Why not to negotiate with the Taliban: A Legalistic Perspective

Gianluca Serra*

Abstract

This article seeks to analyse the political and legal implications of the Afghan president's recent opening to the Taliban insurgents. It makes an attempt to compare the Taliban's notion of power based on an anlysis of their rule during 1996-2001,and the principle of rule of law enshrined in the 2004 Afghan Constitution. The author defines rule of law, contrasts it with the Taliban's approach to law, and concludes that any proposed negotiation with the Taliban aimed at integrating them into the Afghan State, if ever viable, would run counter to the central notion of rule of law.

These are quite complicated stories Here is like in exile, one needs to find an outlet, to hope in something. One began to think of it, all started talking about Tartars, no one knows who was the first
Dino Buzzati, *The Desert of the Tartars*, 1945

...we see neither justice nor injustice which does not change its nature with change in climate. Three degrees of latitude reverse all jurisprudence; a meridian decides the truth. Fundamental laws change after a few years of possession; right has its epochs; the entry of Saturn into the Lion marks to us the origin of such and such a crime. A strange justice that is bounded by a river! Truth on this side of the Pyrenees, error on the other side.
Blaise Pascal, *Pensées* (n. 230), 1660

The president of Afghanistan Hamid Karzai's recent opening to the Taliban (Associated Press 2008) should be subjected to a multi-level analysis. At the internal political level, this move can be interpreted as the "swan song" of a leader who, at the end of his mandate (elections are, in fact, due in 2009), tries to regain some consensus in a war-torn and poverty-ridden country. Karzai would aim at raising his popularity within the Pashtun electorate by expressing his willingness to talk to the Taliban rather than fight them militarily.

At the international level, while the US, in the throes of an economic

Gianluca Serra is currently administrative officer within the EU Police Mission in Afghanistan (from February 2008 onwards). He is also associated with the Italian Institute for International Law Studies in Naples (National Research Council) and working on international criminal justice (since July 2006). The views expressed here are his own and do not reflect the position of the EU Police Mission in Afghanistan in any manner.

recession, schedules its exit strategy from Iraq (Adas 2008), Karzai's offer of negotiations with Taliban sounds as a preliminary step to prepare himself for an uncertain political future without the American support. This would seem inevitable as a result of the growing awareness of what operation Enduring freedom has turned into, i.e., an enduring failure.

The NATO-led mission, the International Stabilization Assistance Force (ISAF) is, in fact, under siege owing to an endless series of terrorist attacks. The effort to negotiate with the Taliban is presumably sponsored even by the newly elected US democratic administration, even if it is attempting to deploy more troops to Afghanistan (Beaumont 2008) to transform Kabul into a safe zone. This is perceived as nothing more than a tactical move (thus a short term action) aimed at covering the withdrawal from Iraq and, perhaps, an extension of the policy of appeasement vis-à-vis Iran. The US is also equally worried about the Russian geopolitical appetites in Caucasus and would like to reassess its policy towards the entire region extending from the Middle East to Central and South Asia. Many analysts would argue that a "puppet-president" like Karzai could not have dared to advance such a policy without the approval of his mentors.

In the regional geopolitical theatre, the opening being offered to the Taliban could also mean a change in Karzai's pro-India policy (in light of the bloody attack of 7 July 2008 on the Indian embassy in Kabul)[1] towards re-establishment of special relations with Pakistan. Since ouster of Taliban from Kabul in 2001, forces in Pakistan— even if Pakistan officially committed itself to the international war in terror— have been offering protection and logistical support to the Taliban, especially in its western and north-western borderlands, in Waziristan, Bajaur and Baluchistan, as also in many other areas in interior Punjab and Sind, where the hold of the state is minimal.

