

Analyzing the Moral and Legal Legitimacy of the U.S. War in Afghanistan

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Abstract

The U.S. war in Afghanistan was one of America's longest wars, spanning twenty years. Globally, the world united in the face of the 9/11 terrorist attack as the United Nations declared that terror should be fought against everywhere. However, this raises concern on the legitimacy of the use of force against non-state actors like al-Qaeda. This paper explores the War in Afghanistan through the lens of just war theory and under international law, specifically the right to self-defence. It is important to discuss this as the war itself is the landmark case for not just self-defence under international law but also the situation where an attack on a state actor was attributed to a non-state actor that resided in a different state. The analysis is achieved through first exploring and defining the principles of both moral and legal theories before then applying them to the case of the War in Afghanistan to determine its moral and legal legitimacy. After defining the principles and applying them to the case, it was concluded that the due to certain principles failing to be satisfied, the war was both morally and legally illegitimate.

Keywords: *just war theory, international law, self-defence, 9/11, Afghanistan War*

1. Introduction

A single event defined the start of the 21st century; the 9/11 attack on the World Trade Center. The act of terrorism sparked a two-decade long war that ended with a return to the status quo. But 9/11 was not the first attack by al-Qaeda; there were other attacks that preceded the apex event. The four terror attacks that can be traced to the terror organization that occurred prior to 9/11 are the 1992 Arden hotel bombing, the 1993 WTC Garage Bombing, the 1998 Embassies Bombing, and the 2000 USS *Cole* bombing. The final nail in the coffin that drove the United States into action was the 2001 WTC attacks – which resulted in the highest casualty numbers out of all the attacks.

In response to the atrocity, the United States called upon the international community to wage a global war on terror. The resultant U.S. war in Afghanistan, also known as the Forever War, raised questions on the overall legality of the war. It was a war waged on not just the Taliban but also on al-Qaeda, a non-state entity. With the benefit of hindsight, the war concluded with a United States defeat and a return to status quo before the war. Two months to topple the Taliban leadership and seize control of Afghanistan, another twenty years spent trying and failing to maintain control and implement a democracy-first approach.

The U.S. war in Afghanistan has its fair share of reviews by different scholars, questioning the legitimacy of the United States to wage such a war in the first place. In this article, this author aimed to discuss legitimacy through just war theory and self-defence under international law.

Moral Legitimacy

The question of moral legitimacy is discussed and analysed through the lens of just war theory. To explain in brief on the origins of just war theory – the theory originated in Christian theology; its foundations laid by St. Augustine in the 4th to 5th century who discussed the nature of justice and suggested that while war may be tragic, it may be morally justifiable if it is waged for peace, righting wrongs, or to restore order (Augustine, 1998). This starting foundation would then be built upon and systemised by St. Thomas Aquinas in the 13th century – formalising the key principles in his work *Summa Theologica* (Aquinas, 1947).

Thus, just war theory construes *jus ad bellum* (right to war) and *jus in bello* (rights during war) into principles that aim to determine whether war is necessary and permissible. As this author will be discussing primarily the permissibility of the U.S. resorting to war in Afghanistan, the primary focus will be on the *jus ad bellum* principles. There are six principles identified from the current model that would give a state the moral legitimacy to resort to war under the just war theory. The six in question that will be discussed are (1) just cause, (2) legitimate authority, (3) right intention, (4) last resort, (5) proportionality, and (6) reasonable

chance of success (Aquinas, 1947). Each of these principles will be introduced in this section; an in-depth analysis and discussion will be done in section 4.

Starting with just cause, the principle requires the presence of a morally legitimate reason for war—one that is uncontroversially serious and significant. Since war requires immense cost in life and resources, its justification must be equally serious. There is no set formula for what a just cause is, but common examples include defence of innocents, restoration of denied rights, or resistance to unjust aggression (O'Brien, 1985; Walzer, 2006). James F. Childress, quoted by O'Brien, listed causes such as "to protect the innocent from unjust attack, to restore rights wrongfully denied, and to reestablish a just order" as those potentially meeting the threshold of moral seriousness. Aggression, according to Frowe (2016), can involve direct invasion or threats to violate a state's sovereignty, irrespective of whether lives are under immediate threat. Historically, just cause fits into two categories: defence of a nation's security—or that of an ally—and humanitarian intervention in only the most egregious breaches of international law. Wars waged for conquest, expansion, or revenge cannot satisfy this requirement.

Moving to the second principle, legitimate authority, this principle assesses whether the war waged was properly authorized; resort to war is just only if it is authorized by the proper or legitimate authority (Frowe, 2016). In regards to the state actors themselves, it is often the head of state or the parliament of the state that is considered to be relevant authority that is capable of entering their state into war. Aquinas explains this requirement on the basis that a private individual does not have the right to declare war as he has recourse to the judgement of a superior to safeguard his rights (Aquinas, 2003). It is the duty of the rulers, whom are entrusted with the responsibility for public affairs, that they are charged with the defence of the territory subjected to them. Additionally, this unauthorizes individuals such as private militias or non-state actors from waging and engaging in a self-claimed 'just' war – maintaining international order and peace.

The third principle of right intention requires that a war must be waged for the originally stated just cause, such as protecting oneself or others. This rule is in place to stop governments from disguising their true intentions—such as territorial or financial gains—by citing morally acceptable justifications (Frowe, 2016). A state cannot go beyond its mandate to act in self-defence, such as by annexing territory after the conflict is over. States often go to war for more than one reason, but the most important thing is whether the main reason is the same as the just cause. The stated just cause for the United States' involvement in Afghanistan was to protect its own people by getting rid of al-Qaeda and making the country safe. There were other reasons for the war, though, such as punishment, building a nation, and protecting one's own interests.

For the fourth principle, last resort, it notes that war should only be pursued as a final option, given its ability to cause immense suffering and extensive geopolitical ramifications. The essential inquiry in fulfilling this pillar is whether every peaceful and diplomatic avenue was thoroughly explored before resorting to force. This captures the essence of the last resort doctrine: was the use of force the sole viable option for realizing the objective, or could other alternatives have been available for the same? (Lazar, 2020) Due to the nature of war being inherently destructive, states must pursue other avenues of conflict resolution before the use of force. This does not call for endless pursuit of diplomacy or war by rigid checklist. Where delay would enhance harm—as in the case of ongoing atrocities—or where swift action might end conflict in short order, then force may be used sooner (Frowe, 2016).

The fifth principle of just war theory, proportionality, holds that force is justified when the "use of force is proportionate when the harm done is counterbalanced by the good achieved in averting a threat" (Lazar, 2020). It compares the expected consequences of allowing a threat to materialize with the consequences of using force to stop it. While the strict interpretation demands that war produce less harm than non-action, this author adopts a more pragmatic view: war can be just if its harms are not significantly worse than inaction, recognizing the uncertainty of predicting war's consequences.

Often, proportionality assessments weigh incomparable values—like sovereignty versus lives (Frowe, 2016)—and raise the issue of partiality. Should states value foreign lives equally to their own? In practice, no. States naturally prioritize their citizens, and some degree of partiality is expected in weighing proportionality (Lazar, 2020).

