Rights and Wrongs: Adopting Legitimacy as the Tenth Principle of War

A Monograph

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First Term AY 00-01

Form SF298 Citation Data

Report Date ("DD MON YYYY")	Report Type	Dates Covered (from... to) ("DD MON YYYY")
14122000	N/A	

Title and Subtitle Rights and Wrongs: Adopting Legitimacy as the Tenth Principle of War	**Contract or Grant Number** **Program Element Number**
Authors	**Project Number** **Task Number** **Work Unit Number**
Performing Organization Name(s) and Address(es) School of Advanced Military Studies United States Army Command and General Staff College Fort Leavenworth, Kansas	**Performing Organization Number(s)**
Sponsoring/Monitoring Agency Name(s) and Address(es)	**Monitoring Agency Acronym** **Monitoring Agency Report Number(s)**
Distribution/Availability Statement Approved for public release, distribution unlimited	
Supplementary Notes	
Abstract	
Subject Terms	
Document Classification unclassified	**Classification of SF298** unclassified
Classification of Abstract unclassified	**Limitation of Abstract** unlimited
Number of Pages 63	

SCHOOL OF ADVANCED MILITARY STUDIES

MONOGRAPH APPROVAL

Major Kemp L. Chester

Title of Monograph: *Rights and Wrongs: Adopting Legitimacy as the Tenth Principle of War*

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Accepted this 14th Day of December 2000

ABSTRACT

A COMMON VISION FOR THE COMMON DEFENSE: TOWARD A MORE COMPREHENSIVE NATIONAL SECURITY STRATEGY by MAJ Kemp L. Chester, USA, 46 pages.

The current *National Security Strategy* is supposed to be the means by which the Nation expresses its fundamental national security goals, identifies national interests, and matches these interests with the necessary tools to implement the strategy on a daily basis around the world. However, the current national security strategy contains critical shortcomings. Its articulation of national objectives and interests is too broad to be truly meaningful. It prescribes a single strategy of Selective Engagement for the entire world, ignoring the possibility that that particular strategy may be appropriate for some regions but wholly counter-productive for others. In addition, by failing to link both means and ends in national security, this capstone document for American national security lacks one of the fundamental characteristics of a sound strategy.

This monograph asks whether it is possible for the United States to develop a single grand strategy that articulates and prioritizes national interests in specific regions of the world, adopts a specific strategy to best meet those interests, and prioritizes the various tools available -- diplomatic, economic, and military -- to bring that strategy to life. The monograph includes a logical series of steps that might make it possible to design such a grand strategy: identifying key American interests, determining the proper time frame for the strategy, identifying the different regions of the world for the development of an accompanying regional sub-strategy, and finally matching these with the appropriate tools to carry each strategy through. The utility of designing such a strategy is measured against three specific criteria: feasibility, necessity, and desirability.

The monograph concludes that creating a more comprehensive strategy is certainly feasible, very much necessary, and clearly desirable at this point in history. Thus, the author recommends that the architects of this new national security strategy set the course for the Nation's future now, by developing a grand strategy as comprehensive and sophisticated as the global environment in which it must succeed.

TABLE OF CONTENTS

Introduction..1

I. The Principles of War: Past, Present, and Future..2

The Origins of the U.S. Military's Principles of War
Continuity and Change in Applying the Principles of War

II. The Meaning and Importance of Legitimacy 6

What is "Legitimacy?"
Legitimacy and Waging War
A Working Definition of Legitimacy as a Principle of War

III. The Three Domains of Legitimacy in the Conduct of War 12

The Domain of the International Community
The Domain of the Alliance/Coalition
The Domain of Domestic Politics
The Commander in the Three Domains

IV. Legitimacy in Context: A Tale of Two Wars 23

The Effect of Legitimacy on Planning for Desert Storm
The Effect of Legitimacy on Planning for Allied Force
The Effect of Legitimacy on the Conduct of Desert Storm
The Effect of Legitimacy on the Conduct of Allied Force
The Effect of Legitimacy on the Termination of Desert Storm
The Effect of Legitimacy on the Termination of Allied Force

V. Some Alternative Views: Possible Arguments Against Adopting
Legitimacy as the Tenth Principle of War 44

Conclusion 46

End Notes 48

Bibliography...57

INTRODUCTION

The US Army currently acknowledges nine principles of war -- touchstones that have guided the planning and execution of Army operations since well before their formal adoption as doctrine in 1949.[1] Today those very same principles of war can be found as part of joint doctrine as well, in the basic manual for joint operations *Joint Publication 3-0*.[2]

The durability of the principles of war is a testament to their practicality. They are as relevant today as they were to planners and commanders of generations past -- broad enough to be applicable in every conceivable combat situation, but specific enough to be useful to commanders at every level.

But while the principles of war remain useful guides for the military's conduct once employed, the conditions under which the military may be called upon to fight and win the Nation's wars have changed somewhat in the past decade. Today there is an increased emphasis on fighting as part of a standing alliance or and *ad hoc* coalition.[3] There has been an increase in the prominence of supra-national organizations like the United Nations as well as a corresponding sensitivity toward adherence to international law and norms in the application of military force.[4] And the unrivaled power of the United States invariably invites worldwide scrutiny whenever it attempts to flex its military power.[5]

These changes will continue to have a profound effect on the planning and conduct of military operations. Specifically, the U.S. military will have to remain ever mindful of its legitimacy throughout the planning and execution of any armed conflict -- ensuring that the international community, alliance or coalition partners, and even the various influences within the domestic political system feel that when the U.S. military is sent forth to do battle, its ends are noble and its means are just.

Legitimacy is a prime example of the nexus between politics and war. Given the enormous effect it will continue to have on the conduct of military operations, should the U.S. military acknowledge its importance by elevating to a status equal to that of mass or objective? Has the time come for the U.S. military adopt legitimacy as its tenth principle of war?

CHAPTER ONE
THE PRINCIPLES OF WAR: PAST, PRESENT, AND FUTURE

The Origins of the U.S. Military's Principles of War

The current nine principles of war -- so much a part of U.S. military planning -- are largely apocryphal. Some draw a direct line from the current principles of war back through history to the nineteenth century writings of Jomini, although as John Alger points out in his book, *The Quest for Victory*, "the claim that [Jomini] provided the first list of principles of war cannot be supported."[6] Others claim that Colonel J.F.C. Fuller deserves the credit for first assigning "principles" to the conduct of warfare in a 1902 supplemental article of the *Encyclopedia Britannica*.[7] And no less a luminary than General Ferdinand Foch credits Napoleon for being among the first to exposit a finite set of principles that govern the conduct of war. In his book, *The Principles of War*, General Foch offers this excerpt of the writings of Napoleon; "The principles of war are those which have guided the great leaders whose achievements have been handed down to us by history."[8]

Regardless of their precise origin, there are a few aspects of the principles of war of which we can be reasonably certain. First, the current principles of war have not sprung from the mind of a single author. Rather, they are a distillation of the work of military theoreticians and practitioners since antiquity. Air Marshal David Evans credits Sun Tzu as being the first to commit principles of war to writing.[9] But the nine principles of war that are found in Joint and Army doctrine today reflect the influence of the work of many others as well: Jomini, Clausewitz, J.F.C. Fuller, G.F.R. Henderson, and Maurice de Saxe, to name but a few. Alger lists sixty-eight different compilations of principles of war, beginning with those of Sun Tzu in 500 BC and ending with the U.S. Army's principles of war from the 1978 version of *FM 100-1*.[10]

Second, these principles are clearly grounded in some basic and enduring truths about conflict and battle. Although the many contributors to our current principles of war observed -- and often participated in -- warfare at different times in history, in different places and among vastly different

armies, there is a remarkable similarity among them regarding the fundamental nature of armed conflict and the imperatives for successfully waging war. Evans writes:

> The surprising factor [about the principles of war] is the sheer consistency of conclusions reached by the multitude of military leaders, scholars, and analysts reporting their observations of war over a span of more than 2000 years … The emphasis may have been different according to the time and other circumstances and the judgements of a particular individual, but essentially the considerations have been much the same.[11]

Third, it is noteworthy that every nation that has fielded a major military force in the twentieth century has adopted a finite set of principles of war for the planning and conduct of its military operations. Along with the United States; the United Kingdom, the Soviet Union, China, France, and Israel all have -- or have had -- principles of war as part of their doctrine.[12] And once again, although there are subtle differences among them, they all display a remarkable similarity to one another.

Finally, far from being considered musty relics of ages past, U.S. planners and commanders of the late twentieth -- and early twenty-first -- century overwhelmingly view the principles of war as important and relevant considerations in the employment and successful use of military force in combat. The Army refers to the principles of war as "the enduring bedrock of Army doctrine."[13] The drafters of *Joint Publication 3-0* elevated the importance of the principles one step further, referring to them as "the bedrock of U.S. *military* doctrine. [emphasis added]"[14] And as a testament to their popularity among the experienced military minds of the U.S. Army, when the principles of war were omitted as a distinct list from the 1976 version of *FM 100-5*, an outcry ensued. As Alger writes:

> The failure was not in the omission of the list from the manual, but in failing to understand the strength and mystique that has become associated with the catalog of nine, or then, or however many a given army has come to accept.[15]

In an effort to mollify the many critics of the 1976 version of *100-5* who wanted an explicit list of the principles as part of Army doctrine, the nine principles of war were published two years later in *FM 100-1 The Army*.[16] Thus to the satisfaction of commanders and planners throughout the Army, "… the 'principles' returned to U.S. doctrine in 1978 after just two years in limbo."[17] And there they remain firmly embedded today.

Continuity and Change in Applying the Principles of War

Just what is it that these principles of war -- so central to U.S. doctrine and military thought -- are supposed to do for commanders and planners?

The principles of war really serve two general purposes: to provide guidance for the planning and conduct of armed conflict, and to offer insight and analysis on the fundamental nature of warfare itself.

United States Army doctrine appears to emphasize the first of these two purposes for the current nine principles of war, to "provide general guidance for the conduct of war at the strategic, operational, and tactical levels."[18] Joint doctrine assigns them a similar utilitarian purpose as well.[19]

For his part, Alger offers a bit more sophisticated point of view and tends to emphasize the second of these two purposes. Although for him the principles of war still hold the same practical value that U.S. doctrine places on them -- to be used as "guides for the effective conduct of war"[20] -- he goes a step beyond and accentuates their analytical value as well. Alger sees the principles of war as useful tools "to facilitate the study of military history."[21] But more importantly, he sees the principles of war a practical way to help simplify and explain what is perhaps the most complex and dynamic of all human endeavors -- warfare. He writes; "[The principles of war] provide a simple -- perhaps too simple -- expression of many of the intricacies and complexities of war."[22]

Given the specific ways in which U.S. military planners and commanders use the principles of war perhaps it is appropriate to avoid making more of them than they are, and also examine what the principles of war are *not.*

First, they are not the elements of a scientific law or formula. Warfare is not, nor should it be, governed by a set of algebraic formulae into which commanders and planners can replace variables with data and arrive at a solution to a complex battlefield problem. Carl von Clausewitz admonishes commanders and planners that "so-called mathematical, factors never find a firm basis in military calculations."[23] Rather, the principles of war are, as Alger writes, a short listing of "apothegms that purport to represent ultimate truths concerning the conduct of war."[24]

Additionally, the nine principles of war do not constitute a checklist whose elements commanders and planners must tick off, one by one, in planning and conducting the fight. The strength of the principles of war lies in their comprehensiveness and not in their rigidity. Often, one particular principle must be traded off in favor of another more important to the battle or campaign -- perhaps there are times when security must be sacrificed for speed, or simplicity set aside in favor of maneuver. The aim is not to have every principle of war met in a plan or a battle, but rather that deliberate decisions be made by a commander or a planner -- fully cognizant of these principles -- who assigns relative importance to each of the principles in a given situation. Thus, rather than being factors that must be addressed, they are aspects of battle that simply must not be ignored.

And finally, the principles of war are not immutable. The fact that the U.S. Army's principles of war have remained unchanged for over a half-century in no way means they should remain unchanged in perpetuity. Their relevance to contemporary military thought must continually be assessed and these hidebound principles must be subjected to scrutiny and challenge to maintain their central position in U.S. military doctrine. Thus, although they reflect fundamental truths about the nature of warfare, they nonetheless must evolve to meet the changing conditions of the contemporary battlefield as well as alterations in the environment in which the U.S. military will be called forward to wage those battles. And it is in this light that the concept of legitimacy must be introduced and addressed. The need for legitimacy has become a feature of the contemporary environment in which the U.S. must wage war, and therefore is a crucial consideration for the planners and commanders of battles and campaigns yet to come.