Such a "Mars' strabismus" (one eye looking in the direction of the US and the other benignly open on the Taliban) together with its historical alliance with China well defines Islamabad's geo-political strategy. It hopes to control Afghanistan (even if amounts to keeping it permanently unstable) especially to prevent India from sucking it into its economical and political sphere of influence, and use it, as Pakistan alleges, to launch subversive action against Pakistan.[2]

A State for the Taliban? The international law perspective

Without dwelling on a detailed analysis of the geopolitical scenario today around Afghanistan, let us focus mainly on the legal implications of the process of negotiation between the Afghan government and the Taliban. In this section, the issue is explored from the angle of international law and in the following section the same issue will

be reappraised from the perspective of Afghan domestic law.

The Taliban currently exercise their control over at least one third of the Afghan territory (wide zones in the Southern provinces of Helmand, Kandahar, Zabul and Uruzgan) and even Kabul is daily targeted from the surrounding area. Their material strength derives from the drug business. Afghanistan is, in fact, the leading producer of opium in the world today.

Customary international law would not oppose a Taliban State on the condition that it is the result of the intervention, though indirect, of any third State. Pakistan's role in the success of the Taliban efforts between 1994 and 2001 is quite well known. But from a legal stand point, it is difficult to ascertain whether Pakistan had been supporting Taliban efforts militarily since it joined the War on Terror since October 2001, and violating its obligation not to use its armed force in international relations, as enshrined in Art. 2 (4) of the UN Charter.

However, it may not be too difficult to establish that Pakistan has violated international norms in the form of an "indirect armed aggression" as per Art. 3 (g) of the UN General Assembly's 1974 Declaration on the definition of aggression (UN AG, 1974). The substantial political, financial and military support and the overall strategic control over the Taliban's insurrectional activities in Afghanistan could be termed as aggression. More explicitly, the continuous indirect armed aggression by Pakistan, if proved, would fall under the sub-hypothesis of "substantial involvement", as defined by the International Court of Justice in its judgment on the Nicaraguan case (ICJ, 1986).

On the other hand, the creation of a Taliban State could not be regarded as legal in light of the special treatment international law reserves for the third-state intervention in internal conflicts between a national liberation entity and a government which is either colonial or racist or claiming right of "external self-determination".[3] It may be correct to say that Karzai government was established following a military intervention (the operation Enduring Freedom) and stands on its feet thanks to the political, economic and military support of NATO (especially the US); it would be improper to call it a colonial or foreign regime.

As a matter of fact, NATO, whose involvement followed the unilateral intervention of coalition of willing States (led by the US and the UK), operates under a mandate – though retroactive– of the UN Security Council[4] and with the consent of then Afghan Transitional Authority; furthermore, the Afghan people have already chosen through their traditional Loya Jirga (which was regarded as a 'constitutional convention') the political and institutional organisation for their self-determination (a democratic, unitary form of State based on Islamic provisions, and a presidential form of

government).[5]

The Taliban remains an organisation, composed of no more than 15,000 militants, which seeks to re-establish the rule of Islam (i.e. the sharia) in Afghanistan. Taliban is bitterly opposed to Western values and intend to keep Afghanistan isolated from whatsoever control or influence from outside.[6] A prospective Taliban State could be internationally lawful if Karzai government recognised it. Such a step by could,[7] in fact, legitimize Taliban rule in terms of the principle of *volenti non fit iniuria* which literally means "to a willing person one cannot do injustice". In its most radical formulation, the principle of *ex facto oritur ius*, (i.e., the law arises from the fact) considers as irrelevant the nature of any regime or any entity claiming to be a State.[8]

Democracy, rule of law and fundamental rights are not prerequisites for statehood and international legitimacy of a government, even though their violation has in recent past led to temporary suspension (and loss) of sovereignty over a part of the national territory allegedly victimised by the state (i.e., the 'amputation' of Kosovo from Serbia).[9] In international legal terms, imposition of any such conditionality would violate one of the very basic principles of the international community, i.e., the equality among States. However, given their wide acceptability and universal appeal, states complying with such prerequisites would be 'more equal' than others in today's world, to borrow an Orwellian phrase.[10]

