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JUS AD BELLUM: GULF WAR I AND GULF WAR II. TWO SIDES OF THE SAME COIN

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SAME COIN**

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ABSTRACT

This paper provides an analysis of the First and Second Gulf War by applying the Just War theory with the intent on demonstrating that the Second Gulf War was unjust due to it failing to meet the five jus ad bellum criteria. The following five jus ad bellum criteria are applied to these two wars; just cause, right intention, legitimate authority, net benefit and last resort. This paper will provide a subjective analysis of these two wars by using the Just War Index (JWI) developed by Dr Walter Dorn. These two wars, though fought in the same region, were initiated under completely different circumstances. The first was a classic example in the just war traditional sense of a wrong needed to be made right or the invasion of Kuwait by the belligerent nation of Iraq. The second war in stark contrast was initiated in a post 9/11 world, a Bush doctrine world where pre-emption against rogue regimes harbouring or supporting terrorism could be targeted due to the imminent threat they posed against the United States. The first section of this paper argues that the First Gulf War was a just war by the fact that all five jus ad bellum criteria were met and supported by their associated positive JWI scoring. The subsequent section argues that the Second Gulf War was an unjust war due to it not meeting two of the five jus ad bellum criteria, specifically legitimate authority and last resort. The United States failed to gain UN support for this conflict and invoked the right to self-defence against a questionable threat and secondly, and closely tied to the legitimate authority, failed to allow UNSCR 1441 adequate time to have an effect despite UN Weapons Inspector lead Hans Blix reporting that progress was being achieved and that more time was required. The analysis results of the first two sections are then compared illustrating the need that all jus ad bellum criteria need to be met in order for a war to be just. Through a comparative analysis of these two wars using the JWI in meeting the jus ad bellum criteria, clearly the United States actions during the Second Gulf War demonstrates the unjustness of this war

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INTRODUCTION

*And there can be no imaginable act of violence, however treacherous or cruel, that falls outside of war, that is not-war, for the logic of war simply is a steady thrust toward moral extremity.*¹

Michael Walzer, *Just and Unjust Wars*, 2004.

The Just War theory has seen a revival over the last few decades in the United States beginning with the Vietnam War and even more so with the United States decisions to go to war against Iraq in 1991 and 2003. These two wars have been and continue to be scrutinized from the point of view of just war theory and their related principles. A set of principles that can be applied to a case of war to provide a “moral justification for the application of armed force.”² For the purpose of this paper, the following five Just War criteria will be applied to the First and Second Gulf Wars. They are *just cause, legitimate authority, right intention, net benefit* and *last resort*. As Michael Walzer states in *Just and Unjust Wars*, “just-war theory has always played a part in official arguments about war”³ and as such, the First and Second Gulf Wars provide excellent examples to compare and contrast the application of the Just War tradition. By applying the Just War criteria to the first and second Gulf Wars, this paper will demonstrate that the First Gulf War fulfilled these criteria and how the Second Gulf War of the ‘coalition of the willing’ failed to meet the Just War criteria thus making this war unjust.

¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd Edition, (New York, NY: Basic Books, 2000), 23.

² Walter A. Dorn, "The Just War Index: Comparing Warfighting and Counterinsurgency in Afghanistan," *Journal of Military Ethics* 10, no. 3 (Sept, 2011): 242; <http://web.ebscohost.com>; Internet; accessed 20 February 2012.

³ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd Edition, (New York, NY: Basic Books, 2000), xi.

In order to avoid this paper assessing the Gulf wars against the Just War criteria as a “series of boxes to check,”⁴ this paper will provide a quantitative analysis by using the Just War Index (JWI)⁵. The results from the JWI, as stated in Dr Walter Dorn’s article, *The Just War Index: Comparing Warfighting and Counterinsurgency in Afghanistan*, are “subjective and are strongly influenced by the assessor’s world perspective and other biasing factors.”⁶ The JWI is a numerical scale with arrange of +3 to -3 which allows the assessor to quantify the justness or unjustness of each of, in the case of this paper, the five selected criteria. The meaning of the numbers can be viewed as follows:

- +3 Strongly just
- +2 Moderately just
- +1 Slightly just
- 0 Neutral
- 1 Slightly unjust
- 2 Moderately unjust
- 3 Strongly unjust

The JWI scale will be applied to the five Just War principles for *jus ad bellum* and will provide an average score or JWI for the particular Gulf War being assessed. Some just war criteria may be viewed as more important and as such should carry more weight than the other criteria yet are equally weighted in this assessment.⁷ To minimize this, a

⁴ Jean Bethke Elshtain, "Jean Bethke Elshtain Responds," *Dissent* 53, no. 3 (Summer 2006): 109.

⁵ In the JWI analysis, numerical scores are given to each Just War criterion and the JWI is the average of the scores. The JWI approach can help one to compare the pros and cons of different strategies or operations within the same conflict.

⁶ Walter A. Dorn, "The Just War Index: Comparing Warfighting and Counterinsurgency in Afghanistan," *Journal of Military Ethics* 10, no. 3 (Sept, 2011): 244; <http://web.ebscohost.com>; Internet; accessed 20 February 2012.

⁷ *Ibid.*

broad base of sources as well as points of view from political, economic and ideological as well as proponents and opponent views to the wars will be used in this paper to provide a relatively sound assessment of each principle.

The just war tradition and their associated criteria have been influential for determining the justness of going to war. This tradition is the culmination of “likeminded thinkers who employed similar concepts and values to construct a moral code regarding wartime behaviour.”⁸ Great thinkers such as Grotius and Augustine have been central to the development of this tradition and as such this tradition has “been codified into contemporary international laws governing armed conflict”⁹ as well as being influential in the legal and moral discourse for going to war.¹⁰ There are many opponents to the just war theory such as pacifists who believe that war is a criminal act and realist who believe that “in time of war, the laws are silent.”¹¹ Walzer argues that the just war theory is language in which people can argue or reflect on a case for war. For centuries the just war theory has been used as a tool to determine if wars have been properly justified. The first just war criteria, *just cause*, has “been central to just war debate”¹² and in today’s context difficult to justify. A *just cause* can be subjective, difficult to define and justify. Classically, *just cause* needed to meet either of the following conditions; defence against an attack, recovery of something wrongly taken, or punishment of evil,¹³ however with

⁸ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000): 86.

⁹ *Ibid*, 87.

¹⁰ *Ibid*.

¹¹ Michael Walzer, *Arguing about War*, New Haven Connecticut; (Yale University Press, 2004), ix.

¹² Ian Holliday, "When is a Cause just?" *Review of International Studies* 28, no. 3 (Jul., 2002): 559; <http://www.jstor.org>; Internet; accessed 20 February 2012.

¹³ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 21.

the advancement of mankind these needed some revision. As such Michael Walzer admits to three revisions required to the just war theory, specifically to *just cause*, which are pre-emptive attacks, counter-intervention and humanitarian intervention.¹⁴ Normally, a *just cause* to go to war was in self-defence, but in light of the realities of modern warfare the just war theory needed to be adjusted. The second criteria, *right intention*, is similarly and as important as *just cause*. A nation needs the *right intention* to go to war in order to justify the cause. A nation cannot go to war for revenge or for personal ambition, they must do so to reverse an evil, to check offensive weapon development or establish the ground rules for the conduct of international political and economic affairs.¹⁵ As Alex Bellamy states in *Just Wars*, “[w]hen a soldier kills another, therefore, he must do so only because it is the only way of defending the common good or righting a wrong.”¹⁶ Not only does a nation require the *right intention* for going to war, their motivation must be morally correct. The third criteria, *legitimate authority*, refers to a state having the proper recognized authority to wage war according to the proper state and international processes, and made public, notably to its own citizens and to the enemy state.¹⁷ The fourth criterion, *net benefit*, “asks whether the overall harm likely to be caused by the war is less than that caused by the wrong that is being righted.”¹⁸ This criterion is potentially the “most contentious and challenging”¹⁹ just war criteria. The fifth and last criterion

¹⁴ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd Edition, (New York, NY: Basic Books, 2000), 102.

