes on the major cities of Afghanistan. In the capital city of Kabul, families were seen crouching down in between the orange-colored flashing of explosion. It is clear beyond a doubt that fear of air strikes and risk to their lives produced refugees.

The first signs of refugees due to the US-UK air strikes could be seen on October 8, 2001. On that day, the Pakistani army fired warning shots to the influx of Afghan refugees trying to cross the border near Peshawar for the entry into Pakistan. Nevertheless, defendant Mr. President Bush ordered the air strikes to continue.

Defendant Mr. President Bush continued the air strikes on the major cities of Kabul and Kandahar on the days following. US-UK coalition forces fired more than 2,000 bombs and missiles during the first 10 days and as many as 100 warplanes a day participated in the aerial campaigning. The air strikes interrupted the distribution of food and medical supplies and caused a panic situation that resulted in a massive exodus of refugees.

#### 2. The Situation in Chaman

On and after the tenth day of the aerial bombing, there was a noted increase of refugees fleeing from the panic-stricken Kandahar to Pakistan. The Office of the United Nations High Commissioner for Refugees (“UNHCR”) confirmed that estimated number of the people who crossed the border into Pakistan was 2,700 on October 17th and 18th and 3,500 in the morning of October 19 alone. According to UNHCR, escaping refugees were unable to bring any personal possessions or food with them and all complained about the intensity of the air strikes. Some of the refugees were searching for members of

their families who were separated in the midst of the confusion on the way out of the city. An additional 5,000 refugees crossed the border on October 20th, 2001.

In the evening of October 21, 2001, approximately 6,000 Afghan refugees rushed to the western Pakistani town of Chaman despite warning shots fired at them in the border area. In this uprising, 15 refugees in all, including a 15-year old boy, were wounded. On the following day, 3,400 refugees rushed to the border in an attempt to flee from Afghanistan. Due to the Pakistani army's strengthened border patrol, tensions were mounting between the armed force and refugees.

Most of the refugees came from Kandahar, the base of the Taliban. Many of the refugees took the trouble of traveling to Chaman, which required several days to travel from the north of Afghanistan, because of the rumor that the Taliban would catch refugees arriving at the northern border and bring them back to Kandahar,

Regardless of the growing call from the international community to open the border to refugees, the Foreign Ministry of Pakistan spokesman Riaz Mohammad Khan rejected the entry of refugees, saying "I am not in the position to deal with mass flows of Afghan refugees to Pakistan" on October 22nd. Consequently, Pakistan refused 1,000 refugees from Afghanistan on the same day.

### 3. Continued Air Strikes and Refugees

A series of civilian deaths and injuries from land mines occurred among refugees who were heading toward the suburbs or mountain areas to escape the air strikes by U.S. Forces. Approximately 10 million land mines have been buried in the Afghan soil; however, refugees enter the dangerous areas anyway because they cannot distinguish the mined areas from the safe areas. A Non-Governmental Organizations ("NGO") specializing in landmine clearing estimated that damage by land mines would increase by 40% above the pre-air strike level.

On November 2, 2001, Spokesperson Stephanie Bunker of U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA) reported at a press conference that 4,000 to 5,000 Afghan refugees suddenly appeared on the previous day around the area bordering with western Pakistan as well as Chaman and requested entry into Pakistan. On November 3, 2001, Ms. Bunker said that UNHCR has housed about 1,000 new Afghan refugees in several refugee camps in Pakistan and added that refugees "fled Afghanistan to avoid air strikes (by U.S. Forces)."

On December 1, 2001, U.S. Forces launched the largest air strike to the areas surrounding Kandahar since the beginning of the air campaign, concentrating on the main roads connecting Kandahar to the border with Pakistan. Those were indiscriminate attacks targeting anything that moved on the road. The warplanes dropped bombs on five buses and four tractors moving on the road and at least 30 passengers were killed. Fearing 24-hour air strikes, many people tried to flee Kandahar. As U.S. Forces targeted moving objects on the main roads, effectively taking away any safe means of transportation, an exodus from Kandahar became virtually impossible. Bombing of the roads made the shipment of aid supplies for refugees even more difficult. For example, the refugee camps in the town of Spinboldak had shortage problems of food and water as the sanitary conditions drastically deteriorated.