However, Karzai does not perhaps intend to recognise the Taliban as an international actor. On the other hand, the Taliban do not see themselves as a unitary subject, that is, a political entity claiming a well identified part of the Afghan territory on ground of any ethnic, linguistic, religious or cultural linkage. Their notion of power, as they proved during their rule during 1994-2001, does not pass through the filter of modernisation (undeniably of Western origin). They do not as much emphasise on the concept of the nation-State. They would draw on Islamic radicalism and simultaneously perpetuate their tribal customs and mores. The Taliban are averse to the idea of compromise; their method of resistance is as radical as their ideology. They want to re-take Kabul and re-establish their rule over Afghanistan. They would then bring in a rigid and orthodox version of Islam and shun any form of contact with the international community. As a result, the reasoning developed from the point of view of international law remains purely theoretical.

Therefore, the only plausible interpretation is that Karzai intends to negotiate with the Taliban at the internal level with a view to integrating them into the government in Kabul. Such a move would restore, through inclusion of Taliban, governmental control over entire Afghan territory and, ultimately, stabilise Karzai government. In

principle, this realistic approach echoes the lessons from Sun Tzu and von Clausewitz: turn your enemy, who poses threats to your existence, into an ally when he cannot be defeated. Such a method is not that original. The British were truly pioneers in this respect; drawing inspiration from their colonial experience in the region,[11] they finalised, in September 2006, separate arrangements with the warlords of some areas falling under their zone of responsibility (e.g., the Musa Qala district in Helmand province). And the US has declared to arm local militias against the Taliban rather than to keep on reinforcing national police and army.[12]

Negotiation with the Taliban: Practical issues

In light of the discussion above, one should, first of all, ask whether Karzai's plan would somehow work and such a move, irrespective of its practical viability, is legitimate from a legal point of view, both internal and international. As about the first question, there would be at least two reasons which would prevent a negotiation with the Taliban.

Firstly, the Taliban is neither a fully autonomous insurrectionary organisation, nor an actor totally alien to Afghanistan. They fall well within the category of an insurrectionary/ subversive local entity with external direction. The underground connections with the government in Islamabad pass through Pakistani intelligence and madrasas. The ambiguity of Pakistan vis-à-vis the Taliban is paradoxically tolerated by the US. After Khomeini's Islamic revolution (1979), Pakistan was regarded as a key-plug (also a nuclear power) for American regional strategy to contain the Soviet Union during the decade 1979-89.[13] Since 2001, Pakistan has again emerged as a key strategic ally in the American war on terrorism.[14] However, President Karzai had openly denounced, until summer 2007, Pakistan's role in destabilising Afghanistan through its support to Taliban and other radical elements aligning with it. From a practical point of view, therefore it would make much more sense for Karzai to put pressure on the US to adopt a more coherent approach towards Islamabad.[15]

Secondly, Taliban cannot be portrayed as a monolithic organisation. The formulation which better describes their real way of being is that of a galaxy/ nebula where jihadism (the ideological and religious component), Pashtun localism (the cultural, ethnic and territorial component), poverty and narco-trafficking (the economical and social component) are closely intertwined.

It is useful to study when and how such a deadly mixture took shape. During the Soviet occupation of Afghanistan (1979-1989), a massive exodus took place from the Pashtun tribal areas. While bulk of the refugees was received in camps settled along the

border in the Pakistani side, the tribal élites migrated to urban areas in Pakistan or to Europe and the US. This entailed a significant social re-structuring and weakening of tribal norms.[16] The Afghan refugees received religious instructions in a host of madrasas which dotted the Pakistan-Afghanistan border. The Taliban, which literally means students, raised in these madrasas represented the anomic empty space between the tribe and the state. They participated in the Afghan jihad which was monitored and executed by Pakistan with American and Saudi money. As the Soviets withdrew and Afghanistan plunged into civil war, the Taliban emerged from the wilderness, backed by Pakistan and swept Afghanistan. However, Taliban remain much like an amoeba without any shape and with multiple centres of power.

The Issue of domestic law

As about the second question, the role of the Constitution enshrined in 2004, as the "supreme" legal source of the Islamic Republic of Afghanistan, is to be explored here too.