Calling attention to the central importance of legitimacy is one matter. Developing a specific definition of the term is quite another. Precision in language -- so crucial to the profession of arms -- demands that any discussion of considering legitimacy as a principle of war be predicated upon an accurate and constructive definition of the term.

CHAPTER TWO
THE MEANING AND IMPORTANCE OF LEGITIMACY

What is "Legitimacy?"

Legitimacy, as a concept and a principle, is difficult to define with any great degree of precision. It is a concept clearly rooted in international law but made more confounding because it connotes adherence to international norms and deeply-held notions of justice and rectitude which may or may not be universal in nature. Additionally, legitimacy is a highly subjective term -- more in the eye of the beholder than a principle measured against a dispassionate and objective standard. And finally, legitimacy is a concept that is often better defined and acknowledged by its absence rather than its presence. As Roger Scruton writes in *A Dictionary of Political Thought*, "[it] seems that illegitimacy, like injustice, is more easily recognized than its opposite…"[25]

Many definitions of the term focus on legitimacy in a strictly legal sense -- legitimacy as a function of adherence to the law. *The Guide to American Law* defines legitimacy as "[that] which is lawful, legal, recognized by law, or in accordance with the law such as … legitimate authority; real, valid, or genuine."[26] As applied to political behavior, *The Oxford Companion to the Politics of the World* simply refers to legitimacy as "designated rule according to law in contrast to arbitrary rule or tyranny."[27]

However, legitimacy in the sense that one state -- or group of states -- has the right to wage war against others surpasses the narrow confines of legal legitimacy as must address legitimacy in a more contextual sense as well. This accounts for legitimacy's subjective nature. David Robertson writes in *A Dictionary of Modern Politics* "[legitimacy] is both a normative and empirical concept in political science."[28] From a normative perspective, determining legitimacy "is to ask whether the state, or government, is entitled to be obeyed."[29] Empirically, legitimacy revolves around one key consideration; "how any given political system comes to be seen as 'legitimate' by a majority of its citizens."[30] Given these two aspects of legitimacy, one can see the enormous difficulty in establishing and maintaining the legitimacy of using of military force at the international level where the mechanism to impel compliance with international laws and norms rests with the explicit consent of the nations themselves, and not with a

supranational arbiter applying an objective standard of behavior. In his influential book *Just and Unjust Wars*, Michael Walzer describes the contemporary international system as a "radically imperfect structure." Walzer writes:

> [International society] might be likened to a defective building, founded on rights; its superstructure raised like that of the state itself … the whole thing shaky and unstable because it lacks the rivets of authority.[31]

Thus, a broader definition of legitimacy is necessary to account for this normative aspect along with its legal connotation. *The Oxford English Dictionary* implies in its definition that the legitimacy of a particular action springs from its adherence to generally accepted norms of behavior as well as strict legality; "[conformity] to rule or principle; lawfulness."[32] And the *Dictionary of Conflict Resolution* goes even further, defining that which is legitimate "[to] be in conformity with the law, recognized principles, or accepted norms as applicable to the context."[33]

Finally, it should be noted that while legitimacy is not currently a principle of war, it is considered one of the six principles of Military Operations Other Than War (MOOTW) as defined by Joint doctrine. *Joint Publication 3-07* states that in MOOTW, "legitimacy is frequently a decisive element."[34] It specifically defines legitimacy as follows:

> In MOOTW, legitimacy is a condition based upon the perception by a specific audience of the legality, morality, or rightness of a set of actions. This audience may be the US public, foreign nations, the populations in the area of responsibility/joint operations area (AOR/JOA), or the participating forces. If an operation is perceived as legitimate, there is a strong impulse to support the action.[35]

Thus Joint doctrine embraces the essential elements of legitimacy found in the broader definitions above; adherence to not only the law but also to generally held principles of right and wrong that shape the perception of the propriety of the application of military force. And those elements considered decisive to the success of an operation other than war are equally decisive when the US chooses to engage in combat operations as well.

Legitimacy and Waging War

One of the more useful definitions for the purpose of examining legitimacy in the use of force is offered in *The Dictionary of World Politics*, which acknowledges that legitimacy "is more often a political matter than a strictly legal one."[36] The authors write:

> The term is also… used in a more general sense in referring to the framework of the international system … implying that all the major powers have accepted established conventions for dealing with one anther and agree on the parameters of foreign policy aims and methods.[37]

In this definition, the authors draw out one of the fundamental problems with establishing and maintaining legitimacy when the United States decides to wage war. By referring to the 'major powers,' they implicitly acknowledge the existence of a nucleus of nations -- of which the United States is chief among equals -- who harbor certain agreed-upon norms of behavior.

However, when the members of that nucleus seek to take military action against those outside of its orbit who likely do not share its beliefs and have not agreed to such norms, the inevitable question arises as to what gives one nation and its allies the right to enforce its norms in a near-universal fashion upon those who may not have acceded to them.

This is where the legitimacy takes its place as a key consideration for U.S. military planners and commanders. Although the fundamental nature of warfare -- adequately addressed by the current nine principles of war -- has changed little over the years, the time has come to give equal consideration to the character of the environment in which America decides to apply the force of arms and how that environment influences the conduct of war. Roger Scruton writes "the crucial concepts in understanding legitimacy are those of power and right."[38] Establishing and maintaining legitimacy during war thus requires the United States to ensure that it clearly has the latter and therefore is duty-bound to exercise the former. In doing so, the United States and its allies will continually be working against passionate arguments from opponents -- both domestic and international -- that the exact opposite is true; that the state or states with the most power define for themselves what is right and are using their unmitigated

power to enforce their beliefs upon others. As the renown political writer and activist Noam Chomsky writes in his book *The New Military Humanism: Lessons From Kosovo*:

> For those who do not adopt the standards of Saddam Hussein, there is a heavy burden of proof to meet in undertaking the threat or use of force. Perhaps that burden can be met, but that has to be shown, not merely proclaimed.[39]

A Working Definition of Legitimacy as a Principle of War

In considering the introduction of legitimacy as a principle of war, it is important to remember that the strength and endurance of the current nine principles is based, in part, upon their simplicity and their applicability to a range of situations in which commanders and planners find themselves. Therefore, a working definition of legitimacy must be equally practical. Commanders and planners would have little use for a principle that is so nuanced and complex as to be useless in its application. Thus it is necessary to establish a simple working definition of legitimacy as it applies to the conduct of war, and a favorite military mental construct -- **purpose**, **method**, and **end state** -- can serve this objective well.

In order to establish and maintain the legitimacy of a particular military action, the United States must address three essential elements. First, the **purpose** of the military action must be considered right, either anchored to an international legal principle such as the right of self-defense or perhaps in response to a mandate by a legitimate international body seeking to redress a clear violation of the norms of international behavior. This element accounts for the first of what Walzer describes as the dual considerations in assessing the ultimate rightness of embarking upon the conduct of war:

> War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt. The first kind of judgement is adjectival in character: we say that a particular war is just or unjust. The second is adverbial: we say that the war is being fought justly or unjustly. Medieval writers made the difference a matter of prepositions, distinguishing *jus ad bellum*, the justice of war, from *jus in bello*, justice in war [40]

Commanders and planners at all levels must have a detailed understanding of the underlying purpose of the war and a deep appreciation of the reasons their nation has chosen to use its military force.

Second, the **method** used in deciding upon, and carrying out, the military action must be above reproach. The conduct of the war itself has an enormous amount of influence over whether the use of

force continues to be seen as a legitimate means to end a particular conflict. This accounts for the second of Walzer's considerations, "whether the war is being fought justly or unjustly."[41] Adherence to the laws of war, the reduction of collateral damage, and the mitigation of suffering in the civilian population are crucial elements that commanders at all levels must keep foremost in their minds in order to help sustain the legitimacy of the military operation.

And third, the war must be focused upon a clearly defined **end state** that will serve the common good rather than the well being and interests of the United States alone. This is particularly crucial in dealing with alliances and *ad hoc* coalitions. A war that is seen as a tool to do little more than further strengthen the power or prestige of the United States will lack legitimacy from its inception. As Michael Ignatieff writes in the *New York Review of Books:*

> America learned from Vietnam that unilateral use of force eventually forfeits international legitimacy and domestic support. Desert Storm demonstrated the political necessity of coalition warfare. Coalition partners do not add much firepower, but they provide essential political legitimacy.[42]

Legitimacy flows from a general sense that the results of the conflict will bring about a change that will be beneficial to the international system as a whole, and that the spoils of war will be shared as equally as its burdens. Commanders and planners, particularly at the operational level where strategic aims are translated into tactical actions, must remain mindful of this aspect of legitimacy in deciding upon the missions and tasks of alliance and coalition partners.

Given the above considerations, legitimacy as a principle of war can be defined as **the perception that the purpose of the war is right, the method of prosecuting the war is just, and the end state of the conflict will bring a lasting benefit to the international community as a whole.**

Of course it is unlikely that all of the conditions that contribute to a perception of legitimacy will be met to everyone's satisfaction before the United States takes up arms against another nation. That is neither likely nor particularly necessary. But once the decision to wage war is made, the responsibility to prosecute the war is placed in the hands of the U.S. military that must play the hand it is dealt. This is not to say that commanders and planners must be passive victims to the issue of legitimacy once they are

charged with meeting national objectives through the force of arms. The perception of legitimacy should not be thought of like the weather, beyond the control of any human influence and a condition of the environment whose benefits must be maximized and detrimental effects simply mitigated. In addition to being highly subjective the perception of legitimacy is subject to change over time, and commanders and planners at all levels must have a sophisticated understanding of the enormous influence they exert over whether the war will be seen as legitimate as it progresses.

Of course much like the other nine principles of war, military leaders must make informed and deliberate choices about the relative importance of maintaining the legitimacy of the military operation as it relates to the other imperatives of conducting the war. However, whether a war is generally viewed as legitimate from its outset or, by contrast, begins under a cloud of dubious legitimacy will have a profound effect on the conduct of the operation and the ability of the commander to conduct it as he sees fit. And while the principle of legitimacy may be no more or less important than the other nine principles of war, the commander who fails to understand its meaning and importance, and ignores the issue of legitimacy in waging war at the dawn of the twenty-first century, does so at his peril.

But defining legitimacy in the abstract is of little use without considering the context in which issues of legitimacy must be considered. The subjective nature of legitimacy demands an understanding of all the different arenas in which the perception of legitimacy will be shaped, where the impact of that perception will be felt, and how these relate to one another.

CHAPTER THREE
THE THREE DOMAINS OF LEGITIMACY IN THE CONDUCT OF WAR

In its definition of legitimacy, *Joint Publication 3-07* refers to certain "audiences" who perceive "the legality, morality, and rightness of a set of actions."[43] Each of these audiences really represents a separate and distinct domain of legitimacy. And it is within these three domains -- the international community, within an alliance or coalition, and in the domain of U.S. public opinion -- that a judgement will be made on the "legality, morality, or rightness" of the war. Commanders and planners must be adept at recognizing the relative strength or weakness of the perception of legitimacy in each of the three domains, and they must understand how that condition may influence the conduct of the war. Upon recognizing how the legitimacy of the use of force is viewed in each of the three domains, commanders and planners must consider active measures to sustain the perception of legitimacy where it is strong, and shore it up where it is weak.

The Domain of the International Community

In the domain of the international community, questions of legitimacy will tend to revolve around the two issues that Walzer describes; the rightness of the decision to go to war (*jus ad bellum*) and the rightness of the method used to carry it out (*jus in bello*).

In his article, "Just War Theory and Recent U.S. Air Strikes against Iraq," Mark Edward DeForrest of Gonzaga University writes:

> The basic theory which has arisen within Western culture to evaluate the legitimacy of military action is called just war theory. The just war theory has received widespread acceptance … in the international community as a means by which war may be determined to be justified or not [and] is perhaps the most universally recognized moral theory by which the use of force may be evaluated.[44]

In spite of its varied background from religious and secular writers and scholars throughout history, there are a few fundamental principles shared by most proponents of just war theory. The two

most relevant to a discussion of the rightness of a decision to wage war in the twenty-first century are the principles of just cause and competent authority.

