Annika Talmar

Self-defense against terrorist attacks: the US action in Afghanistan

Abstract: This essay poses the question whether the United States' action in Afghanistan is a lawful act of self-defense or an act of belligerent reprisals. Use of force in international law is analyzed as well as the concept of terrorism and self-defense. While the use of force is generally banned under international law, self-defense against an immediate attack is allowed. Operation *Enduring Freedom* has been seen as an example of such self-defense. On the other hand, some argue that it was not an act of self-defense because it took place after the Al-Qaida attacks and has developed into a decade-long war in Afghanistan. In this essay several arguments are posed that support both of these positions. Nevertheless it is impossible to give a final answer in this dispute at the given time.

Key words: use of force, terrorism, lawful self-defense, aggression, Afghanistan, United States, Taliban

Introduction

Terrorism and the fight against it has never before been as popular a topic as it has in the past decade. Qualifying different State and non-State acts as terrorism is a difficult task, while defining what terrorism actually means has proven to be almost impossible. I will discuss an age-old problem in international law in the light of terrorism, namely the right of self-defense against terrorist attacks. It will be illustrated by the US-Afghanistan opposition which has posed many additional questions and divided the legal profession in two. Some believe that the US action in Afghanistan was a lawful act of self-defense whereas others argue that it is a case of belligerent reprisals.

The War in Afghanistan was launched in response to the September 11 attacks on the US and marked the beginning of the Bush administration's War on Terrorism. Terrorist attacks on the World Trade Center and the Pentagon led to a fundamental reappraisal of the law on self-defense. Responsibility for those acts was quickly attributed to the Al-Qaida terrorist organization. The US demanded that the Taliban regime in Afghanistan close Al-Qaida terrorist training camps, surrender Osama bin Laden and open Afghanistan to US inspections. But the Taliban refused. US with the assistance of several other states begun *Operation Enduring Freedom* in 7 October 2001.[1] Shortly after the Security Council adopted Resolutions 1368 (2001) and 1373 (2001) which strongly condemned the terrorist attacks and expressly referred to the inherent right of individual or collective self-defense in accordance with the Charter.[2] NATO also invoked Article 5 for the first time.[3] It has been argued therefore that the US was equipped with the permission to use force.

Attacks were launched against Osama bin Laden's Al-Qaida terrorist organization and the Taliban regime that was supporting it. The Taliban was the *de facto* government of Afghanistan and Afghanistan bore responsibility for its actions by permitting Al-Qaida to operate from its territory. Afghanistan also afforded sanctuary for a large number of Al-Qaida personnel.[4] The US intervened in order to overthrow the Taliban regime and replace it with a

---

1 Christine GRAY, *International Law and the Use of Force* (2nd edn, Oxford University Press, 2004), p. 159.

2 *Ibid*., p. 161; Ian Brownlie, *Principles of Public International Law* (6th edn, Oxford University Press, 2003), p. 714.

3 Christine GRAY, "The Use of Force and the International Legal Order" — Malcolm D. Evans (ed.), *International Law* (2nd edn, Oxford University Press 2006), p. 605; Article 5 of the North Atlantic Treaty states: *The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all*.

4 Christopher GREENWOOD, "International Law and the Pre-Emptive Use of Force: Afghanistan, Al-Qaida, and Iraq", 4 *San Diego International Law Journal* (2003) 7 – 36, p. 24.

new government. This was the only way in their opinion to root out the Al-Qaida movement from Afghanistan.

Operation Enduring Freedom initially successfully removed the Taliban from power, but it gradually regained its power and has continued to be a threat to the coalition forces and Afghans. The war has still not ended and the views of East and West seem to be unbridgeable.

How does international law see the conflict – was the intervention an act of aggression, belligerent reprisal or a lawful act of self-defense? It is important to be objective and rational about qualifying the issue in order not to let emotions sculpt the decisions. One has to look at the overall concept of the use of force as well as the requirements and legal basis for lawful self-defense to reach a conclusion. This in not an easy task and there is a good chance that the question will be left unanswered.

Use of force in international law

The principles of the use of force under international law are now quite well established. The starting point of this branch of law is the Preamble to the UN Charter and its Article 1(1). These provide that the purpose of the United Nations should be saving succeeding generations from war and maintaining international peace and security. In doing so, however, the Charter allows taking effective collective measures for the prevention and removal of threats to the peace. Thus even though Article 2(4) seemingly prohibits all use of force, the Charter is about keeping the peace not about pacifism.[5] Use of force can still be justified by one of the limited exceptions provided for in international law. Which are those exceptions and is the US action in Afghanistan covered by one of those? And if it is, can the same justification then be used in all cases of terrorism?

