The Mujahidin Middleman: Pakistan's Role in the Afghan Crisis and the International Rule of Non-Intervention

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The Mujahidin Middleman: Pakistan’s Role in the Afghan Crisis and the International Rule of Non-Intervention

I. Introduction

In today’s international environment, foreign interference in the internal affairs of a state is becoming commonplace. The foreign incursions of the Soviet Union and the United States alone have dominated the headlines for the last several decades. Interferences of this type are most dangerous to world peace when these two superpowers face off against each other while hiding behind opposing sides of a civil war. Afghanistan is now involved in such a crisis.

Caught between this superpower struggle for power is Pakistan. Pakistan is faced with the difficult problem of balancing delicate foreign relations and international responsibilities with the very real dangers and problems caused by its neighbor, Afghanistan.

In recent history, the duty of non-intervention was recognized in theory, but largely ignored in action. States violating this duty excused their actions as justified, and the rule of non-intervention began to lose force. The rule regained strength in 1986, with the decision of the International Court of Justice in Nicaragua v. The United States. This world court opinion has given new life to the principle of non-intervention.

This Comment first will discuss the facts surrounding Pakistan’s involvement in the Afghan crisis before and during the Soviet occupation of Afghanistan. Next, it will analyze these Pakistani actions in the context of the international rule of non-intervention. The rule,

2. For example, the U.S. involvement in Vietnam and Nicaragua, and the Soviet invasions of Czechoslovakia and Afghanistan. Id.
3. Id.
4. See infra notes 125-34 and accompanying text.
its exceptions and justifications will, in turn, be examined. This Comment then will discuss the possibility of Soviet withdrawal of troops from Afghanistan, and analyze Pakistan's potential actions in light of this development.

II. History and Background

A. Afghanistan

Afghanistan is a relatively small country, positioned in a turbulent and strategically important geographic location. A landlocked country, Afghanistan borders on the Soviet Union in the north, China in the northeast, Pakistan in the east and south, and Iran in the west. It is a Muslim country, with an ethnically mixed population.

Afghanistan has historically been an unsettled, non-aligned country, governed by a monarch. The country has been unified only since 1747, when it was founded by King Ahmed Shah Duranni. Duranni's descendants fought amongst themselves, but retained power until 1978. One member, King Zahir Shah, ruled Afghanistan for forty years, from 1933 until 1973. The monarchy ended when, on July 17, 1973, Sardar Mohammed Daoud, a cousin of the

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7. BACKGROUND NOTES SERIES, AFGHANISTAN, supra note 6, at 3.

8. 80% of the population are Sunni (Hanafi branch) and the remainder are Shi'a. Id. at 3.

9. Pukhtun (also called Pashtun and Pathan) constitutes about 40% of the population. Other predominant ethnic groups include: Tajik, Uzbek, Turkoman, Hazar and Aimaq. Id. at 3; see also E. GIRADET, AFGHANISTAN THE SOVIET WAR (1985) [hereinafter GIRADET] (map of location of Ethnic Groups in Afghanistan). Pushtu is the language of about 50% of the population, and Afghan Persian (Dari) is spoken by a third of the population. More than 70 other languages and dialects are spoken throughout the country. BACKGROUND NOTES SERIES, AFGHANISTAN, supra note 6, at 3.

10. For a more in-depth discussion of Afghanistan's early history see J.C. GRIFFITHS, AFGHANISTAN (1981); V. GREGORIAN, THE EMERGENCE OF MODERN AFGHANISTAN, (1969); HISTORY OF AFGHANISTAN (I. Karpikov ed. 1985); BACKGROUND NOTES SERIES, AFGHANISTAN, supra note 6, at 3-4.

11. BACKGROUND NOTES SERIES, AFGHANISTAN, supra note 6, at 4.


13. For information on King Zahir Shah, who may be an important figure in the new Kabul government, see AFGHANISTAN: EIGHT YEARS OF SOVIET OCCUPATION, supra note 6, at 9; see also Weisman, The Great Game, supra note 12.
King, seized power in a military coup. Daoud, who was greatly influenced by the Shah of Iran, pledged reform, but none was forthcoming. After four years of the lack of reforms, the two major political groups in Afghanistan, Parcham and Khalq (the People), withdrew their support of Daoud and formed the People's Democratic Party of Afghanistan (PDPA). Shortly thereafter, on April 27, 1978, Daoud was overthrown and assassinated in a bloody coup. Nur Mohammed Taraki took power as leader of the PDPA, and established the Democratic Republic of Afghanistan (DRA).

Soon after the PDPA seized power, opposition began to grow in the Afghan countryside. Yet despite this, Taraki was holding talks with the Soviet Union, which resulted in a new Treaty of Friendship, Good Neighborliness and Cooperation. As Moscow increased military assistance to the Afghan regime under the treaty, other states began to question Afghanistan's traditional non-aligned status.

The questioning intensified in September of 1979, when Hafizullah Amin took power and had Taraki assassinated. Moscow began to worry about the stability of the Amin regime, and about the growing resistance within the country.

The overthrow of the Taraki Government served a 'blow to the Soviet prestige' and Moscow was faced with the dilemma of how to keep the Amin Government in power... The growing pressure of internal resistance and the Amin Government's failure to contain it, coupled with his gestures towards the United

14. BACKGROUND NOTES Series, Afghanistan, supra note 6, at 4 (Daoud abolished the monarchy upon seizing power.).
16. After four years of Daoud rule, illiteracy had increased, 5% of homeowners owned 45% of the land, and Afghanistan had the lowest per capita income of any Asian country. Id. at 165.
17. Parcham was led by Babrak Karmal; Khalq was led by Nur Mohammed Taraki and Hafizullah Amin. Id. at 165.
18. BACKGROUND NOTES Series, Afghanistan, supra note 6, at 4.
19. Id.
20. A struggle for power had occurred within the PDPA that resulted in Khalq taking command of the party (led by Taraki). Parcham and its leader Karmal were ousted. ALI, supra note 15, at 168.
21. BACKGROUND NOTES Series, Afghanistan, supra note 6, at 4; see generally NABY, THE AFGHAN RESISTANCE MOVEMENT, in Afghan Alternatives 65-6 (R.H. Magnus ed. 1983) (the first stages of the resistance began as early as the early 1970s).
22. The treaty was signed in December, 1978. Id.
23. Id. at 4. Since the Soviet invasion, Moscow has increased aid to Afghanistan in an effort to rebuild the economy and the military. Moscow has also set up trade agreements, built transportation facilities (for use by Soviet troops) and conducted natural resource exploration and development in Afghanistan. Id. at 8; also see AFGHANISTAN: EIGHT YEARS OF SOVIET OCCUPATION, supra note 6, at 16 (chart showing Soviet economic aid to Afghanistan, 1980-1986).
24. BACKGROUND NOTES Series, Afghanistan, supra note 6, at 4.
25. Moscow also feared that the U.S. would take advantage of the weak Afghan regime and support a rebel takeover of the government. Weisman, The Great Game, supra note 12, at 21.
States with a view to wriggle Afghanistan out of the Soviet block were some of the developments which were seriously taken note of in Moscow.

