The current manifestation of international intervention in Afghanistan, the NATO-led International Security Assistance Force (ISAF), is being undertaken under the authority of the United Nations Security Council. Britain as a member of the UN and NATO has since February 2006 committed a significant number of troops to ISAF, and the British force has been engaged in heavy fighting with the Taliban. Though militarily extremely problematic, the international legal basis of the operation seems straightforward since the UN Charter recognises Security Council authority as one of the exceptions to the prohibition on the use of force, along with action taken in self-defence in response to an armed attack. However, Security Council authority tends to obscure the deeper justifications and arguments of politics, of law and of justice behind each State’s decision to contribute to such a dangerous operation. In tracing the history of the *jus ad bellum* and Britain’s attitude towards it, this essay seeks to give a more informed account of the arguments of law and justice behind the British military contribution to the current fight against the Taliban in Afghanistan.
II. The Just War

It will be shown that the war in Afghanistan is portrayed as a just war, not simply because it is lawful but because it is morally justified. Historically, European medieval monarchs invoked various justifications for going to war, from defence of the realm to a just war. As regards interventions outside Europe, mention ought to be made of the crusades of Richard I in the Holy Land in the twelfth century. Richard was so often fighting in the Middle East doing ‘God’s work’ that he spent less than one year out of his nine and a half year reign in England.2

The ‘Just War’ doctrine predated Richard the Lionheart, with an elaborate, but basically procedural doctrine being found in the Roman period. According to the Roman approach, a just war was commenced in accordance with the law by approval of the college of fetiales, ‘the view of the majority of writers being that the fetiales were not concerned with the intrinsic justice of the war but only with the correct observance of formalities’.3 In the fourth century St. Augustine incorporated the just war doctrine into Christianity, giving a number of just causes of war including avenging injuries, but moreover war was just if it were one which ‘God himself ordains’.4

Whilst Augustine in the fourth century, and much later, St. Thomas Aquinas in the thirteenth century wrote in terms of war being just only if the other party was at fault, and that the attacking sovereign intended the ‘advancement of good, or the avoidance of evil’,5 the principles appeared too broad to offer any precise rules as to permissible uses of force. Indeed, they seemed to advance the appalling religious wars that regularly occurred in the medieval period, culminating in the Thirty Years War that was ended by the Peace of Westphalia of 1648.

iii. Westphalian Order

The period following the Peace of Westphalia marked the emergence of modern nation States in Europe, each with ‘internal’ sovereignty over their own territories, and each being free ‘externally’ to deal with sovereign powers of other States.6 Thus international law moved away from being dominated by the

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5 Ibid, p. 6.