¹⁵ Paul Robinson, *Just War in Comparative Perspective*, (Aldershot, England: Ashgate, 2003), 201.

¹⁶ Alex J. Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge, UK: Polity, 2006), 122.

¹⁷ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 87.

¹⁸ Alex J. Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge, UK: Polity, 2006), 123.

¹⁹ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 100.

discussed in this paper, *last resort*, refers to “war should only be pursued after nonmilitary alternatives to solving the dispute have been pursued within reasonable limits.”²⁰ The nonmilitary methods available range from diplomatic negotiations to economic sanctions, however, as Walzer points out “there is no such thing as a last resort.”²¹ What Walzer implies is that there are always other means to attempt in order to avoid war, another attempt at diplomacy or extending sanctions on the aggressor, however, continuing to pursue alternative options to war can lead to further human suffering. A rational decision considering all the just war criteria must be made at some point.

This paper will examine the just war tradition as it relates to *jus ad bellum* or “the justice of resorting to war.”²² As stated by Brian Orend in *Michael Walzer on War and Justice*, the rising red tide of armed conflict since the end of the Cold War has seen a revival of the ethics of war and international justice.²³ The rapid advancement of informational technology has brought all conflicts into the global arena which can be scrutinized by all nation states and individuals. This revival has placed heads of States’ decisions under closer examination. It ensures that they are held accountable for their actions by the court of world opinion for their decisions to go to war. Michael Walzer, a renowned contemporary political philosopher, is best known for his seminal work *Just and Unjust Wars*, in which he theorizes that war can be morally justified as long as it has been started for the right reasons or criteria. An analysis of the two Gulf Wars provide an

²⁰ Eric Heinze, and Brent J. Steele, *Ethics, Authority, and War: Non-State Actors and the Just War Tradition*, (New York: Palgrave Macmillan, 2009), 5.

²¹ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 98.

²² *Ibid.*, 88.

²³ *Ibid.*, 3.

excellent examples Just War criteria both making and failing the grade in terms of the justness of the those wars.

The settings for the two Gulf Wars are markedly different. The first was basically to right a wrong or the removal of Iraq from the sovereign nation of Kuwait. The second was based on the United States perception of an imminent threat thus justifying their preemptive actions against Iraq. This paper will examine the efforts the United States did before making that final decision to go to war. This will be examined from the aforementioned just war criteria using knowledge of the day and quantitatively assessed using the JWI. The Second Gulf War is a marked contrast to the war of 1990. The United States needed to provide a more compelling argument to go to war against a country that had not invaded another country but was believed to have the capabilities of producing Weapons of Mass Destruction (WMD) and potentially using them on other countries, primarily the United States.

This paper is divided into three sections. The first two sections will follow the same methodology of applying the five Just War criteria to both Gulf Wars and providing a JWI assessment for each criterion. The third section will provide a comparative analysis of the two Gulf Wars and provide a summary of the findings demonstrating that the Second Gulf War failed to meet the Just War criteria of a just war.

OPERATION DESERT STORM

*Americans want their nations actions to be moral; it is part of the legacy of that tradition by which this country is “a city set on a hill,” a model for other nations to follow.*²⁴

James Turner Johnson, *Just War and the Gulf War*, 1991

HISTORY

On January 15th 1991, after months of diplomatic, political and economic attempts to get Saddam Hussein to comply with United Nations Security Resolution (UNSCR) 678, President George H. W. Bush issued National Security Directive (NSD) 54, which authorized “military actions designed to bring about Iraq's withdrawal from Kuwait.”²⁵ The Bush administration had articulated its policy towards the Gulf region with the release of NSD 26 in October 1989 in which they highlighted the requirement for security in the region and to foster better relationships with Iraq. Following the invasion of Kuwait, President Bush issued the first of two NSD which reinforced the requirements for stability in the Gulf region. Common to both of these directives, as well as NSD 26, was the requirement for “[a]ccess to Persian Gulf oil and the security of key friendly states in the area are vital to U.S. national security.”²⁶ Similarly, the UN issued a series of UNSCRs starting with UNSCR 660 on 2 August 1990 which condemned the invasion

²⁴ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 3.

²⁵ George Bush, “National Security Directive 54,” *George Bush Presidential Library and Museum*, available from <http://bushlibrary.tamu.edu/research/pdfs/nsd/nsd54.pdf>; Internet; accessed 20 February 2012.

²⁶ Bush, George. “National Security Directive 45.” *George Bush Presidential Library and Museum*. Available from <http://bushlibrary.tamu.edu/research/pdfs/nsd/nsd45.pdf> Internet; accessed 20 February 2012.

and asked for immediate withdrawal from Kuwait and was quickly followed up four days later with UNSCR 661 on 6 August 1990 placing economic sanctions on Iraq. Over the following five months, diplomatic efforts and economic sanctions were not meeting the main objective of having Iraq cease its occupation of Kuwait. This war, in contrast to the Second Gulf War, which would occur twelve years later, was quite different in terms of setting. The First Gulf War was a UN sanctioned war with overall popular support to remove the Iraqi occupation of Kuwait. Simply put, the invasion of Kuwait placed the objectives of the United States NSD 26 and 54 at risk and the forced the UN to sanction action for the termination of Iraqi occupation. This war was characterized as “a relentlessly successful military campaign”²⁷ in which coalition partners quickly achieved NSD 54 objectives with minimal coalition casualties and the “popular support on the home front”²⁸ from Americans.

JUST CAUSE

Just cause to go to war in the traditional sense needed the following conditions met: defence if you were attacked, recovery from something wrongly taken or the punishment of evil. Michael Walzer provides revisions to *just cause* in light of how the dynamics of the global community has changed in the last few decades. His revisions adds the following *just cause* conditions; pre-emptive attacks, counter-intervention and humanitarian intervention.²⁹ Clearly the case of counter-intervention for the condition comes to play in the analysis of *just cause* for the Gulf War. In Ian Holliday’s article,

²⁷ Rick Atkinson, “Murky Ending Clouds Desert Storm Legacy,” *Washington Post*, 1998, Available from <http://www.washingtonpost.com/wp-srv/inatl/longterm/fogofwar/intro.htm>; Internet; accessed 20 February 2012.

²⁸ *Ibid.*

²⁹ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 102.

When is a cause just?, he states “ a just cause judgment can only be made at the end of this particular line, not at the beginning.”³⁰ What Holliday is stating in this article is that the other *jus ad bellum* criteria must be fulfilled in order to have a *just cause*.

To examine this war from a legal perspective, the invasion of Kuwait by Iraq on 2 August 1991 provided the legal right for individual or collective self-defence under Article 51 of the UN Charter. What is important to note in this provision is that self-defence is not unlimited. The article states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.³¹

Secondly, Iraq violated Article 2 of the Charter which prohibits the “use of force against the territorial integrity or political independence of any state.”³² Following the annexation of Kuwait by Iraq, the Kuwaitis were brutalized their country gutted which are clear violations of international law and to Article 2 of the UN Charter. This act of aggression against Kuwait provided the basis or legal foundation for the counter-intervention condition of *just cause*. As mentioned earlier in this section, the United States had their own self-serving cause over and above the UN Charter which were items in NSD 54. This NSD served a United States cause of “[a]ccess to Persian Gulf oil and the security of key friendly states in the area [which] are vital to U.S. national security.”³³ Under such conditions is where greater debate can occur with the legitimacy of the cause.

³⁰ Ian Holliday, "When is a Cause just?" *Review of International Studies* 28, no. 3 (Jul., 2002): 561; <http://www.jstor.org>; Internet; accessed 20 February 2012.