Lastly, reasonable chance of success simply entails that wars must be fought only when the primary goods under the just cause principle has a reasonable chance, or hope, to be realised – preventing the victim state from pursuing a 'last stand' or 'against all odds' defence against an aggressor (of which would often

result in more harm and suffering on victim than achieving any good or righting wrongs) (Frowe, 2016). If there is no reasonable chance of success in achieving the primary goods under just cause, then more likely that the expected harms rendered from the acts of war will make such use of force disproportionate. Thus, while a war may be just according to other principles, if such war does not have a reasonable chance of success, then engaging in a war would often cause more harm than good – greatly increasing the negative costs and consequences.

Together, these six principles form the foundation of just war theory and provide a moral compass for political and military leaders. While they do not eliminate the horrors of war, they serve to restrain its excesses and uphold human dignity in the face of conflict.

Moral Legitimacy: Existing Literature

With the six principles covered, now we can turn the discussion to the previous literature on the moral legitimacy of the war itself. A majority of scholars argue that the Afghanistan War was not a just war. Writers such as Connah (2020) argued that while the Afghanistan War had certain principles under the Just War theory satisfied that allowed it to be just, the prolonged nature of the war eroded any moral legitimacy and justification it once had. The 9/11 incident triggered an overwhelming wave for support for the United States government to take action. After the devastating attack, the objectives of bringing the perpetrators to justice and suppressing the al-Qaeda threat was seen as a ‘just’ purpose as the perceived threat of further terrorist acts became increasingly prominent as well as restoring stability to Afghanistan. (Cortright, 2011). The Bush administration had declared Afghanistan was a ‘failed’ state as it served as a safe haven for al-Qaeda (Huria, 2009). Additionally, by the promotion of democracy, the United States had hoped that it will prevent the return of radical militant groups in the region (Huria, 2009). A majority of writers agree that there was a surface-level ‘just cause’ for the invasion. Thus, the declaration of war was formally issued and published by the United States, thereby satisfying that the war was issued by a legitimate authority (Connah, 2020).

Another issue arises when one discusses the intention of the United States and whether conducting a large-scale military operation involving multiple countries was proportional to the just cause that it rallied behind. While the *just cause* of securing international peace from al-Qaeda and terrorism is sound, the quickly established ambitions to overthrow the Taliban government post-incident was dubious (Cortright, 2011). The decision to invade Afghanistan was established as the public outrage demanded the administration to respond quickly and to get revenge for the atrocity committed. This meant that peaceful resolution may not be sufficient to appease the public outrage. There is also the view that the incident gave the U.S. supposedly legitimacy to pursue its own economic policy. The geo-political location of Afghanistan as well as the energy/oil interest of the region were a few reasons why the United States were keen to have a foothold in the region. In contrast, it could also be argued that the war had the proper intention of securing international peace but also to stabilise the country to prevent the rise of terrorism. This was evident by the numerous and substantive financial and infrastructural investment seen.

As for the reasonable chance of success of engaging in a military operation, some saw it as there was a high chance of success of achieving their objectives. With the support of major U.S. allies, President Bush remarked that the likelihood of success was high and the prospect that the operation would be swift (Connah, 2020). The United States and her allies had the advantage in military power in comparison to Afghanistan. Early predictions saw that the intervention would last a few weeks, with months into the new year at the latest (Rogers, 2004). However, as we have the benefit of hindsight, the operation did not end as quickly as many had predicted.

Legal Legitimacy

Aside from just war theory to legitimise the Afghanistan War, self-defence under international law is utilised to give the United States legitimacy in their invasion of Afghanistan. Under the UN Charter, a state is allowed to use force in a self-defensive manner under Article 51. Self-defence under international law requires certain principles to be met before a state has the legitimate right to conduct use of force under self-defence. Under Article 51 of the UN Charter, this is only the requirement of there being an “armed attack”. However, the right of self-defence, as stated under Article 51, is an inherent right – the UN Charter does not give the right but rather affirms the presence of such international right. Authors that discuss the right to self-defence underline other principles that ought to be met before self-defence can be legitimate.

In jurisprudence, there are four landmark cases that build upon this right of self-defence. For armed attack, the International Court of Justice in *Nicaragua v. United States* (henceforth as *Nicaragua*) held that only grave uses of force—such as significant scale and effects—qualify as armed attacks. It further clarified that support to rebels, even if substantial, does not meet the threshold unless it involves sending armed groups directly. In the 2003 *Oil Platforms* (2003), the ICJ reiterated that even if an armed attack were presumed, any defensive response must satisfy the principles of necessity and proportionality. The Court ruled that the U.S. actions against Iranian oil installations were neither necessary nor proportionate, and thus not lawful under Article 51.

The *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* (henceforth *Nuclear Weapons*) reaffirmed that self-defence had to comply not just with Article 51 but also with international humanitarian law. Finally, in the 2005 case of *Armed Activities on the Territory of the Congo*, the Court dismissed Uganda's invocation of self-defence since the purported attacks by non-state actors were not attributable to the Democratic Republic of the Congo, reaffirming that the armed attack had to be imputable to a state unless there were exceptional circumstances and that a threshold exists for an armed attack conducted by a non-state actor. Cumulatively, these cases demonstrate that Article 51 is strictly limited by rigorous evidentiary thresholds, state attribution, and the stipulation that any defensive force be necessary and proportionate.

With this in mind, this author will begin with discussing armed attack and the related conditions, followed up with proportionality and necessity.

Armed Attack

The concept of an "armed attack" under international law lacks a precise definition in the UN Charter, leading to reliance on judicial interpretations and scholarly opinions. Generally, an armed attack is understood as a use of force that threatens a state's territorial integrity or the safety of its citizens (Dinstein, 2012; Wilmschurst, 2006). However, key debates arise around three aspects: the scale of the attack (whether it is serious enough to justify self-defense or merely a minor "frontier incident"), the timing or *ratione temporis* (whether an imminent but not yet actualized attack can be considered an armed attack), and the perpetrators or *ratione personae* (who is responsible for the attack and whether their actions are attributable to a state).

A central reference point in this discussion is the International Court of Justice's decision in *Nicaragua*, where the Court distinguished between minor uses of force and armed attacks based on "scale and effect." It concluded that not all uses of force—especially small-scale border incidents—constitute armed attacks, underscoring the need to differentiate between lesser and graver forms of violence. This cautious approach was partly to avoid eroding the legal boundary between the general prohibition on force under Article 2(4) and the specific right to self-defense under Article 51. This matter gets more convoluted when the issue of attributability and threshold of an attack conducted by a non-state actor is raised.

Regardless, scholars remain divided on whether such distinctions on differentiating skirmishes and armed attacks are appropriate. Greenwood (2011) criticizes the traditional view for creating ambiguity, suggesting instead that any violation of Article 2(4) could justify self-defense, with the scale and effect influencing the proportionality of the response. Gazini (2006) supports a broader interpretation, arguing that any hostile military action should trigger a right of defense, regardless of its gravity. Dinstein (2012) cautions against labeling all border incidents as minor, noting their diversity and potential seriousness. Shaw (2014) and others further argue that context matters—what may seem minor militarily may be significant politically or psychologically, warranting a flexible and contextualized understanding of armed attack.