Keeping the nature of Taliban rule during 1994-2001, one does not have to labour too much to conclude that even if they are made part of the ruling clique in Kabul through negotiation with the Taliban aimed at integrating them into the Afghan State, it is highly unlikely that they will ever subscribe to the 'rule of law' as envisaged in the 2004 Constitution. They may rather try their best to subvert the process and revert to the rigid and orthodox methods they had introduced during their rule earlier.

The principle of rule of law implies that only the State, as the holder of sovereign power, can create norms.[17] In contrast, in a pre-modern traditional State, a plurality of centres operates producing norms and values especially in a situation of endemic conflict. Rule of law removes all ambiguities surrounding the process of 'authoritative allocation of values'. However, a loose and nebulous outfit like Taliban would rather like to turn this principle on its head. For it the state is as they would like to define it, in Islamic terms. In doing so also, they would only subscribe to their version of Islam which many others in Afghan society may not ascribe to. In this sense, the Taliban approach to state is based more on force than on popular consensus. Thus, it violates the fundamental principle of modern statecraft.

More precisely, the rule of law is a political-juridical principle connecting power and individuals with a view to protecting, through the law, the private sphere of the latter from any abuse the rulers may arbitrarily commit. From this angle, the notion of Rule of law has its major feature in the principle of legality, which is characterised by at least three dimensions.

Firstly, it lays emphasis on the smooth functioning of legislative, executive and judicial organs of the state and expects them to check and balance one another.

The Taliban would rather like all these organs to conform to the Islamic jurisprudence as delineated by them. The Taliban draws its power from sharia, subject to arbitrary interpretation by local mullahs; furthermore, such a power is held illegitimately through the exercise, or the threat to exercise, of the brute force.

The second aspect of rule of law concerns the relation between the sovereign and the individuals whose lives are affected by the exercise of state power. The sovereign authority of the state is drawn from public consent and from an obligation to protect the life, liberites and rights of the people. Two categories of fundamental rights are essential here: the civil and political rights which imply withdrawal of the State from the private sphere (e.g. freedom of thought, religion, assembly; private property) and creating conditions for individuals to play an active role in the affairs of the State (e.g. active and passive electorate, creation of and participation in political parties).[18] Regarded from the perspective of formal equality and civil and political rights, the Rule of law marks the transformation of the individual's juridical status from a mere subject into a responsible citizen.

The Taliban do not subscribe to this view at all. They emphasise on tribal mores and customs and the sharia. Granting civil and political rights to individuals is anathema to them. Rather individuals in a Taliban controlled state will be subjected to arbitrary dictates of Mullahs, tribe leaders, narco-traffickers and mujahideens (often overlapping figures) who will enjoy higher privileges. In such a system, Women will also be denied right to equality under law. If one goes by the Taliban practices during 1994-2001, women were treated as mere objects well summarised by the Pashtun expression "kam asl" (less perfect). Children were made object of abuses by adults (not only sexual violence but also as child labour). The book *Kite Runner*, written by Khaled Hosseini (2003) is an effective literary portrayal of such violation of human dignity and liberty.

For Taliban, the position of an individual does not matter as such but only as member of a particular community and is the obliged to conform to the age-old norms and values thrust on him/her. As regards democracy, they do not value it at all. For them elections are a farce, and power is either inherited along bloodline (within tribes) or conferred on some by Allah's will.

The third dimension acknowledges the right to a fair trial for all citizens of ther state. The notion of fair trial includes a set of guarantees for the individual vis-à-vis the state. There are several obligations for public authorities like independence and impartiality of the tribunal, adoption of decisions not on the basis of wisdom but pre-existing laws,[19] publicity of the hearings, equality between the defence and the

prosecution throughout the trial (presumption of innocence until the final sentence; rights to prompt notice of nature and cause of criminal charges, to defend oneself in person or through a legal counsel, to an interpreter, to be present during the hearings, to examine witnesses, to appeal and to compensation for miscarriage of justice) and reasonable duration of the trial. All this can be ensured only through an autonomous judiciary. However, the Taliban justice system ignores all such gurantees. In the civil field, they would reinforce traditional mechanisms for disputes settlement based on tribal customs and authoritative judgement of the tribal elders. In the more sensitive criminal field, on the other hand, summary trials are held before senior Talibs or religious students and teachers of madrasas who apply the sharia (Islamic jurisprudence). Unlike in a system driven by rule of law, in the Taliban scheme of things, the presumption of guilt is the accepted starting point of any trial; there are structural asymmetries in the treatment of witnesses for example female witnesses are treated unequally. Judges do not operate autonomously from the political and religious system but are part thereof.

