

Testing the Legality of the Attack on Afghanistan

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The establishment of the United Nations (U.N.) was the fruit of a common goal among its members to ensure the maintenance of world peace and security, as well as save future generations from the horror of war. In the pursuit of such a goal, the U.N. has effectively prohibited states from using force, except in the case of self-defense. The attacks of 11 September 2001 brought about the United States-led war on terror against the state of Afghanistan for harboring and supporting the Al-Qaeda terrorist network. In justifying its attack, America invokes the doctrine of self-defense against aggression by another state. As such, this Article examines the legality of America's war on terror, in light of the law on the use of force and accepted international responses to terrorist attacks.

The Article begins by recalling the harrowing events of 11 September, where airplanes manned by members of the Al-Qaeda terrorist organization caused the destruction of the World Trade Center. It then recounts the measures taken up by the United States in rallying support for an American-led armed incursion into the state of Afghanistan, which it alleges to have acted as an "accomplice" in supporting Al-Qaeda's activities. It then conducts an extensive discussion on the nature of terrorism, distinguishing it from common domestic crimes, and wartime violence, and argues that the Al-Qaeda perpetrated attacks of 11 September cannot be viewed as an "armed attack" by a state against another state. Mere allegations of a state's support of a terrorist organization, absent proof that such state exercises direct control over the terrorists, is insufficient to hold a state responsible for acts of terrorism.

The Author concludes that the American attack on Afghanistan is not contemplated by the intent and spirit of Article 51 of the U.N. Charter and constitutes a grave violation of international law. However, it does not necessarily mean that states, which have been victims of terrorist attacks, are without recourse. The Author suggests that the use of force by a state may be justified under the U.N.'s policy of suppressing any and all forms of terrorism. Within the spirit of this policy, military intervention may, after the exhaustion of all diplomatic measures, be resorted to if its primary purpose is to eliminate the sources of terrorist attacks — the terrorist

organizations themselves. Such military efforts may be, as the Author suggests, a measure of self-help, rather than an exercise of self-defense.