DeForrest writes that “just cause is classically understood to refer to self-defense.”[45] However, in the murkier world of contemporary international relations, one should not expect that only wars fought for individual self-defense should enjoy the status of full international legitimacy. In addition to simple acts of self-defense, Article 51 of the *Charter of the United Nations* allows for collective defense as well, stating that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member …”[46] This legitimate exercise of collective self-defense was not only codified in the UN Charter, but the United Nations itself reserves the right to use military force collectively where it deems necessary. Article 42 states:

> Should the Security Council consider that the measures provided for in Article 41[not involving the use of armed force] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.[47]

Moreover, this contemporary standard for the rightness of waging war is wholly consistent with classical just war theory that holds “defense of self, or defense of another, are legitimate reasons for a nation-state to resort to force.”[48]

The issue of competent authority can be problematic in the international domain. In cases where individual self-defense is not the reason for waging war, the decision to use military force can be legitimized by receiving the sanction of an international body -- most often the United Nations. In such a case, the United Nations will often be considered sufficient competent legal authority in the international domain and, while not a new feature of international conflict, the legitimizing effect of United Nations approval -- or acquiescence -- for the use of force can be beneficial. Waltraud Morales writes in *Third World Quarterly*:

> As a collective limited war under United Nations mandate and U.S. leadership, the 1991 Operation Desert Storm shifted to the new post-Cold War model of intervention which relied on coalition partners, shared costs, and UN-led multinational forces.[49]

This feature of using the United Nations to legitimize the use of American military force is a feature of the international domain that is not likely to change. As Professor Robert Tucker of Johns Hopkins University writes in winter 1999 edition of *Foreign Affairs*:

> … the difficulties of justifying the use of American military power will persist. The conviction is likely to deepen further that, barring cases of self-defense against naked aggression, the legitimacy of force requires the sanction of the institution held to represent the international community [the United Nations].[50]

The second key consideration in the international domain revolves around *jus in bello*, or the rightness of the means used to prosecute the war. Regardless of the level of legitimacy the war enjoys at its inception, that legitimacy will be subject to the constant scrutiny of the international community as the conflict progresses over time. Consequently, commanders and planners at all levels must be acutely aware of how the conduct of the war affects the perception of its legitimacy as the conflict unfolds.

In their book *War: Ends and Means*, Paul Seabury and Angelo Codevilla state than in general terms, a war that is justly conducted meets one simple test; "the means used to fight the war may not outweigh the good that victory may bring … the means must not be allowed to dishonor the ends."[51]

In practical terms, the responsibility for ensuring the ends and means of the war are appropriately matched fall squarely upon the shoulders of military commanders. Seabury and Codevilla write:

> …one must make reasonable efforts to spare noncombatants from harm and, indeed, that the harm inflicted in order to achieve the worthy ends of the war, even upon combatants, must be as minimal as possible. The rules boil down to *discrimination, economy*, and *mercy*.[52]

The principle of discrimination essentially means "the right of parties to adopt the means and methods of warfare is not unlimited."[53] It is a long standing feature of customary international law, as well as a distinct feature of several international treaties, that "wars [are] disputes between states and not people … to be conducted exclusively between combatants in uniform …"[54] But the principle of discrimination goes well beyond the minimum level described by Seabury and Codevilla --"not intentionally killing civilians."[55] United States military manuals on the law of war ascribe an affirmative duty to ensure that combatants are distinguished from noncombatants and military targets from civilian.

Further, the accomplishment of military objectives must not inflict undue suffering upon the enemy or the civilian populace, giving due regard to the principles of "humanity and chivalry."[56]

A second issue, economy, is related not only to the war itself but also to its continuing purpose and the criteria used to determine when it should be stopped. Seabury and Codevilla remind us that "[the] purpose of war is not to fight and die, or to temporize among contradictory lines of policy, but to win a peace worth winning."[57] Commanders must be ever mindful of the purpose of each military operation and distinguish between those conducted to prosecute the war properly from those designed to merely punish an already vanquished enemy. As the war progresses and takes on a life of its own, a rational calculus must be applied to the costs of continuing the war versus the likely gains that the victor could reasonably expect. As Walzer writes, "… the inflation of ends is probably inevitable unless it is barred by considerations of justice itself."[58] Shrewd commanders and planners will remain mindful of this issue of justice, knowing full well that the international community will be making its own judgements and will use them as a prime consideration in evaluating the legitimacy of the war as it progresses.

The final concept -- closely related to discrimination and economy -- is that of mercy. Whereas discrimination involves the protection of the civilian population from undue suffering, mercy is a duty to mitigate the suffering of enemy combatants as well.[59] *Field Manual 27-10* charges commanders with the obligation of ensuring they "refrain from employing any kind or degree of violence which is not actually necessary for military purposes …"[60] This concept is particularly difficult to reconcile with the desire to use overwhelming force in defeating the enemy, and is precisely where legitimacy --as a principle -- must be weighed against the other imperatives that a commander must consider in executing combat operations. In his book *Virtual War*, Michael Ignatieff writes of Operation Allied Force:

> The Kosovo campaign achieved its objectives without a single NATO combat fatality. From a military standpoint, this is an unprecedented achievement. From an ethical standpoint, it transforms the expectations that govern the morality of war. A tacit contract of combat throughout the ages has always assumed a basic equality of moral risk: kill or be killed. Accordingly violence in war avails itself of the legitimacy of self-defense. But this contract is void when one side begins killing with impunity. Put another way, a war ceases to be just when it becomes a turkey shoot.[61]

While the ability to apply military force in a devastating fashion, with little or no real risk to ones own troops, could be considered the pinnacle of military skill, it nonetheless places the perception of legitimacy in danger. And the desire to dominate the battlefield at a point in time must be weighed -- for better or worse -- with the desire to sustain the perception of legitimacy during the course of the war.

Of course commanders are responsible for ensuring their operations comply with the laws of land warfare. But beyond the strict questions of legality, they must also be aware that the actions of the military in the field influence the perception of legitimacy of the war throughout the international community. How adherence to the norms of behavior in war as well as the sizable body of international law is a matter of necessity and sufficiency. Total adherence to international law, both customary and codified, as well as the universally accepted tenets of just war theory is not sufficient in and of itself to guarantee the perception of legitimacy in the international domain. However, it is absolutely necessary to gain and maintain a workable level of international support for the United States when it decides to wage war.

The Domain of the Alliance/Coalition

It is a fundamental precept of U.S. military doctrine that although the United States will retain its capability to wage war unilaterally, when possible it will "seek to operate alongside alliance or coalition forces, integrating their capabilities and capitalizing on their strengths."[62]

Although the capabilities of potential multinational partners vary greatly, they all share one enormous strength -- the legitimacy they bring to the conduct of the war. The Army's doctrinal manual for Multinational Operations, *Field Manual 100-8*, is explicit about the legitimizing effect of the inclusion of multinational partners is war:

> The strategic principal [*sic*] of collective security caused the United States to join several alliances and form coalitions. This requires the United States to conduct multinational military operations with forces from other nations. This blending of capabilities and *political legitimacy* makes certain operations possible that the U.S. could not or would not conduct unilaterally [*emphasis added*]. [63]

It is noteworthy that Army doctrine not only calls attention to the political benefit of multinational partners in war, but asserts that their inclusion sometimes allows the United States to conduct operations that it would be unwilling or unable to do by itself. Thus according to Army doctrine, there are certain cases where the absence of a coalition would mean there would be no operation at all, a testament of the central importance of legitimacy.

Two key issues must be considered when examining legitimacy in the domain of the alliance/coalition. First is a shared vision among contributing nations of the desired end state of the war, as well as the strategy for brining that end state about. In his article "Principles for Coalition Operations," General Robert RisCassi calls "agreement on strategy [the] foundation for coalition action."[64] Agreement on strategy ensures that coalition partners have a voice in the conduct of the war. This level of accord will lend it self to the legitimacy of the war by becoming a *de facto* contract between the United States and its multinational partners that all agree on the war's purpose, method, and end state.

Here it is important to distinguish between an alliance and a coalition because the nature of each affects the level of congruence likely to be felt by all multinational partners and, consequently, the ease or difficulty in establishing the legitimacy of U.S. action within the partnership. An alliance is a standing, formal agreement among nations for "broad, long-term objectives which further the common interests of the members."[65] By contrast, a coalition is "an *ad hoc* arrangement between two or more nations for common action."[66]

Alliances, by their very nature, lend themselves to a greater level of accord among partners simply because the act of joining the alliance demonstrates a willingness to accept its terms and relationships. But coalitions, the shotgun weddings of international conflict, usually begin in response to a looming threat and thus do not avail themselves of lengthy, formal discourse and long-term agreement, as do alliances. General RisCassi writes:

> Rarely do nations enter a coalition with identical views on ends to be achieved. As a coalition increases in number of member nations, conflicting objectives and additional political constraints are added to the pot.[67]

Reconciling all of these divergent interests is a monumental task for commanders and planners, particularly at the operational level. Although it would be perhaps more efficient for the United States to assert the role as lead nation and final arbiter of coalition objectives, doing so would undoubtedly place the legitimacy of the coalition -- and U.S. objectives for waging war in the first place -- in danger. Consensus-driven decision making is the norm in multinational operations, and the legitimacy of the war effort depends upon this level of cooperation.[68] It is preferable that a political authority recognized by all multinational partners sanction the desired endstate of the military action. *Field Manual 100-8* includes the identification of this entity as a step in mission analysis for coalition operations; "Determine which legitimizing political authority defined the desired endstate and the relationship between the military force and this political entity."[69] But receiving the sanction of a supranational body is no guarantee of complete agreement among coalition members. In every case, the commander must, as General RisCassi writes, "walk a taut line between accommodating and compromising, yet preserve the ability to achieve military decision."[70] In short, the commander must balance the need for legitimacy within the domain of the alliance/coalition with the other imperatives of successfully waging war.

A second issue is that of coalition cohesion. There is a direct relationship between cohesion and legitimacy in this domain. The greater the level of cohesion, the greater legitimacy the alliance or coalition will enjoy, and vice versa. Coalition members who see themselves as equal partners in the war effort are more likely to feel a greater stake in the conflict and its outcome and will therefore see the war as a legitimate use of force. Conversely, a coalition wholly led and dictated by the United States alone -- with little substantive input from coalition partners -- runs the risk of being seen as an assertion of American interests under the guise of multinational cooperation.

Preventing the loss of multinational cohesion -- and a concomitant loss of legitimacy -- depends upon "the proportionate sharing of burdens, risks, and credit" among coalition partners.[71] The commander must ensure that all coalition partners are included in the planning process, and that their input is actively sought in the assignment of missions with full consideration given to the national interests, honor, and prestige of contributing nations as well as their military capabilities.[72] Additionally, the commander must

be adept at understanding that "the degree of involvement of each participant is likely to be a purely political consideration [and] it may be necessary to employ the force according to national and political considerations."[73] Thus, the assignment of tasks -- with their commensurate level of risk and reward -- to coalition partners cannot be made based upon the sole calculus of what each nation brings to the fight. Rather, the legitimacy of the war itself, which often hinges upon the composition and attitudes of America's multinational partners, must be a key consideration for commanders and planners as they seek to build and sustain a cohesive coalition whose efforts will enjoy the perception of legitimacy among all its members.

The Domain of Domestic Politics

Although in the domain of domestic politics commanders and planners have very little influence over the legitimacy of a decision to go to war -- that is the purview of political decision makers – they will most certainly feel its effects. Moreover, as in the international domain, how the military conducts the war will affect the level of legitimacy it posses on the homefront as the conflict unfolds. Therefore, a short look at the domain of domestic politics is appropriate in examining how legitimacy must remain a key consideration for U.S. military commanders and their planners.

Constitutionally, the power to employ the U.S. military to achieve national objectives is shared between the president and the Congress -- the president is the commander in chief of the armed forces but the Congress retains the power to declare war.[74] However, the last formal declaration of war occurred following the attack on Pearl Harbor in 1941.[75] In the many years --and countless uses of military force -- since, presidents have chosen to dispatch the U.S. military to conflicts both large and small without the constitutional blessing of the legislative branch of the government. Professor Jerel Rosati of the University of South Carolina writes in his book, *The Politics of United States Foreign Policy* that "Congress has declared war just five times in American history while presidents have committed military forces abroad in over two hundred instances."[76] In short, while the dual power to send American armed forces to distant shores was designed by the framers to be "an invitation to struggle,"[77] the succession of

presidents choosing to dispatch troops without a formal declaration of war has been an invitation to conflicts of questionable legitimacy.