Finally, Moscow decided to act. On December 24, 1979, Soviet transport planes, carrying about 4,000 Soviet troops, were sent into Kabul to lend “fraternal aid” to the Afghan regime. The Soviets claimed to be in Kabul on the invitation of Amin and the PDPA; however, on December 27, 1979, just three days after the invasion, Amin was reported dead. The Soviets then flew in Babrak Karmal from Czechoslovakia, and installed him as the new Afghan leader. Soon after gaining control, Karmal denounced Amin as an agent of the CIA. Now, with a Soviet supported government in power, Moscow would next look to control the anti-regime rebels interspersed through the country.

B. Pakistan

Bordering the troubled Afghanistan and Iran on the west, Pakistan also shares a border with India in the east, and with China in the north. A larger and more populous country than Afghanistan.

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26. Amin had made several friendly overtures to the U.S., offering peace and welcoming any aid that the U.S. might provide. M.A. WAKMAN, AFGHANISTAN, NON-ALIGNMENT AND THE SUPER POWERS 122 (1985) [hereinafter WAKMAN]. Also, Amin was considering a deal with China, whereby he could break from the Soviet Union and be indirectly tied with the U.S. ALI, supra note 15, at 172.
27. WAKMAN, supra note 26, at 122-23.
28. While actual plans for the invasion were begun as early as March, 1979, initial preparations for the takeover had been ongoing for several years. GIRADET, supra note 9, at 12.
29. This number was increased to 5000 on December 27, 1979. Six months later, 85,000 Soviet troops were occupying Afghanistan. This number continued to grow until in 1985 approximately 120,000 Soviet troops were in Afghanistan, with about 30,000 additional troops massed at the Soviet-Afghan border. This number had since remained relatively constant. Whitehead, Afghanistan’s Struggle for Freedom, DEP’T ST. BULL., Feb. 1986 at 1 [hereinafter Whitehead]. When the Soviets arrived in Afghanistan they joined approximately 50,000 “desertion-ridden” Afghan army troops who were “halfheartedly” supporting the regime. GIRADET, supra note 9, at 12. As of November 1985, the Afghan regime army had shrunk to less than one-half of its pre-invasion strength of 90,000. Statement by U.S. Ambassador Vernon A. Walters, U.N. General Assembly (Nov. 12, 1985), reprinted in DEP’T ST. BULL., Feb. 1986, at 20.
30. GIRADET, supra note 9, at 12. This marked the first time that the Soviet Union intervened outside Eastern Europe since World War II. ALI, supra note 15, at 173.
33. It is believed that Amin was assassinated by a special Soviet KGB hit team. GIRADET, supra note 9, at 12.
34. HARRIS, supra note 32, at 653.
35. ALI, supra note 15, at 172.
36. Pakistan’s area is 310,527 square miles, about the size of California. In the middle of 1986, its population was approximately 97.7 million. BUREAU OF PUBLIC AFFAIRS, U.S.
Pakistan is a Muslim country with an ethnic majority of Punjabis.\textsuperscript{37} Throughout most of the 1970s, Pakistan was ruled by Zulfiqar Ali Bhutto, the leader of Pakistan's People's Party (PPP).\textsuperscript{38} In 1977, as a result of public unrest, Bhutto offered to hold free elections. Due to strong opposition from the Pakistan National Alliance (PNA), the outcome of the elections was expected to be close;\textsuperscript{39} however, Bhutto won two-thirds of the National Assembly seats. The PNA claimed fraud, and called for a new election.\textsuperscript{40} Bhutto initially refused, which resulted in outbreaks of violence.\textsuperscript{41} The violence culminated on July 15, 1977, when the Pakistan army removed Bhutto from power, and declared martial law. Upon the imposition of such martial law, and until new elections could be held, General Mohammed Zia ul-Haq temporarily installed himself as leader.\textsuperscript{42}

Zia did not hold these elections immediately, but instead scheduled them for late 1979.\textsuperscript{43} As the new election date neared, Zia, fearing defeat, again cancelled the elections.\textsuperscript{44} At this time, the PPP formed the Movement for the Restoration of Democracy (MRD), in opposition of Zia.\textsuperscript{45} When valid elections were finally held in 1985, the MRD called for a boycott.\textsuperscript{46} This strategy backfired on the MRD, however, as large numbers of voters turned out and the lack of opposition to Zia resulted in his retaining office.\textsuperscript{47} Upon taking office again, Zia set the next elections for 1990.\textsuperscript{48}

Zia's government shares many of the characteristics of a typical military rule: censorship, imprisonment without trial, and other human rights violations.\textsuperscript{49} Still, Zia's position remains strong, largely due to recent improvements in the Pakistan economy.\textsuperscript{50} Regardless

\textsuperscript{37} 65\% of Pakistanis speak Punjabi, 11\% speak Sindi, 9\% speak Urdu (official language) and 15\% speak other languages including Pushu (the major tongue in Afghanistan). English is also widely spoken, especially in government and military circles. \textit{Id.} at 3.
\textsuperscript{38} \textit{Id.} at 4.
\textsuperscript{39} \textit{See Id.}
\textsuperscript{40} \textsc{Ali, supra note 15, at 138-42.}
\textsuperscript{41} \textsc{Background Notes Series, Pakistan, supra note 36, at 4.}
\textsuperscript{42} Bhutto was later executed after being convicted of conspiracy. \textit{Id.} at 4.
\textsuperscript{43} Zia did not hold elections because the parties involved could not agree on electoral rules and also because Zia feared a PPP victory. \textit{Id.} at 4.
\textsuperscript{44} \textsc{Ali, supra note 15, at 136-39.}
\textsuperscript{45} \textsc{Background Notes Series, Pakistan, supra note 36, at 4.}
\textsuperscript{46} The boycott was led by Benazir Bhutto, daughter of the former ruler, and the leader of the PPP. Ispahani, \textit{The Perils of Pakistan, the New Republic, Mar. 16, 1987, at 24 [hereinafter Ispahani].}
\textsuperscript{47} The voter turnout for the National Assembly ballot was about 53\%, and the elections were generally free of fraud. \textsc{Background Notes Series, Pakistan, supra note 36, at 5.} The boycott failure has led to the decline of MRD. Ispahani, \textit{supra note 46, at 25.}
\textsuperscript{48} Ispahani, \textit{supra note 46, at 24.}
\textsuperscript{49} \textit{Id.} at 20; \textit{see generally Zia's Pakistan (C. Baxter ed. 1985).} However, it seems that overall, Zia's rule is better than most military rules. Ispahani, \textit{supra note 46, at 20.}
\textsuperscript{50} GNP is growing at a remarkable rate of 7\% per year. Ispahani, \textit{supra note 46, at 25.}
of the results of the 1990 elections, it is very likely that the military will have a strong influence over all of Pakistan’s policy decisions for years to come.51

C. Pakistan's Response to the Soviet Invasion

1. Pakistan’s Initial Reaction.—When the Soviets invaded Afghanistan, Pakistan suddenly became a “front-line” state. Pakistan was no longer separated from the Soviets by the Afghan mountains; it now had to face a 13,000 mile border that was, for all practical purposes, a Soviet border.52 Overnight, Pakistan became of “vital interest” to the United States, which pledged its military support.53 On the surface, Pakistan did not seem alarmed by the Soviet invasion, for there was very little troop movement in Pakistan.54 There was, however, one obvious change in Pakistan: the country was suddenly flooded with Afghan refugees.55