³¹ United Nations. Charter of the United Nations. Available from <http://www.un.org/en/documents/charter/>; Internet. Accessed 23 February 2012.

³² *Ibid.*

³³ George Bush, “National Security Directive 54,” *George Bush Presidential Library and Museum*, available from <http://bushlibrary.tamu.edu/research/pdfs/nsd/nsd54.pdf>; Internet; accessed 20 February 2012.

As Walzer states in *Just and Unjust War*, “[i]t is common criticism of the war [first Gulf War] that the United States had ‘imperialist’ motives: world order masked a desire for influence and power in the Gulf, for a strategic presence and control over the flow of oil.”³⁴ One can easily accuse the United States at being self-serving to its own interests and using international law as an asset to legitimize the use of force. However, as history has shown this region has played an important role to the economic stability of many nations. Yet in President Bush’s address before a Joint Session of the Congress on the State of the Union, on 29 January 1991, where he describes a ‘new world order’ in which “diverse nations are drawn together in common cause to achieve the universal aspirations of mankind -- peace and security, freedom, and the rule of law,”³⁵ thus clearly indicating the cause for the United States to invade Iraq. The *just cause* of intervening to right a wrong in this case was the basis for armed intervention. President Bush was adamant throughout the build-up to the Gulf War which supported by his statement “[w]e went halfway round the world to do what is moral, just, and right.”³⁶ Without doing so would have led to regional and economic instability. However, the interests of the United States are not always apparent due to the complexity of politics. As Walzer states about political motive, “[a]n absolutely singular motivation, a pure good will, is a political illusion.”³⁷

Just cause for this war from the theological perspective is one of great debate and divide.

³⁴ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd Edition, (New York, NY: Basic Books, 2000), xviii.

³⁵ George H. W. Bush, “Address Before a Joint Session of the Congress on the State of the Union.” 29 January 1991. Available from http://bushlibrary.tamu.edu/research/public_papers.php?id=2656&year=1991&month=01; Internet; accessed 20 April 2012.

³⁶ Paul Robinson, *Just War in Comparative Perspective*, (Aldershot, England: Ashgate, 2003), 200.

³⁷ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd Edition, (New York, NY: Basic Books, 2000), xviii.

In modern Western Christian tradition Just War doctrine is the main way to think about war in which the church has used it as an ethical framework to analyze to reasons to go to war.³⁸ Some critics of the churches approach to Just War theory is that it “maintains a presumption against the use of force.”³⁹ This was illustrated by the initial condemnation of the prospective war as the United States and its coalition partners as they were nearing the start of the Gulf War. Comments such as, "I am not convinced that this is a war of last resort," Archbishop Francis T. Hurley of Anchorage stated on 17 January 1991, "It is a war without glory."⁴⁰ However, Cardinal Bernard Law, the highest-ranking Roman Catholic Cardinal in the United States offered his support to President Bush in a column published on 25 January 1991 in the weekly newspaper of the Boston Archdiocese by stating, “[t]he allies were faced with a regrettable dilemma...[e]ven as we echo the prayer of Pope Paul VI, 'No more war, war never again,' with heavy hearts we realize that such a prayer is not fulfilled at the price of granting tyrants and aggressors an open field to achieve unjust ends.”⁴¹ Even though the United States Conference of Catholic Bishops pastoral letter entitled *The Harvest of Justice Is Sown in Peace* states that the “devastation wrought by these recent wars reinforces and strengthens for us the strong presumption

³⁸ Eric Patterson, *Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats*, (Lanham, MD: Lexington Books, 2007), 18.

³⁹ *Ibid.*, 11.

⁴⁰ Peter Steinfels, “War in the Gulf: Religious Leaders; Cardinal Says Iraqi's Acts Prove Bush Right,” *New York Times*, 26 January 1991; Available from <http://www.nytimes.com/1991/01/26/us/war-in-the-gulf-religious-leaders-cardinal-says-iraqi-s-acts-prove-bush-right.html>; Internet; accessed 20 February 2012.

⁴¹ *Ibid.*

against the use of force,”⁴² this war was considered a *just cause* due to the grave violations of the rights of the Kuwaiti people.

This analysis of the *just cause* criterion was assessed from the legal, political and theological points of view. Based on this assessment, *just cause* is assigned a JWI of +2. Now that there has been substantiation for the cause, the next section will examine the criterion of *right intention*.

RIGHT INTENTION

This section will assess the Gulf War from the Just War criteria *right intention*. This section will first examine the United States intentions from their National Security Directives for the Gulf region to determine if their intentions were self-serving for greater global economic and regional stability. Secondly, this section will examine their intentions from a restoration of peace or moral perspective demonstrating the benefit of the moral perspective of the just war theory and the rule of law, international law perspective illustrating the need to balance both in determining if the intention is just.

As this paper has previously demonstrated a war must be fought for a *just cause* and “not for some other ulterior or hidden reason.”⁴³ Truly, the *right intention* should be concerned with “the kind of post-war situation that is truly sought by those who would wage war”⁴⁴ and not for a state’s personal gain. One of the common criticisms of *right*

⁴² United States Conference of Catholic Bishops. *The Harvest of Justice Is Sown in Peace*. Available from <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/the-harvest-of-justice-is-sown-in-peace.cfm>; Internet. Accessed 26 February 2012.

⁴³ Eric Heinze, and Brent J. Steele, *Ethics, Authority, and War: Non-State Actors and the Just War Tradition*, (New York: Palgrave Macmillan, 2009), 5.

⁴⁴ Christian Enemark and Christopher Michaelsen. "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005), 559.

intention is on the “grounds of double standards.”⁴⁵ Criticisms on why the United States at times seems to pick and choose when and where not they wish to intervene such as when the Soviet Union invaded some of their neighboring countries or the illegal Israeli oppression of Palestine. In these two instances, war in those situations would have potentially destabilized regional and global stability at the cost of many military and civilian lives. As Brendan Howe states in *Conflicting Normative Dimensions of Justification: The Gulf War*, “[n]o sane political leader would chose a war that brought millions or even hundreds of thousands of deaths, or threaten the world with nuclear destruction, for the sake of Kuwaiti independence.”⁴⁶ In the case of the Gulf War, critics saw the United States involvement in the war as “blood for oil or as an effort to secure American hegemony in the Gulf region.”⁴⁷ Often these interventions serve the national interests of that state and in the case of the United States its intention for war against Iraq can be drawn from the NSD 26, 45 and 54. First and common to all three directives is the United States vital interests of access to oil in the Persian Gulf, of which Iraq “controls some 10 percent of the world's proven oil reserves,”⁴⁸ and the security and stability of key friendly states in the region. Stated as well in these directives is the importance of maintaining national and world economic stability. The invasion of Kuwait not only placed in jeopardy the interests of the United States but potentially as well global economics. Furthermore, stated in NSD 26 issued 2 October 1989, the United States

⁴⁵ Paul Robinson, *Just War in Comparative Perspective*, (Aldershot, England: Ashgate, 2003), 203.

⁴⁶ *Ibid.*, 204.

⁴⁷ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 25.

⁴⁸ George H. W. Bush, “Address Before a Joint Session of the Congress on the Persian Gulf Crisis and the Federal Budget Deficit.” 11 September 1990. Available from http://bushlibrary.tamu.edu/research/public_papers.php?id=2217&year=1990&month=9; Internet; accessed 20 April 2012.

pressed for normal relations with Iraq and Iran in order to serve their “long-term interests and promote stability in both the Gulf and Middle East.”⁴⁹ From the perspective of the United States vital interests stated in NSD 26, 45 and 54, the intention of ensuring the United States national and global economic stability is assessed as being of the *right intention*. However, that being said there is still “a long and tangled history between the Bush family and the elite of Saudi Arabia”⁵⁰ which would lead one to easily believe that personal financial gains were at stake as well.