Legitimacy in the domain of domestic politics centers around three key questions. First: Was there proper consultation with the Congress before the military was dispatched into a particular conflict? In the wake of the Vietnam War – as well as after a realization that the absence of a Congressional declaration of war did nothing to prevent presidents from using military force – the Congress passed the *War Powers Resolution*, over President Nixon's veto, in 1973.

The *War Powers Resolution* requires the president "in every possible instance [to] consult with the Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."[78] The Resolution also places a sixty-day limit on the deployment of troops, beginning with presidential notification, unless extended by the Congress.[79] However the vague language of the resolution, along with the fact that every president since Nixon has regarded the *War Powers Resolution* to be an infringement upon the power of the chief executive, has resulted in the consultation with Congress to be informal and outside the realm of the Resolution itself.[80] The model of consultation that has evolved over time is one where the president essentially makes the decision to use military force and hands the Congress a *fait accompli*. While this may give the president broad latitude to exercise his power as the Commander-in-Chief, it inevitably raises questions of the legitimacy of the use of force within the domain of domestic politics.

The second key question is similar to one likely to be asked in the international domain: Are the ends of the war worth the means? The decision to send military forces into harm's way is undoubtedly the most grave and monumental that a president is forced to make. Within the domain of domestic politics, it is expected that this decision be made only after a rational and deliberate calculus of the risks of war and the likely benefits to be attained. However, unlike in the domain of the international community, where the likely rewards of the war are considered as a benefit the international community as a whole, in the domain of domestic politics one can expect the potential fruits of victory -- at whatever cost -- to be calculated more narrowly and focused mainly on the national interests of the United States. Nonetheless,

a military venture that is perceived as entailing too much cost for too little reward will begin, and be conducted by the commanders of U.S. military forces, on a foundation of legitimacy that is shaky and subject to collapse over time.

Finally, whenever presidents decide to embark upon foreign military endeavors the inevitable question arises as to whether to decision to engage in armed conflict was made for political, rather than foreign policy, reasons. Foreign crises tend to cause the American public to coalesce around the president, affording him wide latitude to manage the crisis as he sees fit -- what political scientists Charles W. Kegley and Eugene Wittkopf refer to as the "rally-round-the-flag" effect. Additionally, presidents often benefit from higher approval ratings both during and after international crises involving the use of military force. President Reagan's popularity rose six percentage points after the bombing of Libya in 1986. President Bush received an increase in his approval rating of eighteen percentage points following the initiation of Operation Desert Storm in January of 1991. And the cruise missile attack on the Iraqi intelligence headquarters in June 1993 as well as the U.S. invasion of Haiti a year later yielded increases for President Clinton of eleven points and nine points respectively.[81]

Questions of the legitimacy of using force often arise when voices from the domestic domain reverse the cause and effect of this phenomenon – questioning whether the military action was a means to satisfy a need for domestic approval. These judgements can be harsh, and if the perception surfaces that war was aged to increase presidential approval ratings, the legitimacy of the war will be called into question and will hang like a dark cloud over the domain of domestic politics throughout the war.

The Commander in the Three Domains

Each of these three domains – the international community, the alliance/coalition, and the domestic – is where the judgements on the level of legitimacy of a given conflict will be made. They have a profound effect on the course of the war, imposing constraints and restraints upon the planners who must plan the war and the commanders who must lead it. Recognizing the perception of legitimacy in each domain is crucial for commanders if they are to have an in-depth understanding of the

environment under which they are to fight and the amount of latitude they are likely to have in deciding upon the means they will employ in prosecuting the war. Moreover, they must understand how the conduct of the war contributes to the perception of legitimacy in each of the three domains and how the decisions they make will impact the level of comfort their many "audiences" will have with the purpose, method, and end state of the war.

Understanding the meaning and importance of legitimacy in all its three domains is a clearly a critical task for the commanders and planners of America's wars. But to fully appreciate the criticality of these broad concepts, it is necessary to place them in a historical context to better understand how -- in the recent past -- the issue of legitimacy affected the conduct of war at the strategic, operational, and tactical levels.

CHAPTER FOUR
LEGITIMACY IN CONTEXT: A TALE OF TWO WARS

History will likely remember the 1990s as a decade of enormous change in international relations. Governments fell, new states were born, borders were re-drawn, and forces were unleashed that will likely call the continued relevance of those borders into question. At the center of the tempest stood the United States, often a force for enormous change but just as often little more than a passive victim of its effects.

One of the more noteworthy features of the 1990s for the United States is that the decade began and ended with America at war. Operation Desert Storm in the sands of Iraq in 1991, and Operation Allied Force in the skies over Kosovo eight years later, are the frontiers that will frame the last decade of America's third century.

Both wars were similar enough -- multinational operations led by the United States that introduced new weapons and technologies and relied heavily on the promise of air power. However, there are striking differences between Desert Storm and Allied Force, most notably regarding the strength of the perception of the legitimacy of each and the impact that the perception of legitimacy in each of the three domains had on the conduct of the war. Legitimacy had a definitive effect on both wars, just how it did -- and what that means to a consideration of legitimacy as a principle of war -- warrants an earnest examination.

Assessing the level and effect of legitimacy on Desert Storm and Allied Force requires the identification of specific criteria; not only to measure the importance of legitimacy in shaping the nature of each war but also to see how perceptions of legitimacy affected the commanders and planners responsible for fighting and wining them. Three specific criteria will be used in comparing Desert Storm and Allied Force:

1. The degree to which the issue of legitimacy in each of the three domains affected war planning.

2. The degree to which legitimacy affected the conduct of the war, especially in targeting and alliance/coalition tasking.

3. The degree to which the issue of legitimacy affected war termination.

The subjective nature of legitimacy itself precludes a quantitative analysis of its importance and impact. However, it is possible to tap the historical record and weigh the events of both wars against each criterion to better understand how the issue of legitimacy shaped the conduct -- and ultimately the outcome -- of America's last two wars of the twentieth century. And doing so will also aid in judging whether legitimacy should be acknowledged as a distinct principle of war for the planners and commanders of future wars as well.

Criterion One: The Effect of Legitimacy on War Planning for Desert Storm

On the 2nd of August 1991, Iraq shocked the world by invading its tiny neighbor Kuwait. What followed was a series of diplomatic maneuvers and ultimately Operation Desert Storm, a multinational war to liberate Kuwait. The issue of the legitimacy of military action against Iraq permeated the planning of Desert Storm, from the first frenzied moments after Iraq's invasion to the triumphant liberation of Kuwait six months later.

In the international domain, the first step in establishing the legitimacy of using military force was to get the United Nations to formally condemn Iraq's actions. Doing do served dual purposes; solidifying world support for a response and, consequently, setting the stage for the legitimacy of military action to undo the act of aggression.[82] President Bush was adamant about gaining the support of the UN and giving all subsequent actions a legitimate multinational character.[83] As Lauren Holland writes in her analysis of Gulf War planning in the Winter 1999 edition of *Armed Forces and Society*, the decision to pursue a multinational course of action under the legitimizing auspices of the UN was "perhaps the most profound policy decision made during the crisis."[84]

The next step was to coax the Kuwaiti government to ask for American help, and then for the Saudi government to allow Western troops on its soil to defend the kingdom.[85] This was a consideration that was both operational and political. Operationally, the Commander-in-Chief of Central Command, General Norman Schwarzkopf needed to occupy the kingdom in order to execute the standard CENTCOM OPLAN 1002-90, the defense of Saudi Arabia. Beyond facilitating the deployment of defensive forces however, the CINC needed access the kingdom's ports and airfields to launch offensive actions against Iraq should that become necessary. Politically, a foothold in Saudi Arabia -- home to Islam's two holiest cities and *a de facto* guardian of Islamic purity -- would establish the legitimacy of a U.S. presence within the region. After being briefed on August 6th by senior officials, including the CINC himself, King Fahd determined that "the United States has no ulterior motive" and welcomed American armed forces into his reclusive kingdom.[86]

Finally, the President decided that while the U.S. military would lead the military response to Iraq's aggression, the effort would be multinational. President Bush recalled later that the formation of the coalition "became essential from the very first days." He stated:

> Unilateral U.S. response to Saddam's invasion could well have gotten us crosswise with the Soviet Union, with other Arab countries, and even with Europe. It was essential that other countries join in, and that the United Nations be involved. In so doing, not only could we bring together the coalition that could commit forces, but major powers such as China could be committed. So there were 'philosophical underpinnings' from our insistence on UN action and on forming the coalition that would bear the military burden.[87]

Establishing the international legitimacy of an armed response to Iraq's invasion of Kuwait was aided by several factors. First was Iraq's naked aggression, which unquestionably violated the norms of international behavior as well as the *Charter of the United Nations*. This justified and legitimized an armed response under both just war theory as well as the principle of collective defense codified in international law.[88] Second was President Bush's decision to pursue all actions under the auspices of the United Nations. This lent any further action the legitimacy of being waged by competent authority, consistent with just war theory as well as the practical mechanisms of the United Nations. And third was the effort to pursue the formation of a multinational military coalition, with heavy contributions from

Arab nations, that ensured that armed conflict waged by the United States against a fellow Arab nation would be a collective action and not a case of Yankee imperialism.[89]

Within the domain of the coalition, the team that was created by the diplomats was given to the operational commander to direct. And management of this diverse blend of coalition partners became one of General Schwarzkopf's primary responsibilities.

Establishing a shared vision for the coalition was not a major concern. Saddam Husseins's blatant attack upon a neighboring Arab state made the threat manifestly clear, and President Bush's diplomatic efforts ensured that the international community was almost completely uniform in its contempt of Iraq's actions, as well as the need to reverse them by force of arms.

However, Schwarzkopf took specific actions as the operational commander to keep the coalition in tact and sustain the legitimacy of the use of force against Iraq within the Arab world. Schwarzkopf decided that he would command the Western coalition forces -- minus the French 6th Division which balked at American command -- and that Saudi Prince Khalid bin Sultan al-Saud would command the Arab forces.[90] This was clearly a decision made for reasons of coalition cohesion and not warfighting acumen; consistent with Ignatieff's observation that coalition partners add more legitimacy than they do firepower.[91]

Additionally, observers of General Schwarzkopf implicitly point to the level to which his sensitivity to the issue of legitimacy dictated his behavior as the operational commander leading the coalition:

> While Schwarzkopf intimidated his staff, he was circumspect with ranking officers from other countries. Powerful constituencies in Riyadh, London, and Paris were watching every move he made, and Schwarzkopf had no intention of adding unnecessary political battles to the military one he faced.[92]

Apart from the CINC's deft handling of his coalition partners in terms of his personal demeanor, Schwarzkopf also made some operational decisions in order to sustain alliance cohesion and legitimacy as well. During the defense of Saudi Arabia U.S. military planners felt that an Iraqi attack on the Saudi oil fields in the Eastern Province was most likely, and that the threat to Riyadh was minimal. However, the

Saudis insisted upon more than "lip-service" to the defense of their capital, and the 1st Cavalry Division was assigned the secondary mission to block an Iraqi push to Riyadh. Later, elements of the 82nd Airborne were dispatched to defend Riyadh and other critical facilities from attack -- an operational decision based upon considerations of alliance cohesion and legitimacy rather than a likely enemy course of action.[93] Additionally, General Schwarzkopf made it clear to his subordinate commanders that Arab forces would be the first to enter Kuwait City after its liberation – a promise he took great pains to honor when the moment finally came.[94]

Within the domain of domestic politics, the president worked with congressional leaders in the days and weeks leading up to Desert Storm to develop a level of domestic political legitimacy for the use of force against Iraq. It is clear that the President felt no legal obligation to consult with the Congress regarding the use of force in this circumstance. However, he sought a vote of congressional support for his actions as Commander-in-Chief nonetheless, and vowed to keep congressional leaders "apprised of events."[95]

Throughout the fall and late winter as American military commanders were busy building combat power in the region, the president met almost daily with members of the Congress. And as January 15th approached -- the UN-imposed deadline for Iraq to withdraw from Kuwait or face being thrown out -- President Bush actively sought a vote of congressional approval for war.[96] As Lauren Holland writes, this approval would "offset congressional opposition and lend legitimacy to his offensive goal."[97]

Three days of debate ensued within the Congress, mostly focused on one of the key questions of legitimacy in the domestic domain, means versus ends. But when it was over, *The Joint Congressional Resolution of 12 January 1991* gave the Chief Executive the Legislative blessing he wanted to wage war.[98] And during the course of the vote, the Republican President was inoculated against charges of using the military for partisan purposes by none other than the Democratic Speaker of the House Tom Foley who said, "Let us come together after this vote without recrimination. We are all Americans here -- not Democrats or Republicans."[99]

During the planning of Operation Desert Storm, legitimacy shaped the terms of the debate and the actions of key leaders in all three of its domains. The President and his key advisors secured the support of the UN as well as the international community. They built a coalition of Arab and non-Arab states who provided forces to the operational commander responsible for planning and conducting the war as well as a considerable level of regional and international legitimacy. And they established and maintained the domestic legitimacy of the war by close consultation with the Congress, who voted to support the President in his actions. For his part the operational commander, General Schwarzkopf, was the beneficiary of the foundation of legitimacy built by the politicians. Waltraud Morales writes of "a central fact, heeded in the Gulf War: The appearance of, and actual compliance with, moral, legal and constitutional norms can foster permissive climates for intervention."[100] However, it was incumbent upon the operational commander to take active measures to sustain that level of legitimacy during the planning of the war, and doing so appears to have been as crucial a consideration for him as any other in his planning for Desert Storm.