These refugees migrated across the Pakistan border to avoid Soviet air raids56 and over the next few years, millions of Afghan refugees made their home in Pakistan. The current number of Afghan citizens living in Pakistan now stands at more than 2.9 million.57 The refugees have caused many problems for Pakistan, including a shortage of jobs and a shortage of pasture land.58 Pakistan has also put itself at risk with Afghanistan and the Soviet Union by providing help to the refugees.60

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51. “... [T]he military will likely always be present, ruling, advising, or simply casting its shadow across civilian deliberations.” Id.
52. Id.
53. Wriggins, Pakistan’s Search for a Foreign Policy After the Invasion of Afghanistan, PACIFIC AFFAIRS, Summer, 1984, at 284 [hereinafter Wriggins]. Pakistan was a “vital interest” to the U.S. because President Carter felt it necessary to have a Western presence in Southern Asia, especially after the Soviet invasion of Afghanistan and the fall of the Shah of Iran (formerly a pro-Western government). Therefore, President Carter committed the U.S. to use force if necessary to defend Pakistan. Id.
54. Id. at 285. However, beneath the surface, Pakistani officials analyzed the Soviet move and proposed two possible reasons for the invasion. First, to keep Afghanistan within the Soviet’s scientific, socialist sphere. Second, as the beginning of a long-run Soviet plan to move toward the Arabian Sea, which would mean, of course, the eventual invasion of Pakistan. Id. at 287.
55. See infra note 57.
56. These air raids were part of a successful Soviet strategy to depopulate the Afghan countryside. Ispahani, supra note 46, at 21.
57. This is the single largest group of refugees in the world. The numbers still continue to grow, but at a much slower pace than in the years immediately after the invasion. The refugees are sheltered in more than 320 camps. In addition, nearly one million Afghan refugees are living in Iran. AFGHANISTAN: EIGHT YEARS OF SOVIET OCCUPATION, supra note 6, at 19. The refugees now living in Pakistan account for 20-25% of Afghanistan’s pre-war population. Whitehead, supra note 29, at 2.
58. Two of the biggest problems in Pakistan, drugs and guns, are commonly referred to as the “gifts of the Afghans”. Ispahani, supra note 46, at 19. Also Afghan animals, numbering about three million, consumed much of the available pasture land in the Buluchistan area of Pakistan. Id. at 21.
59. The refugee situation has in part been the cause of Afghan air raids into Pakistan and terrorism in Pakistan by KHAD (the Afghan secret police). Ispahani, supra note 46, at
Beyond aid to the Afghan refugees, Pakistan’s initial response was cautious, as it feared a direct Soviet conflict.\textsuperscript{60} Zia’s initial strategy was twofold: First, mobilize support from Islamic countries and the West against the Soviet invasion; second, strengthen Pakistan’s military defense by seeking aid from a foreign power.\textsuperscript{61}

Pakistan did mobilize support in opposition to the Soviet invasion by strongly condemning the Soviet action.\textsuperscript{62} The invasion was universally protested, and was also condemned by the Islamic Conference in early 1980.\textsuperscript{63} While these countries were voicing their objection to the Soviet actions and implementing part one of Zia’s strategy, Pakistan began a search for a powerful ally.

After unsuccessfully attempting to mend relations with India,\textsuperscript{64} Pakistan rejected an initial offer of help from the U.S.\textsuperscript{65} Meanwhile, Pakistan began receiving aid from China and the Middle East, particularly Saudi Arabia.\textsuperscript{66} Pakistan, however, still wanted to find one powerful ally willing to give full support. Finally, in 1981, with President Reagan in office, the U.S. made a second offer, and Pakistan accepted.\textsuperscript{67} Pakistan had successfully achieved both of its initial goals,\textsuperscript{68} but one large question still loomed, whether or not to support the Afghan rebels and risk a direct Soviet conflict.

2. Pakistan and the Afghan Resistance.—The Afghan resis-
tance is a broad national movement that includes almost the entire population inside Afghanistan, plus the Afghan refugees, and the exiles in Pakistan, Iran and throughout the world. The fighting men in the resistance are collectively referred to as the mujahidin and are located in hundreds of fronts throughout most of Afghanistan. Soon after the Soviet invasion, Pakistan extended an invitation to the leaders of the mujahidin to meet, organize and plan strategy in Peshawar, Pakistan. The leaders of the resistance accepted the invitation, and while there is a strong independent fighting group based in Afghanistan, most resistance fighters are now affiliated with one of the seven resistance groups headquartered in Peshawar.

While helping the Afghan rebels in other ways, Pakistan had expressly refused to be a middleman for military supplies sent to the mujahidin during the years immediately following the Soviet inva-

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69. Presently, the primary motivation of the Afghan resistance is “to free Muslim Afghan land from an atheist enemy.” Therefore, the resistance refers to its struggle against the Soviet-backed regime as jehad (meaning holy war). Naby, supra note 22, at 65.
70. Afghanistan: Eight Years of Soviet Occupation, supra note 6, at 7. Relatively secularist nationalists from all walks of life — students, bureaucrats, technocrats, teachers, and professionals — took action in one of three ways. They fled the country to join the existing resistance groups in Peshawar or Iran, they joined the resistance in the countryside (especially true for military men), or collaborated with the resistance in the towns while they continued holding their jobs in the private or public sector.

Naby, supra note 22, at 67; see also Giradet, supra note 9, at 48-87; see generally Cassese, Resistance Movements, in 4 Encyclopedia of Public International Law 188-90 (1982) (general information on resistance movements).
71. Also spelled Mujahideen. The resistance fighters are commonly called “freedom fighters,” especially in Washington. For purposes of this Comment, they will also be referred to as “rebels” and “insurgents.” The term “mujahidin” is derived from the religious term “jehad” (holy war). An individual fighter is called a “mujahid.” See supra note 69.
72. Wriggins, supra note 53, at 300-01.
73. The internal rebels, independent of the Peshawar league, may be the real problem for the Soviets. See Ali, supra note 15, at 176; also see Giradet, supra note 9, at 55.
74. These groups are often called the Peshawar parties or the Peshawar league. The parties are organized along political or military lines. The parties often take on the name and personality of their leader (which is often a source of conflict between the parties). Presently, these parties have split into two general alliances: fundamentalists and moderates. Giradet, supra note 9, at 55. The parties and leaders are as follows:

— Islamic Party (Hezb-e-Islami-Khalis) led by Maulavi Mohammed Yunis Khalis, a fundamentalist party.
— Afghanistan National Liberation Front (Jebh-e-Nejat-i-Melli Afghanistan) led by Sebghatullah Mojaddedi, a moderate party.
— National Islamic Front for Afghanistan (NIFA) (Mahz-e-Melli) led by Pir Sayyid Ahmad Gallani, a moderate party.
— Islamic Party (Hezb-e-Islami-Gulbuddin since 1974) led by Gulbuddin Hikmatyar, a fundamentalist party.
— Islamic Society (Jamiat-i-Islami) led by Burhanuddin Rabbani, a fundamentalist party.
— Islamic Revolutionary Movement (Harakat-e-Inquilab-i-Islami) led by Mohammad Nabi Mohammadi, a moderate party.
— Islamic Union for the Liberation of Afghanistan (Ittihad-i-Islami) led by Abd Al-Rab Abd ul-Rassul Sayyaf, a fundamentalist party.

sion.\textsuperscript{76} Over time, however, Pakistani views have radically changed. Over the past several years, Pakistan has openly admitted being a conduit for the rebels,\textsuperscript{77} and presently controls nearly all money and supplies sent from the United States.\textsuperscript{77} Further, the Zia regime is actively training the rebels in refugee camps located in Pakistan,\textsuperscript{76} and is allowing U.S. intelligence to do the same on a limited scale.\textsuperscript{79} In response to these actions, Soviet-backed Afghan leaders ordered air strikes of rebel supply lines located in Pakistan.\textsuperscript{80} The recent Pakistani actions and views on aiding the rebels have not only led to retaliation on the part of the Soviets, but have been questioned in the international sphere as well under the rule of non-intervention.