The *ratione temporis* aspect of armed attack remains a contentious issue in international law, particularly regarding when self-defence becomes legally permissible. Article 51 of the UN Charter states that the right of self-defence arises "if an armed attack occurs," traditionally interpreted to mean self-defence is lawful only during or after such an attack. However, growing debate surrounds whether anticipatory or pre-emptive self-defence—based on imminent threat—is also justifiable. Scholars such as Dinstein (2012) argue that nothing in Article 51 explicitly prohibits anticipatory self-defence, particularly when there is clear and convincing evidence of an imminent attack. Moreover, linguistic differences between Charter texts (e.g., the French version) and policy-oriented interpretations further complicate the matter (McDougal, 1963).

Beyond textual interpretation, some scholars emphasize the functional purpose of self-defence—protecting a state's integrity—which arguably necessitates pre-emptive action to prevent substantial harm. In

this context, states may act not only to repel aggression but also to deter future attacks or disable a hostile actor's capacity to strike again. While motives such as punishment or deterrence tend to blur the line between self-defence and retaliation, prevention of further harm remains a central justification.

Finally, the timing of a self-defensive response after an attack raises additional concerns. While some argue for immediate action to prevent abuse of the self-defence doctrine, others recognize practical delays due to internal state conditions. Ultimately, the temporal dimension of lawful self-defence depends heavily on the interpretation of imminence, necessity, and proportionality within a given context.

The final sub-element in defining an *armed attack* concerns the identity of the perpetrator and the attribution of the armed attack – which is traditionally understood in international law as a state actor. Under this interpretation, only states deploying force across borders would be the only one considered responsible and thus subject to lawful self-defence measures.

However, this state-centric model is challenged when non-state actors, such as terrorist groups, initiate armed violence. Prior to the 9/11 attacks, extraterritorial force against such actors was generally deemed unlawful unless the host state exercised "effective control" over them, as established in *Nicaragua v. United States*. This "control" issue is also debated in the International Criminal Tribunal for the Former Yugoslavia's (henceforth as ICTY) case of *Prosecutor v. Tadić* (henceforth referred to as *Tadić*) and the ICJ's *Bosnia and Herzegovina v. Serbia and Montenegro* (henceforth referred to as *Bosnia v. Serbia*). While *Tadić* commented on the usage of the "overall control" test (and thus moving away from *Nicaragua*), *Bosnia v. Serbia* saw the ICJ reaffirming *Nicaragua*'s position of "effective control" and rejecting the ICTY's *Tadić* interpretation.

Cassese (2001) and others argue that non-state actors can now independently bear responsibility for armed attacks, permitting self-defence even when the state where they operate lacks direct control. This shift is supported by the 1970 Declaration on Friendly Relations, which imposes obligations on states to prevent terrorist acts originating from their territory. However, Quigley (2003) and O'Connell (2002) caution against attributing responsibility solely based on a state's failure to suppress terrorist activity, absent concrete links. Conversely, Cassese (2001) and others contend that passive toleration of terrorist presence may render a state complicit. Notably, historical interpretations of Article 51, including analyses of the *travaux préparatoires* (McDougal & Feliciano, 1961, as cited in O'Brien, 1962), suggest that the Charter's framers did not intend to limit "armed attacks" strictly to inter-state conflicts, thereby allowing for broader interpretations that include non-state actors.

The post-9/11 practice is aligned to the same thought. On the national level, Germany's Federal Constitutional Court noted that the text nor purpose of Article 51 restricts the right to only state-level implementation and recognizing that a non-state entity with an established and consolidated territorial in another State may indicate that the host State is unable or unwilling to prevent the group from launching armed attacks (Bundesverfassungsgericht, 2020). This, in turn, draws in the "willing or unable" doctrine into the issue, which held that a State's failure to suppress or prevent armed activities may be interpreted as a legal vacuum, thus allowing the victim State to act in self-defence within that country without violating the principle of non-intervention of the host State (Jordan, 2024).

As for other nations, India has clearly declared that the right of self-defence under Article 51 is not limited to State attacks, asserting at a United Nations Arria Formula meeting that it also "applies to attacks by non-state actors" (Sukumar, 2021). Contrastingly, France's official stance in 2019 upheld that Article 51 does not apply to non-State actors except where they act as "quasi-States" or a non-State actor that exercises effective control over a territory with a level of autonomy that includes the ability to plan and carry out armed attacks (French Ministry of Armed Forces, 2019). Yet, more recent pronouncements intimate a possible change of position—recognizing that the identity of the aggressor is not conclusive and that suitably capable non-State groups can also warrant self-defence—reflecting an emerging French interpretation.

Proportionality

The principle of proportionality is a fundamental requirement for lawful self-defence under international law. It demands that any use of force in response to an armed attack must be limited to what is necessary to stop or repel the threat, without causing excessive harm relative to the initial attack. Unlike a strict tit-for-tat response, proportionality does not require using the same weapons or matching the attack's intensity exactly. Rather, it asks whether the scale, nature, and means of the defensive action are reasonable and necessary, taking into account humanitarian and strategic outcomes (Wilmshurst, 2006). Importantly,

proportionality considers not just military aspects but also civilian, economic, and humanitarian impacts. Excessive collateral damage, or a response that causes more destruction than the original threat justifies, may violate international law—even if the defending state was initially justified in responding (Dinstein, 2012). Furthermore, proportionality works alongside the principle of necessity, which requires that non-violent alternatives be considered and used when reasonably effective. However, in some cases, non-military measures like sanctions might cause greater harm or fail to neutralize an immediate threat—justifying the use of force.

In practice, the *Oil Platforms* case is significant in the discussion of proportionality as the Court evaluated not just the scale of force utilized but also in relations to the objectives for the force. In addition to this, in the advisory opinion for *Nuclear Weapons*, the ICJ further refined the concept, stressing that proportionality must also conform to the law of armed conflict – stating that even if a weapon is used to repel an armed attack, it must not cause destruction exceeding the advantage gained (while leaving a narrow possibility that the usage of nuclear weapons may be lawful in extreme scenarios). These two jurisprudences highlight the test of proportionality by limiting not only how much force is applicable but also how it is applied.

Following 9/11, scholars proposed two justifications for U.S. self-defence in Afghanistan: (1) the attacks constituted an armed attack, and (2) imminent future threats justified anticipatory self-defence. The UN Security Council and NATO recognized 9/11 as an armed attack, triggering collective self-defence under Article 51 and Article V of the Washington Treaty. Evidence also indicated ongoing threats from Al-Qaeda, including plans for further attacks and past incidents such as the 1998 embassy bombings and the USS Cole attack. The U.S. informed the UN of its intent to respond to Al-Qaeda as a continuing threat (Negroponte, 2001).

However, critics argue that terrorism does not qualify as an "armed attack" under traditional interpretations and that the October 7, 2001 invasion of Afghanistan lacked immediacy (Quigley, 2003). Others reject state responsibility for non-state actors, contending that mere failure to prevent terrorism does not meet the threshold for self-defence (O'Connell, 2002). The U.S. justified its actions only after the Taliban refused to extradite bin Laden, despite international pressure and multiple UN resolutions calling for Afghanistan to act against Al-Qaeda.