### 4. Summary Conclusion

According to UNHCR, 50,000 refugees entered Pakistan while 250,000 refugees sought shelters in the mountain areas of Afghanistan since the beginning of the air strike on October 7, 2001. On December

30, 2001, UNHCR announced that the total number of new refugees from Afghanistan to Pakistan exceeded one million after the September 11, 2001 terrorist attacks. In addition to the refugees who fled the country, the number of internally displaced persons who abandoned their homes in search of food rose to approximately several hundred thousand.

As stated above, defendant Mr. President Bush generated a large number of refugees by the merciless air campaign executed by US-UK coalition forces and his commands resulted in the death of many refugees.

### III. Warning from the World

#### 1. The Warning from the World

On October 10, 2001, Abdur Rashid, Chief, ESCG, U.N. Food and Agriculture Organization (FAO) discussed the situation in Afghanistan and warned, "Several millions of people are facing starvation and the food situation is very serious." He then pointed out that the field survey conducted by the U.N. World Food Program (WFP) and FAO in April-May in 2001 predicted a shortage of over one million tons of food in Afghanistan due to severe drought in the past several years, and that the situation "would be worse" because of the air strikes. He also added, "Now is the time to plant wheat which makes up 80% of all grain production in Afghanistan. The situation will be even more serious the next year if farmers can not work on planting due to aerial bombing by US-UK coalition forces."

#### 2. Warning from United Nations High Commissioner for Refugees (UNHCR)

On October 17, 2001, UNHCR announced that the number of refugees traveling through the Chaman Pass in the three days beginning on October 15th, 2001 reached 8,000 and on October 20, 2001, they appealed for assistance, saying, "Although refugees have evacuated to Balochistan to avoid air strikes, there are not enough tents to house those people who are facing severe winter ahead." The representative of United Nations Children's Fund ("UNICEF") to the central Asia warned that if assistance should be postponed for several weeks because of air strikes, one hundred thousand children would die that winter. In addition, six NGOs engaging in humanitarian assistance noted that food stocks in Afghanistan would last only two weeks.

#### 3. Warning from United Nations

On November 1, 2001, UN Special Envoy Lachdar Brahimi warned of the severe cold weather of the upcoming winter and noted that stored food would only last three months for 400,000 people, but noted that there were another 900,000 facing the food crisis. On November 20, 2001, the local representative of UNICEF pointed out that there were about two million weakened people in and around Mazar-e-Sharif and without food aid from outside, 120,000 of them would die. On December 5, 2001, UNHCR reported that more than 150,000 people have entered Pakistan since the 9.11 incidents, while an additional 16,000 people had escaped to Pakistan after the capture of Kabul by U.S. Forces. During the days Kandahar was attacked most fiercely, 300 to 400 families a day were being registered as refugees. However, we have no idea about the number of families who chose to enter Pakistan secretly. It is worth noting that the shortage of food and medicines was very serious in all the refugee camps.

Defendant Mr. President Bush, ignoring the warnings by many of the reputable international



organizations and NGOs, continued air attacks and eventually produced masses of refugees, causing many deaths among them. It is evident that defendant Mr. President Bush was aware of the refugees caused by the aerial bombings and the hunger caused by shortage of food supply due to the failure of the distribution system under aerial bombings in Afghanistan.

## IV. Despair and Death of Refugees

### 1. Starvation

Women and children make up 70% of the population of Afghanistan and children are most vulnerable to hunger and illness. During the first few days of December, 2001, 177 people died of hunger and cold in a refugee camp near Kunduz of northern Afghanistan. The majority of death came from children who were hungry and cold because blankets, food, and medical supplies did not arrive in time due to chaos caused by American aerial bombings when temperatures went down to minus 20 degree C-. During the first two weeks of December, 2001, 215 women and children died in the Baghisharkat camp where 24,000 refugees were sheltered. In Mazar-e-Sharif, where the battle was most intense, 1,500 children died in two months due to a shortage of food and medicines.