There were at least four possible legal justifications for the use of force against Afghanistan: (1) Chapter VII of the UN Charter; (2) intervention by invitation; (3) humanitarian intervention and (4) self-defense.[6] The US relied solely on the last justification.

In Resolution 1368 (2001) the UN Security Council strongly condemned the terrorist attacks against the US, but stopped short of authorizing the use of force. Later that year in Resolution 1373 the Council adopted a language that could be argued to constitute a mandate to use force. For some reasons the US did not rely on those Resolutions but opted for self-defense instead. In *Operation Enduring Freedom* the USA preferred not to act through the UN or even through NATO. Subsequently, the US National Security Strategy[7] famously made no mention to the UN as a means of addressing perceived new threats from global terrorists.[8] It was a choice made keeping both international law and international politics in mind,[9] and might also be seen as a strategic decision directed at loosening the legal constraints on the use of force to the ongoing advantage of the US.[10]

It follows from the wording of Article 51 that the exercise of the right is not subject to requirement of prior authorization by the UN Security Council but is an aspect of State sovereignty. The right to self-defense lapses after the SC takes the measures necessary to

---

5 *Ibid*., pp. 10, 11.

6 Michael BYERS, "Terrorism, the Use of Force and International Law After 11 September", 51 *International and Comparative Law Quarterly* (2002) 401 – 414, p. 401.

7 The White House, "The National Security Strategy of the United States of America" (2002), available at <www.whitehouse.gov/nsc/nss.pdf> (16.04.2009).

8 Christine GRAY, "A Crisis of Legitimacy for the UN Collective Security System?", 56 International and Comparative Law Quarterly (2007) 157 – 170, p. 157.

9 Michael BYERS, Terrorism, *supra nota* 6, p. 402.

10 *Ibid*., p. 410.

maintain international peace and security. Thus in a strict sense there is no legal requirement to obtain SC authorization before resorting to force.

States are nevertheless under a duty to report measures taken in the exercise of the right of self-defense to the SC.[11] Failure to report will weaken any claim to be acting in self-defense. The Court held in the *Nicaragua* case that the absence of a report may be one of the factors indicating whether the State in question was itself convinced that it was acting in self-defense.[12] The US complied with this obligation by sending a letter to the President of the SC on October 7, 2001 stating that: "…the US, together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defense following the armed attacks that were carried out against the US on September 11, 2001…"[13]

Therefore and also owing to the limited scope of this essay I will not address the concept of collective security or any of the other options here. The United States and its allies consistently based their justification for military action in Afghanistan on the right of self-defense and not on any collective security mandate from the SC.[14]

Self-defense – the concept

The right of self-defense is an area of international law that is particularly contentious and difficult to analyze.[15] Following September 11, States have found themselves faced with the problem of finding a balance between the need to adequately secure themselves against this kind of threats and the imperative to ensure that any action taken in combating terrorist activities conforms with the principles of international law.

The right is not created by the Charter but is rather a customary law right.[16] Conditions for its exercise though are mostly to be found in the provisions of Article 51 of the Charter, which states in relevant part: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

It follows that the exercise of the right is not subject to requirement of prior authorization by the UN Security Council but is an aspect of State sovereignty. The right to self-defense lapses after the SC takes measures necessary to maintain international peace and security.

As for its customary law origin, the famous Caroline incident of 1837 has been repeatedly cited as representing the position of customary international law with regard to the regulation of forcible action taken in self-defense.[17]

In 1837, the United Kingdom was facing a rebellion in Canada, which at that time was still under British control. The British forces attacked and sank a privately-owned US steamer, the Caroline, docked in US territory. A number of the rebel forces acting in support of the Canadian rebellion were stationed on Navy Island, in British territory. They were supplied in munitions and personnel by the Caroline.[18] The often sited "Webster formula" was born from

---

[11] Christine GRAY, *International Law*, *supra nota* 1, p. 100.
[12] *Nicaragua* case, ICJ Reports (1986) 14, para 200.
[13] Christopher GREENWOOD, International Law, *supra nota* 4, p. 21; Christine Gray, The Use of Force, *supra nota* 3, p. 602.
[14] Christopher GREENWOOD, International Law, *supra nota* 4, p. 21.
[15] Michael BYERS, Terrorism, *supra nota* 6, p. 405.
[16] *Ibid*., p. 401; Christine GRAY, *supra nota* 1, p. 160; *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States), ICJ Reports (1986) 14.
[17] James A. GREEN, "Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense", 14 *Cardozo Journal of International and Comparative Law* (2006) 429 – 480, p. 429.
[18] *Ibid*., p. 432.

a sentence in the correspondence exchanged between the UK and the US in connection with this dispute:

> "It will be for that Government to show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation."