This author would also like to note that there is not a requirement for parity in force – States are not required to meet the threat in equal strength (Greenwood, 2011). To stress, proportionality operates on restraining threats and the mitigation of excess harm; if a state is reduced to only the same level of force that the aggressor uses, then a stalemate may occur. The purpose of self-defence is to utilise force as a means to stop an armed attack. To stop an armed attack, sometimes it may be necessary to use violence of action – the idea of using speed, strength, surprise and aggression to disrupt and gain dominance over an enemy before they can react properly. Meeting an enemy on the same level may result in a drawn-out conflict, leading to higher casualties. Retaliation with a higher-level of force may have a higher chance in stopping an armed attack. For example, if an enemy conducts a ground invasion with a large army, a defending state may retaliate with overwhelming air strikes on key structures inside the aggressor's territory to disrupt their chain of command as well as logistics. While the aggressor may suffer casualties in the process, such action may stop an army's advance. Thus, it would be counter-intuitive to limit a defending state to the same level of force as its aggressor – especially if a series of attacks had occurred. The amount utilised by an aggressor, be it state or non-state, does not need to be reciprocated tit-for-tat in the response (Wilmshurst, 2006). Regardless, in jurisprudence, the ICJ in the *Oil Platforms* case emphasised that the scale and effect of a defensive use of force must be proportionate to the armed attack suffered – and not as a means of seeking revenge or punishment.

Necessity

The principle of necessity dictates that force ought to be the last resort measure to either resolve a conflict or prevent a conflict from occurring or spiralling out of control – should a pre-emptive action be authorised. It entails that all peaceful measures be exhausted before a state utilises forceful measures to resolve the conflict. But this is not an impossible barrier—states may determine that the immediate use of force is most likely to prevent additional harm. Where an aggressor is already on the move, prompt action—e.g., striking a crucial bridge to halt the advance—is permissible without attempting first to negotiate

(Bethlehem, 2012). The doctrine seeks to reduce harm, not to insist on procedural delay that can lead to additional casualties (Dinstein, 2012).

Therefore, there must be a situation of absolute certainty where no other non-forceful measures could prevent an enemy attack from occurring.

Under the UN Charter, there are two articles that state that States must settle disputes peacefully and utilise force as a last resort. Article 2(3) stipulates that States “settle their international disputes by peaceful means,” whilst Article 33 maintains that state disputes where the “continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by...peaceful means.” While the inherent right to self-defence grants States the ability to exercise force to defend itself, the UN Charter still prohibits the usage of force and regulates its usage. Any other alternatives must be explored before a state pursue the use of force – it should not be necessary for a state to use force when a possible alternative and peaceful solution would have had the same result (Ago, 1980).

Sir Daniel Bethlehem (2012) discussed several points in his principles on the topic of necessity; that force can only be utilised when no other peaceful means are available, and the threat is clear and imminent. And in cases of anticipatory self-defence, necessity requires that the threat be immediate and concrete, justifying action only when waiting would result in severe harm. Additionally, the principles emphasise that necessity is not a one-time evaluation; it must be reassessed continuously throughout the conflict. If the threat diminishes or peaceful solutions become viable, further use of force may no longer be justified.

Regardless, this is not a hard check as a state may find it necessary to use force to resolve a conflict if, by using force, it resolves the conflict quickly and prevents further damage from happening. This is especially so if pursuing peaceful measures would result in greater casualties during the meantime. This would bring forth the discussion of anticipatory self-defence as scenarios that would entail the usage of force before pursuit of all peaceful measures involve the need of a sudden and instantaneous action to prevent greater harm (Bethlehem, 2012). This is not to be confused with armed attack’s *ratione temporis*; while similar in nature, the former focuses on the timeline of the attack whereas necessity focuses on not just the immediacy of a response but also the need to respond in force. Not all armed attacks that pass the *ratione temporis* check require the need to respond in force, either immediately or at all. To give a simple example, an armed attack had occurred but such attack was done to a remote region and there was no harm actually done; while the victim’s sovereignty has been damaged, it would be unnecessary for the victim to respond as there was no notable damage actually done. For self-defence, necessity thus seeks to limit and prevent further harm.

Jurisprudence-wise, the ICJ in *Nicaragua* drew a sharp distinction between threat of force and an armed attack, emphasising Article 51 is triggered exclusively by an armed attack that has already occurred (thus rejecting the broader interpretation that allowed pre-emptive or anticipatory self-defence). This position is held and affirmed in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* where the ICJ stressed that self-defence cannot be triggered based upon vague or general security concerns, pushing the burden of proof on the defending state to prove fact and temporal necessity of a response.

However, the post-9/11 narrative has changed the practice and exercising of the right to self-defence in both international and national courts, as previously mentioned. Germany’s Federal Constitutional Court 2020 ruling on “Operation Counter Daesh” saw the upholding of the legality of German forces in Syria as a lawful exercise of collective self-defence under Article 51. They emphasised that the interpretation of the right to self-defence must be done in light of contemporary security challenges, endorsing a more context and functional-based assessment of imminence, necessity, and proportionality (Bundesverfassungsgericht, 2020).

Importance of Afghanistan War

The Afghanistan War is a critical junction for the right to self-defence in international law. Prior to this incident, there had been no other attack to reach the same magnitude of which drastically changed the legal landscape. Those who argue that the Afghanistan War was an illegal war that did not satisfy the self-defence narrative note that there was no armed attack that could have been attributable to the Taliban, and by extension to Afghanistan. Though an attack occurred, critics argue the coalition struck too late as the threat had passed, and thus making the war illegal under self-defence laws. This author will argue that while there was an armed attack that prompted the right to self-defence, the military operation to neutralise the threat

failed to meet the principle of proportionality. In my opinion, this author believes that there was an armed attack (as well as imminent armed attacks in the future) that warranted the use of force in self-defence. In spite of this, this author does not believe that the U.S. method to wage war on the entirety of Afghanistan was the correct decision, as well as proportional to the actual threat. Al-Qaeda needed to be held responsible for its actions but the Taliban should not have been held fully accountable for their actions.

2. Objectives

- 1) To assess the moral permissibility of the U.S. war in Afghanistan through the *ad bellum* principles of just war theory
- 2) To evaluate the legal legitimacy of the U.S. war in Afghanistan within the framework of international law

3. Materials and Methods

In this research, this author aims to delve into the morality and legality of the Afghanistan war. As such, the research will mainly be utilising just war theory to assess the moral permissibility of the war while assessment for legal legitimacy will be done utilising relevant international law. The data required for the analysis is readily available via online databases, libraries, and government websites. The data and information will be collected from, but not limited to, reports, news articles, scholarly journals, and books pertaining to the topic at hand.

To assess the moral permissibility of the war, this author will be discussing just war theory, namely the *jus ad bellum* principles of the theory. *Jus ad bellum*, or literally the ‘right to war’, refers to the conditions under which a state may permissibly resort to war or utilise force. In this case for just war theory, *jus ad bellum* focuses on determining whether a country has the moral legitimacy to wage war – if the *jus ad bellum* principles are fulfilled, then it would be morally permissible to wage war. By defining and analysing the six principles first, it will then follow up and proceed to address and apply each one separately to the case of the U.S. Afghanistan war. Once each principle has been applied, this author will then conclude by incorporating all the principles together to assess whether moral permissibility for the war had been satisfied or not.

As for the analysing the legal permissibility of the war, this will be done through, first, discussing the relevant international law in regards to war and armed conflict. In the case of the U.S. war in Afghanistan, the relevant framework for assessing the legal legitimacy is whether the elements for justifiable self-defence were met. This author will begin by analysing what is required for a justifiable self-defence under international law; by breaking it down to various elements, this author will attempt to define and discuss each separately. Once each of the elements has been defined, they will be applied to the facts of the war to assess whether the United States had the legal legitimacy under self-defence to use force against Afghanistan.

