

Legal or Illegal? The 2001 US-British Attack on Afghanistan. Never Got the U.N. “Green Light”

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The Twitter equivalent of a bickering married couple, Times newspaper columnist David Aaronovitch and Huffington Post Political Editor Mehdi Hasan, recently alighted on a point of agreement during one of their regular Twitter exchanges.

The US/Nato invasion of Afghanistan was “UN-sanctioned,” they both said.

But are they right? With British forces formally handing over the military command of Helmand to US forces, it seems a good point to look at the legal status of the bombing and invasion in October 2001.

Written in 2010, the official House of Commons Library briefing paper on the subject provides interesting reading:

“The military campaign in Afghanistan was not specifically mandated by the UN, but was widely (although not universally) perceived to be a legitimate form of self-defence under the UN Charter.”

The paper goes on to explain that Article 2(4) of the UN Charter prohibits the “threat or use of force against the territorial integrity or political independence of any state.”

The accepted exceptions to this are where the security council authorises military action or where it is in self-defence under Article 51 of the Charter.

As the paper alludes, the UN security council did not authorise the military attack on Afghanistan.

Furthermore, there is reason to believe the US and Britain’s citing of Article 51 is suspect too.

Writing a month into the invasion, Marjorie Cohn, a professor of law at California’s Thomas Jefferson School of Law and a former president of the US National Lawyers Guild, described the US and

British attack as “a patently illegal use of armed force.”

The bombing was not a legitimate form of self-defence under Article 51 for two reasons, according to Cohn.

First, “the attacks in New York and Washington DC were criminal attacks, not ‘armed attacks’ by another state.” Indeed, as Frank Ledwidge argues in his new book *Investment In Blood: The True*

Cost Of Britain’s Afghan War, “the Taliban certainly were not aware of the 9/11 plot, and equally certainly would not have approved even if they had been.”

Cohn’s second criticism is that “there was not an imminent threat of an armed attack on the US after September 11, or the US would not have waited three weeks before initiating its bombing campaign.”

Michael Mandel, professor of law at Osgoode Hall Law School, is in agreement on the latter point, arguing: “The right of unilateral self-defence does not include the right to retaliate once an attack has stopped.”

Even if one were to agree the West’s attack was legitimate under Article 51, the House of Commons Library paper notes proportionality is central to the use of force in self-defence.

“It may not be considered proportionate to produce the same amount of damage” as the initial attack, the paper notes.

Writing in November 2001, Brian Foley, professor of law at Florida Coastal School of Law, maintained “these attacks on Afghanistan most likely do not stand up as proportional to the threat of terrorism on US soil.”

Having undertaken a systematic study of press reports and eyewitness accounts, Professor Marc Herold from the University of Hampshire found more civilians were killed during “Operation Enduring Freedom” than died on September 11 2001.

Moreover, the House of Commons Library briefing paper inadvertently highlights the crux of the issue.

“The USA might conceivably have gained specific legal support from the security council for its action in Afghanistan, but in the end did not seek such a resolution.”

With much of the world standing in sympathy alongside the US, why didn’t the US try to get UN security council authorisation for its attack on Afghanistan?

“An immediate need after 9/11 was to recover imperial prestige swiftly and decisively,” argue Sonali Kolhatkar and James Ingalls in their book *Bleeding Afghanistan: Washington, Warlords And The Propaganda Of Silence*.

Speaking just after the bombing had started, the anti-Taliban Afghan resistance leader Abdul Haq concurred with this reason for the attack.

“The US is trying to show its muscle, score a victory and scare everyone in the world.”

The last thing a nation attempting to “recover imperial prestige” would want to be seen doing is asking the United Nations for permission to act — a sure sign of weakness to the watching world.

The likely illegality of the 2001 attack on Afghanistan remains one of the biggest secrets of

the so-called “war on terror.”

No overt censorship is needed, just an intellectual culture and corporate-dominated journalism that has — often heated — discussion within a narrow set of factual and ideological boundaries.

But while it is perhaps right to be forgiving of those who lost their critical faculties during those days of high emotion immediately after September 11 2001, how should we judge the ignorance of two award-winning journalists repeating the official deception 13 years later?

Ian Sinclair is the author of *The March That Shook Blair: An Oral History Of 15 February 2003*, published by Peace News Press.

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