In the twenty-first century there has been much debate regarding the moral aspect of the just war theory and its conflicting view to the rule of law in the international system. Collective security organizations such as the UN are central to international law and is considered by some as the means for judging when the use of force is justified thus making the “just war theory obsolete.”⁵¹ However, the change in conflict in the last few decades has made it more difficult to justify the use of force through international law and as such the Just War theory has seen resurgence using its moral principles to justify the use of force.

In James Turner Johnson and George Weigel book *Just War and the Gulf War*, they argue that another interpretation of *right intention* is for the goal of peace. In it they argue that the coalition’s use of force for the aim of achieving peace was substantially

⁴⁹ George Bush, “National Security Directive 26,” *George Bush Presidential Library and Museum*. Available from <http://bushlibrary.tamu.edu/research/pdfs/nsd/nsd26.pdf> Internet; accessed 20 February 2012.

⁵⁰ The Fifth Estate. “Conspiracy Theories: The Saudi Connection.” Available from <http://www.cbc.ca/fifth/conspiracytheories/saudi.html>; Internet. Accessed 20 April 2012.

⁵¹ Belinda Helmke, “Just Not Good enough,” *AQ: Australian Quarterly* 76, no. 5 (Sep. - Oct., 2004): 22.

satisfied.⁵² In the classical just war tradition this principle of *right intention* is understood in “terms of three values: order, justice, and peace.”⁵³ First, to have good order a nation must have good politics and in turn reflects natural law which leads to justice and a legitimate political body. With these first two values established it will produce peace and with it the orderly running of politics in society. The goal of the United States was to restore Kuwaiti sovereignty and territory fulfilling the values of order, peace and justice in the region thus satisfying the *right intention* of peace. However, as James Turner Johnson and George Weigel state, in the just war tradition if the coalition was to maintain a broader peace, their peace efforts needed to be extended into the offending state as well.⁵⁴ This is where the conflict with international law occurs and the reluctance of the UN to get involved with the affairs between nations. Ultimately, the coalition decided not to pursue a regime change in Iraq and was satisfied with their *right intention* of establishing peace in the region.

This section assessed the just war principle of *right intention* from the perspective of the United States intentions for the use of force in the Gulf based on NSD 26, 45, and 54 and from the moral perspective of achieving the goal of peace in the region. First this section demonstrated that NSD 54 intent for regional and global economic stability and security were *right intentions* even though there are many critics to the fact the United States was fulfilling their own interests. Secondly, this section argued that from the intention of the goal of peace that the United States had the *right intention* in restoring peace in the region supported both by the just war theory and by the principles of

⁵² James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 25.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, 26.

international law. Based on this assessment, *right intention* is assigned a JWI of +2. Now that there has been substantiation for the cause and intention, the next section will examine the criteria of *legitimate authority* required to make such a decision.

LEGITIMATE AUTHORITY

This section will assess the Gulf War from the Just War criteria *legitimate authority*. This section will first examine *legitimate authority* from the United States legal authority to go to war against Iraq as stated in their Constitution and War Powers Act. Secondly, this section will examine *legitimate authority* from the international level by examining the UN resolutions that were passed in order to allow the coalition to use force. This section will demonstrate that the United States had *legitimate authority* from both the international community represented by the UN and from the legal authority vested in nation of the United States.

In the just war historical sense the legal use of force was once limited to a sovereign King and all subordinates to the king did not have the authority. In modern times the *legitimate authority* for the use of force is limited to the “political leadership of a sovereign state duly authorized by the legitimate political processes of that state.”⁵⁵ For the sake of this argument it can be confidently stated that the two major contributing nations, the United States and the United Kingdom, are legitimate political states and their democratic governments possess the legitimate authority by means of War Powers Acts and War Powers of the Prime Minister respectively. In the case of the United States, authority was granted by Congress through the War Powers Resolution of 1973 and the

⁵⁵ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 23.

Authorization for Use of Military Force Against Iraq Resolution of 12 January 1991

which states:

Authorizes the President to use U.S. armed forces against Iraq pursuant to United Nations Security Council Resolution 678 to implement Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677 (summarized below) after making available to the Speaker of the House and the President pro tempore of the Senate his determination that: (1) the United States has used all appropriate diplomatic and other peaceful means to obtain compliance by Iraq with such resolutions; and (2) those means have not been and would not be successful.⁵⁶

However, as an aside, President George H. W. Bush stated that he did not require Congressional authority since he was the Commander in Chief of the military, but did so as courtesy to Congress. This War Resolution clearly provides the *legitimate authority* on the national level embedded in this legitimate political body to authorize the use of force against Iraq. From the United Kingdom perspective, *legitimate authority* is constitutionally vested in the Prime Minister as the Commander in Chief for the deployment of his forces. It must be therefore assumed that these nations legal authorities are legitimate and their decisions to use force are based on legal and moral basis. As James Turner Johnson and George Weigel state in *Just War and the Gulf War*, [u]nderlying such legal authority is a moral basis for the notion that the right authority may use force to serve justice in the international arena.⁵⁷ Arguments that may contest the legitimacy of these governments are countries not in favor with Western political ideologies. As Brendan Howe states in *Just War in Comparative Perspective*, regarding the political bodies of the United States and the United Kingdom, these bodies may be

⁵⁶ The Library of Congress. Authorization for Use of Military Force Against Iraq Resolution. Available from <http://thomas.loc.gov/cgi-bin/bdquery/z?d102:HJ00077:@@@L&summ2=m&>; Internet. Accessed 06 March 2012.

⁵⁷ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 23.

“seen as representative of only certain sectors inherently antagonistic to the Iraqi regime, and thus lacking in legitimacy or authority.”⁵⁸ However, he goes on to state that in order to avoid this view the backing of the Arab League was sought. Subsequently in August 1990, the Arab League was convened in Cairo by President Hosni Mubarak of Egypt where they condemned “the Iraqi invasion and to dispatch a joint Arab military force to Saudi Arabia.”⁵⁹ The final authority and the most important to the international community is the UN Security Council Resolution 678 of 29 November 1990 in which it authorized member nations “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.”⁶⁰ What is important to note is that this resolution was passed before the United States Congress Authorization for Use of Military Force Against Iraq Resolution thus demonstrating the importance of first gaining international authority to use force. However, as Michael Walzer argues, the UN is not the “global authority, claiming a monopoly on the legitimate use of force... instead is an organization that authorizes its members to use force but does not use force itself.”⁶¹ The UN’s authorization to use force to enforce the resolution and their condemnation of Iraq’s aggression towards Kuwait along with the *legitimate authority* of the United States and the United Kingdom is a clear indication of the right authority in Iraq. As Brendan Howe

⁵⁸ Paul Robinson, *Just War in Comparative Perspective*, (Aldershot, England: Ashgate, 2003), 202.

⁵⁹ John F. Burns, “Confrontation in the Gulf; Libya Denounces Iraq's Decision to Take Westerners as Hostages,” *New York Times*, 21 August 1990. Available from <http://www.nytimes.com/1990/08/21/world/confrontation-gulf-libya-denounces-iraq-s-decision-take-westerners-hostages.html?src=pm>; Internet; accessed 06 March 2012.

⁶⁰ United Nations. Security Council Resolutions 1990. UNSCR 678. Available from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement>; Internet. Accessed 11 February 2012.

⁶¹ Michael Walzer, *Arguing about War*, New Haven Connecticut; (Yale University Press, 2004), xxii.

states in *Just War in Comparative Perspective*, “[i]n short, the Gulf War was authorized, not just once, but in a continuing process of international agreement, by all the relevant ‘competent authorities.’”⁶²

This section has clearly established the legal authority for the war in the Gulf. This was demonstrated by the major nations participating and their recognized legitimate political authorities and secondly by the UN condemnation and SCR 678 which provides the internationally recognized authority to use force. Based on this assessment, *legitimate authority* is assigned a score of +3. The next criterion to be examined is the *net benefit*.