Criterion One: The Effect of Legitimacy on War Planning for Allied Force:

During Desert Storm, the foundation of legitimacy in all three domains gave the operational commander, General Schwarzkopf, enormous latitude to execute the war as he saw fit. Eight years later another operational commander, Supreme Allied Commander Europe General Wesley Clark, would have his war to fight. His experience was quite different, and the issue of legitimacy can be identified as a key reason why.

By the spring of 1999, the United States had had a great deal of experience with Serbia's Slobodan Milosevic. A former communist party hack and nationalist provocateur, Milosevic was one of the key levers of power in the agonizing six-year unraveling of Yugoslavia.

The Serbian province of Kosovo -- for years a favorite Milosevic punching bag -- had taken up arms against Serbia during the summer of 1998. Serbia's shocking and brutal repression of the Kosovar Albanians and their rag tag Kosovo Liberation Army (KLA) had become a full-blown international crisis

by the fall of 1998.[101] Diplomatic overtures failed to bring an end to the bloodshed -- considered an internal matter by Milosevic. A series of U.S.-sponsored talks in Rambioullet, France failed to stem the violence or to keep Milosevic at the peace table, and on 24 March 1999 NATO -- led by the United States -- resorted to the force of arms to secure what the force of persuasion could not.[102] America was at war again.

Unlike Desert Storm, planning for Allied Force did not begin with a UN resolution authorizing the use of force. The closest America and her allies ever got was *Resolution 1199* calling the situation in Kosovo "a threat to peace and security in the region."[103] Further, neither the United States or any other NATO member attempted to secure a Security Council resolution authorizing the use of force against Serbia, ostensibly because China and Russia -- vehemently opposed to military action against Serbia -- would most assuredly have exercised their veto over it. According to Hassan Abbas, "That would have made the whole exercise illegal and hence NATO predictably avoided a verdict of the Security Council on the issue."[104]

This lack of a UN Security Council resolution is one aspect of the war that raised serious questions about its legitimacy in the international domain. The second was that NATO's plan to use military force -- well intentioned as it was -- immediately ran afoul of the principle of sovereignty, the most sacred principle of international relations.

The *Charter of the United Nations* is based upon "the principle of the sovereign equality of all its members."[105] In addition, Article 2(7) of the Charter states that "Nothing in this present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state …"[106] Writing in the November 20th 1999 issue of *The National Journal*, James Kitfield states that in Allied Force:

> For the first time, Western nations would be intervening militarily against an independent nation not because it posed a direct threat to its neighbors, but because it persecuted an ethnic minority within its own borders. In striking Belgrade, NATO would bypass the United Nations and ignore the fundamental principles of sovereignty and the 'Great Powers' consensus that are at the core of the United Nations Charter.[107]

International legal scholars continue to debate the legality of Allied Force as well as the larger issue of invoking the right of collective defense as a justification to reverse the fortunes of internal ethnic conflict.[108] However, during the planning of the war, enough concerns were raised about the legality and justification of the war within the international domain to place the legitimacy of Allied Force in question well before the first bomb was ever dropped.[109]

These questions of *jus ad bellum*, as well as questions over the war being joined by a competent international legal authority, framed the planning for the war. It appeared that the lack of clear-cut international legitimacy of Allied Force reflected an international community that had no stomach for a bloody and protracted war whose fundamental precepts were questionable. Hoping to claim victory before the complete erosion of its already dubious legitimacy, the U.S. and its allies pursued a war that was to be short, cautious, and clean.[110] This entailed a definite cost. As Ivo Daalder and Michael O'Hanlon write:

> NATO's campaign plan was unsound in the war's early going. The basic idea of using bombing as an element of coercive diplomacy against Milosevic was pushed incessantly by Washington, and most specifically by the State Department, with strong support from NATO's military leadership. The U.S. government expected air strikes to last only a few days -- a couple of weeks at the outside -- as interviews with key officials and other sources convincingly attest.[111]

Thus the issue of legitimacy in the international domain meant the operational commander, General Clark, had to fight the war he could rather than the one he wanted.

Within the domain of the alliance, the issue of legitimacy was naturally a bit stronger than in the international community as a whole. All alliance members publicly shared the purpose of using air strikes to halt the ethnic cleansing of the Kosovar Albanians and to get Milosevic back to the peace table. Further, the alliance established three -- and later five –

specific objectives for the war.[112] Also, the members of the alliance seemed to agree amongst themselves on the fundamental rectitude of NATO's war against Serbia. As NATO's secretary-general Javier Solana writes in *Foreign Affairs*:

> It was the unique allied cohesion of 19 democracies, including NATO's three new members, that was crucial in establishing consensus on the legal basis and legitimacy of NATO's actions [and] the difficult issue of whether NATO could threaten the use of force without an

> explicit Security Council mandate to do so. The allies agreed that NATO could -- for it had become abundantly clear that such s step was the only likely solution.[113]

This level of accord does not however mean that all alliance members shared an equal level of enthusiasm for the war. It appears that the veneer of solidarity within the alliance was rather thin, which not only caused its members to doubt the legitimacy of its actions but affected the planning of the war as well. As David Fromkin writes in his book *Kosovo Crossing*:

> ... NATO approval and participation was more procedural and less substantive than might have been originally thought: Germany found itself politically torn, as did Italy, Greece, and other members of the alliance. This constrained America's freedom of action.[114]

As in Desert Storm, this alliance was eventually handed over to the operational commander to husband through the course of the war, and once again legitimacy within the domain of the alliance in the heat of battle became one of his key concerns. General Clark's task was an unenviable one and many of the decisions he made, specifically regarding burden sharing among members within the alliance, reflect the precarious nature of legitimacy within the alliance. As Michael Ignatieff writes:

> The Americans supplied most of the intelligence as well as between sixty-five and eighty percent of the aircraft and the precision ordinance. The other NATO partners provided the rest of the air-crews and crucial political backing. Clark's job was to make coalition warfare work, to keep the high-precision equipment supplied by the Americans from being rendered ineffectual by the political and moral hesitations of nineteen allies running a war by committee.[115]

Unlike the traditional model of multinational warfare, where missions are distributed to maximize credit and account for national prestige, the disproportionate share of the burden that General Clark assumed for the Americans reflected not only superior American capability but also an alliance not totally at ease with its task.

Within the domestic domain of legitimacy, Operation Allied Force suffered greatly. Daalder and O'Hanlon are explicit about the effect of the legitimacy deficit in the domestic domain:

> Politics at home and abroad were believed to constrain the United States and its partners in the use of force. When hostilities began, President Bill Clinton had just survived his impeachment ordeal. He faced a congress that was not only politically hostile but also increasingly wary of U.S. military action designed to serve humanitarian goals, including in the Balkans. Against this backdrop, the president failed to prepare the country for the possibility that NATO's initial bombing raids might be the opening salvo of a drawn-out war.[116]

This affected war planning in several key ways. First, the option of sending ground troops to fight the Serbs was essentially taken off the table from the start of the war.[117] Although several members of Congress as well as key NATO allies -- most notably the United Kingdom -- favored entertaining the ground force option, the administration considered it too much to ask of a nation that was doubtful of the rightness of the war and the balance of risk and benefit, ends and means.[118] Thus restrained by the issue legitimacy, the operational commander was forced to plan a war using air power alone.

Moreover, the conduct of the air war itself was to be further circumscribed by a desire to minimize -- if not obviate --any risk to allied pilots. General Clark was given the constraint of having planning for his pilots to fly above 15,000 feet and to minimize their loiter time over targets.[119] In addition to altitude restrictions, Clark was not given a free hand to plan the targets he wanted either:

> ... Clark wanted a different approach from the outset, He and his air commanders ...wanted to go 'downtown' on the first night, hitting the power, telephone, command-and-control sites, and Milosevic's bunkers. But political leaders were holding the air-men back, ordering Clark to keep the strikes as light as possible.[120]

A final aspect of domestic politics that affected the legitimacy of Allied Force is what is known as the diversionary theory of war -- which holds that leaders sometimes seek to quell internal political woes by engaging in conflict with an external threat.[121] In his vitriolic book *Kosovo-Serbia: A Just War?*, Frank Columbus posits just this theory as a causal factor in Allied Force. Columbus asserts that perhaps the events leading up to the President's impeachment led him to initiate the war to divert the Nation's attention from his domestic political troubles.[122] There is not a shred of evidence that this was the case. However shouts and murmurs along this line most definitely cast a pall over the legitimacy of Allied Force within the domestic domain from its very beginning.

The contrasts between Desert Storm and Allied Force in regards to the effect of the issue of legitimacy are striking. General Schwarzkopf inherited a multinational war whose legitimacy was almost completely without question both at home and abroad. He began the war with almost a free hand to prosecute it as he saw fit. The coalition he was given to fight the war was remarkably cohesive in spite of its diverse composition, and he ably managed it through the end.

General Clark, on the other hand, was not so privileged. From its very beginning, Allied Force suffered from questions of legitimacy in both the international and domestic domains. This severely restricted how he, as the operational commander, could design his plan and execute his difficult mission. Further, although NATO was the world's most successful alliance, Clark was forced to make decisions about partner tasks and responsibilities with as much consideration on internal alliance politics as on tactical or operational merit.

As both wars unfolded, the level of legitimacy they enjoyed from the opening moments of both crises became magnified, shaping the conduct of each war as well as how they would both be brought to a close.

Criterion Two: The Effect of Legitimacy on the Conduct of Desert Storm

Because Desert Storm enjoyed a high level of international legitimacy from its inception, it was crucial that the war be conducted in such a way as to sustain that level throughout. Certain key events during the course of the war demonstrate how issues of legitimacy invariably wind their way into the conduct of war in each of the three domains.

In the international domain, the bombing of the Al Fidros bunker was one such event. At 4:30 a.m. on 13 February 1991, two American aircraft dropped their ordnance with devastating accuracy on a target they were told was a bunker being used by the Iraqi General Intelligence Department.[123] Although labeled -- in English -- Public Shelter 25 and located in the middle of a Baghdad suburb, a mounting body of intelligence evidence led reluctant commanders and planners to believe the facility was a viable military target.[124] They were wrong. As the sun rose over Baghdad on the morning of 13 February, Western television crews recorded the grisly removal of over two hundred mostly women and children from the wreckage. The effect of the mistake on the air war was almost immediate. From that moment on General Buster Glosson, commander of the air component of the campaign, was required to submit written justification for each target to the CINC.[125] For his part, General Schwarzkopf would henceforth submit sorties planned against Baghdad to Joint Chiefs Chairman Colin Powell for his evaluation.[126]

Bombing runs against the Iraqi capital slowed to a trickle, from twenty-five targets in the two weeks prior to the Al Fidros bombing to five in the two weeks following.[127]

After Al Fidros, the issue of international legitimacy intruded more heavily into the operational commander's province of warfighting. The "enormous latitude" the commanders of the air campaign had up to that point was significantly trimmed in favor of a sustainment of international legitimacy for the war.[128] General Powell felt that "another massacre like Al Fidros would destroy the allies moral standing."[129] He was not alone. The president's top advisors also had international legitimacy foremost in their minds:

> [They] worried not only about American public opinion but also about sentiment abroad. Solidarity within the coalition -- as well as support from the Soviets, the Chinese, and the Arab world -- would be important if sanctions were to be maintained against Iraq after the shooting stopped.[130]

Thus the tragic bombing of the Al Fidros bunker provides a lens through which to view the importance of balancing the desire to attain an overwhelming military victory with the need to sustain international legitimacy throughout the war. As Rick Atkinson writes in his book *Crusade*, "victory was a matter of perception as well as battlefield position. Military campaigns were not an end unto themselves."[131]

Within the domain of the coalition, strategic level decision makers remained convinced that America's legitimacy within the coalition depended upon keeping the Israelis out of the war -- lest the entire enterprise be viewed as little more than the United States and Israel seizing the opportunity to cudgel an Arab nation. And those decision-makers forced the operational commander to adopt an equal level of sensitivity as well.