Keeping the above discussion in mind, Karzai's opening up to the Taliban appears illegitimate from a legal point of view. It is also unconstitutional, because here, he is making an attempt to mainstream a group which disavows the very principle of civilized statecraft which Karzai himself seeks to establish in Afghanistan following the 2004 Constitution. In fact, such negotiations stand outside the purview of Afghan state. Karzai may be hoping to draw the Taliban into the process of governance but it is highly unlikely that they would ever conform to the principles enunciated by the new Constitution. Given their suspicion of western values, they will never acknowledge the principles of Rule of law, democracy, the fundamental freedoms and rights accounts as enshrined in Art. 64 of the Afghan Constitution. Moreover, at the moment, they appear to have held sway in the southern and eastern Afghanistan and would negotiate, if they agree to it at all, from a position of strength. As such, they may pitch their demands too high for Karzai to accept. In a hypothetical situation, if they agree to operate within the existing political framework, and join the government, it is almost certain that they will do their best to wreck the present system from within and get back to the medieval system they had earlier imposed on Afghanistan, by all means.

Therefore, the President is not only bound to ensure the implementation of the Constitution (as required by Art. 64.1) but also to exercise his powers in accordance with its provisions (as required by Art. 64.21). As such, he cannot negotiate with such a regressive force. By integrating the Taliban into the political life of the Afghan State, Karzai would run a risk of repeating President Hindenburg's decision in the Weimar Republic in the 1930s, when he invited Hitler to power and pushed Germany to the abyss of Nazism. ■

Endnotes

1. A generous supporter of the internal opposition (namely the Northern Alliance) during the Taliban rule and the main regional donor now (with 850 million of USD invested in infrastructural projects such as schools, hospitals, energy plants and the police and civil servants training), India considers Afghanistan a key-country for its strategy of economic expansion, not only as an end market (so far hegemonised by Pakistan) but also and above all as the entry door for the central Asian energetic resources, absolutely needed to keep on growing at rates close to double digit.

2. The rivalry between Pakistan and India for the geo-political control over Afghanistan echoes to a certain extent the confrontation between Great Britain and Russia for the hegemony on the Asian heartland throughout the nineteen century.

3. According to the principle of external self-determination (a peremptory norm since the aftermath of WWII), those people fighting to free themselves from either a colonial domination or a racist regime or a foreign government created after a military occupation, are meant to pursue a special objective worth some legal guarantees: lawfulness of (a) the use of the armed force against the incumbent government, (b) third States' intervention in favor of the incumbent government and (c) third States' support (even the military one, as long as indirect). See Grado (1998).

4. More precisely, in August 2003, on request of the Afghan government and the UN, NATO took over the lead of ISAF, a mission already established outside the umbrella of the Atlantic Alliance by a coalition of willing States and authorised by the UN Security Council (2001).

5. The Afghan Constitution was adopted by the Loya Girga on 26 January 2004 as a result of the political process launched by the 2001 Bonn arrangements.

6. See the reports of the UN Drugs and Crime Office (UNDCO) for Afghanistan, available online at http://www.unodc.org/afg/.