Under international law, a state may only invoke the right of self-defence if three specific requirements are satisfied. First, there must be an armed attack. This is the essential trigger for lawful self-defence; without an actual or imminent armed attack, a state cannot justify the use of force. The attack must be of sufficient gravity, such as large-scale military action, rather than minor incidents or threats. Second, the response must meet the requirement of proportionality. This means that the defensive force used must be limited to what is necessary to repel the attack and must not exceed the scale or intensity of the initial aggression. Excessive or retaliatory force would violate this requirement. Third, the use of force must fulfil the requirement of necessity. Self-defence must be the only reasonable option available at the time – diplomatic or non-violent measures must have been exhausted or deemed ineffective. All three requirements – armed attack, proportionality, and necessity – must be met simultaneously for a claim of self-defence to be valid under international law.

All three requirements will be discussed, analysed and will be determined whether it has been satisfied; all three requirements need to be satisfied for any self-defence to be legitimate.

4. Results and Discussion

In this section, this author will be discussing and applying theory to the facts of the U.S. war in Afghanistan. This section will be divided into two main sections; for the first section, the main focus will be on answering the first research question: Did the U.S. war in Afghanistan satisfy the *jus ad bellum* criteria of just war theory? The following section will then focus on answering the second research question: Was the U.S. war in Afghanistan legitimate under international law?

Moral Legitimacy

To begin the discussion, this author will first discuss on the moral legitimacy of the war. In answering the question of such, the six principles of just war theory must be fulfilled. All six principles, (1) just cause, (2) legitimate authority, (3) right intention, (4) last resort, (5) proportionality, and (6) reasonable chance of success, will be covered in that respective order.

Just Cause

For the United States, the primary just cause of the war was self-defence. The U.S. had entered into war with Afghanistan under the reason of the 9/11 attacks and to prevent future terrorist attacks on U.S. soil by al-Qaeda. However, there is an issue in attributing the just cause to a non-state actor such as al-Qaeda. While the traditional roots of just cause are rooted in state-to-state aggression; an armed response can be justifiable against a host state if it is shown that the non-state actor's action amounts to an attack and the host state exercised either "effective control" over the non-state or failed to restrain them despite having the capacity to do so. The result of a state's attempt in destroying a terrorist group inside the border is another matter but there must be evidence that a genuine attempt, at a minimal, has been conducted by the state. On the other hand, some scholars push for a more demanding condition for when a state can be held accountable. For this view, scholars such as Garrett (2001) view that for a state to be held accountable for the actions of a non-state actor there are two scenarios: (1) unjustified financial support, either monetary or arms, and (2) unjustified military training for the non-state group.

For the case of al-Qaeda and the Taliban, al-Qaeda had been financing much of the Taliban's major factions prior and after the 9/11 attack. It was reported that al-Qaeda had been supporting the Taliban to an expense of about \$20 million US Dollars per year, prior to 9/11 (Special Inspector General for Afghanistan Reconstruction, 2022). Furthermore, Taliban fighters received training from al-Qaeda (Amiri & Jackson, 2021). The relationship between the two groups was more overt than covert; the commanders from both sides knew each other – often on a personal level with many affiliated members rising within the Taliban ranks. In a hearing before the U.S. Senate, intelligence reports mentioned that the two groups had a 'cozy relationship' with one another (Special Inspector General for Afghanistan Reconstruction, 2022).

In addition, comments made by Osama bin-Laden promising future attacks were sufficient to materialise the just cause for stopping the continued aggression against the States of the world, and the attack of 9/11 allowed the United States to claim self-defence as their just cause for waging war in Afghanistan. In addition to the support received, the Taliban shielded al-Qaeda from the United States was enough grounds to materialise just cause on both parties within the country.

Legitimate Authority

For the U.S. war in Afghanistan, the proper legitimate authority for the United States for declaring war is not the President but rather it is the U.S. Congress that has the formal powers to declare war on foreign nations. With this in mind, the facts of the case were that Congress did not declare war on Afghanistan but authorised action to be taken after the attack. It was U.S. President Bush who declared war on al-Qaeda and the Taliban. This principle is short and quick as it is satisfied as an elected official of the country, given power by the constitutionally specified proper authority, was the one to authorize resort to war.

Right Intention

Cortright (2011) argued that the invasion was emotionally charged because of the trauma of 9/11. This author, on the other hand, says that the response was mostly rational and meant to get rid of a growing threat. Al-Qaeda had already attacked several times before 9/11, and the decision to retaliate was more thought out than just emotional. Second, the invasion was partly motivated by the need to stabilize Afghanistan, which was a failing state with civil unrest, poor healthcare, and weak governance (Barry, 2017). The U.S. thought that building stable nations was necessary to meet its security goals, since instability allowed groups like al-Qaeda to grow. Third, nation-building may have helped the U.S. achieve its national goals by expanding its influence, gaining military access, and securing resources in the Gulf. However, this may be seen as a secondary benefit rather than a primary goal. The main goal was still self-defence: stopping al-Qaeda and stopping future attacks by dealing with the reasons why people become extremists in the first place.

Having more than one reason does not always go against the principle of right intention. As long as the main goal stays in line with the just cause, secondary goals like gaining a strategic advantage or positioning yourself geopolitically do not make the war morally wrong; all actions will affect other sectors regardless of intention. In the end, the U.S. met the requirement of having the right intention. The main goal was to protect itself by breaking up al-Qaeda. Other goals, like building a nation and looking out for one's own interests, were either necessary to reach that goal or not. So, this rule was followed.

Last Resort

Prior to the invasion of Afghanistan, the U.S. took two steps: President Bush on September 20 delivered an ultimatum demanding the extradition of Osama bin Laden by the Taliban, and on September 24 froze assets related to terrorist networks. These actions may suggest that options were explored, but the limited exchange between the U.S. and Taliban persuades otherwise. The U.S. position was hardline, and both sides refused to negotiate in good faith.

The Taliban did not take it seriously either. They doubted U.S. motives, continued to be the supporters of al-Qaeda, and disregarded bin Laden's guilt – even when he claimed responsibility for the attacks (Malkasian, 2021). Presuming the U.S. would not use force, the Taliban utilized diplomacy as a bluff. In the United States, national fear of another attack rose in the U.S. Polls in September and October 2001 which showed that common belief was that another attack was pending (Malkasian, 2021). Thus, while U.S. diplomatic efforts were lacking, waiting longer could have emboldened al-Qaeda to attack again with impunity.

The issue then is whether the invasion, occupation, and regime change were necessary for self-defence. Might the U.S. have been able to accomplish its objectives without war? An air war against terrorists might have disrupted their operations for a while, but not the preconditions enabling future attacks. Continued bombing after each attack would not address the root causes of terrorism, nor ensure long-term self-defence.

Regime change adds complexity. The 9/11 attacks had anti-American roots that flourished in Afghanistan's chaotic environment. If the U.S. wanted to prevent future attacks, stabilizing the nation was crucial. Killing leaders and militants could de-accelerate violence, but sustained deterrence needed social and political transformation. Only by fixing these causes – through education, governance, and reconstruction – could future attacks be effectively prevented.