NET BENEFIT

When a nation or coalition considers the justness of the use of force they must consider or place “effort to calculate the overall balance of good versus evil in deciding whether to use force to right a wrong.”⁶³ *Net benefit* is “one of the most contentious and challenging jus ad bellum criteria.”⁶⁴ This is due to the difficulty in placing value on items such as human life or estimating the consequences of military actions or inactions and as such can be very ‘pie in the sky’ subjective assessments. One of the challenges for *net benefit* is how far out does one look to assess the benefit. As James Turner Johnson and George Weigel’s argue in *Just War and the Gulf War*, in order to calculate the *net benefit* one must consider the following three parts. First is to assess the damage the belligerent nation has done on the lives, property, economic and regional stability to

⁶² Paul Robinson, *Just War in Comparative Perspective*, (Aldershot, England: Ashgate, 2003), 202.

⁶³ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 27.

⁶⁴ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000): 100.

name a few. Second, a nation must consider the cost of allowing the belligerent nation of Iraq to remain in place, for example, to allow Iraq to remain in Kuwait and to continue to repress the Kuwaiti people. Lastly, a nation must assess the means and cost of righting these wrongs as well as the benefits they may produce.⁶⁵ This section will assess the proportionality used during the Gulf War, first in terms of the leveraging of weapons technology to fight a clean and precise war and address some of the criticisms of their use of force. Secondly, this section will examine the cost in terms of destruction from both the coalition and Iraqi sides weighed against the ends achieved.

On the 17 January 1991 President George H. W. Bush announced to the world that “the liberation of Kuwait has begun” and with those words Operation Desert Storm was launched with a coalition of over 425 000 US troops and an additional 265 000 troops from other countries against an estimated 545 000 Iraqi troops.⁶⁶ The United States armed forces represented “a new class of military systems that gave American forces a revolutionary advance in military capability.”⁶⁷ The United States was armed with technologically superior weapons which would allow it to fight a swift and precise action against Saddam Hussein. The Gulf War was the first major war that the United States had fought since Vietnam which carried with it the memories of high body counts, inaccurate bombing and high civilian casualties. Now armed with precision weapons such as Global Positioning System (GPS) bombs and cruise missiles, along with advanced platforms such as the F117 Stealth fighter-bombers, allowed the United States to fight

⁶⁵ James T. Johnson, and George Weigel, *Just War and the Gulf War*, (Washington, D.C.: Ethics and Public Policy Center, 1991), 27.

⁶⁶ Andrew Rosenthal, “U.S. and Allies Open Air War on Iraq; Bomb Bagdad and Kuwaiti Targets; 'No Choice' But Force, Bush Declares,” *New York Times*, 17 January 1991. Available from <http://www.nytimes.com/learning/general/onthisday/big/0116.html#article>; Accessed 08 March 2012.

⁶⁷ William J. Perry, “Desert Storm and Deterrence,” *Foreign Affairs* 70, no. 4 (Fall, 1991): 66.

what some perceived as a moral and clean war. In Nicholas Fotion's article, *The Gulf War: Cleanly Fought*, Fotion argues that the coalition fought a clean war despite the many criticisms such as the coalition's technological superiority against a technologically inferior Iraqi military resulted in a asymmetric balance of force and that some of the coalition bombing targets caused too much undue suffering to the Iraqi civilian population. This criticism on disproportionate balance of force is echoed by the church with statements such as from theologian Oxford Regius Professor Rowan Williams, later the leader of the Anglican Church, where he argues that "the conflict (the Gulf War) was one of disproportionate power against weakness, 'a one-way adventure' in the Pope's words."⁶⁸ Fotion argues that the coalition fought the war following the goal of the campaign which was "to liberate Kuwait and destroy Iraq's offensive military capability."⁶⁹ In his article he justifies the military necessity of the attacks on Iraqi communication facilities and bridges in that they were legitimate military targets even though they also served the civilian population. It is often a difficult to place a distinction between a civilian and military objective when interests to both are served but in the end if we restrict ourselves from engaging such targets would it risk defeat or prolong the war.⁷⁰ Conversely, Walzer argues that some of these targets as well as power grids and water treatment facilities "suggests a war aim beyond the legitimate aim of 'restoration plus' – the liberation of Kuwait and the defeat and reduction of Iraqi military power."⁷¹ Similarly, there were criticisms on the attacks on poorly trained Iraqi conscripts, but

⁶⁸ Kenneth L. Vaux, *Ethics and the Gulf War: Religion, Rhetoric, and Righteousness*, (Boulder: Westview Press, 1992) 117.

⁶⁹ Nicholas G. Fotion, "The Gulf War: Cleanly Fought," *Bulletin of the Atomic Scientists* 47, no. 7 (Sept, 1991): 26.

⁷⁰ *Ibid.*, 28.

⁷¹ Michael Walzer, *Arguing about War*, (New Haven Connecticut; Yale University Press, 2004) 96.

Fotion argues that they were legitimate targets and that it was Saddam Hussein who treated them unjust “by using them as cannon fodder.”⁷² Despite these criticisms the United States was committed to fighting this war to limit the impact on the civilian population as Secretary of Defence, Dick Cheney stated in a press conference shortly after the start of the war announced they will, “do everything possible to avoid injury to civilians.”⁷³ Unlike the United States, Saddam Hussein held many civilian hostages, abused and executed Kuwaiti civilians, abused coalition prisoners, created major ecological disasters, and tolerated horrendous casualties for no apparent military purpose.⁷⁴

What is apparent from this analysis is that defining *net benefit* or proportionality becomes very difficult, very subjective and heavily dependent on ones ideologies. One can argue proportionality to no end. Michael Walzer points out in *Arguing about War*, “we have no way that even mimics mathematics of comparing the costs of not fighting, since one set of costs is necessarily speculative.”⁷⁵ How do you measure the value of a country’s independence or the defeat of an aggressive regime and compare them to the lives of civilians and soldiers? In the end, the political leaders must worry about the costs of the war to ensure that the *just cause* is maintained and that it is done so morally and ethically. Based on the assessment of *net benefit* a JWI of +1 is assigned. The final criterion to be examined is *last resort*.

⁷² Nicholas G. Fotion, "The Gulf War: Cleanly Fought," *Bulletin of the Atomic Scientists* 47, no. 7 (Sept, 1991): 28.

⁷³ Andrew Rosenthal, “U.S. and Allies Open Air War on Iraq; Bomb Bagdad and Kuwaiti Targets; 'No Choice' But Force, Bush Declares,” *New York Times*, 17 January 1991. Available from <http://www.nytimes.com/learning/general/onthisday/big/0116.html#article>; Accessed 08 March 2012.

⁷⁴ Nicholas G. Fotion, "The Gulf War: Cleanly Fought," *Bulletin of the Atomic Scientists* 47, no. 7 (Sept, 1991): 29.

⁷⁵ Michael Walzer, *Arguing about War*, (New Haven Connecticut; Yale University Press, 2004) 90.

LAST RESORT

The last criterion to be analyzed is *last resort*. Many critics of the war believed that there was always some other option available to prevent the use of force. As Paul Baumann states in this case, *last resort* is “an endlessly receding horizon”⁷⁶ and could lead to further unnecessary human suffering if a belligerent nation is left too long in an illegally occupied country. In the context of the Just War theory it “comes down to whether ‘reasonable people can reasonably conclude that all reasonable efforts at a non-military solution have been tried, have failed, and in all probability will continue to fail.’”⁷⁷ This section on *last resort* will demonstrate the United States pursued all reasonable efforts to have Iraq agree to the unconditional withdrawal of their forces despite criticisms internally and externally that they did not wait long enough or exhaust all means before resorting to the use of force.