Shortly after the air phase of Desert Storm began, Saddam trained his sights on Israel -- not a party to the conflict -- launching several SCUD missiles toward Tel Aviv and the port city of Haifa.[132] The president's men knew the historic coalition they had brought together would irreparably fracture if Israel unilaterally retaliated against Iraq, regardless of its unassailable justification for doing so.[133] Face to face with the Israelis, American leaders urged restraint, promising that U.S. forces were doing all they

could to locate and destroy the SCUDs themselves and that retaliatory action by the Israelis would only "play into Saddam's hands."[134]

Hunting SCUDs became a major priority for leaders at the strategic level and thus a priority at the operational and tactical levels as well. Carrier-based aircraft and special operations forces were launched in an effort to neutralize the SCUD threat emanating from the vast expanse of the western Iraqi desert.[135] Throughout the continued bombings of Israel however, General Schwarzkopf publicly stated he did not see the SCUD as a militarily significant weapon – a statement that was probably correct from a military standpoint but one that nonetheless failed to account for the importance of assuaging Israel's concerns in order to keep its sword sheathed and maintain legitimacy within the alliance.[136]

As the pressure to find and destroy SCUDs in western Iraq increased, the CINC chafed at being told what targets he should service during the course of his war. As Gordon and Trainor write:

> Throughout the war, and even afterward, Schwarzkopf and his commanders complained that the SCUD-hunting efforts had siphoned away a large number of missions that otherwise would have been directed at other key targets.[137]

Because the operational commander failed to appreciate fully the consequences that finding the SCUDs held in sustaining legitimacy within the domain of the coalition, he was forced by his civilian bosses into the painful exercise of having to alter his plan to accommodate this principle in the conduct of the war. Although the commanders' reservations about hunting SCUDs undoubtedly had military merit, they ignored the simple fact that whether the CINC liked it or not, "one of CENTCOM's tasks was keeping the coalition together and that meant trying to keep Israel out of the war."[138]

Within the domestic domain, the war enjoyed generally wide support and thus its course was altered little to sustain domestic legitimacy. It had begun under the auspices of the United Nations. That was followed by a congressional authorization for war. And in the eleventh hour, a meeting in Geneva between Secretary of State Baker and Iraqi foreign minister Tariq Aziz offered one last chance for peace. In reality the meeting was little more than a means to demonstrate to the "Congress and the American public that the Bush administration had given the Iraqis every chance to seek peace before sending

American troops into battle."[139] Baker was snubbed and the war was turned over to the military to fight and win, a sequence of events that enjoyed a high level of legitimacy within the domestic domain.

Criterion Two: The Effect of Legitimacy on the Conduct of Allied Force

Because Operation Allied Force was a war fought in only one dimension, it follows that the issue of legitimacy assumed a single dimension as well -- the issue of targeting.

The precarious state of the legitimacy of Allied Force -- in all three of its domains --led the operational commander to face two competing demands during the conduct of the war; the need to minimize risk to his pilots with the need to minimize collateral damage. As Michael Ignatieff writes:

> The central difficulty of the American way of war in Kosovo was that avoiding 'collateral damage' to civilians and to nonmilitary targets and avoiding pilot loss were conflicting objectives. If pilots fly high, they can't identify targets accurately and the risks of horrifying accidents increase. Flying low improves accuracy but the risk to pilots is significantly increased.[140]

In the international domain, General Clark tried to satisfy both imperatives by several means. First, he tried to reduce collateral damage through precision weaponry, whose use rose from eight percent in Desert Storm to about thirty-five percent in Allied Force.[141] But precision weaponry alone was not the answer. The CINC also took great pains to ensure that the alliance complied with all relevant international law regarding the aerial bombing in order to preclude concerns over *jus in bello*.[142] Military lawyers evaluated every target in the context of the Geneva Convention, assessing whether the military utility of striking the target outweighed the potential risk in causing collateral damage.[143] The pilots were only allowed to fire by visual recognition, meaning bad weather caused the cancellation of sorties that might otherwise have been flown. And targets of opportunity had to be cleared, at times by the air component commander himself, before they could be engaged.[144]

All of these measures however, failed to prevent incidents similar to the Al Fidros bombing that so vexed the commanders of Desert Storm. Two such tragic accidents occurred within two days of one another in late April when NATO planes attacked a bridge while a passenger train was crossing, and when NATO planes mistook a caravan of Albanian refugees for an armored column killing seventy-three

civilians.[145] Three weeks later, in what Ignatieff calls "Wes Clark's worst moment of the war," a series of intelligence failures led NATO forces to mistakenly bomb the Chinese Embassy in downtown Belgrade.[146]

This string of accidents, along with the fact that the air war had failed to demonstrate that it was actually halting Serb brutality on the ground, began to raise questions of legitimacy in the international domain. It appeared that the greater good of ending the repression of the Kosovar Albanians was not being realized by the accepted evil of the air war. As Ignatieff writes:

> By late May, both Clark and NATO's political leaders were desperate for results. A string of dreadful accidents -- hitting the train on the bridge, bombing the refugee convoy and a strike against a Serbian old people's home -- were all draining away public support for the air war. Opinion polls were shifting alarmingly. The campaign's mistakes -- rare as they were -- were consuming its legitimacy.[147]

Within the domain of the alliance, cracks began to appear as the war dragged on. The tension between protecting pilots to sustain domestic legitimacy and reducing collateral damage to ameliorate harsh international judgements was magnified nineteen fold as each alliance member had to come to terms with the balance between legitimacy and military victory. General Clark first attempted to work the problem from within the structure of the alliance. Member nations that had pilots hitting particular targets had to render their formal approval each day. The CINC often had to call national capitals to obtain approval for particular strikes, and if he was rebuffed he would call the NATO secretary-general to lobby on his behalf with the reluctant member nation.[148]

But General Clark also sacrificed a level of U.S. legitimacy within the alliance by later taking the extreme measure establishing a separate targeting process for American aircraft alone. This was due not only to the often glacial pace of the approval process within the alliance, but also because he feared that certain NATO allies, sympathetic to Serbia, might leak information to the very enemy that alliance pilots were risking their lives to attack.[149] General Clark obviously felt that having American planes fighting their own air war over Kosovo -- unfettered by the political restrictions of an alliance that as a whole appeared squeamish about the rightness of its actions -- was the shortest route to military victory.

However, his decision bore a substantial cost in terms of legitimacy within the alliance. The French, who took issue with the commander's arrangement, seized the opportunity to observe acidly " that, like them, the United States was not truly a fully integrated NATO member, either."[150]

Domestically, as the air war unfolded -- and appeared to be yielding few tangible results -- the lack of a foundation for its legitimacy early on began to bear some bitter fruit for the Clinton administration. On April 29th 1999 the Congress eventually spoke on the issue of Operation Allied Force, and it was nothing like the message sent to president Bush in the days before Desert Storm just eight years earlier. In a vote of 249 to 180, the House of Representatives voted to bar the president from sending ground forces to Yugoslavia without congressional approval. And a House resolution supporting NATO air strikes in Yugoslavia resulted in a 213-213 tie, a legislative failure. While both votes were largely symbolic, they nonetheless sent a clear message to the administration and the American people about the level of legitimacy the continuing operation had in the domain of domestic politics.

From the very outset of Allied Force, issues of legitimacy shaped the very nature of the war. The operational commander found himself making decisions -- consciously or unconsciously -- that were dictated by the imperative to sustain the legitimacy of the war in each of the three domains. Just as often, it appeared that decisions were taken out of his hands and made for him for the very same reason. Given the nearly impossible task of walking the fine line between sustaining legitimacy and fighting the war as he felt he needed, General Clark's experience as commander of Operation Allied Force is an object lesson in the central importance of legitimacy in the conduct of modern war.

Criterion Three: The Effect of Legitimacy on the Termination of Desert Storm

War is difficult enough. However, deciding just when an armed conflict should be brought to a close is as difficult a decision as any in the course of a war. One would think war termination to be a simple matter; once military objectives have been met and the enemy capitulates, the war is over. Reality is seldom so orderly. War termination is as much a political decision as a military one, and the issue of

legitimacy in each of the three domains is a prime consideration when the moment comes to decide when to silence one's guns. Such was the case in Desert Storm.

On the evening of 25 February 1991 with the ground campaign in full gallop, a spate of coalition intelligence sources began to indicate the beginning of a complete Iraqi withdrawal from Kuwait.[151] American pilots were scrambled to take advantage of the Iraqi retreat and were sent to pound the fleeing enemy north of Kuwait City.[152] When it was over, more than 1,400 vehicles, of which only a handful were tanks or personnel carriers, littered the highway along with scores of dead Iraqis.[153] Scenes of the carnage were quickly broadcast around the world and macabre monikers like "Highway of Doom" were being assigned to what was rapidly being interpreted as a coalition turkey shoot.[154]

The destruction of retreating forces may have been the final stroke of Desert Storm, but it was only the beginning of an intense debate over the proper time to end the war. The questions revolved around balancing the political costs of continuing the war -- which was increasingly being viewed as a rout -- with the military imperative to complete the destruction of the Iraqi Republican Guard.

From a purely military perspective, it made sense to seal the victory by destroying the Republican Guard. But key leaders like General Powell implicitly understood the impact that would have on the legitimacy of coalition actions in the international domain. The Chairman felt that legally the destruction of the retreating forces could continue unabated, and there is reason to believe he was correct in his assessment.[155] But in a practical sense, Powell felt that to "blight the dazzling performance of the U.S. military with images of a 'turkey shoot' would be unnecessary and foolish."[156] Powell's civilian bosses were inclined to agree.[157]

Within the alliance there was also a great deal of pressure to end the war, particularly from Saudi Arabia and Egypt, who feared the chaos that a collapse of the Iraqi regime would visit upon their region.[158] Further destruction of fleeing Iraqi forces would have placed the legitimacy of U.S. actions within the coalition in question as well, particularly in light of the fact that the stated aim of removing the Iraqis from Kuwait appeared to have been met and the Iraqis had agreed to accept the UN's pre-war demands.[159]

Domestically, Bush fretted that images coming from the war might lead some to accuse the United States of "butchering the Iraqis."[160] The President understood that ending the war on such terms entailed a likely long-term cost, "We do not want to lose anything now with charges of brutalization … the issue is how to find a clean end. This is not going to be like the battleship Missouri."[161] However, it appears that issues of legitimacy in the three domains weighed heavier than other factors in deciding when to bring Desert Storm to a victorious conclusion.

General Schwarzkopf was deeply involved in the discussions of when to end the war. He too was concerned about the negative images being broadcast from his theater, as was his air component commander General Glosson, although Schwarzkopf thought his pilots were being treated unfairly by the press.[162] But there was some unfinished business on the ground, with the 3rd Army not having completely sealed off the egress routes through which Iraq's residual combat power was rapidly flowing. [163] However, the operational imperative to complete the destruction of the Republican Guard by sealing off its escape routes appeared to be less important than maintaining the legitimacy of U.S. actions in the context of the war. The CINC received the final cease-fire time via a 2:00 a.m. phone call from General Powell. The war was to end one hundred hours after the ground phase began, a time that Schwarzkopf accepted.[164] Gordon and Trainor write:

> Now that the Iraqis were being routed, Schwarzkopf was prepared to subordinate the final destruction of the Republican Guard to the administration's political goals. Protecting the United States military against the charge of brutalization and holding down American and Iraqi casualties in the final days of the war were becoming the main measures of merit in Washington. [165]

Criterion Three: The Effect of Legitimacy on the Termination of Allied Force

Much like in Desert Storm, the issue of legitimacy hung thick in the air as the allies labored to find the right time to bring the war to a close. However in this case, the problem was not the task of throttling back a military in the throes of a rout, but rather how to end the war as quickly as possible with a settlement that would make the whole endeavor appear worthwhile.