In the opinion of many authors it this is still applicable as first formulated.[19] In view of the majority though, the criteria for Caroline are too strict in the contemporary context of self-defense. Two important aspects remain – necessity and proportionality. These will be analyzed below.

While those aspects are relatively clear and rooted in customary law, the question here is whether: (1) it is permitted to use military action to avert a threat that has not yet materialized in the form of actual violence and (2) does such a threat have to emanate from a State?[20] The latter one is especially important in context of the current essay, since it determines whether it is lawful to exercise self-defense against terrorist attacks.

Self-defense against threatened attacks

Is anticipatory self-defense accepted or can self-defense only be lawful when exercised against an attack already taking place? It seems from the wording of Article 51 that the right to self-defense literally begins when "an armed attack occurs". Although since the famous Caroline incident in 1837 States have consistently maintained that the right to self-defense also applies when an armed attack is imminent.[21] Secretary of State Daniel Webster recognized that the right of self-defense did not depend on the UK having already been the subject of an attack but accepted that there was a right to anticipatory self-defense provided that the conditions for the abovementioned Webster formula are met.

Academic opinion is divided as to the existence of such self-defense. For example Judge Higgins stated that in a nuclear age common sense cannot require one to interpret an ambiguous provision in a text in a way that requires a State passively to accept its fate before it can defend itself.[22] Greenwood further suggests that there are two new factors to be taken into account when assessing whether the attack is considered imminent. Those are the gravity of the threat and the method of delivery of the threat.[23] A State cannot afford effective protection to its nationals once a weapon of mass destruction has been launched whereas it can do so when it can stop another State's rebel groups at the boarder. Similarly the time scale has to be taken into account. In other words, the gravity of the threat and the means by which it would materialize in violence are relevant considerations and mean that the concept of imminence will vary from case to case.[24]

On the other hand the controversy over the legality of anticipatory or pre-emptive self-defense has been so strong that no provision on self-defense could be included in the UN General Assembly resolutions such as the *Definition of Aggression* and the *Declaration on Friendly Relations*. The ICJ in the *Nicaragua* case deliberately left the matter unresolved.[25] Some have argued though that the commonsense view would not oblige States passively to

---

[19] *Ibid*., pp. 437, 438; Michael Byers, Terrorism, *supra nota* 6, p. 406; Chatham House, International Law Programme, „Principles of International Law on the Use of Force by States in Self-Defense" (2005), available at <www.chathamhouse.org.uk/publications/papers/view/-/id/308/> (16.04.2009).

[20] Christopher GREENWOOD, International Law, *supra nota* 4, p. 11.

[21] James A. GREEN, Docking the Caroline, *supra nota* 17, p. 471.

[22] Rosalyn HIGGINS, *Problems and Process: International Law and How We Use it* (Oxford University Press, 1994), p. 242.

[23] Christopher GREENWOOD, International Law, *supra nota* 4, pp. 36, 37.

[24] *Ibid*.

[25] Christine GRAY, The Use of Force, *supra nota* 3, p. 601.

accept their fate before they can defend themselves.[26] Be that as it may, our situation is a bit more complicated.

Namely when the US began *Operation Enduring Freedom* in Afghanistan, it claimed to be acting in self-defense, but it subsequently went on to say that it wanted to overthrow the Taliban regime and install a new government.[27] What is more, even the first actions against Afghanistan begun weeks after the attacks on US had taken place. As such the US actions go against the very notion of self-defense. Self-defense can only be taken against an immediate attack, not after the attack is over and done with. Stretching the concept of armed attack would perhaps allow for the first actions taken by the US to be seen as self-defense, but the longer the operation continues, the further it is detached from its initial basis in self-defense.[28]

Self-defense against acts of terrorism – was the action by the US a response to an armed attack within the meaning of Article 51?