III. Rule of Non-Intervention

A. Sovereignty and Non-Intervention

All states, due to their independent existence, are endowed with certain basic rights.\textsuperscript{81} The foremost of these rights are sovereignty and equality.\textsuperscript{82} Sovereignty is the right to perform functions of a state, to the exclusion of, and without interference from, any other state.\textsuperscript{83} The principle of equality of states directly follows from this. Put simply, each sovereign state must be treated, and must treat other states, as an equal in the international community, at least insofar as basic rights and duties are concerned.\textsuperscript{84} These rights of sovereignty and equality form the basis for international law in the modern world. These customary international law rights were codified in Article 2(1) of the United Nations Charter.\textsuperscript{85}

Certain complementary duties arise from these basic rights.\textsuperscript{86}
These duties not only further a state’s basic rights, but also, define and limit its allowed and required actions. Therefore, these duties—both protect and limit the sovereignty and equality of all states.

One of these duties, the duty of non-intervention, is a generally accepted principle of customary international law. While the U.N. Charter does not directly restrict intervention, the duty of non-intervention can be implied from the Charter’s language. To confirm this implied duty, and to dispel all doubts, the U.N. adopted several declarations dealing specifically with the intervention issue. First, in December of 1965, the U.N. adopted the Declaration on the Inadmissibility of Intervention, which clearly denounced all forms of intervention. Second, in 1970, the U.N. restated and reinforced this principle in The Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States. Further, later resolutions of international organizations have strengthened the status of the non-intervention principle.

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88. The duty may be inferred from U.N. CHARTER art. 2, para. 1, see supra note 85, and from art. 2, para. 4 that states: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any matter inconsistent with the Purposes of the United Nations.” The duty may also be inferred from U.N. CHARTER art. 2, para. 7 that reads in part: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . .” While art. 2, para. 7 expressly prohibits only the United Nations from intervening, this could be extended by implication to also include intervention by its member states. WILLIAMS, supra note 86, at 47.

89. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131, 14 U.N. GAOR Supp. (No. 20) at 11 (adopted by a vote of 109-0-1, the U.K. abstaining); see R. SWIFT, INTERNATIONAL LAW: CURRENT AND CLASSIC 165-67 (1969). This Declaration, in part, reads: “1. No State has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State . . . .” Id.


91. See Oppermann, Intervention in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 234 (1982) [hereinafter Oppermann]. Notably, in 1975, the Institut de Droit International (a 60-member college of cardinals of international law scholars) also issued a resolution entitled: The Principle of Non-Intervention in Civil Wars. This resolution further affirmed the United Nation’s view of intervention. Also, the International Court of Justice always has recognized
B. Intervention and Civil War

1. Definition of Intervention.—Intervention may be defined as a state’s interference with the affairs of another state “without lawful justification for the purposes of altering or maintaining conditions there.” Intervention is interference designed to “induce a certain behavior” of another state, “whereby the intervening state employs coercion and violates the sovereign will of its victim.”

What, then, constitutes “interference?” According to the U.N. Declarations of 1965 and 1970, interference of any type is prohibited. Thus, the U.N. adopted a very broad definition of interference. This broad definition would include not only direct forcible intervention, but also indirect forcible intervention, and non-forcible intervention, such as economic or political interference.

2. Civil War.—The principle of non-interference is of particular importance in the context of civil war for two reasons. First, it is a useful tool in preventing civil war from escalating into an international war. Second, the principle can prevent a state from encouraging internal conflicts in other states for that state’s own advantage.

Civil war can be defined as a war between two or more groups of inhabitants of the same state. The most common form of civil war is a conflict between the established government and insurgents. The present situation in Afghanistan presents a classic example of the prohibition of intervention as exemplified in Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 35. See also Oppenheim, I INTERNATIONAL LAW 134-8 (H. Lauterpacht 7th ed. 1965); Nicar. v. U.S., supra note 5, at 105-06; J. Brierly, THE LAW OF NATIONS 402 (6th ed. 1963).

Oppermann, supra note 91, at 233.
Prior to the Declarations (supra notes 89 and 90), it was unclear whether the intervention meant only direct armed attack or whether it also included other interference. Id. at 234; Williams, supra note 86, at 48.
Williams, supra note 86, at 47.
In today’s international environment, states frequently attempt to expand their territories by “encouraging factions sharing their own ideology to seize or retain power in other states.” Id.
Other forms of civil war include: part of the population attempting to secede to form a new state, rebels merely trying to force the government to make concessions, or even war between factions within a state while the government remains a neutral bystander. Id.; see also R. Falk, The International Law of Civil War 18-19 (1971) (five types of conflict). For purposes of this Comment, use of the most common type, mentioned in the text, is both relevant and sufficient.
Also referred to as “de jure” government, and for purposes of this Comment, as the Afghan regime or government.
Insurgents can be defined as “individuals who wish to set up a new government or a new State . . . .” Akehurst, supra note 96, at 240. In this comment, insurgent is used interchangeably with rebel, resistance, mujahidin and freedom fighter; but see id. at 240.
ample of civil war: the Afghan government is warring with a resistance movement that arose out of the Afghan populace with intentions of overthrowing the established government.

3. Intervention in the Context of Civil War.—The duty of non-intervention exists equally in the context of civil war. A civil war generally violates neither customary international law nor Article 2(4) of the U.N. Charter. However, the fact that civil war is legal on its face does not mean that foreign intervention in a civil war is also permitted under international law.

As a general rule, outside states are prohibited from providing "help" to insurgents in a civil war. The U.N. Declarations of 1965 and 1970 expressly prohibit any such aid that would be used to overthrow the established government of another state. Therefore, in the civil war context, the duty of non-intervention is a valid rule, particularly with regard to insurgent forces.