Following the invasion of Kuwait and the brief resistance from Kuwaiti forces, the journey towards righting this belligerent action started with international condemnation and UN resolution 660 demanding that “Iraq withdraw immediately and unconditionally all its forces”⁷⁸ and followed a day later by resolution 661 establishing economic sanctions on Iraq. So what options are available outside of war in this context? Considering the timeline from the invasion to the start of hostilities (August 1990 – January 1991) the following actions were taken; the United Nations engaged in conversation and condemnation, diplomacy, sanctions and military build-up in the region

⁷⁶ Paul Baumann, "Limits of the just War," *Commonweal* 118, no. 5 (Mar 8, 1991): 150.

⁷⁷ Brendan Howe, “Conflicting Normative Dimensions of Justifications: The Gulf War,” in *Just War in Comparative Perspective*, ed. Paul Robinson, 200-217 (Aldershot, England: Ashgate, 2003), 202.

⁷⁸ United Nations. Security Council Resolutions 1990. UNSCR 660. Available from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/10/IMG/NR057510.pdf?OpenElement>; Internet. Accessed 11 February 2012.

were all carried out in the months leading up to the Gulf War. However, one can argue that six months does not allow enough time for sanctions to have the desired effect. The United States followed all possible non-military methods within reason and were willing, as President Bush stated on 30 November 1990 wanting to “go the extra mile for peace”⁷⁹ in order to avoid the use of force. Saddam Hussein manipulated the international community and the United States Congress. This is illustrated by how Saddam Hussein allowed for certain minor concessions which were perceived by the Bush administration as methods to force further delays to an armed conflict. On 9 December 1990, President Bush laid out four goals of the military deployment to the Gulf which were the freeing of American hostages, the withdrawal of Iraq from Kuwait, the restoration of Kuwait's Government and stability in the Gulf region. One week after the UN passing SCR 678, authorizing the use of force on Iraq, Saddam Hussein had agreed to free foreign hostages meeting one of the goals, however, as Secretary of State James Baker stated after the fact, that it was “no coincidence that this comes just one week, just one week, after the international community has authorized the use of force.”⁸⁰ This highlights the difficulty in determining if options are given adequate time. In this case Saddam Hussein cleverly manipulated the international community by indicating that he was slowly capitulating to international demands and this in turn delayed military actions. This supports the argument of not knowing when you have reached the threshold for the use of force. Michael Walzer points out in *Arguing about War*, “[f]or we can never reach lastness, or

⁷⁹ Ian Holliday, "When is a Cause just?" *Review of International Studies* 28, no. 3 (Jul., 2002): 566; <http://www.jstor.org>; Internet; accessed 20 February 2012.

⁸⁰ Thomas L. Friedman, “Standoff in the Gulf; Bush Welcomes Hussein's Move, But Insists Iraq Must Yield Kuwait,” *New York Times*, (07 December 1990). Available from <http://www.nytimes.com/1990/12/07/world/standoff-gulf-bush-welcomes-hussein-s-move-but-insists-iraq-must-yield-kuwait.html?pagewanted=all&src=pm>; Internet; accessed 10 March 2012.

we can never know that we have reached it.”⁸¹ This is further illustrated by the Congressional Democrats who, following Saddam Hussein’s freeing of foreign hostages, were calling for more time for the sanctions to work, believing that Saddam’s positive actions were a confident indication the sanctions were starting to work and were arguing “that if four months of sanctions produced an unconditional release of all hostages, perhaps a few more months of sanctions will produce an Iraqi withdrawal.”⁸² However, most were not blind to Saddam’s tricks as demonstrated by UN Secretary General Javier Perez de Cuellar comments in which he stated after a meeting with Tariq Aziz, Foreign Minister of Iraq in September 1990, “[t]he situation is extremely serious. We cannot wait indefinitely for the crisis to be solved step by step.”⁸³ Ultimately, a reasonable government must make a decision at one point once all reasonable efforts have been attempted. In the case of Iraq, perhaps further delay would have worked, but at what cost. Saddam Hussein had violated international law with his invasion of Iraq, further pillage Kuwait, causing undue suffering and loss to the Kuwaiti people. President Bush attempted on many occasions to pressure Saddam Hussein through sanctions, military build-ups and diplomatic discussion, however seeing that Iraq was not interested in listening, the United States made the final decision to sponsor a UN supported resolution and deadline.

⁸¹ Michael Walzer, *Arguing about War*, New Haven Connecticut; (Yale University Press, 2004) 88.

⁸² Thomas L. Friedman, “Standoff in the Gulf; Bush Welcomes Hussein's Move, But Insists Iraq Must Yield Kuwait,” *New York Times*, (07 December 1990). Available from <http://www.nytimes.com/1990/12/07/world/standoff-gulf-bush-welcomes-hussein-s-move-but-insists-iraq-must-yield-kuwait.html?pagewanted=all&src=pm>; Internet; accessed 10 March 2012.

⁸³ New York Times, *Quotation of the Day*, 03 September 1990, Available from <http://www.nytimes.com/1990/09/03/nyregion/quotation-of-the-day-512390.html?src=pm>; Internet; accessed 10 March 2012.

As Brian Orend states in *Michael Walzer on War and Justice*, in the end the key question that must be asked regarding *last resort* is this, is the proposed use of force reasonable, given the situation and the nature of the aggression?⁸⁴ In this case with Saddam Hussein's tyrannical ideology, his stubbornness in maintaining his stance in Kuwait and not bending to international sanctions, it demonstrated that the efforts in diplomacy, sanctions and military build-up in the region were not going to deter Saddam Hussein and that further delay would cause additional humanitarian suffering and destabilize the region. Based on the assessment of *last resort* a score of +2 is assigned.

This section has assessed the First Gulf War by the five Just War criteria and are represented in Table 1. The average score assigned based on this assessment is +2. This quantitative assessment represents the author's opinion based on the span on his research and as such has assessed the First Gulf War as just.

TABLE 1.
Summary of scores for the First Gulf War in each criterion and the JWI

	JWI
1. Just Cause	+2
2. Right Intention	+2
3. Legitimate Authority	+3
4. Net Benefit	+1
5. Last Resort	+2
Average JWI	+2

This section has clearly demonstrated that the First Gulf War was a just war and met all the Just War criteria. First, this section demonstrated that the United States had a strong *just cause* for war in Iraq illustrated the requirement to right a violation in the UN

⁸⁴ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 99.

Charter and free the Kuwaiti people. The justness of the cause was demonstrated by the violations of international law indicated by Articles 2, paragraph 4 of the UN Charter. Secondly, it was evaluated from the context of the United States NSD 54 in which the requirement of access to Persian Gulf oil as well as security in the region was not self-serving as some may criticize, but the cause was to promote global and regional economic stability and security. Lastly, it evaluated this criterion from the theological perspective highlighting the Catholic Church's presumption against the use of force, however, the cause was ultimately accepted due to the grave violations of Kuwait's rights which would continue should no action be taken. Next the *right intention* criterion assessed from the perspective that the United States demonstrated the *right intention* for the restoration of peace in the region and the return of regional and economic stability and security as good intentions. Third, *legitimate authority* was demonstrated by first and foremost the international body represented by the UN authorizing member nations to use sanctioned force which recognizes that all reasonable measures were taken short of war. Secondly, from the nation level, in this case the United States, the *Authorization for Use of Military Force Against Iraq Resolution*, sanctioned use of force from a legitimate political body. Next, this section demonstrated the difficulty in assessing *net benefit*. As Michael Walzer points out, there is no mathematical formula to determine the cost of fighting and the net benefit a nation wishes to achieve. The United States fought a quick war with precision weapons and justified military targeting. Lastly, this section demonstrated the similar difficulties to *net benefit* in determining *last resort* or as Paul Baumann described it as "an endlessly receding horizon."⁸⁵ This section argued that only

⁸⁵ Paul Baumann, "Limits of the just War," *Commonweal* 118, no. 5 (Mar 8, 1991): 150.

a responsible political body can make the reasonable decision on when force is ultimately required. The difficulties in making this decision were highlighted by the pressure from the Congressional democrats in pressing for more time for sanctions to work, yet in the end more time for Saddam could have potentially resulted in more harm to the Kuwaiti people and continues regional and economic instability. The First Gulf War was the first major conflict for the United States since Vietnam which brought with it many bad memories of a unpopular war. President Bush knew that the world would closely scrutinize this war and as such the United States ensured that all possible means were attempted before committing to force. The Second Gulf War will prove to be a little more difficult to justify. In contrast, Iraq is not illegally occupying another country but is being accused of developing WMD and harbouring terrorist thus threatening the United States and the United States trying to justify pre-emption.