Today the question arises as to whether the right of self-defense extends to military responses to terrorist acts, particularly since most such responses will violate the territorial integrity of a State that is not itself directly responsible.[29] In other words, does the concept of "armed attack" in Article 51 include terrorist attacks? Article 51 means that the right of self-defense arises only if an armed attack occurs. This right is an exception to the prohibition of the use of force in article 2(4) and therefore should be narrowly construed. The limits imposed on self-defense in Article 51 would be meaningless if a wider customary law right to self-defense survives unfettered by these restrictions.[30]

Nevertheless the ICJ in its judgment in the *Nicaragua* case in 1986 considered that covert military action by a state could be classified as an armed attack if it was of sufficient gravity.

"Self-defense could include responses to the sending by or behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed forces against another State of such a gravity as to amount to an actual armed attack conducted by regular armed forces, or its substantial involvement therein".[31]

In other words, the Court held that an armed attack exists only when the link between the State and the non-State actor is very close. This position is consistent with the law of State responsibility insofar as it concerns the attribution of the acts of non-State actors to a State.[32] It is generally accepted that because of the wide support from the State of Afghanistan to the rebel movements, their acts could be imputed to Afghanistan.

Nevertheless it is important to note that self-defense does not have such narrow conditions anymore – a State should be able to protect itself even if the attack does not emanate from another State at all. This was already confirmed in the Caroline incident, where the application of the Webster formula was not dependent of whether the acts emanated from States or non-State groups. Similarly the Security Council Resolutions 1368 and 1373 (2001) make it clear that terrorist attacks indeed constitute armed attacks for the purposes of Article

---

[26] James A. GREEN, Docking the Caroline, *supra nota* 17, p. 471.
[27] Christine GRAY, *International Law, supra nota* 1, p. 90.
[28] *Ibid*., p. 169.
[29] Michael BYERS, Terrorism, *supra nota* 6, p. 406.
[30] Christine GRAY, *International Law, supra nota* 1, p. 98.
[31] Military *and Paramilitary Activities in and against Nicaragua, supra nota* 16.
[32] Michael BYERS, Terrorism, *supra nota* 6, p. 407; International Law Commission, „ILC Draft Articles on State
Responsibility"(2001), available at:
<untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> (16.04.2009).

51.[33] Thus even if the acts of Al-Qaida would not be imputed to Afghanistan, the US could still have been exercising self-defense lawfully.

Today states do not challenge the view that actions by irregulars can constitute armed attacks; the controversy centers on the degree of state involvement that is necessary to make the actions attributable to the state and to justify actions in self-defense in particular cases. If there is no state involvement in the actions of the irregular forces there can be no self-defense against that state, but only lesser action not going beyond the territory of the victim state.[34]

Thus the troubling question here is whether the law of self-defense would also authorize the overthrow of the Taliban. In response to the attacks by individuals of different nationalities (none of Afghan nationality!) the US adopted the view that the *de facto* government of Afghanistan was complicit and used military force in order to remove the government.[35] The US has stated that anyone who is not with them in the battle is against them and that all of the acts of the terrorists can be imputed to the government that harbors them. That has not been the doctrine in international law regarding the use of force. It is a doctrine of state responsibility that tells us Taliban is liable for what it has actively done, in permitting and facilitating the Al-Qaida presence in the territory. But the law of self-defense is about stop-gap measures rather than vindication of international rights, and does not seem to license the treating of Taliban as though it had itself engaged in armed attack.[36] Thus attacking the State of Afghanistan for the actions of Taliban is taking it all too far.

The requirements of necessity and proportionality

It is undeniable that a response taken in self-defense today must be both necessary and proportional for it to be legally permissible. The ICJ itself has stated that it is even a rule of customary law.[37]

Brad R. Roth has but it nicely: "One has to understand the requirements of necessity and proportionality in terms of the "last clear chance" and the "least drastic means". By "last clear chance" it is meant that it has to be clear that a State cannot afford to wait to be hit. The State must already have determined, by virtue of having directly suffered harm from attackers, that it is indeed under threat – not a speculative one but a real one – and that it is not possible to prevent the attack through other means – diplomatic and through the Security Council – but rather that the last clear chance to prevent massive harm is to take proportionate forcible action."[38]

We have thus established that commentators agree on few basic uncontroversial principles: necessity and proportionality mean that self-defense must not be retaliatory or punitive; the aim should be to halt and repel an attack.[39] It is not sufficient that force is used after an armed attack, it must be necessary to repel that attack. Use of force in response to an armed attack that is over and done with does not meet that requirement and looks more like a reprisal.[40]

---

[33] Christopher GREENWOOD, International Law, *supra nota* 4, p. 17; SC Res. 1368, UN Doc. SC/7143, available at: <daccessdds.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement> (16.04.2009); SC Res. 1373, UN Doc SC/7158, available at: <daccessdds.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement> (16.04.2009).