In the international domain, the allies made some key decisions in an attempt to find a path to peace that would not sacrifice the legitimacy of the war as a whole. First, they welcomed Russia -- a

traditional Serbian ally -- into the fold as a party to the peace talks.[166] This would legitimize any potential settlement by removing the stigma of a punitive peace imposed by NATO alone. Second, the United States -- and by extension NATO -- appeared willing to compromise on some of its core demands in order to bring the war to a speedy close.[167] This allowed NATO the chance to reach an agreement with the recalcitrant Milosevic, precluding him from further playing the role of international martyr at the hands of NATO bombs. And third, the United Nations was brought in and given a significant amount of influence over the peace settlement and the administration of post-war Kosovo. A Security Council resolution was used to designate the mission of the multinational occupation force, and that force was to remain in place until another resolution determined its future.[168]

In early June a list of NATO's ten demands were presented to Milosevic and he, realizing it was the best he could get, acceded to them in full.[169] After the signing of a military technical agreement on the 9th of June 1999, secretary-general Solana ordered a halt to the bombing and General Clark's war -- never really his to fight in the first place-- was over.

Within the domain of the alliance, Michael Ignatieff argues that alliance unity, as well as the legitimacy of the United States within NATO, was perhaps a key consideration in the timing of decision to end the war:

> One reason why the alliance may have decided to conclude operations in early June and settle for less than total victory was that its leadership sensed 'alliance cohesion' ... could not be maintained much longer.[170]

As the bombing of Serbia came to a close, the nurturing of Kosovo began in earnest and a new coalition began a new and very different mission. A multinational force (KFOR) entered the province and, although NATO remained in charge of the operation, Russian forces were invited to participate as full partners. A workable command and control relationship was hammered out between Russian and NATO forces, and the legitimacy of the alliance in this new mission was thus enhanced by the participation of a nation that had opposed the war but would be intimately involved in the peace.[171]

Domestically, the end of Allied Force could not have come soon enough. The peace settlement allowed the administration to claim victory; a cease-fire was in place, Serb forces were out of Kosovo,

and almost all Albanian refugees were home by the end of June.[172] All of this was possible in spite of the fact that the president had been unable to "overcome congressional opposition, allied squeamishness, and Russian fears ..."[173] But peace is more than the absence of conflict, and in the end the war's ill-defined beginnings shaped the contours of its termination as well, "not unconditional surrender, regime change or destruction of the war-making capacity of the other side, only an ambiguous 'end state.'"[174]

There is scant evidence that General Clark enjoyed as much input in the decision to terminate Allied Force as did General Schwarzkopf in the decision to end Desert Storm. However in both cases, the operational commanders -- and the commanders at all echelons below them --were at the whip end of a process that attempted to balance the need to maintain the legitimacy of the war with the desire to secure an unambiguous military victory. And those decisions were undoubtedly shaped by three prime considerations: the need to establish and maintain the perception that purpose of the war was right, the method of prosecuting the war was just, and the end state of the conflict would bring a lasting benefit to the international community as a whole.

It is important to remember however, that adopting a tenth principle of war is not a decision that should be made in an impulsive or capricious manner. Nor should it be considered in an effort to address a phenomenon that is most likely temporary in nature. Rather, contemplating a fundamental change to U.S. military doctrine demands nothing less than a measured and intellectually honest consideration of different perspectives on the subject, their merits and shortcomings alike.

CHAPTER FIVE
SOME ALTERNATIVE VIEWS: POSSIBLE ARGUMENTS AGAINST ADOPTING LEGITIMACY AS THE TENTH PRINCIPLE OF WAR

It has been demonstrated that the issue of legitimacy was a key consideration in the planning, conduct, and termination of Operations Desert Storm and Allied Force. The question remains, however, of whether its importance crosses the threshold necessary to warrant its consideration as the tenth principle of war. There are substantial and cogent arguments against doing so. However, they ultimately fail when placed in light of the historical importance of legitimacy in recent wars as well as its likely level of importance in the future.

One could argue that the principles of war must apply to all levels of war, and that concerns over legitimacy have little utility below the strategic level. However, it has been shown how deeply issues of legitimacy in each of the three domains affected the operational commanders in Desert Storm and Allied Force. Moreover, concerns over legitimacy shaped the very nature of both wars -- how they were planned, fought, and terminated -- which in turn affected actions at the tactical level as well.

Questions of legitimacy affect whether tactical commanders will fight alongside partners from other nations and who those partners will be. International legitimacy was a key determinant in the composition of the Desert Storm coalition and the decision to fight as part of NATO in Allied Force. Issues of legitimacy determined the tactical missions of the 1st Cavalry Division and the 82nd Airborne during the defense of Saudi Arabia as well as those of the pilots and troops dispatched to locate and destroy SCUDs in the vast Iraqi desert. Legitimacy determined which targets the pilots of Allied Force could service and at what altitude they would fly. And although the genesis of those decisions may have been at the highest levels, their effects were felt at the lowest. Commanders and planners at all levels of war must recognize how the issue of legitimacy shapes the very nature of their actions in the context of war. And a commander at the tactical or operational level who does not concern himself with issues of legitimacy invites a commander at a higher level to do so for him.

Another argument might be that legitimacy is only a perception and therefore beyond the commander's control. This argument reflects an understandable reluctance to make commanders responsible for aspects of warfare and its environment over which they have little or no influence. However, it ignores the reciprocal nature of legitimacy and the role that commanders at all levels play in sustaining the legitimacy of the war.

Just as tactical actions can have operational or strategic effects, tactical actions can effect the perception of legitimacy as well. The bombing of the Al Fidros bunker during Desert Storm and the engagement of retreating troops on the Basra highway, as well as the errant bombings during Allied Force, rocketed up the levels of war with breath-taking speed. And the perception of legitimacy was not only affected by these events, but also had a resulting affect on the further conduct and eventual termination of each war. Perception is formed by deeds more than words, and commanders at the tactical and operational levels must account for the character of those perceptions as they wage America's wars.

A third argument is that legitimacy is a diplomatic or political imperative and not a warfighting concept, a valid concern that the line between politics and war is becoming hopelessly blurred. But joint doctrine offers a simple rejoinder to this argument:

> Often, the MNFC [Multinational Force Commander] will be required to accomplish the mission through coordination, communication, and consensus in addition to traditional command concepts. Political sensitivities must be acknowledged and often the MNFC (and subordinates) must depend on their diplomatic as well as warrior skills.[175]

This is not to say that tactical and operational commanders must set aside the warrior ethos in favor of diplomatic flair. However, the issue of legitimacy often drives the United States to operate as part of a multinational effort. Sustaining the legitimacy of U.S. action within that multinational partnership is now, and will remain, a key consideration for leaders at all levels in the U.S. military.

Moreover, it should be remembered that legitimacy is currently a principle of Military Operations *Other Than* War, ostensibly a consequence of the politically sensitive nature of such operations. But who is to say that operations other than war are any more politically sensitive than wars themselves? The need to consider the central importance of legitimacy is a function of the contemporary international security

environment and the not the type of military operation being conducted. As the environment has changed, so too must the U.S. military's thinking about how legitimacy affects the conduct of all military operations -- including the use of armed force.

CONCLUSION

This monograph began with a proposal: That the U.S. military will have to remain ever mindful of its legitimacy throughout the planning and execution of any conflict -- ensuring that the international community, alliance or coalition partners, and even the various influences within the US domestic political system feel that when the U.S. military is sent forth to do battle, its ends are noble and its means are just. That proposal was followed by two simple questions: Given the enormous effect it will continue to have on the conduct of military operations, should the U.S. military acknowledge its importance by elevating to a status equal to that of *mass* or *objective*? Has the time come for the U.S. military adopt *legitimacy* as its tenth principle of war?

Absolutely. It has been shown that in the cases of Operations Desert Storm and Allied Force, concerns over the legitimacy of each war were prime considerations for both commanders. For General Schwarzkopf and General Clark, legitimacy affected the amount of latitude each had in prosecuting the war. Legitimacy affected the conduct of the war and the tasks they assigned to tactical commanders. And legitimacy affected the point at which they were called upon to bring the war to a close. In short, legitimacy clearly appears to have been a tacit principle of war for both commanders.

Legitimacy is, of course, a principle no more or less important than the other nine in making the crucial decisions necessary to successfully wage war. However, the U.S. military has little choice but to come to terms with the central role legitimacy plays in the nature of armed conflict at the dawn of the twenty-first century. And there is little doubt that when America's armed forces are called once again to secure national objectives through the use of force, commanders at all levels must be sensitive to how their mission interacts with the perception that the purpose of the war is right, the method of prosecuting the war is just, and the end state of the conflict will bring a lasting benefit to the international community as a whole. Balancing this imperative with the other nine principles of war will remain a key challenge for the officers who must plan America's wars in the years to come and the commanders who will win them.

END NOTES

[1] Department of the Army, *FM 100-5 Operations* (Washington, D.C.: United States Government Printing Office, June 1993) 2-4 through 2-6. The currently recognized principles of war are: objective, offensive, mass, economy of force, maneuver, unity of command, security, surprise, and simplicity.

[2] The National Military Strategy is explicit about the emphasis on combined operations, "… while retaining unilateral capability, whenever possible, we must seek to operate alongside alliance or coalition forces …" See Joint Chiefs of Staff, *Joint Publication 3-0, Doctrine for Joint Operations* (Washington, D.C.: United States Government Printing Office, 1997) 2.

[3] Joint Chiefs of Staff, *National Military Strategy* (Washington, D.C.: United States Government Printing Office, 1 February 1995) A-1 through A-3.

[4] Horace B. Robertson, Jr. "Contemporary International Law Relevant to Today's World?" *Naval War College Review* 45 (Summer 1992): 97-98. For an excellent examination of contemporary trends in international law regarding the use of military force, see Horace B. Robertson, Jr. "The Principle of the Military Objective in the Law of Armed Conflict" *International Law Studies* 72 (1998): 197-223.

[5] For a good snapshot of the current state of American military power at the dawn of the 21st century, see Greg Easterbrook, "Apocryphal Now: The Myth of the Hollow Military." *The New Republic*, September 12th 2000, 22-24. See also Michael Ignatieff , "The New American Way of War." *The New York Review of Books*, July 20th 2000, 42.

[6] John I. Alger, *The Quest for Victory: The History of the Principles of War* (Westport: Greenwood Press, 1982) 19.

[7] Air Marshal David Evans, *War: A Matter of Principles* (New York: St. Martins, 1997) 9.

[8] General Ferdinand Foch, *The Principles of War*, trans. J. de Morinni (New York: AMS Press 1970; reprint, 1918 edition), 13.

[9] Evans, *A Matter of Principles*, 7.

[10] Alger, Quest for Victory, 195-270.

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[12] Major Walter E. Piatt, "Do the Principles of War Still Apply?" (Monograph, School of Advanced Military Studies, Fort Leavenworth, KS, AY 1998-99), 30. See also Lieutenant Commander Kent A. Michaelis, "Considering Morale as the Tenth Principle of War" (Paper, Naval War College, Newport, RI, February 8th, 2000), A-1.

[13] Department of the Army, *FM 100-5 Operations,* 2-4.

[14] Joint Chiefs of Staff, *Joint Publication 3-0, Doctrine for Joint Operations*, A-1.

[15] Alger, *Quest for Victory*, 168-169.

[16] John L. Ronjue, *From Active Defense to AirLand Battle: The Development of Army Doctrine, 1973-1982,* TRADOC Historical Monograph Series (Ft. Monroe: U.S. Army Training and Doctrine Command, June 1984), 20.

[17] Alger, *Quest for Victory*, 169.

[18] *FM 100-5 Operations,* 2-4.

[19] *Joint Publication 3-0,* A-1.

[20] Alger, *Quest for Victory*, xviii.

[21] Ibid.

[22] Ibid.

[23] Carl von Clausewitz, On War, ed. and trans. Michael Howard and Peter Paret (Princeton: Princeton University Press 1976), 86.

[24] Alger, *Quest For Victory*, xviii.

[25] Roger Scruton, *A Dictionary of Political Thought* (New York: Harper and Row, 1983) 264.

[26] *The Guide to American Law*, Volume 7, s.v. "legitimacy."

[27] Joel Krieger, ed., *The Oxford Companion to the Politics of the World* (Oxford: Oxford University Press, 1993) 533.