7. The conditional mode is due to the fact that the obligation not to use the armed force in international relations accounts for: a) a jus cogens (literally "peremptory law") norm (see Art. 53 and 64 of the 1969 Vienna Convention on treaty law), and, as such, un-derogable by any other norm (including the one on the consent of the injured State) unless endowed with the same legal rank; b) an erga omnes (literally "toward all") obligation, that is, as inferable from Art. 19 and 40 on the Project of articles on States' responsibility passed on first reading in 1996 by the International Law Commission (and ruled out on the second reading in 2001), a norm protecting

the fundamental interests of the international community and, as such, binding on every State not at a bilateral level but with respect to the international community as a whole; a norm, therefore, whose violation produces legal effects not only vis-à-vis the directly and actually injured State but also toward all the other States of the international community. On the theory of a limited extent of the effectiveness principle (ex iniuria non oritur ius, i.e. "the law does not arise from the fact") see Conforti (1997), Verdross (1957) and the UN International Law Commission (2003). On the topic of erga omnes obligations see Picone (2006).

8. On the topic see Cassese (1984, 2005).

9. On the topic of Kosovo's secession from Serbia see Serra (2009).

10. On the topic see Assorted Authors (2006).

11. We refer to the devolution of power to the leaders of local clans experimented by the British Crown's delegates in the territories North-West of today's boundary between Pakistan and Afghanistan. A boundary which, by the way, was demarcated in 1893 by the then British Minister of foreign affairs Mortimer Durand not as an international frontier but as an indicative partition line between the zone under the British direct control and those Pashtun territories which were wisely attributed a special status (the so called "indirect rule").

12. See Mulrine (2008) and International Crisis Group (2008).

13. It is sufficient to remind that, under the CIA's direction, the Pakistani intelligence, together with the Saudi Arabia's, recruited, trained and armed against Russia not only the Afghan mujahidin but also the Pakistani Islamic extremists and more than 6.000 Arabs from Western Asia and North Africa. Osama bin Laden and his followers were part of this multicolored Islamist International.

14. Since September the 11th, Pakistan has being offering its territory to the US-led coalition as the logistical backstage to conduct the anti-Taliban campaign in Afghanistan. Given the unavailability of the "Russian corridor", through the former Soviet republic of Turkmenistan, Uzbekistan and Tajikistan, the Karachi arbour and the entire Pakistani logistical system allowed for the constant alimentation of the colossal US and NATO war machinery. Only recently, further to Bucharest NATO summit (April 2008), Russia has given its consent for the transit through its territory of NATO's material heading for Afghanistan; a political concession which should materialise by the beginning of 2009 significantly downsizing the importance of Pakistan and, to us, also the tolerance showed by the US toward its "Afghan strabism". The US missile strikes against the Pakistani territory, along those border zones under the Taliban's control, are symptoms of such a change. A change which anyway will not dare too much, being Pakistan a nuclear power with 160 million people.

15. The assassination, in December 2007, of Benazir Buttho, who would have almost certainly followed Musharraf's new line, and the latter's resignation in August 2008, have shed new shadows on the Pakistani position.
16. On the topic of the Afghan tribal culture see Dupree (1997).
17. The formula "Rule of law" is, in fact, translated as "Stato di diritto" in Italian, "État de droit" in French, "Rechts staat" in German, "Estado de derecho" in Spanish.
18. In light of its philosophical assumptions and specific purposes, the notion of Rule of law does not encompass social rights – the so called "second generation rights" – which imply a State active role through the implementations of politics (e.g. for the promotion of employment, social assistance, health, education, housing); their inclusion would deprive the notion of Rule of law of its conceptual autonomy and thus of a useful effect vis-à-vis the notion of Welfare State, centered, on the contrary, on the substantial equality. Not even the "last generation rights" associated to defined and undefined categories of people (protection of minorities and groups, freedom from fear/terror, sustainable development) fall under the theoretical umbrella of the Rule of law. For a definition of Rule of law including the topic of minorities and groups see Tamanaha (2004).
19. In the criminal field, such an obligation is summarised by the Latin maxim nullum crimen, nulla poena sine lege (literally "no crime, no punishment without a previous penal law").