[34] Christine GRAY, *International Law*, *supra nota* 1, p. 109.

[35] Brad R. ROTH, "Terrorism and the Inherent Right to Self-Defense", 10 *Michigan State University – DCL Journal of International Law* (2001) 542 – 551, p. 549.

[36] *Ibid*.

[37] James A. GREEN, Docking the Caroline, *supra nota* 17, p. 471; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports (1996) 226.

[38] Brad R. ROTH, Terrorism, *supra nota* 35, p. 548.

[39] Christine GRAY, *International Law, supra nota* 1, p. 121.

[40] Christopher GREENWOOD, International Law, *supra nota* 4, p. 21.

Both of the concepts are highly context specific. A State can use force in self-defense only if there is no other option open to it to defend itself, yet this need not be defending itself from total destruction.[41] The US made a number of demands of the Taliban regime prior to the use of force, offering ultimatums if these were not met. The Taliban rejected these demands.[42] On the other hand the proportionality of a response to an attack is to be measured not in regard to the specific attack suffered by a State but in regard to what is necessary to remove the overall treat.[43] By giving refuge to Bin Laden and Al-Qaeda and refusing to hand him over, the Taliban were alleged to have directly facilitated and endorsed his acts. Moreover, their continued presence as the *de facto* government of Afghanistan was viewed as a threat of even more terrorism.[44] Therefore the intervention was seen as a proportionate measure by some.

On the other hand it is difficult to identify an appropriate end to the action in a campaign to prevent future terrorist attacks. The longer it continues and the more destruction it involves the more difficult it is to argue that it is proportionate. If the use of force proves ineffective in deterring terrorist attacks, it is also hard to prove that it is necessary.[45] Furthermore it has been claimed that for self-defense to be necessary it has to be an act of last resort. There was no indication that the US felt itself required to resolve the matter without use of force, or that it saw the ultimatums presented to Taliban as anything other than politically or strategically relevant. The US actually had a number of possible non-forcible options open to it with regard to Afghanistan, which it failed to explore, meaning that *Operation Enduring Freedom* was unnecessary.[46] Proportionality it turn, entails at least some equivalence of scale, meaning that attacks that are wholly disproportionate in terms of scale are unlikely to be legally proportional.[47] A complete change of regime and an eight-year long conflict cannot be held proportional to the initial attacks.

Conclusion

The US action in Afghanistan could indeed be qualified as a lawful act of self-defense. It is established that self-defense is lawful against an imminent threat that has not amounted to actual armed attack yet. In the reality of modern warfare no State can be obliged to wait until it is actually attacked. It might simply be too late to protect the vital interest of its population by then. Similarly the right of self-defense cannot be limited to armed attacks by States. The real danger today emanates from non-State actors, and this development has to be taken into account.

The events of September 11 undoubtedly changed international law forever. Decisions were made in a hasty manner and many of those are irreversible. Take the SC Resolutions for example which have been seen as providing the US with an argument whenever it decides that force is necessary to prevent the commission of terrorist acts. Many relevant standards of law were loosened greatly is those extreme circumstances. The heightened concern about terrorism world-wide made it easier to include military responses against States which actively support or willingly harbor terrorist groups who have already attacked the responding State.

But it can just as well be argued that US action in Afghanistan was not a lawful exercise of self-defense since it did not meet most of the criteria proposed. First of all

---

[41] James A. GREEN, Docking the Caroline, *supra nota* 17, p. 452.
[42] *Ibid*., pp. 454, 455.
[43] *Ibid*., p. 460; *Legality of the Threat or Use of Nuclear Weapons, supra nota* 37, para. 42.
[44] Michael BYERS, Terrorism, *supra nota* 6, p. 408.
[45] Christine GRAY, The Use of Force, *supra nota* 3, p. 603.
[46] James A. GREEN, Docking the Caroline, *supra nota* 17, p. 455.
[47] *Ibid*., p. 463.

anticipatory self-defense is generally not accepted by the community of States. Secondly the nexus between the Al-Qaida and Afghanistan was not sufficient to be attacking the whole nation. And finally the actions taken were clearly not necessary or proportionate.

