



Assumptions and known facts

- Bin Laden was a Saudi national.
- He was suspected by the US government of being largely responsible for a number of violent attacks on the USA and its allies, including the 9/11 attacks.
- Those suspicions were reasonable.
- Bin Laden was killed on 2 May 2011 as the result of a US military operation conducted within Pakistan.
- Pakistan did not give prior approval to the raid.
- According to the official version of the raid, bin Laden himself offered no armed resistance, nor did he make clear a desire to surrender.
- The operation also led to:
 - the deaths of bin Laden's son (aged 23), as well as an al-Qaeda operative, the operative's brother and the brother's wife;
 - numerous injuries to inhabitants in the compound;
 - damage to privately owned property.

Uncertainties

- Was bin Laden in fact responsible for 9/11 or other attacks?
- Was the true intent to kill or capture bin Laden?
- Did Pakistan offer covert consent to the raid?
- What really happened within the compound?
In particular:
 - did those killed or injured offer resistance?
 - did the US personnel follow orders?

Relevant areas of international law

- Re the launching of the raid:
 - Rules relating to state sovereignty and jurisdiction
 - There was a prima facie invasion of Pakistani state sovereignty
 - Rules relating to the use of force (ILOAC)
 - The raid involved the use of force
- Re the consequences of the raid:
 - The Geneva Conventions (IHL)
 - The raid inflicted deaths and injuries

State sovereignty and jurisdiction

- The USA was entitled to bring the planning and execution of 9/11 and other attacks within the cognisance of US law even if the acts in question (the planning, etc) took place outside US territory (ie it could exercise prescriptive jurisdiction).
- However, generally speaking states are not permitted to take measures designed to enforce that jurisdiction within the territory of another state without that other state's prior approval.

UN Charter, 1945

Art 2(4)

'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'

Art 51:

'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence 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.'

(...)

- These articles raise two key questions:
 1. Did the USA breach Art 2(4) when it launched the raid against bin Laden?
 2. If so, could the USA justify that breach on the basis of Art 51 (self defence)?

Key questions raised by Art 2(4)

Art 2(4)

‘All Members shall refrain in their **international relations** from the threat or use of **force** against the **territorial integrity or political independence** of any state, or in any **other manner inconsistent** with the Purposes of the United Nations.’

- Can the force used by the USA be said to have been against either:
 1. the territorial integrity or political independence of Pakistan?
 2. otherwise inconsistent with the Purposes of the United Nations?

UN Charter, Art 1

The Purposes of the United Nations are:

1. **To maintain international peace and security**, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. **To develop friendly relations among nations** based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Key questions raised by Art 51

Art 51:

‘Nothing in the present Charter shall impair the inherent **right of individual or collective self-defence** 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.

(...)

1. Did the US or an ally suffer an armed attack sufficient to engage the right to self defence?
2. If so, did the raid on bin Laden constitute a legitimate act of self defence?

UN Security Council Res 1368 (12 Sept 2001)

The Security Council,

Reaffirming the principles and purposes of the Charter of the United Nations,

Determined to combat by all means threats to international peace and security caused by terrorist acts,

Recognizing the inherent right of individual or collective self-defence in accordance with the Charter,

1. *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and *regards* such acts, like any act of international terrorism, as a threat to international peace and security ...

Did the launching of the raid constitute a legitimate act of self defence?

- Consider the following factors:
 - Necessity
 - NB the need to be forward looking
 - was the raid necessary to prevent further attacks?
 - The question is not whether the raid was necessary to punish bin Laden or bring him to justice.
 - Proportionality
 - Did the US do more than was necessary?
 - Immediacy
 - Did the US unreasonably delay in taking reasonable measures in self-defence?

Was the raid lawful given the consequences?

- Were those who were killed or injured lawful combatants?
 - If yes:
 - they constitute legitimate targets up until such point as they either:
 - manifest an intention to surrender, or
 - fall *hors de combat* (eg are incapacitated through injury)
 - once captured, they are entitled to treatment as prisoners of war
 - If no, they are civilians
 - Civilians are not legitimate targets, but forfeit that protection if they participate in conflict (other than in personal self defence against unlawful assault)

Geneva Convention 1949, Art 4(A)

Prisoners of war ... are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) ...

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates;
- (b) that of having a fixed distinctive sign recognizable at a distance;
- (c) that of carrying arms openly;
- (d) that of conducting their operations in accordance with the laws and customs of war.

Geneva Conventions 1949, Art 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces **who have laid down their arms** and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be **treated humanely**, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) **violence to life and person**, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (...)

Civilian Convention 1949, Art 146

[...]

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of **proper trial and defence**, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.