Some of the malnutrition cases began to show up in the Maslakh camp for internally displaced persons (“IDP”) in Herat in the west of Afghanistan, which was originally set up for those who had fled from the draught in the north and civil wars toward the end 1990’s. Food aids were cut off after the American aerial bombing started.

### 2. Report by an NGO “Doctors Without Borders”

According to the report of the NGO “Doctors without Borders” dated February 21, 2002, one out of six children accepted into the food distribution program suffered severe malnutrition and many of them will die without proper treatment. Also, according to the survey conducted by “Doctors without Borders” in Kaisar and Almar, the death rate was 0.61 per 10,000 for the general population in August of 2001 before the bombing started. For children under the age of five, the rate was 1.4. However, the death rate went up to 1.4 as well as 3.2 respectively in January of 2002, three month after the bombing started. Meanwhile, the number of IDP continues to increase every day. Many people abandoned their homes in search of food. In the district of Armar, only one out of 10 families has been lucky enough to receive food continuously since last winter. 42% of families surveyed did not receive any food aid last year.

### 3. Report of the International Committee of Red Cross (ICRC)

The Islamabad office of ICRC surveyed 12 villages of in western Afghanistan. They found that a 10-year-old girl was sold as a “bride” in exchange for 100kg of wheat. Among 10,000 villagers surveyed in 12 villages, there were 510 orphans, 261 widows, and 699 elderly people who depend on the remittance from abroad. There was also a case of selling a 2-year-old boy for the price of 30 US dollars.

U.S. Forces went so far as to drop bombs on a refugee camp. For example, the Shorgala camp in the province of Barca was exposed to an hour of bombing, which killed eight people and injured nine.

### 4. Returning Home - Difficult Voyages

Going home is not easy for refugees even after UNHCR started aid activities. Especially in the area

controlled by the general of the Northern Alliance, there have been rising tensions among different ethnic groups. Mass exodus of ethnic Pashtun to the south has begun because they feared looting, murder, and rape. A new fear has been fast spreading that the Northern Alliance would start the ethnic cleansing against Pashtun after the fall of the Taliban regime.

## 5. Summary

As elaborated above, the aerial bombing against Afghanistan by the order of defendant Mr. President Bush produced masses of refugees, crippling and causing great difficulty with distributing food, clothing and daily necessities, followed by despair or death of many refugees.

## V. The Crimes of Defendant Mr. President Bush

As previously elaborated, the aerial bombing against Afghanistan by US-UK coalition forces ordered by defendant Mr. President Bush produced masses of refugees, crippled or caused great difficulty in the distribution of food, clothing and daily necessities, resulting in death of many refugees caused either by starvation or freezing.

Under Article 4 of Statute of ICTA, the following crimes shall be punishable as crimes against humanity :

(a) murder, (b) extermination, (d) deportation, (h) persecutions on political, racial an religious grounds, and (i) other inhumane acts.

Here, the act of extermination includes knowingly depriving access to food and medicine by forcing difficult and deplorable living conditions on the general public. The act of deportation includes the removal of people from their lawful place of residence by the use of force without a reasonable ground in international law. The act of persecution includes the willful and serious deprivation of basic rights on the basis of a group identity or by a group in violation of international law. Inhumane acts include an act or acts which cause great pain and suffering resulting in extraordinary damage to physical and psychological health.

The air campaign executed by U.S.-UK coalition forces is an extensive and systematic assault on the people of Afghanistan.

Defendant Mr. President Bush murdered civilians, intentionally robbed the people access to food and medical supplies, imposed on the people deplorable living conditions, and removed residents forcibly from their places of residence. Furthermore, defendant Mr. President Bush deprived the Afghan people of their fundamental rights collectively and inflicted extraordinary pains willfully and caused the serious damage to physical as well as psychological health of the Afghan people.