OPERATION IRAQI FREEDOM

*The Bush administration is threatening to attack Iraq and has been doing so for many months now. But it is hard, even after the president's U.N. speech, to see the point of the threat.*⁸⁶

Michael Walzer, *Arguing about War*, 2004.

On 19 March 2003 in a televised address, President George W. Bush announced to the nation that Operation Iraqi Freedom had begun. The road which led them to this point is fraught with the troubles which existed with Saddam Hussein since the end of the First Gulf War. The years leading up to the Second Gulf war was lined with a series of UN resolutions which attempted to get Iraq to comply with disarmament requirements as well as the access to weapons facilities. The years that followed was a series of

⁸⁶ Michael Walzer, *Arguing about War*, New Haven Connecticut; (Yale University Press, 2004) 143.

disagreements between the UN and Saddam Hussein allowing weapons inspectors access to Iraqi facilities. Following the 9/11 attacks, the Bush administration announced a new doctrine, called Bush doctrine, which allowed the United States to act pre-emptively against imminent terrorist threats posed by rogue regimes. This Bush doctrine, Saddam Hussein's persistent annoyance to the international community and the United States, set the course for this final show down with Iraq, with or without the consent of the UN.

JUST CAUSE

The First Gulf War demonstrated a relatively sound *just cause* of peace and regional stability, yet in contrast the *just cause* for the Second Gulf War is much more difficult to pin down. The United States had changing causes in which they wanted to use force against Iraq which included the "illegal possession of WMD, Iraqi links to international terrorist organisations, a desire to liberate the Iraqi people, and a policy of bringing democracy to the Middle East."⁸⁷ These causes are represented by two of the three revisions Michael Walzer proposed as additions to *just cause* in the Just War theory to include pre-emptive attacks and humanitarian intervention.⁸⁸ This section will examine the difficulty in substantiating the *just cause* in the case of the second Gulf War by first assessing the validity that pre-emption is valid based on the imminent threat that WMD posed on the United States and Iraq's links to international terrorist organizations.

⁸⁷ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 546.

⁸⁸ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 102.

We will see that “is that all too often the justice of a given cause turns out to be stated in either very general or highly subjective terms.”⁸⁹

Following the attacks of 9/11 that targeted the United States solely, it became widely accepted that the idea of self-defence needed rethinking.⁹⁰ Article 51 of the UN Charter states “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.”⁹¹ There are a few points of view on what constitutes self-defence, for example, restrictionists argue that a state only has the right to self-defence after an attack has occurred whereas counter-restrictionists believe that armed attacks, regardless of the scale constitutes an armed attack and therefore supports pre-emptive self-defence.⁹² The United States took this ground in 2002 which is reflected in Bush Doctrine and the release of the National Security Strategy (NSS) 2002 which provides a new approach to pre-emption in that it defined the new threat from terrorism and the need for the United States to “take the battle to them.”⁹³ In this strategy the United States would not be on the defensive but instead acting against rogue nations which posed a threat to the United States. This NSS (2002) can be argued as the new way of thinking that was based on the new reality of threats. A nation has the responsibility to protect its citizens from an imminent threat and the framework of the traditional pre-emption theory did not allow nations to react to terrorist threats. Alex Bellamy argues in *Just Wars: From Cicero to*

⁸⁹ Ian Holliday, "When is a Cause just?" *Review of International Studies* 28, no. 3 (Jul., 2002): 559; <http://www.jstor.org>; Internet; accessed 20 February 2012.

⁹⁰ Alex J. Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge, UK: Polity, 2006) 163.

⁹¹ United Nations. Charter of the United Nations. Available from <http://www.un.org/en/documents/charter/>; Internet. Accessed 23 February 2012.

⁹² Alex J. Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge, UK: Polity, 2006) 160.

⁹³ George W. Bush, *President Bush Delivers Graduation Speech at West Point*. 01 June 2002. Available from <http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020601-3.html>; Internet; accessed 25 March 2012.

Iraq, that “there are at least four good reasons for rethinking pre-emption.”⁹⁴ First is that prevention is better than cure, second, the best way to reduce the threat of terrorism is to adopt a proactive strategy, third the potential for mass-casualty terrorism renders a reactive strategy imprudent at best and potentially immoral and finally, the ability to constrain the type of terrorism witnessed on 9/11 in the short term is limited.⁹⁵ There are certain conditions that must be met in order to satisfy international law and this is where the United States may have stretched these arguments, that argument was the intelligence. The revisionist’s argument to support pre-emption is that “if a ‘threat’ is to be used as justification for war, it must be demonstrable.”⁹⁶ The Bush administration’s cause for going to war “was on the belief that the regime had and was enhancing a stockpile of weapons of mass destruction.”⁹⁷ This belief is demonstrated by three key addresses by President Bush, Prime Minister Tony Blair and Secretary of State Colin Powell. In the first instance in an address to the UN General Assembly on 12 September 2002, President Bush stated his concerns that “Saddam Hussein has defied all these efforts [sanctions] and continues to develop weapons of mass destruction.”⁹⁸ Prime Minister Tony Blair followed up a few weeks later by releasing evidence to the British public which he argued that “[h]is [Saddam] weapons of mass destruction program is active, detailed and growing.”⁹⁹ Lastly, Colin Powell went before the UN Security Council on 5 February

⁹⁴ Alex J. Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge, UK: Polity, 2006), 163.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*, 165.

⁹⁷ Eric Patterson, *Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats*, (Lanham, MD: Lexington Books, 2007), 50.

⁹⁸ George W Bush, *Statement by President Bush: United Nations General Assembly*, 12 September 2002, Available from <http://www.un.org/webcast/ga/57/statements/020912usaE.htm>; Internet; accessed 14 March 2012.

⁹⁹ Eric Patterson, *Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats*, (Lanham, MD: Lexington Books, 2007), 50.

2003 arguing the case for war stating “[i]ndeed, the facts and Iraq’s behavior show that Saddam Hussein and his regime are concealing their efforts to produce more weapons of mass destruction.”¹⁰⁰

The intelligence that the United States and the United Kingdom had used to justify an invasion was based on poor sources to say the least. The coalition “relied heavily on human intelligence, derived mainly from defectors”¹⁰¹ which proved to be vague and inaccurate. Their estimates as stated in Colin Powell’s speech to the UN on WMD, the link to terrorism and the exaggerated claim of imminent danger were all proven false in the end.¹⁰² The Bush administration, from this author’s perspective and the luxury of knowing the accuracy of the intelligence after the war, did not provide sufficient evidence that a credible and imminent threat was posed against the United States and thus had not justified the cause for the use of force. What further substantiates this argument was the mere fact that the UN was not convinced either. As stated by Christian Enemark and Christopher Michaelsen in *Just War Doctrine and the Invasion of Iraq*, “the coalition bears the moral burden of proof under Just War Doctrine, yet its purported Just Cause for invading Iraq on self-defence grounds is highly questionable.”¹⁰³ Based on the assessment of *just cause* a *JWI* of -2 is assigned.