4. Applying Intervention Rules to Pakistan's Involvement in the Afghan Crisis.—In recent years, Pakistan openly admits being the major arms conduit between the U.S. and the mujahidin. Pakistani officials control not only the means of supplying arms and money to the rebels, but also the quality and quantity of arms received by the mujahidin. Further, Pakistan, upon its own invitation, has been the home base for rebel leaders since the Soviet inva-

Also note that no distinction is made between the classification of rebel, insurgent and belligerent for purposes of this comment. This classification is not relevant to an issue in this paper. See id. at 242 n.1; Bowett, The Interrelation of Theories of Intervention and Self-Defense in Law and Civil War in the Modern World 41 n.9 (1974) [hereinafter Bowett]; Firmage, supra note 1 at 406-07. For a discussion of the recognition of insurgency and belligerency see Riedel, Recognition of Belligerency. Recognition of Insurgency in Encyclopedia of Public International Law 165-71 (1982); Starke, supra note 83, at 146-48; Vincent, supra note 87, at 286-87.
sion in 1979. From this home base, resistance leaders plan strategy and receive instruction and training from Pakistani and American intelligence agents.

Clearly, these Pakistani actions fit within the broad definition of intervention adopted by the United Nations. The Declarations of 1965 and 1970 state that it is contrary to international law to: “organize, assist, . . . incite or tolerate subversive or armed activities” aimed at overthrowing an established government of another state. Pakistan not only tolerated the actions of the rebels on Pakistan soil, but also actively encouraged and assisted the resistance in organizing and fighting the Soviet-backed Afghan government.

The International Court of Justice has always assumed that general customary international law prohibits intervention. However, until Nicaragua v. U.S., the Court had had no opportunity to rule on the legality of any intervention in recent history. In the Nicaragua v. U.S. case, the U.S. had been supplying weapons, training and other aid to contra forces against the established government in Nicaragua. The Court held that the U.S. actions constituted intervention, and as such, were violations of international law.

The present situation in Afghanistan is analogous to the Nicaragua conflict. In both situations, a third state provided aid to insurgents involved in a civil war. Therefore, in both situations, the third state intervened into the internal affairs of another state. Unless such

110. See supra note 72-74 and accompanying text.

111. See supra note 106 and accompanying text.

112. See supra notes 72-79 and accompanying text.

113. See supra note 106 and accompanying text.

114. Oppermann, supra note 91, at 234. The International Court or Justice, in Nicaragua v. U.S., stated: "The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; . . . the Court considers that it is part on parcel of customary international law." Nicara. v. U.S., supra note 5, at 106.


116. Id. at 20-22.

117. By a vote of twelve votes to three. Voting in the majority were: President Nagendra Singh (India); Vice-President Guy Ladreit de Lacharei (France); Judges Manfred Lachs (Poland), Jose Maria Ruda (Argentina), Taslim Olawale Elias (Nigeria), Roberto Ago (Italy), Jose Sette-Camara (Brazil), Keba Mbaye (Senegal), Mohammed Bedjaoui (Algeria), Ni Zhengyu (China), Jens Eversen (Norway); and Judge ad hoc Claude-Albert Colliard. Voting against the majority on this provision were: Judges Shigeru Oda (Japan), Stephen Schwebel (United States) and Sir Robert Y. Jennings (United Kingdom). Id. at 146.

118. The provision stated:

THE COURT

. . . .

(3) By twelve votes to three.

Decides that the United States of America, training, arming, equipping, fi-
nancing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under cus-
tomary international law not to intervene in the affairs of another State;

Id. at 146.
intervention is justified, it is a violation of international law.\textsuperscript{119} Having determined that Pakistan intervened, the more controversial question remains: was that intervention justified or excused in any way?\textsuperscript{120}

\textbf{C. Exceptions to the Duty of Non-Intervention and Justifications for Intervention}

Repeated violations of the U.N.'s broad definition of intervention tends to show its impracticality in the world today.\textsuperscript{121} Further, a legal basis for exceptions to the general rule does exist: just as sovereignty is not absolute, neither is the duty of non-intervention.\textsuperscript{122}

The U.N. Charter recognizes only one exception to the restriction on the use of force: the right of self-defense as found in Article 51.\textsuperscript{124} Despite this however, states have attempted to justify intervention on other grounds alleged to exist in customary international law.\textsuperscript{126} Justifications used or proposed for use in recent history are:\textsuperscript{126}

1. Intervention allowed in Article 51 (self-defense);\textsuperscript{127}
2. Collective intervention by enforcement action authorized by the Security Council of the U.N.;\textsuperscript{128}

\textsuperscript{119} The Court in Nicaragua v. U.S. stated: "Having concluded that the activities of the United States . . . constitute prima facie acts of intervention, the Court must next consider whether they may nevertheless be justified on some legal ground." \textit{Id.} at 126.
\textsuperscript{120} \textit{Id.}
\textsuperscript{121} \textit{See supra} note 1 and accompanying text.
\textsuperscript{122} T. \textit{NARDIN, LAW, MORALITY AND THE RELATIONS OF STATES} 287 (1983). "... [T]he rights of political sovereignty and territorial integrity are not absolute, and therefore the ban on intervention is not absolute either." \textit{Id.}
\textsuperscript{123} The restriction on the use of force is found in U.N. \textit{CHARTER} art. 2, para. 4, \textit{supra} note 88.
\textsuperscript{124} Cutler states that:

The only exception to this prohibition is Article 51 of the charter, which exempts any action taken in individual or collective self defense if an armed attack occurs against a Member of the United Nations . . . . Even this exception is permitted only until the Security Council has taken measures necessary to maintain international peace and security. Cutler, \textit{supra} note 87, at 48.
\textsuperscript{125} Oppermann, \textit{supra} note 91, at 233.
\textsuperscript{126} For a list of justifications see Williams, \textit{supra} note 86, at 48-51.
\textsuperscript{127} \textit{See supra} note 124. U.N. \textit{CHARTER} art. 51 reads:

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

The individual right of self-defense is discussed below. \textit{See supra} notes 136-54 and accompanying text. For a discussion of collective self-defense see Delbruck, \textit{COLLECTIVE SELF-DEFENSE}, in 3 \textit{ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW} 114-17 (1982); Akehurst, \textit{supra} note 96, at 244-45; Harris, \textit{supra} note 32, at 653-55 (Vietnam example).
\textsuperscript{128} Authority is granted pursuant to U.N. \textit{CHARTER} chap. VII. Enforcement action
3. Intervention as required by treaty;\(^{129}\)
4. Intervention to protect nationals;\(^{130}\)
5. Intervention at invitation of government;\(^{131}\)
6. Intervention to protect right of self-determination;\(^{132}\)
7. Humanitarian intervention;\(^{133}\) and
8. Counterintervention.\(^{134}\)

The applicability or validity of all of the above-listed justifications is unclear and open to debate.\(^{136}\) The justifications that can best be applied to Pakistan’s involvement in Afghanistan are: self-defense intervention, humanitarian intervention and counterintervention.

1. **Self-Defense Intervention.**

(a) **Protective Self-Defense.**—Article 51 of the U.N. Charter allows for the use of force by a victim of an attack as a means of self-defense to repel the attack.\(^{136}\) According to a literal interpretation of Article 51, the justification cannot be invoked until armed attack actually occurs.\(^{137}\) Further, any justified force used must be immediate.

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\(^{129}\) See Harris, supra note 32, at 655 (Cyprus crisis as example of intervention required by treaty).

\(^{130}\) See Starke, supra note 83, at 146; also see Harris, supra note 32, at 653 (Dominican Republic crisis as example of intervention to protect nationals). This justification is often considered a variation of humanitarian intervention. See Beyerlin, Humanitarian Intervention, in Encyclopedia of Public International Law 211-14 (1982) [hereinafter Beyerlin].