Also, engaging an enemy like al-Qaeda, an entity that wages unconventional warfare, required much more effort. Establishing a presence inside offered the potential for intelligence gathering, security coordination, and counterterrorism operations. A friendly Afghan government offered the potential for such initiatives. An unfriendly or ambivalent government would thwart U.S. efforts. Bombing without ground support and legitimacy would allow the radicals to remain unrestrained and further alienate the populace. Short of reconstituting the collapsed state, radicalism would most likely thrive in the vacuum.

It is a matter of whether or not peaceful options actually failed or if further diplomatic effort could have reduced the crisis. As stated by Malkasian, it is "one of the big 'what-ifs' of 2001" (Malkasian, 2021, p. 84).

Although it is questionable whether the invasion was absolutely necessary, the air-ground combination might have been perceived as the most convenient method to address the conflict and avert future damage. Simply demonstrating military force by bombing, despite its symbolic significance, might have been inadequate—a subject explored in more detail under proportionality. This analysis ultimately determines that the United States fulfilled the requirement of last resort by appropriately considering non-violent alternatives prior to using military force. Although the implementation was imperfect, the character and immediacy of the threat rendered military intervention an available choice.

Proportionality

The proportionality test under just war theory will thus delve into the expected good and bad consequences of not going to war after the 9/11 attack against the same consequences of utilising force in Afghanistan in self-defence.

To begin, there are a number of obvious advantages to not going to war after 9/11. First of all, it would have saved lives—those of American military personnel as well as Afghan civilians. Both sides would have avoided combat deaths, civilian casualties, and the psychological effects of war if it had been avoided. Additionally, it would have saved a significant amount of money. Transporting troops around the world, using a lot of fuel and ordnance, and eventually footing the bill for reconstruction would all be part of a war

with Afghanistan. The American taxpayer was responsible for these expenses. The United States could have prevented these financial strains and maintained domestic stability by abstaining from direct action.

But there were some noticeable consequences associated with inaction. More attacks might have resulted from allowing al-Qaeda to operate freely. Their violent past, the bombings prior to 9/11, implies that a lack of reaction would have given them more confidence. By showing that such crimes go unpunished, a failure to take action might have inspired other terrorist organizations. The Taliban, who already dominated the Northern Alliance and backed al-Qaeda, might have been strengthened as a result. Ignoring it could have resulted in the demise of a possible regional ally, necessitating a more significant commitment down the road. The area might have descended into even more instability and turned into a safe haven for terrorists. Under Taliban rule, violations of human rights would have persisted unchallenged. Lastly, the United States' credibility would have suffered if nothing had been done. Ignoring an attack that killed thousands would signal weakness, both to allies and enemies.

On the side of resorting to war, there are goods to be obtained such as deterring future aggression by sending a clear message that attacks on the United States would be met with force. Military action might disrupt Taliban support, stifle terrorist networks, and impair al-Qaeda's ability to operate. It maintained the United States' reputation as a superpower and showed its resolve; the action would have represented justice and a direct reaction to the trauma of the country for audiences back home.

However, there are consequences as well; a war campaign backed mainly through airstrikes would result in civilians killed and destroyed infrastructure. Displaced were millions. Deeper economic instability and long-term reconstruction difficulties engulfed the nation. Afghanistan took the brunt of the damage, even though the United States also suffered losses. Afghans, many of whom opposed both the Taliban and foreign occupation, did not directly benefit from the war. Complete victory was also impossible due to the enemy's ideology. The Taliban and al-Qaeda operated as dispersed organizations driven by extremism, which was impossible to stop with just military might. Long-term efforts to stabilize and rebuild the nation – known as "hearts and minds" campaigns – prolonged the conflict and increased suffering for all parties. Ultimately, from the points raised, the war in Afghanistan was disproportionate. While limited military action for self-defence may have been justified, the broader objectives of regime change and nation-building were unrealistic and predictably harmful. Afghanistan's resistance to external political models and its deeply rooted traditionalism made success highly unlikely. According to the principle of proportionality, when the anticipated harm of a military campaign significantly exceeds the benefits, the resort to war cannot be considered just.

Despite the intention to prevent future terrorist attacks and promote democratic governance, the realities of internal resistance, regional interference, and the inability to dismantle extremist ideology made such goals unattainable. In a different context, similar objectives might have yielded positive results. But in Afghanistan – often referred to as "the graveyard of empires" – the pursuit of these aims proved to be strategically and morally flawed. The overall harm caused by war, including civilian casualties, displacement, and societal upheaval, vastly outweighed the more limited and uncertain consequences of non-action. The threat of future terrorism could have been addressed through enhanced global intelligence, targeted security operations, and increased vigilance – measures that would have been necessary regardless of whether war was pursued. Therefore, the war, as conducted, was ultimately disproportionate.

Reasonable Chance of Success

While relatively straightforward, the discussion on reasonable chance of success for the Afghanistan War brings a quagmire when one considers not just the preliminary offensive but also the intentions and plans made by the United States for Afghanistan post-conflict. It is undebatable that the United States had the definite advantage when it came to military action against al-Qaeda and the Taliban – evident from the aftermath that it only took one month for the main conflict to end. From the onset and the planning stage, there was a more than reasonable chance of success that the military action would result in achieving the just cause of stopping al-Qaeda and stemming the flow of terrorism in the region. For the military objective portion to eliminate the Taliban and al-Qaeda from the country, there was a reasonable chance of success that the United States would achieve it, considering the resources and power it has. However, if the United States had failed to destroy all of the Taliban and al-Qaeda members within Afghanistan or prevent their flight to neighbouring countries, an insurgency war could bring any policy changes or development to a crawl. While this author believes that the military objective of preventing any more attacks against the United

States directly would be achievable through the war, a failure to fully suppress the Taliban and al-Qaeda inside the country would doom the political aim of regime change and nation-building.

However, while the United States may have a large supply of resources that could be devoted to achieving the goal, it would be naïve to assume that money and resources are the key in achieving it. The Soviet attempt at invading and changing the Afghan government to be Soviet-aligned communism failed – leading to complete withdrawal from the region. While it can be argued that the Soviets and the United States both have different playbooks on regional control, the problem is not solely on the side of the Soviets or the United States – it is the opponent that they are faring up against. The truth is that any attempt to instil democratic values aggressively into a society that is built upon religious fundamentals is, at best, incredibly difficult and, at worst, doomed to fail.

To fully realise the goal of a self-sufficient democracy, it must start with the people first – this would take years and millions of dollars to accomplish. The people would have to embrace democracy; this is almost impossible to achieve as Afghans are a group that are ethnocentric, religious and conservative that have embraced Islam for decades. This is coupled with the geographical aspect of Afghanistan – mountainous and rugged terrain that favours guerrilla warfare. Ambushes and hit-and-run strikes mean that it is difficult to pinpoint and retaliate in return; enemies that shift after every strike makes it hard to achieve enemy destruction. All in all, the United States faced a united and conservative group that understood their home and environment well. Thus, considering the case study of the Soviet-Afghan War and the values that the Afghan people have embraced for centuries, this author does not believe that there was a reasonable chance of success for the regime change to be accomplished smoothly or, let alone, at all.