Finally, defendant Mr. President Bush committed the crimes of (a), murder (b), extermination (d), deportation (h), persecution on political, racial an religious grounds, and (i) other inhumane acts as provided in Article 4, 3 (a)(b)(d)(h)(i) of the Statute of ICTA, when he ordered the extensive and systematic aerial bombing campaigns directed at the populations of Afghanistan knowingly, with the knowledge that the aerial bombing was continuing.

Defendant Mr. President Bush knew or should have known that his subordinates were attacking the people of Afghanistan and deprived them of means of getting food and medical supplies, he is liable for crimes against humanity as their superior as provided in Article 6(3) of the Statute of ICTA.

## Chapter 6

### Concluding Statement

#### I.

The crimes of defendant Mr. President Bush are an assault on the peace and security of international society in which human-beings have worked hard to establish based on the experiences of the two world wars and the wisdom derived from those experiences. At the same time, it is an attempt to deliver a lethal blow to international law, which human beings have strived to form and develop for centuries in the name of civilization and humanity.

#### II.

Huge amount of bombs fell on the dry land of Afghanistan, destroying the city structures and homes, dwellings of ordinary people, all of which have been shattered again and again during the past 20 years of continuous wars on an international as well as domestic level. Afghanistan and her people have already been exhausted and plagued by poverty and draught. Merciless bombing did not just destroy the cities, farm fields or water resources. It is not just the names of countless people who disappeared from this earth by direct hits or bombing errors. The bombing has also driven away tired and poverty-stricken people from their homes. They became internally displaced persons or refugees outside the country. They wander around the vast land searching for a safe place, living in refugee camps, or sleeping out in the fields under merciless conditions. Their lives are at stake. Deaths from hunger, cold, unsanitary conditions or lack of medical supplies did not come about by chance. It is a criminal act committed and designed by defendant Mr. President Bush. Cluster bombs hurt people twice, first by hitting the victims directly and secondly by exploding on innocent children who pick them up. Daisy cutters devastated the ground of Afghanistan. The crimes of defendant Mr. President Bush swooped down on children and left scars on their bodies as well as deep in their psyche. The social structure of Afghanistan, already on the verge of collapse, was pounded by cruel hands, repeatedly, beyond repair.

#### III.

Without a doubt, defendant Mr. President Bush has violated international law in his launching a war on Afghanistan. The international community should have protested the war, prevented him from ordering the attack and stopped the war immediately by all means. However, the voice of protest was a voice in the wilderness which nobody hears before loud noises of enthusiastic support and praise for the war. It is now clear that the weak protest of the international society encouraged defendant Mr. President Bush to commit his next war crimes.

There was a powerful and intense anti-war movement against the Iraq war before the war on Iraq started on March 20, 2003. It should be noted in the history of the international community that the huge wave of the anti-war movement beat against every shore in the world. Our experience of the anti-war movement against the Iraqi war should be memorized, handed down from generation to generation as a valuable legacy to be proud of.

#### IV.

Whether it is the Afghanistan war or the Iraqi war, the mechanism works in the same way. Defendant Mr. President Bush and his government ignored international law, launched an attack on the peace and security of the international community, which led to the crime of self-righteousness, bringing the disaster and destruction into the 21st Century. If we approved, affirmed or tolerated the Afghanistan War, we may have to approve, affirm or tolerate the Iraqi war again. If we do nothing to change the world as it is, the international community would be at the mercy of defendant Mr. President Bush and his likes, who would venture into destruction and massacre as he wishes in years to come.

In order to prevent another war of arbitrary justice, we have to make clear that the Afghan war was unlawful. We then need to prosecute and try the war crimes of defendant Mr. President Bush under international law.

#### V.

As elaborated in Chapter 3, the assaults on Afghanistan violate international law. Anybody who knows the tragedy of the 9.11 incidents would understand the serious impact of the disaster and empathize with the shock and sorrow of victims, residents of New York City as well as the US citizens.