\(^{131}\) See Bowett, supra note 101, at 42-43; Nar. v. U.S., supra note 5, at 126. “In the case of internal strife, an invitation by the government cannot justify intervention, as when the outcome of the domestic war is doubtful, the government cannot hold itself out to speak for the state.” Williams, supra note 86, at 50.

\(^{132}\) Self-determination intervention involves aid to rebels in colonial territories who are fighting a war of national liberation. Akehurst, Civil War, supra note 98, at 89. There is general disagreement over the legality of such intervention. Developing and Communist states argue that it is legal, while Western states claim it is illegal. Harris, supra note 32, at 649. The U.N. has generally respected the right to self-determination, but has not spoken to self-determination intervention. See Bowett, supra note 101, at 43 n.13; see also H. Espeill, The Right to Self-Determination (1980) (U.N. Resolutions supporting self-determination).

\(^{133}\) See infra notes 155-67 and accompanying text.

\(^{134}\) See infra notes 168-72 and accompanying text.

\(^{135}\) “... [M]ost grounds of justification are of doubtful value, especially as regards notions of self-help, humanitarian intervention or according to the ‘rules’ of Soviet international law...” Oppermann, supra note 91, at 63.

\(^{136}\) U.N. Charter, art. 51, supra note 127.

\(^{137}\) The Court stated that:

There appears now to be general agreement on the acts which can be treated as constituting armed attacks. In particular, it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also “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 or such gravity as to amount to” (inter alia) an actual armed attack conducted by regular forces, “or its substantial involvement therein.” This description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law.
ately reported to the Security Council. This classic form of self-defense, also called protective self-defense, is inherent in customary international law, as is evidenced by the language of Article 51.

In the present situation, there is no evidence that, prior to its intervention in Afghanistan, Pakistan was attacked in any manner that would require self-defense. Armed attacks in the form of air strikes by the Soviets and Afghans occurred, but only after, and in response to, intervention by Pakistan. Therefore, Pakistan was not justified in intervening in Afghanistan for the purpose of protective self-defense.

(b) Anticipatory or Preventive Self-Defense.—Another form of the self-defense justification that existed in customary law is anticipatory or preventive self-defense. This justification rule was originally laid out in *The Carolina case*. The *Carolina* was a steamer used by the rebels in the Canadian Rebellion of 1837 to transport men and supplies from United States to Canada. The American government was unable to stop this transport, so the Great Britain-backed government sent Canadian militia into America. The militia finally destroyed the *Carolina*, but killed several American citizens in the process. The ensuing controversy revolved around whether Great Britain’s actions were justified under self-defense. The Court held that any force used in self-defense must be first, immediately necessary, and second, limited to the amount necessary to repel the aggressor’s attack.

Although the doctrine clearly existed in customary law, there is general disagreement as to whether the doctrine survived the adoption of the U.N. Charter. On its face, the language of Article 51
allows the use of force only after armed attack and therefore, recent use of the doctrine has been criticized.

The Soviet occupation of Afghanistan presented Pakistan with many problems. Pakistan faced the dangers of being a front-line state bordering on a hostile world power, the Soviet Union. The Soviet Union had over 115,000 troops located throughout Afghanistan, including troops placed on the Pakistani-Afghan border. Many diplomats, including Pakistani officials thought that the next move for the Soviet Troops would be into Pakistan. Therefore, Pakistan reacted by aiding anti-regime rebels.

While the dangers faced by Pakistan were not illusory, it is questionable whether these dangers were of such an immediate nature as to require intervention by Pakistan. Due to the doubtful existence of the doctrine in international law today, and because of the dubious necessity of Pakistan's actions, the doctrine of anticipatory self-defense provides a weak legal justification for Pakistani intervention.

2. Humanitarian Intervention.—Another justification for Pakistan's invasion might be found in the doctrine of humanitarian intervention. Humanitarian intervention can be defined as interference by one state to protect the human rights of citizens of another state. Although often invoked as a justification for intervention, the doctrine exists in direct conflict with Article 2(4) of the U.N. Charter. Therefore, as a general principle, humanitarian intervention is "neither legally or politically acceptable."

The major difficulty with the humanitarian intervention doctrine is that the decision to intervene would be at the discretion of an individual state, and would create too many opportunities for abuse. Thus, the general rule prohibits such intervention. Some legal scholars, however, state that there may be extreme cases where the doctrine could be applied as for the protection of a large mass of refugees.

150. See supra note 127 and accompanying text.
151. Harris, supra note 32, at 638-59.
152. See Afghanistan: Eight Years of Soviet Occupation, supra note 6, at 2-7, 9.
153. See supra note 54.
154. See supra notes 72-79 and accompanying text.
155. Beyerlin, supra note 130, at 212.
156. Id. at 213.
157. Id.; see also supra note 135.
158. Bowett, supra note 101, at 45; Beyerlin, supra note 130, at 212; but see Lillich, Forcible Self-Help by States to Protect Human Rights, 53 Iowa L. Rev. 325 (1967).
159. Beyerlin, supra note 130, at 212.
160. Id.
161. Nardin, supra note 122, at 239 (intervention to stop "great crimes" and to preserve international minimal standards).
162. For a situation very similar to the Afghan-Pakistani crisis which involved Pakistan,
The Afghan refugees living in Pakistan are costing Pakistan money, jobs and land.\textsuperscript{168} Also, the refugee camps are crowded and unsafe.\textsuperscript{164} Nevertheless, the refugees will remain in Pakistan until the fighting in Afghanistan slows down.\textsuperscript{166} The fighting may not stop until the Communist regime government is removed from power, due to the strong convictions of fundamentalist mujahidin.\textsuperscript{166} Therefore, it may be in Pakistan's best interests and in the best interests of the refugees to support the rebel forces.

Pakistan's intervention in Afghanistan may be a socially responsible, and even wise, individual policy decision. However, the international society believes that the interest of preventing widespread abuse of the doctrine overrides the equities involved in a particular intervention.\textsuperscript{167} Thus, the doctrine of humanitarian intervention would be a weak legal justification for Pakistan's intervention.

3. \textit{Counterintervention}.—In order for the rule of non-intervention to work, such a rule must be uniformly observed.\textsuperscript{168} In a civil war, if the rule is violated on one side, it is generally agreed that limited intervention by the other side should be permitted.\textsuperscript{166} Therefore, if a government is receiving foreign help, the insurgents probably also are permitted to receive a proportionate amount of foreign help.\textsuperscript{170}

After the Soviet invasion of Afghanistan, Egypt provided the Afghan rebels with weapons and military training, while Saudi Arabia contributed currency.\textsuperscript{171} The interventions on the side of the Afghan rebels by Egypt and Saudi Arabia were justified because the Soviet Union had first intervened on behalf of the established government.\textsuperscript{172} This reasoning also justifies both the weapons and money supplied by the U.S., and the help given by Pakistan, to the Afghan rebels. Pakistan’s intervention in Afghanistan would therefore be legally justifiable as counterintervention.
IV. Movement Towards a Soviet Withdrawal

A. Initial Negotiations

Initially, Pakistan rallied support in opposition to the Soviet occupation, but refused to involve itself in negotiations for a Soviet withdrawal. Finally, late in 1981, Pakistan requested that the United Nations become involved in the crisis, by appointing a representative to explore this situation. The U.N. appointed such a representative, and after initial discussions, formal meetings were held in Geneva throughout 1982 and 1983. These meetings, while helpful in determining the major issues, showed little progress towards a final withdrawal settlement. Talks continued periodically throughout 1984 and 1985, and again produced no results.