To conclude on this principle, this author believes that while there could be a chance of success in regards to eliminating the threat of future attacks in the immediate future, the chances that the United States will be able to progress with a successful regime change that would sustain itself is unlikely.

Legal Legitimacy: Self-Defence

The Bush Administration invoked the self-defence argument primarily in their public speeches and declaration of the war on terror. Previously, this author has discussed the specific Articles and documentation relevant to self-defence alongside various interpretations of the elements (armed attack, necessity, and proportionality). In this section, this author will be mainly focusing on singling out a specific interpretation for each element, giving my own reasoning why, before applying them to analyse the facts of the war.

Armed Attack

The concept of armed attack under Article 51 of the UN Charter involves three core considerations: the substance of the attack, the timing of the attack, and the identity of the perpetrator. Each is essential for determining the legality of a claim to self-defence in international law.

The UN Charter does not provide a precise definition of armed attack, but prevailing interpretations describe it as a use of force that threatens the territorial integrity or population of a state (Dinstein, 2012; Wilmshurst, 2006). Jurisprudence, such as the *Nicaragua v. United States* case, has sought to clarify this by distinguishing between full-scale armed attacks and lower-intensity “frontier incidents,” requiring that a certain threshold of “scale and effect” be met for a use of force to qualify as an armed attack (Dinstein, 2012). Greenwood (2011) points out that imposing too narrow a threshold risk creating an unhelpful divide between acts prohibited under Article 2(4) and those that might justify self-defence under Article 51. Rather than using gravity to define the legality of self-defence, some suggest that all unlawful uses of force could justify defensive action, with the scale and effect instead influencing the proportionality of the response. Gazini (2006), for example, argues that any hostile military act could justify self-defence, regardless of scale. Dinstein (2012) warns against oversimplifying all border incidents as trivial, as some may involve large-scale hostilities. Shaw, as cited in Wilmshurst (2006), emphasizes that the political and psychological context of an incident must also be considered, as smaller attacks in one scenario may carry greater weight in another. In the context of the Afghanistan War, the 9/11 attacks—with thousands killed and substantial material damage—clearly met the necessary gravity threshold. Additionally, the cumulative effect of earlier al-Qaeda attacks reinforces the argument that the threshold for an armed attack was surpassed.

Timing plays a critical role in debates surrounding anticipatory and pre-emptive self-defence. The traditional legal view holds that self-defence is only justified after an armed attack has occurred or is clearly imminent. Revised interpretations challenge this, arguing that Article 51’s phrasing – “if an armed attack

occurs” – does not explicitly prohibit anticipatory measures (Dinstein, 2012; Erickson, 1989; McDougal, 1963). Interpretations differ further in distinguishing between pre-emptive, preventive, and interceptive self-defence. The latter is widely accepted when a hostile act is already underway or unavoidable (Dinstein, 2012; Shiryayev, 2008). In the case of the U.S. intervention in Afghanistan, two lines of argument can be identified. First, the 9/11 attacks themselves had already occurred, providing a straightforward basis for invoking self-defence. Second, the U.S. cited the likelihood of future al-Qaeda operations as justification for continued military action. While the first argument aligns with traditional interpretations, the second raises concern. The desire or motivation to commit further violence does not amount to a legally sufficient threat. Without specific and observable preparations for future attacks, the case for anticipatory self-defence loses force. This author, therefore, finds the claim of preventive self-defence unconvincing in the absence of compelling evidence of an imminent threat.

A further issue involves the attribution of responsibility for the armed attack. Classical international law limited attribution to state actors, but more recent interpretations recognize that non-state actors, such as terrorist groups, can be responsible if the host state is complicit in their actions. The Taliban’s relationship with al-Qaeda complicates this analysis. While the Taliban may not have exercised effective control over al-Qaeda and reportedly were not informed of the 9/11 attacks (Linschoten & Kuehn, 2011), their tolerance of al-Qaeda’s operations within Afghanistan and their failure to expel them implicates them to some extent. Additional evidence of Taliban leaders accepting payments from al-Qaeda (Amiri & Jackson, 2021), along with the fact that the Taliban requested prior notification of international operations, further suggests collusion or at least acquiescence. It is difficult to interpret such a request as anything other than an intent to facilitate or conceal al-Qaeda’s actions. Therefore, this author contends that the Taliban bears partial responsibility for enabling the 9/11 attacks by permitting al-Qaeda to operate unchecked within its territory.

In conclusion, the requirements for establishing an armed attack under Article 51 of the UN Charter were satisfied. The 9/11 attacks met the necessary threshold of gravity; they had already occurred – thus removing any ambiguity regarding timing – and responsibility can be reasonably attributed to both al-Qaeda and the Taliban. An armed attack of sufficient gravity was inflicted on the United States; triggering self-defence as a possible decision.

Proportionality

Proportionality under self-defence aims to discover a proportional response to the threat imposed upon the victim state. A forceful response against an armed attack under self-defence must be at the level that is not greater than is necessary to resist the aggression. While the definition of this element is straightforward, the proportionality test upon application, however, is much less. Proportionality is done on a case-by-case basis and is often very arguable by other scholars.

With that in mind, this analysis is aimed at discussing only the *ad bellum* portion of the Afghanistan War. To begin, the scale and nature of the initial invasion of Afghanistan was relatively small-scale despite being an invasion. Most of the ground combat and seizing of territory was conducted by local Afghan troops of the Northern Alliance with the United States assisting with airstrikes and special forces operations. Despite calling it an invasion, the terminology used for the first stage of overthrowing the Taliban and rooting out of al-Qaeda was minimally done by Western coalition troops. On the other hand, it can be argued that the cost burden for the civilians may have been high for the armed attack. While thousands may have perished in the al-Qaeda attacks, the ‘invasion’ could be seen as disproportionate in the scale factor for an entire country to be subjected to the environments of war for the actions of a few.

The harm involved was kept to the best of the combat operations. The air campaign over Afghanistan was primarily focused on delivering precision strikes on hostile targets and infrastructure through the use of cruise missiles, precision munitions, and ground-air coordination. While there had been civilian casualties, the number was kept as low as possible when considering that the nature of the ground combat involved manoeuvring through villages and civilian occupied zones (Conetta, 2002). If open ground combat took place without the assistance of air support, many of the battles may have resulted in greater human losses for both sides. Aerial warfare/primacy has played a great role in increasing operational success – proper utilisation for it can lead to lower casualties for allies and civilians while maintaining or even increasing the combat power of a military engaged in combat.

However, it can be argued that the main target of the self-defence should have been only al-Qaeda. The Taliban had little to no influence in staging and assisting in the act of international terrorism. The case

of *Nicaragua* demonstrated that for a state to be held responsible for the action of a non-state actor there must be 'effective control' – the Taliban must have given explicit orders for al-Qaeda to attack the United States. As mentioned previously throughout this chapter, the Taliban did not have effective control over al-Qaeda nor were any explicit orders given. While al-Qaeda may have had supporters amongst the Afghan populace, the organisation did not speak for or represent the entirety of Afghanistan (Malkasian, 2021).

However, inaction is ultimately an 'action'; the Taliban's negligence in stopping al-Qaeda from acting is what causes the Taliban to be complicit. What causes this contradiction is that the *Nicaragua* ruling and the 'effective control' test is, unfortunately, inconsistent with the basic principles of state responsibility – which is the primary standard and reasoning for the complicity of the Taliban (Trapp, 2016). States cannot evade responsibility for the actions of international terrorism conducted by non-state armed organisations; whether such organisations were under the orders of state actors or based within the territory of the state itself (Trapp, 2011).