However, the 9.11 incidents did not justify the Afghanistan war. It is a well-known fact that doubts surrounding the 9.11 incidents have never been resolved and that U.S. authorities have given up the efforts to find out the truth. The connections between the 9.11 incidents and al Qaeda have never been established. Even if it is proved that al Qaeda participated in the crime, it is a crime to be prosecuted and punished by the rule of a penal court. It is not a valid ground for the attack on Afghanistan by any means. In the meantime, we point out that defendant Mr. President Bush has changed his story about the ground for rationalization of the Afghanistan war, which was unconvincing in the first place.

#### VI.

Next, when we went through the facts about the Afghanistan war, we have come to understand that mass exodus of civilians was caused by indiscriminate aerial bombing over the country. Prior to the outbreak of the war, many NGOs as well as concerned UN agencies, warned of the possibility of serious refugee crisis if or when air strikes were to be carried out. From November to December, 2001, many NGOs as well as mass media reported the exodus of civilians from the cities in many parts of Afghanistan in order to escape from the indiscriminate bombing. Since air strikes continued with full knowledge of growing number of refugees, defendant Mr. President Bush is responsible for creation of the recent refugee crisis in Afghanistan.

#### VII.

During the Afghanistan war, U.S. Forces committed many war crimes. In spite of the Conventions and the customary rules of war which prohibit the assault on civilians and private sector facilities, defendant Mr. President Bush continued committing these crimes openly and nonchalantly. A bombing error or errors is much too irresponsible to be used as an excuse. Furthermore, use of weapons of mass destruction including cluster bombs, daisy cutters and DU are twice as harmful in that they injured and killed people once they are dropped, and then unexploded cluster bombs remain on the ground, waiting for a second chance to kill innocent people, especially young ones over a long period of time. DU shells

leave radiation in the environment, causing sickness among residents for generations.

#### VIII.

There is a long history of international humanitarian law prohibiting the mistreatment and slaughtering of POWs. Once in the past, the United States severely punished Japanese soldiers for the abusive treatment of POWs during the World War II at the Military Tribunal for BC Class War Crimes. The same United States under Mr. President Bush committed the crime of mistreating and murdering POWs in Afghanistan in these days. Then, when they got criticized by the international community, they shamelessly make irresponsible excuses like “These people are terrorists, but not prisoners of war” or “We admit that they are POWs, but the Geneva Convention shall not apply to them”.

#### IX.

Defendant Mr. President Bush committed the war crimes on a large scale by ignoring international law boldly, and violently. Nowhere else have we seen so much and so extensive use of weapons of mass destruction in the history of human being outside the nuclear weapons. If we leave such crimes unchallenged, the order of international society will never be maintained.

#### X.

We, Prosecutors for ICTA, believe that it is the first step to accomplish the peace and security of the world to condemn defendant Mr. President Bush severely for his war crimes. By exposing the war crimes committed by defendant Mr. President Bush, and by judging him in the light of international law, we toll a bell at numerous victims who were killed in Afghanistan, and offer a small comfort to people who are suffering a great deal in the difficult and disorderly situation in Afghanistan today. Defendant Mr. President Bush and the U.S. government should apologize to the Afghan people immediately and offer compensation to all surviving victims. We, Prosecutors for ICTA, do not tolerate the unilateral logic of a war asserted by defendant Mr. President Bush. Instead we insist that it should be the minimum requirement for the peaceful future of the international community that we establish that defendant Mr. President Bush committed the worst war crimes. It is in the best interest of defendant Mr. President Bush and of the United States of America to seek the remedy against the “war poisoning” of defendant Mr. President Bush, and it is also the duty of the international community.

We, Prosecutors for ICTA, firmly believe that defendant Mr. President Bush is guilty of all counts with which he is indicted beyond any doubt after days of calm deliberation. At the same time, we share our intense rage and indignation to the unreasonable war with all the people who support ICTA movement, all those who are hopeful of us, and all the people of the world who are ready to walk with us.

We, Prosecutors for ICTA, declare here aloud “Defendant George Bush is guilty” on behalf of all the people who pray for and work for the peace of the world.