During the period from 1980-86, the U.N. General Assembly passed eight resolutions calling for the withdrawal of Soviet troops from Afghanistan. Though the Soviets refused to abide by the resolutions, the U.N. could not take any action due to the Soviet Union's Security Council veto power. Due to Moscow's apparent intent to remain in Afghanistan, withdrawal seemed unlikely.

B. Success of the Resistance Movement

Besides using physical force, the Soviets attempted to "Sovietize" the Afghan spirit, that is, Moscow tried to bring Soviet ideas and ideals into Afghanistan. Due to the Afghans strong rejection of these ideals, the mujahidin became more unified and more adept at fighting the Soviets. By the early 1980s Moscow had gained no ground on the rebels. After four years of Soviet occupation, the...
mujahidin controlled about eighty-two percent of the countryside, and Moscow was spending between $15 and $20 million per day to keep the rebels out of the other eighteen percent of the country.\textsuperscript{184}

The Soviets reacted by replacing Karmal with Najibullah, the former chief of the Afghan secret police (KHAD), in May 1986.\textsuperscript{185} The Soviets had also attempted to appease the Afghan citizens by formally showing respect for the Islamic faith.\textsuperscript{186} Najibullah called for a cease-fire and a national reconciliation, both of which were largely ignored by both sides.\textsuperscript{187} Najibullah also proposed a new Constitution, but the resistance movement was further incited when he had himself installed as President under the new Constitution.\textsuperscript{188}

In 1987, the resistance grew even stronger, and the Soviets were forced to take defensive positions in key Afghan cities.\textsuperscript{189} Soviet army casualties continued to increase\textsuperscript{190} while respect for the Red Army continued to decline.\textsuperscript{191} Soviet involvement in the Afghan war prompted comparisons to the U.S. involvement in Vietnam\textsuperscript{192} as the

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\textsuperscript{184} HUSAIN, ALTERNATIVE FUTURES FOR AFGHANISTAN, in AFGHAN ALTERNATIVES 189, 190 (1983).

\textsuperscript{185} “Najibullah’s rise can largely be attributed to a Soviet desire to see party, government and military policies more effectively implemented.” BACKGROUND NOTES SERIES, AFGHANISTAN, supra note 6, at 5; see also ALI, supra note 15, at 178.

\textsuperscript{186} One commentator writes that:

Recently the government announced with great fanfare the establishment of an Islamic research center, although Westerners claim that it has only 200 books so far. An evening television news program featured a Koran-reading contest coinciding with the sacred month of Ramadan. Afghan soldiers could be seen patrolling the streets with a rifle in one hand and Muslim prayer beads dangling from the other. Often at meetings with the press, officials made an elaborate point of apologizing for their weakness or dizziness, saying that [they] were fasting all day in keeping with the holiday.

Weisman, \textit{The Great Game}, supra note 12, at 22.

\textsuperscript{187} AFGHANISTAN: EIGHT YEARS OF SOVIET OCCUPATION, supra note 6, at 12.

\textsuperscript{188} \textit{Id.} at 15.


One of the greatest advances for rebel forces was use of “stinger” weapons. These weapons, supplied by the U.S. through Pakistan, all but stopped Afghan air strikes via helicopter and could have turned the tide for the rebels. See Rashid, \textit{supra} note 66, at 241-42.

\textsuperscript{190} The most conservative estimate by the U.S. State Department is that Soviets have suffered 35,000 casualties, one-third of which were fatalities. This number does not include the large numbers of soldiers stricken by illnesses such as malaria, jaundice, typhus, dysentery, hepatitis and heatstroke, or stung by scorpions. Keller, \textit{Home From Afghanistan}, N.Y. TIMES, MAG., Feb. 14, 1988 at 24-28 [hereinafter Keller]. It is estimated that the Afghan crisis has cost the Soviet Union “at least 18,000 Soviet lives.” Watson, \textit{supra} note 176, at 32.

\textsuperscript{191} Keller, \textit{supra} note 190, at 92.

\textsuperscript{192} \textit{Id.} at 26-28 (prolonged foreign war of questionable purpose).
war became unpopular among the Soviet populace. Afghan and Soviet officials also began to talk of mistakes made in the invasion. Finally, in 1987, Mikhail Gorbachev, the new Soviet leader, made it clear that the Soviets wanted to withdraw.

C. Withdrawal Negotiations in 1986-1987

In 1986, Moscow had implied that it was considering withdrawal, however, at negotiations, little progress was made. Nevertheless, the gap between the parties regarding the withdrawal timetable was decreased to less than one year. The Soviet Union demanded that an interim or transitional government be set up with the Najibullah as leader, and that the U.S. halt all aid to the rebels before it would withdraw troops. Clearly, these demands were not acceptable to the U.S., Pakistan or the Afghan rebels.

In 1987, Moscow finally began making concessions at the bargaining table. The Soviets further decreased the withdrawal timetable to ten months and acceded to U.S. demands for a front-loading plan. Also, the Soviets, having become displeased with Najibullah, offered to withdraw if any broad-based transitional government was set up. Finally, the Soviets went one step further: they agreed to withdraw even without the establishment of an interim government.

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193. Id. at 91 (public opinion polls).
194. Moscow was said to be "increasingly desperate "for withdrawal, and Gorbachev called the Afghan occupation a "bleeding wound." Kifner, Moscow Is Seen at Turning Point In Its Intervention in Afghanistan, N.Y. Times, Nov. 29, 1987, § 1, at 1, col. 3 [hereinafter Kifner]; see also Weisman, Neighbors of Afghanistan, supra note 12, § 5, at 3, col. 1; Keller, supra note 190, at 27.
195. Watson, supra note 176, at 33.
196. Initially, the two sides were far apart. The Soviets offered a withdrawal timetable of 48 months, while Pakistan demanded a 3-month withdrawal. However, by early 1987, this gap had shortened to 32 months, and then to less than one year. Gap on Time-frame for Withdrawal of Troops Narrowed to Less Than a Year, U.N. Chronicle, May, 1987, at 59.
197. See Lief, supra note 165, at 25-26. The Soviets stated that when they pull out of Afghanistan, the country would be thrown into a violent chaos. Keller, supra note 190, at 91. Western diplomats say that a blood bath will be averted because much of the Afghan army will desert. The U.N. is considering the use of a peace-keeping force. Watson, supra note 176, at 51.
198. Weisman, The Great Game, supra note 12, at 23. While the Soviets are conceding at the negotiations table, the Soviet troops "don't seem to be packing their bags." Rather, they are building barricades and buildings. Id.; see also Taylor, Gorbachev's Problem: How To Lose a War, U.S. News & World Report, Jan. 11, 1988, at 40.
199. Yalowitz, Worldgram, U.S. News & World Report, Feb. 22, 1988, at 64. The "front loading" request involves removal of at least one-half of Soviet combat troops in the first 2-3 months. This is a device to test Soviet sincerity and to protect the rebels after cutoff of U.S. aid. Watson, supra note 176, at 33.
200. Watson, supra note 176, at 32. "General Najibullah . . . is coming to be regarded as the most difficult kind of ally: one who is politically and militarily weak, but determined to act strong and independent." Kifner, supra note 194, at 9; see also Yalowitz, supra note 165, at 46 (proposals for type of transitional government).
201. "Mr. Gorbachev must have finally decided that no future Afghan government can afford to be hostile to Moscow, and that any such government would be preferable to the
This final concession pleased everyone except Pakistan.202 Pakistan feared that the refugees would refuse to return to Afghanistan if its government was in disarray.203 Therefore, Pakistan demanded that a broad-based interim government be set up.204 Since this time, however, Pakistan has backed off this stance for two reasons: first, the unlikelihood of reaching an agreement on this issue;205 second, the likelihood that any agreement reached would be ignored.206