Necessity

Necessity is twofold: first, is the resort to force in general justified? Second, what specific measures are called for in that use of force? The latter of these is quite linked to proportionality in requesting that the means and degree of force used be considered (O'Meara, 2021). Force can be needed (e.g., employing a weapon), yet so must the form (which weapon, how many shots, where to aim).

This debate is also relevant to *ratione temporis*—the temporal dimension of self-defence—in relation to the timing of the attack and respective response. Self-defence is obviously accepted once the attack has occurred, but anticipatory self-defence is contentious. According to the Caroline test, the threat must be "instant, overwhelming, and leaving no choice of means, and no moment for deliberation" (Wood, 2018). In the Afghan situation, the U.S. attempted to justify its actions on grounds of anticipatory self-defence against future terrorist attacks. The threat, nevertheless, lacked the immediacy and certainty required by international law. The intention of al-Qaeda to launch future attacks did not constitute a concrete enough or imminent enough threat to warrant pre-emptive or preventive attacks. Without credible evidence of an imminent attack, legal justification on grounds of anticipatory self-defence falls apart.

The second question is whether peaceful alternatives were attempted following the 9/11 attacks. There was a window of tranquillity right after the initial attack. America had the time to attempt multilateral diplomatic solutions, i.e., UN action against al-Qaeda, rather than opting for a complete invasion. To attack Afghanistan and overthrow the Taliban exceeded what was necessary for self-defence.

This leads to a concluding consideration: the timeliness of the response. Article 51 of the UN Charter refers to self-defence "if an armed attack occurs," and it has been argued that the right ends once the attack has ended. The meaning is difficult – attackers could take advantage and make speedy, successive attacks without enduring prolonged reprisal. A more practical interpretation is that the right to respond lasts briefly after an attack, particularly if subsequent attacks are expected. However, responses must be within a reasonable timeframe (Dinstein, 2012). In this case, it was nearly two months from the attack to the invasion, which weakens the argument of immediacy.

In addition, the necessity for regime change complicates the justification for war. The removal of the Taliban was not necessary for the suppression of al-Qaeda. Military strikes could have achieved this objective without leading to regional destabilization. Regime change more often results in long-term conflict, greater instability, and failed political outcomes. The U.S. overestimated the prospects for democratisation in a state with little domestic support for such a transformation. Unlike post-WWII Germany and Japan, Afghanistan lacked the political and social foundation upon which to maintain such change.

To conclude, the United States invasion of Afghanistan was a failure of the principle of necessity. There was neither an imminent nor an absolute future threat, nor had peaceful alternatives been fully investigated. Even if one were to presume self-defence to be legitimate, the methods used – including regime change – were excessive and unnecessary. The additional objectives of encouraging democracy and political change exceeded the legal boundaries of self-defence and rendered the war unlawful under international law.

5. Conclusion

The end result of this research is that the U.S. war in Afghanistan was both morally and legally illegitimate based upon analysis of the war through just war theory and under international law. It was a war that, while waged under the support of the international community and the United Nations, was ultimately

illegal for specifically the reason that the response to the attack was disproportionate and was overall unnecessary and highly unlikely to succeed based upon past historical data.

To summarise the moral analysis, under just war theory, the war was unjust and immoral on the basis that there was no reasonable chance of success to achieve the goals and objectives that the United States had in mind - which also made such war disproportional as the expected consequences of the war would have caused significantly more harm than choosing non-action. For a war to be morally legitimate under just war theory, all six principles need to be fulfilled. Under traditional interpretation, all six principles are considered necessary conditions of a just war.

For the Afghanistan War, the inherent terrain, culture, and fundamentals of the region prevented any successful military operation. The deep values rooted in the culture would have also extinguished any chance of successfully implementing a cultural shift to a more Western-style regime. Historically, no power has been able to properly conquer the region of Afghanistan. In addition, with no reasonable chance of success in sight, the expected goods envisioned by the added objectives of regime change, nation-building, and the promotion of democracy would never see fruition - what is left of these objectives are the expected negative consequences, such as disruption to local lives, uprooting the inherent culture of the region (which would in turn cause the local population to turn against the United States and ultimately causing even more harm). Choosing non-action is the least harmful action as the expected consequences of such an act, possible harm from future terrorist attacks, can be mitigated through vigilance and increased security. By choosing to go to war, the expected consequences of war such as the loss of life on both sides (combatants and non-combatants) and damage to infrastructure and livelihood is coupled with the added consequences such as increased instability from implementing a regime change and disruption to local culture and values through promotion of democracy without consideration of the population.

For the United States to truly achieve the goal of self-defence, the ideology that is deeply seated in the minds of the people in this region must be removed - and to achieve this, the United States must change the hearts and minds of the people. Yet, it was very unlikely that such campaigns would succeed in the region - both due to the resilience of the natives as well as how the United States approached the topic. This thus only leaves the discussion on solely the military aspect. A standalone military operation would only suppress terrorism; it would not remove it. Conducting only a military operation would achieve very little as terror organisations operate through small cells and guerilla tactics. The goods to be obtained is miniscule if one compares it to what is gained through non-action. Thus, with very little gain, and much to lose and damage, this author concludes that the war was unjust and immoral as it had very little chance of success and resorting to such war would result in significantly more harm than choosing inaction instead.

As for the legality of the war, the Afghanistan War was illegal on account of it both being disproportional and unnecessary. While certainly there had been an armed attack as al-Qaeda had committed an act that caused harm and damage to the United States, the United States' response to such attack is questionable. The war was disproportional for two reasons; firstly, claims on a pre-emptive self-defence cannot be justified as the threat had passed and future threats are not sufficiently imminent enough nor reasonably foreseeable. Secondly, the self-defence action overreaches as it targets not just the perpetrators but also affects ordinary civilians as the United States aimed to implement a regime change and nation-building programme. The two added objectives also brought into question the necessity of it all. As necessity under international law strives to determine not only were there other peaceful alternatives but also other forceful alternatives and if they were necessary to achieve the goal. For the U.S. Afghanistan War, the inclusion of other programmes, such as regime change operations and nation-building, were unnecessary towards the objectives as military air strikes would have been sufficient in suppressing al-Qaeda from attacking the United States. Rigorous surveillance and precision strikes via airstrikes or special forces may achieve the same effect while minimising collateral damage. Thus, as such actions employed by the United States were ultimately unnecessary, this in turn makes the overall action disproportional as there could have been other measures that would have sufficed. With this, the United States failed both the proportionality test as well as the necessity test - making the overall war illegal.

Whereas most of the post-9/11 literature has addressed the strategic and legal rationales advanced by the United States and its coalition partners—especially the invocation of Article 51 and collective self-defence—this article hopes to add to the literature by presenting an in-depth critique that gives equal weight to moral philosophy and international legal norms. By synthesizing normative argumentation based on just war theory with international legal analysis, this research develops a more integrated framework for assessing

the legitimacy of military intervention. In doing so, this method demonstrates how an internationally sanctioned response may nevertheless fall short of the strictures of just war and legal proportionality, highlighting the valuable distinction between legal authorization and moral justification.

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