

Myra Williamson: Terrorism, War and International Law: The Legality of the Use of Force Against Afghanistan in 2001

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In the aftermath of the events of 9/11 and the subsequent US led uses of force against Afghanistan and Iraq, much attention has been given by international lawyers to the rules which govern the use of force between states, and in particular the question of whether we are witnessing a relaxation of some of the traditionally accepted norms of international law which will legitimise the use of force in response to new phenomena, such as the threat posed by international terrorism. In relation to the legality of particular instances of the use of force, however, while a considerable amount of literature has been produced upon the legality or otherwise of the 2003 military operation against Iraq, the earlier US led operation against Afghanistan which came in response to the 9/11 attacks has been rather neglected by international lawyers. This may create the false impression that the action against Afghanistan was legally insignificant and void of any controversy. It is, thus, to be welcomed that Myra Williamson has produced this new contribution upon the subject of the legality of the use of force carried out against Afghanistan in 2001. Arguably, this book makes two especially important contributions to contemporary debates pertaining to the use of force in international law. Specifically the book addresses the question of whether the use of force against Afghanistan was justifiable under international law, a matter not addressed in great detail by many legal commentators. More generally, however, the book provides a detailed assessment of the current state of international law governing the use of force between states.

Williamson begins in chapter two by considering the changing nature of conflict. Drawing upon modern conflict data, she suggests that the scale of conflict has decreased, with most conflicts nowadays tending to be internal in nature. In relation to the often made point that international terrorism poses a new threat in the modern world, Williamson contends that there is a great gap between the perception and

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reality of international terrorism, with an overview of terrorism trends over history demonstrating that its current level is far from being exceptionable. Chapter three is concerned with the definition of terrorism. A definition of the term is long overdue, particularly given that the UN Security Council has determined that all terrorist acts constitute threats to the peace. However, as the chapter's overview of efforts to define terrorism makes all too clear, there continues to be a lack of consensus among states upon an appropriate definition, there currently being thirteen international and nine regional conventions or protocols concerned with the issue. This is unfortunate as for any consideration to be given to responding to acts of terrorism through the use of force, law enforcement or otherwise, it is essential that agreement exists upon what is considered to fall under the umbrella of 'terrorism', so as to prevent against its invocation as a politically convenient term to serve the policy objectives of individual states.

In chapters four and five, Williamson considers the evolution of limitations placed upon the use of force by international law in the inter-war years and the UN Charter era respectively. This is helpful in providing a framework against which the legality of the use of force against Afghanistan can be assessed. The main focus throughout is upon the scope of the right of self-defence, which is natural given that this was the primary legal ground upon which it was assumed the US case for the action rested. Williamson gives consideration to restrictive and broader interpretations of the right of self-defence contained in Article 51 of the UN Charter, and draws upon decisions of the International Court of Justice, the customary law criteria for self-defence, and the attitudes of states towards purported exercises of self-defence to establish the appropriate construction of Article 51. Williamson's understanding of self-defence is essentially more in line with restrictive interpretations of Article 51. In rejecting the existence of a right of pre-emptive self-defence, as argued for in the 2002 United States National Security Strategy, she points to various instances where such a right has been overwhelmingly rejected by the international community and notes that the *opinio juris* of most states remains unchanged in this respect. Williamson emphasises the importance of states acting in self-defence satisfying the customary law criteria laid down in the Caroline case, of necessity, immediacy and proportionality. Particularly important in the context of 9/11 and the US' response, she reiterates the conventional position that for a state to be held responsible for an armed attack perpetrated by non-state actors, an 'effective control' test must be applied to assess whether the act can be attributed to the state.

The legality of the use of force against Afghanistan is finally considered in detail in chapter six. Here, Williamson carefully deconstructs the necessary elements of self-defence and casts doubt upon whether any of them were satisfied by the events of 9/11 and the US military response against Afghanistan. Firstly, it is questioned whether the terrorist attacks of 9/11 could constitute an armed attack against the US. Even if the actions themselves were regarded as an 'armed attack', Williamson argues that there was no evidence of Taliban control or direction of, or assumption of responsibility for, the events of 9/11. This alone would deprive the US of any right of self-defence against Afghanistan. Even if that hurdle could be cleared, it is doubtful whether the customary elements of the right of self-defence could be satisfied. The action against Afghanistan was hardly necessary given that at the time

no attack was imminent and other options existed for responding to the terrorist attacks of 9/11. It was disproportionate by going beyond simply repelling an armed attack, taking the form of a full-scale invasion of another country with the objective of toppling its governing regime. The 3 week delay which preceded its commencement undermines any claim that it was immediate. Williamson considers whether other legal bases may afford some justification to the action, but is quickly able to dismiss them.

The book concludes that the 2001 use of force against Afghanistan was unlawful in international law. While acknowledging some of the calls that have been made to adapt international law to take account of terrorist threats, Williamson cautions against the dangers of so doing and notes that in practice the US is one of the countries least affected by terrorism and should be not given the freedom to bring about a change in the law. She notes that a negative consequence of the action against Afghanistan, and the limited attention it received, is that it eased the way for the 2003 invasion of Iraq and subsequent unilateral interventions in the Middle East by Israel. Without doubt, there are important lessons for international lawyers to heed, most obviously that the existing norms of international law pertaining to the use of force ought to be defended against any attempt to weaken them in what is clearly a potentially dangerous time for those legal rules as we currently understand them.

The book is a welcome contribution to the debate on the use of force in international law. It is clear, accessible and draws upon a good breadth of scholarship which, while primarily legal, draws upon broader material where appropriate to paint a picture of the law that currently exists, how that law rightly applies to the 2001 use of force against Afghanistan, and the current challenges to the law. It ought to find a place in any decent international law library.