The Soviets agreed to withdraw troops beginning on May 15, 1988, if an accord was reached by March 15, 1988.207 Due to a dispute over the cut-off of U.S. aid to the rebels, an agreement was not reached by March 15.208 Recently, however, Gorbachev publicly promised the Soviet people that withdrawal would begin by mid-May.209

D. Applying the Rule of Non-Intervention and its Exception to the Withdrawal Situation

While the withdrawal situation is still uncertain, it is necessary to look into the possibility of a Soviet withdrawal and analyze potential Pakistan actions in light of this. Assuming a Soviet withdrawal,210 Pakistan has two alternatives: continue to help the resistance or halt all aid to the rebels. If the U.S. continues to supply arms, and other aid to the rebels after withdrawal, then Pakistan would probably continue in its capacity as conduit.211 Even if the U.S. halts all support to the rebels212 it is likely that Peshawar would still be open to the rebels as a home base for strategic operations. Pakistan could thus continue to assist the rebels in other ways.213

1. Practical Considerations.—Despite U.S. or Soviet actions,
Pakistan is currently faced with its own dilemma as to whether or not to continue aiding the rebels. Pakistan must consider the practical effects of its decision. First, Pakistan has always supported the rebels in the past, and a sudden cut-off of any help could cause bad feelings between the mujahidin and Pakistan. Pakistan could even become an enemy of fundamentalist groups of Afghan refugees, if Zia "sells them out."214

Second, and most important, Pakistan has to consider the return of the refugees to Afghanistan.215 As long as chaos continues in Afghanistan, the Afghan refugees will remain in Pakistan.216 Therefore, it might be in the best interests of Pakistan to help the mujahidin seize power quickly and establish a government acceptable to the refugees.

Last, Pakistan must consider the possible Soviet reactions and balance these against the other factors. If the rebels gain power in Afghanistan, it is possible that the Soviets may return, possibly in greater numbers, with more hostility towards Pakistan.217

2. Legal Analysis.—Under the U.N.'s broad definition, any type of interference in the internal affairs of another state constitutes intervention.218 Presently, Pakistan is training and advising rebel troops, tolerating, and even encouraging, the use of Peshawar as a home base for the resistance, and acting as the major conduit for arms and money passed from the U.S. to the mujahidin.219 As long as Pakistan continues any of these activities, it is violating the non-intervention rule. This analysis would not change with the Soviet withdrawal of troops. A Soviet withdrawal, however, may alter the justification analysis.220 Again, unless Pakistani actions are legitimately justified, they violate international law.221

(a) Self Defense Intervention.—After Soviet withdrawal, the danger of a Soviet invasion is no longer immediate, if it ever was, as Soviet troops would be at a relatively safe distance. Although the threat of a Soviet return may be real, it would not be an immediate danger to Pakistan's security. Thus, not only would the classical self-

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215. Bayerlin, supra note 130, at 212; Afghanistan: Eight Years of Soviet Occupation, supra note 6, at 19.
216. See supra notes 165-66 and accompanying text.
218. Oppermann, supra note 91, at 234; Williams, supra note 86, at 47-48.
219. See supra notes 72-79 and accompanying text.
defense argument fail, as again there was no prior armed attack,\textsuperscript{222} but also the anticipatory self-defense justification would find little support.

\textit{(b) Humanitarian Intervention.}—The withdrawal of Soviet troops from Afghanistan will bring the refugees one step closer to returning home. This, of course, means that Pakistan is one step closer to solving many of its prominent internal problems which have been caused by the refugees. However, even further delays in the exist of the Afghan refugees would not justify Pakistani intervention, even if such intervention was solely for the benefit of the refugees.\textsuperscript{223} Although "humanism" may be a good policy, it is not a basis for intervention in international law.\textsuperscript{224}

\textit{(c) Counterintervention.}—Pakistan's counterintervention justification depends entirely on Soviet actions, as only a reaction proportionate to a Soviet intervention would be justified.\textsuperscript{225} Thus, if Moscow withdraws its troops but continues to aid the Afghan regime in other ways, then Pakistan may be justified in giving equal aid to the rebels.\textsuperscript{226} If, however, Moscow halts all aid to the Afghan rebels, then Pakistan would violate international law by aiding the rebels in any way.\textsuperscript{227} In fact, continued Pakistani aid for the \textit{mujahidin}, may justify counterintervention by Moscow.\textsuperscript{228}

V. Conclusion

Once it has been determined that Pakistan has intervened in the internal affairs of Afghanistan, Pakistan must produce a legitimate justification for the interference. Most "justifications" offered by states are controversial. They often are merely reasons why a state acted as it did, and have no basis in international law. The justifications that are legitimate often are inapplicable to a given fact situation.\textsuperscript{229} However, Pakistan has a legitimate, legal and applicable justification in counterintervention. Therefore, Pakistan's past and present interventions are justified and fall within the limits set by international law.

The situation changes considerably if the Soviets withdraw their troops. If this should happen, Pakistan could continue to aid the rebels but only to the extent that Moscow aids the regime. Anything

\begin{itemize}
  \item \textsuperscript{222} See Weisman, \textit{The Great Game}, \textit{supra} note 12, at 23.
  \item \textsuperscript{223} See \textit{supra} notes 157-58 and accompanying text.
  \item \textsuperscript{224} \textit{Beyerlin}, \textit{supra} note 130, at 213.
  \item \textsuperscript{225} \textit{Akehurst}, \textit{supra} note 96, at 242.
  \item \textsuperscript{226} \textit{Id.}
  \item \textsuperscript{227} \textit{Id.}
  \item \textsuperscript{228} \textit{Id.}
  \item \textsuperscript{229} See \textit{supra} note 135 and accompanying text.
\end{itemize}
beyond this equal reaction would violate international law.\textsuperscript{230}

Pakistan, up to this point, has handled a delicate situation in a manner that served its best interests, and also was within the limits prescribed by international law. A Soviet withdrawal, however, may be the breaking point for Pakistan, as Pakistani interests may run contrary to international law.

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\textsuperscript{230} Williams, supra note 86, at 50-51; Akehurst, supra note 96, at 242.