Since the *Nicaragua* case, states have taken care to invoke Article 51 to justify their use of force. They do so even when this seems entirely implausible and involves stretching Article 51 beyond all measure. States devote more time to expounding their own version of the facts and their political justifications.[48] Professor Cassese finishes this dilemma with a nice line of argumentation:

"Since 9/11 though, some states have seen the SC position as amounting to instant customary international law and an authoritative re-interpretation of the Charter. This view cannot be shared. A large convergence in the international community towards a new notion of self-defense, which was motivated by the emotional reaction to the horrific terrorist action of 11 September, may not amount to the consistent practice and *opinio juris* required for a customary change. A customary modification of that regulation can only be held to occur if both practice and the legal conviction of States are express, clear, and consistent, and cover more than one instance."[49]

This case has thus proven to be very interesting and revolutionary indeed. How it will affect the future of international law and international relations remains to be seen. Certainly it did not make the role of the US smaller in shaping the World Order. I could not find definite answers to my questions because it seems there are none. Almost all of the arguments make sense and at the end of the day the stronger lawyer (US lawyer?) wins.

References

Michael BYERS, "Terrorism, the Use of Force and International Law After 11 September", 51 *International and Comparative Law Quarterly* (2002).

Ian BROWNLIE, *Principles of Public International Law* (6th edn, Oxford University Press, 2003), p. 714.

Antonio CASSESE, *International Law* (2nd edn, Oxford University Press 2005), p. 475.

Christine GRAY, "The Use of Force and the International Legal Order" — Malcolm D. Evans (ed.), *International Law* (2nd edn, Oxford University Press 2006), p. 605; Article 5 of the North Atlantic Treaty states: *The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all*.

Christine GRAY, "A Crisis of Legitimacy for the UN Collective Security System?", 56 International and Comparative Law Quarterly (2007) 157 – 170, p. 157.

Christopher GREENWOOD, "International Law and the Pre-Emptive Use of Force: Afghanistan, Al-Qaida, and Iraq", 4 *San Diego International Law Journal* (2003)

Rosalyn HIGGINS, *Problems and Process: International Law and How We Use it* (Oxford University Press, 1994), p. 242.

Brad R. ROTH, "Terrorism and the Inherent Right to Self-Defense", 10 *Michigan State University – DCL Journal of International Law* (2001).

The White House, "The National Security Strategy of the United States of America" (2002), available at <www.whitehouse.gov/nsc/nss.pdf> (16.04.2009).

James A. Green, "Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense", 14 *Cardozo Journal of International and Comparative Law* (2006).

[48] Christine GRAY, *International Law, supra nota* 1, p. 99.

[49] Antonio CASSESE, *International Law* (2nd edn, Oxford University Press 2005), p. 475.

Chatham House, International Law Programme, „Principles of International Law on the Use of Force by States in Self-Defense“ (2005), available at <www.chathamhouse.org.uk/publications/papers/view/-/id/308/> (16.04.2009).
Responsibility“(2001), available at: <untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> (16.04.2009).

Kľúčové slová: použitie sily, oprávnený čin sebaobrany, agresia, Afganistan, USA, Taliban

Resumé

Článok sa zaoberá otázkou či konanie USA v Afganistane bolo oprávneným činnom sebaobrany alebo útočným odvetným činnom. Analyzuje používanie sily, koncept terorizmu a sebaobrany v rámci medzinárodného práva. Hoci medzinárodné právo vo všeobecnosti zakazuje používanie sily, povoľuje sebaobranu mierenú proti bezprostrednému útoku. Príkladom takejto sebaobrany je operácia “Enduring Freedom”. Niektorí poukazujú, že sa nejednalo o čin sebaobrany, keďže sa odohral po útokoch al-Káidy a výsledkom takéhoto konania bola vojna v Afganistane, ktorá trvala jednu dekádu. Napriek tomu, že článok rozoberá argumenty obidvoch postojov, nie je možné dať konečnú odpoveď .

Annika Talmar
PhD student at the University of Tartu
Faculty of Law and a researcher
at the Estonian Public Service Academy
e-mail: annika.talmar@sisekaitse.ee

Recenzent: prof. PhDr. Silvia Miháliková, PhD.