References

Associated Press (16 November 2008). Karzai offers protection for Taliban leader as incentive for talks. The Guardian (available at http://www.guardian.co.uk/world/2008/nov/16/afghanistan, lastly visited on 9 January 2009);

Adas, B. (28 July 2008). US troop pullout to start in 2010. Gulf News (available at http://www.iraqupdates.com/p_articles.php/article/34338/refid/RN-story-01-01-2009www.iraqupdates.com, lastly visited on 9 January 2009);

Assorted Authors (2006). *Democracy and legitimacy*. ISPI Papers of International Relations, 2. Milan: Egea;

Assorted Authors (2008). The Pakistani Volcano. Limes – Review of Geopolitics, 4. Milan: Gruppo Editoriale L'Espresso;

Afghan Loya Girga (2004), Constitution of the Islamic Republic of Afghanistan adopted on 26 January 2004 (available at http://www.president.gov.af/english/constitution.mspx, lastly visited on 9 January 2009)

Baccelli, L. (1999). *The particularism of rights: individuals' power and paradoxes*

of universalism. Rome: Carocci;

Beaumont, P. (21 December 2008). US will send to up 30,000 troops in new Afghan surge. The Observer (available at http://www.guardian.co.uk/uk/2008/dec/21/us-troops-afghanistan, lastly visited on 9 January 2009);

Bobbio, N., Matteucci, N., Pasquino, G. (2004). *Dictionary of politics*. Turin: UTET;

Cassese, A. (1984). *International law in the contemporary world*. Bologna: Il Mulino, 34-35;

Cassese, A. (2005). International Law. Oxford: Oxford University Press, 12-13, 46;

Conforti, B. (1997). Diritto Internazionale. Naples: Editoriale Scientifica, 199-202;

Costa, P., Zolo, D. (2007). The Rule of Law - History, Theory and Criticism. Dorderecht: Springer;

Dupree, L. (1997). Afghanistan. Karachi: Oxford University Press;

Focarelli, C. (2007). Lectures on the history of international law. Perugia: Morlacchi Editore, 147-149;

Grado, V. (1998). *Civil wars and third States*. Padua: Cedam;

Habermas, J. (1981). *The theory of the communicative action*. Boston: Beacon Press;

ICJ (1986). Judgment of 27 June 1986 on the contentious case Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America);

International Crisis Group (2008), 'Policing in Afghanistan: still searching for a strategy'. Asia Briefing, 85, 14-15;

Mulrine, A. (16 December 2008). US Pilot Program To Recruit New Local Afghan Militias. Afghanistan Conflict Monitor (available at http://www.afghanconflictmonitor.org/2008/12/us-pilot-program-to-recruit-new-local-afghan-militias.html, lastly visited on 9 January 2009)

Picone, A. (2006). *International community and erga omnes obligations: Studies of International law*. Naples: Jovene.

Serra, G. (2009). 'The Kosovo and Georgia crisis in light of international law'. *EURASIA – Review of Geopolitics*, 2. Parma: Edizioni all'insegna del Veltro;

Serra, G. (2009). The EU external action for the promotion of the Rule of law in the
criminal justice sector: the EU Rule of law mission in Kosovo. Jean Monnet Antology. Naples: Editoriale Scientifica;

Tamanaha, B. Z. (2004). *On the Rule of Law: History, Politics, Theory*, Cambridge:

Cambridge University Press;

UN GA (1974). Declaration on the definition of aggression (UN doc. A/RES/29/3314 of 14 December 1974);

UN GA (1988). Res. No. 43/157 on Enhancing the effectiveness of the principle of periodic and genuine elections (UN doc. A/RES/43/157 of 8 December 1988);

UN International Law Commission (2003). Sixth Report on unilateral acts of States (UN Doc. A/CN.4/534 of 30 May 2003), 17-20;

UN SC (2001). Res. No. 1386 on The situation in Afghanistan (UN Doc. S/RES/1386(2001) of 20 December 2001);

Verdross, A. (1959). *International Law*. Vienna: Springer (4th edition);

Wilder, A. (2007). Cops or robbers? The struggle to reform the Afghan National police. Afghanistan Research and Evaluation Unit (available at http://www.areu.org.af/index.php?option=com_content&task=view&id=28&Itemid=33, lastl visited on 9 January 2009).