[28] David Robertson, *A Dictionary of Modern Politics* (London: Europa Publications, 1993) 279.

[29] Ibid.

[30] Ibid.

[31] Michael Walzer*., Just and Unjust Wars*, (New York: Basic Books, 1992) 58.

[32] *The Oxford English Dictionary*, 2nd ed., Volume VIII, s.v. "legitimacy."

[33] Douglas H. Yarn, ed*., Dictionary of Conflict Resolution*, (San Francisco: Jossey-Bass Publishers, 1999) 257.

[34] Joint Chiefs of Staff, *Joint Publication 3-07, Joint Doctrine for Military Operations Other Than War*, (Washington, D.C.: United States Government Printing Office, 16 June 1995), II-5.

[35] Ibid.

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[37] Ibid.

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[40] Walzer, *Just and Unjust Wars*, 21.

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[43] *Joint Publication 3-07,* II-5.

[44] Mark Edward DeForrest, "Just War Theory and the Recent U.S. Air Strikes Against Iraq," p. 2; available from http://www.law.gonzaga.edu/borders/documents/deforres.htm.

[45] Ibid., 8.

[46] United Nations. *The Charter of the United Nations*. 26 June 1945. Article 51.

[47] Ibid., Article. 42.

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[49] Waltraud Queise Morales, "U.S. Intervention and the New World Order: Lessons From Cold War and Post-Cold War Cases." *Third World Quarterly* 15, (March 1994): 78.

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[56] Department of the Army, *FM 27-10 The Law of Land Warfare* (Washington, D.C.: United States Government Printing Office, Change 1-15 July 1976) Chapter 1, Section I. See also NWP 1-14M / MCWP 5-2.1 / COMDTPUB P5800.7 *The Commander's Handbook on the Law of Naval Operations* (Washington, D.C.: United States Government Printing Office, October 1995) 5-1, 8-1.

[57] Seabury and Codevilla, *War*, 224.

[58] Walzer, *Just and Unjust Wars*, 120.

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[60] *FM 27-10 The Law of Land Warfare,* Chapter 1, Section I.

[61] Michael Ignatieff, *Virtual War,* (New York: Metropolitan Books, 2000) 161.

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[64] General Robert W. RisCassi, "Principles for Coalition Operations," *Joint Force Quarterly* (Summer 1993): 63.

[65] *Joint Publication 3-16, Multinational Operations*, I-1.

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[78] *War Powers Resolution*, Section 3. Quoted in Craig R. Ducat, *Constitutional Interpretation: Powers of Government Volume I.* (St. Paul: West Publishing Company, 1996), 321.

[79] Ibid., Section 5(b).

[80] Thomas, Pika, and Watson, *The Politics of the Presidency*, 419.

[81] Charles W. Kegley and Eugene R. Wittkopf, *American Foreign Policy: Pattern and Process*. (New York: St. Martins, 1996), 277.

[82] U.S. News and Wold Report, *Triumph Without Victory*. (New York: Times Books, 1992), 37-39. In all, the UN issued 12 separate resolutions on the crisis, culminating with resolution 678 that authorized member states cooperating with the coalition to use "all necessary means" to expel Iraq from Kuwait. See "United Nations Resolutions on Desert Storm, "*Essential Documents in American History*, available from EBSCO Host.

[83] Bob Woodward, *The Commanders*. (New York: Star Books, 1991), 206. For a good synopsis of the President's view of the impossibility of a unilateral response, in his own words, see also U.S. News and Wold Report, *Triumph Without Victory*. (New York: Times Books, 1992), 82.

[84] Lauren Holland, "The Decision to Launch Operation Desert Storm: A Bureaucratic Politics Analysis." *Armed Forces and Society*, (Winter 1999): 224.

[85] U.S. News, *Triumph*, 36, 72-75.

[86] Ibid., 86.

[87] Ibid., 82.

[88] James Turner Johnson and George Weigel, *Just War and the Gulf War*. (Washington, D.C.: Ethics and Public Policy Institute, 1991), 22, 23-25. See also N.D. White and H. McCoubrey, "International Law and the Use of Force in the Gulf." *International Relations* 10 (November 1991): 351.

[89] Ignatieff, *Virtual War*, 205.

[90] Michael Gordon and Lieutenant General Bernard E. Trainor, *The General's War*. (Boston: Little, Brown, and Company, 1995): 72.

[91] Ignatieff , "The New American Way of War." *The New York Review of Books*, 42.

[92] Gordon and Trainor, *General's War*, 72.

[93] Ibid., 73-74.

[94] Gordon and Trainor, *General's War*, 373. See also Rick Atkinson, *Crusade: The Untold Story of the Persian Gulf War*. (New York: Houghton Mifflin Company, 1993), 458-459.

[95] U.S. News, *Triumph*, 185,187,191.

[96] Ibid., 202.

[97] Holland, "The U.S. Decision," 225.

[98] U.S. News, *Triumph*, 207, 449-450. See also James Blackwell, *Thunder in the Desert*. (New York: Bantam Books, 1991), 110-111.

[99] U.S. News, *Triumph*, 207.

[100] Morales, “U.S. Intervention,” 84.

[101] Michael Ignatieff, *Virtual War,* (New York: Metropolitan Books, 2000) 14.

[102] Ibid., 36.

[103] Hassan Abbas, “Under International Law or International Politics?” *Peacekeeping and International Relations* 28 (September-December 1999): 4.

[104] Ibid.

[105] *Charter of the United Nations*, Art.2(1).

[106] Ibid., Art. 2(7).

[107] James Kitfield, “Not So Sacred Borders.” *National Journal*, 20 November 1999, 1. Available from http://ebird.dtic.mil/Nov1999/s19991124notso.htm.

[108] Robert Tomes, “Operation Allied Force and the Legal Basis for Humanitarian Intervention.” *Parameters* 30, (Spring 2000): 11.

[109] Ivo Daalder and Michael E. O’Hanlon. *Winning Ugly: NATO’s War to Save Kosovo*. (Washington, D.C.: Brookings Institution Press, 2000), 102.

[110] Ignatieff, *Virtual War*, 198-200.

[111] Daalder and O’Hanlon, *Winning Ugly*, 18.

[112] Ibid., 101-102.

[113] Javier Solana, “NATO’s Success in Kosovo.” *Foreign Affairs* 78 (November/December 1999): 116.

[114] David Fromkin, *Kosovo Crossing*. (New York: The Free Press, 1999), 194.

[115] Ignatieff, *Virtual War*, 92.

[116] Daalder and O’Hanlon, *Winning Ugly*, 2.

[117] Ignatieff, *Virtual War*, 98.

[118] Daalder and O’Hanlon, *Winning Ugly*, 98-99, 130-133. See also Ignatieff, *Virtual War*, 179.

[119] Daalder and O’Hanlon, *Winning Ugly*, 106.

[120] Ignatieff, *Virtual War*, 96.

[121] Greg Cashman, *What Causes War?: An Introduction to Theories of International Conflict*. (New York: Lexington Books, 1993): 146.

[122] Frank Columbus, ed. *Kosovo-Serbia: A Just War?* (Commack: Nova Science Publishers, 1999): 26-27. In one of the cruelest ironies of recent political history, Allied Force was begun just about the time a movie titled "Wag the Dog" was making the rounds in America's theaters. In the movie, a U.S. president fabricates a war -- in Albania no less -- to divert the attention of the American people from a sexual scandal. "Wag the Dog" entered the American lexicon and became a popular pseudonym for the diversionary theory of war throughout the course of Allied Force. Most serious commentators and political thinkers, however, dismissed the similarity as unfortunate but not substantive.

[123] Rick Atkinson, *Crusade: The Untold Story of the Persian Gulf War*. (New York: Houghton Mifflin Company, 1993), 276-277, 285.

[124] Ibid., 277.

[125] Ibid., 294.

[126] Ibid., 289. See also Gordon and Trainor, *General's War*, 324-327.

[127] Atkinson, *Crusade*, 294-295.

[128] Gordon and Trainor, *General's War*, 326. For an excellent analysis of the Al Fidros bombing from the perspective of international law, see Nigel D. White and Hilaire McCoubrey, "International Law and the Use of Force in the Gulf." *International Relations* 10 (November 1991): 365-366.

[129] Atkinson, *Crusade*, 288.

[130] Ibid., 289.

[131] Ibid., 290. The strength of Desert Storm's legitimacy in the domestic domain is can be evidenced by the fact that the Al Fidros bombing did not appear to cause universal soul-searching within the United States. Columnist Charles Krauthammer wrote a column in the 14 February 1991 edition of the *Washington Post* that seemed to reflect the zeitgeist, "Civilian pain in war is a horror beyond words. But when a war is just, it must be faced with a kind of nerve." Krauthammer concluded his column by stating, "So long as we scrupulously attack what we reasonably believe to be military targets, the bombing of Baghdad is a cause for sorrow, not guilt." Charles Krauthammer, "Bombing Baghdad: No Cause for Guilt." *Washington Post*, 14 February 1991. Quoted in Michah Sifry and Christopher Cerf, *The Gulf War Reader*. (New York: Times Books, 1991), 331-333.

[132] Atkinson, *Crusade*, 81.

[133] Ibid., 82-83.

[134] Ibid., 84.

[135] Ibid., 97-103, 175-181.

[136] Gordon and Trainor, *General's War*, 235.

[137] Ibid., 238.

[138] Ibid., 237.

[139] Ibid., 196.

[140] Ignatieff, "New American Way of War," 42.

[141] Ibid.

[142] Military manuals on the laws of war that address the issue of targeting ascribe an affirmative duty to clearly distinguish between military and civilian targets. The gray area involves so-called "dual use" targets such as power stations, infrastructure, and economic targets. According to U.S. doctrine, and consistent with international law, such targets may be engaged if it can be proven that they effectively support the war-fighting capability of the enemy. See NWP 1-14M / MCWP 5-2.1 / COMDTPUB P5800.7 *The Commander's Handbook on the Law of Naval Operations* (Washington, D.C.: United States Government Printing Office, October 1995) 5-1, 8-1. Michael Ignatieff also addresses the moral issues surrounding dual use targets. See Ignatieff, *Virtual War*, 170 and 194.

[143] Ignatieff, *Virtual War*, 100-101.

[144] The rules of engagement for the pilots of Allied Force were, in the words of one Air Force general officer, "as strict as any I have seen in twenty-seven years." See Ignatieff, *Virtual War*, 101.

[145] Daalder and O'Hanlon, *Winning Ugly*, 122, 231. See also Ignatieff, *Virtual War*, 101.

[146] Ignatieff, *Virtual War*, 103-104. See also Daalder and O'Hanlon, *Winning Ugly*, 147.

[147] Ibid., 107.

[148] Ibid., 102.

[149] Ibid., 103. See also Daalder and O'Hanlon, *Winning Ugly*, 124.

[150] Daalder and O'Hanlon, *Winning Ugly*, 124.

[151] Gordon and Trainor, *General's War*, 369.

[152] Ibid., 370.

[153] Ibid., 370.

[154] Stacy R. Obenhaus, "Highway to Basra and the Ethics of Pursuit," *Military Review* 80 (March/April 2000): 51. See also U.S. News, *Triumph*, 451, Gordon and Trainor, *General's War*, 369, and Atkinson, *Crusade*, 395.

[155] U.S. News, *Triumph*, 452. For an analysis of the situation from the perspective of international law, see Obenhaus, "Highway to Basra," 51-64, and White and McCoubrey, "International Law and the Use of Force in the Gulf," 370.

[156] U.S. News, *Triumph*, 453.

[157] Gordon and Trainor , 414-416.

[158] Ibid., 395.

[159] Gordon and Trainor , 414-416. See also U.S. News, *Triumph*, 396.

[160] Ibid., 414. See also Atkinson, *Crusade*, 450.

[161] Gordon and Trainor , 416.

[162] U.S. News, *Triumph*, 395. See also Atkinson, *Crusade*, 449.

[163] Gordon and Trainor , 427-429.

[164] Ibid., 422-423.

[165] Ibid., 423.

[166] Daalder and O'Hanlon, Winning Ugly, 166-175.

[167] Ibid., 168.

[168] Ibid., 174-175.

[169] Ibid., 173-174.

[170] Ignatieff, *Virtual War*, 208.

[171] Daalder and O'Hanlon, *Winning Ugly*, 175.

[172] Ibid., 176.

[173] Ibid., 191.

[174] Ignatieff, *Virtual War*, 208.

[175] *Joint Publication 3-17*, I-1

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