¹⁰⁰ Colin Powell, *Briefing Security Council, US Secretary of State Powell*, Available from <http://www.un.org/News/Press/docs/2003/sc7658.doc.htm>; Internet; accessed 10 March 2012.

¹⁰¹ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 548.

¹⁰² Colin Powell, *Briefing Security Council, US Secretary of State Powell*, Available from <http://www.un.org/News/Press/docs/2003/sc7658.doc.htm>; Internet; accessed 10 March 2012.

¹⁰³ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 551.

RIGHT INTENTION

A good introduction to the criterion of *right intention* as it relates to the Second Gulf War is from Belinda Helmke's article *Just Not Good enough*, in which she states, "it is well known that the road to hell is paved with good intentions."¹⁰⁴ As previously discussed, the *right intention* criterion must meet the cause or aim of the war. In this case Iraq posed a threat to the United States by the threat of production of WMD, its links to terrorism, and Saddam Hussein's unpredictability and oppression of the Iraqi people. So it can be safely assumed by the United States warnings regarding the imminent threat from Saddam Hussein that their intentions were to depose Saddam Hussein, establish democracy and dismantle WMD capabilities in order to meet the *just cause* of pre-emptive self-defence. With this basis, this section will argue that the United States had the *right intentions* for the invasion as indicated within their NSD, however did not necessarily demonstrate a clear plan on how their intentions were to be accomplished.

Following the victory in Iraq and the toppling of Saddam Hussein's regime, the United States *right intentions* were demonstrated by the "establishment of WMD search teams and the drafting of an interim constitution pending Iraqi self-rule."¹⁰⁵ This is where their intentions fall short. There is much criticism regarding the United States true intentions. First and not surprisingly, the argument that their motivation was based on economics, mainly oil. This is reflected in the a history of policy statements from former President George H. W. Bush's National Security Strategy stating the need for regional security in the Gulf region are directly related to US interests to the National Energy

¹⁰⁴ Belinda Helmke, "Just Not Good enough," *AQ: Australian Quarterly* 76, no. 5 (Sep. - Oct., 2004): 24.

¹⁰⁵ Christian Enemark and Christopher Michaelson, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 559.

policy of 2001 “confirming that the Persian Gulf continues to be a ‘primary focus of U.S. international energy policy.’”¹⁰⁶ These arguments “do not prove the lack of right intention.”¹⁰⁷ The more valid arguments are derived from what became quickly apparent following the invasion of Iraq. The military invasion was well planned which is reflected in the short period of 21 days to topple Saddam Hussein’s regime. What was lacking was that “after the invasion, it became clear that detailed U.S. government plans to manage Iraq after conquering it simply did not exist.”¹⁰⁸ For a government that had *right intentions* for the invasion of Iraq, they certainly showed a lack of planning for post invasion in terms of government, exit strategy and dealing with an insurrection or as Michael Walzer aptly states in *Arguing about War*, “occupying is harder than fighting.”¹⁰⁹

In a Jean Bethke Elshtain article, *Jean Bethke Elshtain Responds*, she points out the aspect of humanitarian intervention can be a legitimate criterion of *right intention* for the use of force. Responsibility to protect or R2P is a UN document that “declares that a UN member state or group of states may be justified in intervening in the internal affairs of a...rogue state engaged in systematic and egregious crimes against its own people.”¹¹⁰ In this article Elshtain believes this is a valid reason for the use of force. Saddam Hussein has had a history of well documented human rights violations such as the “brutal suppression of the Shiite uprising, the destruction of the way of life of the Marsh

¹⁰⁶ Christian Enemark and Christopher Michaelson, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 559.

¹⁰⁷ Craig M. White, *Iraq: The Moral Reckoning : Applying Just War Theory to the 2003 War Decision*, (Lexington Books; Lanham, Maryland, 2010), 139.

¹⁰⁸ *Ibid.*

¹⁰⁹ Michael Walzer, *Arguing about War*, New Haven Connecticut; (Yale University Press, 2004), 168.

¹¹⁰ Jean Bethke Elshtain, "Jean Bethke Elshtain Responds," *Dissent* 53, no. 3 (Summer 2006): 109.

Arabs,...systematic torture as a policy, arbitrary arrest, and on and on”¹¹¹ and as such “connect directly to the current norms of humanitarian intervention and RTP.”¹¹² The Resolutions imposed since 1990 were soft and hard power measures such as sanctions and no fly zones to persuade Saddam Hussein to acquiesce to the demands of the international community but these ultimately failed. In Elshtain’s opinion, “many alternatives to the use of force cannot be implemented or even initiated until coercive force is deployed to stabilize the situation.”¹¹³ As stated earlier, one of the Bush administrations intentions for the invasion of Iraq was to change the regime and liberate the Iraqi people from Saddam Hussein’s tyranny and oppression. At face value this can be assessed as a *right intention*, however as Belinda Helmke states in *Just not Good Enough*, the Bush administrations “intention of liberating the people of Iraqi by using force was obviously not perceived as a ‘right’ intention by everyone.”¹¹⁴ Following the invasion of Iraq, it was ultimately determine that no WMD existed, there were no links to terrorism and the regime change has somewhat improved the lives of the Iraqi people.

This section has demonstrated that the intentions of the Bush administration at face value were valid by wanting a regime change which would free the Iraqi people, remove the threat of WMD and establish democracy, however fell short following the invasion due to a lack of a plan to accomplish these objectives. As Craig White notes in *Iraq; The Moral Reckoning*, “[w]e must judge intentions. If statements made by political actors were to be taken at face value in just war evaluation, the vast majority and perhaps

¹¹¹ Jean Bethke Elshtain, "Jean Bethke Elshtain Responds," *Dissent* 53, no. 3 (Summer 2006): 110.

¹¹² *Ibid.*

¹¹³ *Ibid.*, 111.

¹¹⁴ Belinda Helmke, "Just Not Good enough," *AQ: Australian Quarterly* 76, no. 5 (Sep. - Oct. 2004): 24.

all wars would meet this criterion, and the criterion would be meaningless.”¹¹⁵ The Bush administration had the *right intentions* however failed to plan. Therefore based on this assessment of *right intention* a JWI of -1 is assigned.

LEGITIMATE AUTHORITY

The importance in justifying each Just War criterion was clearly stated at the beginning of this paper and the “failure to meet just one criterion can render a war unlawful,”¹¹⁶ or in the case of this section, unjust. Though many of the criteria assessed to date in this paper have been difficult to justify, the most contentiously debated criterion is by far if the United States had the *legitimate authority* to invade Iraq. This section on *legitimate authority* will assess the United States authority to use force against Iraq. This will be examined by first looking at Article 51 of the UN Charter and the United States right to self-defence due to the imminent threat posed by Iraq and secondly from the perspective of international law or more precisely UNSCR 678, 687 and 1441. The United States believed the authority already existing in these resolutions. This section will demonstrate since there was no imminent threat the United States did not have the right to self-defence and secondly that the UNSCR did not give the United States authority to use force against Iraq.

Article 51 of the UN Charter states “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations”¹¹⁷ which allows a country to use force without the

¹¹⁵ Craig M. White, *Iraq: The Moral Reckoning: Applying Just War Theory to the 2003 War Decision*, (Lexington Books; Lanham, Maryland, 2010): 135.

¹¹⁶ *Ibid.*

¹¹⁷ United Nations. *Charter of the United Nations*. Available from <http://www.un.org/en/documents/charter/>; Internet. Accessed 23 February 2012.

authority of the UN. This right to self-defence which the United States was now facing since the attacks of 9/11 was from the imminent threat posed by terrorists groups. As stated by President Bush in his address to the nation following the 9/11 attacks, “[w]e will make no distinction between the terrorists who committed these acts and those who harbour them.”¹¹⁸ With this statement the United States had “clearly staked its position on the right of a state that has been attacked by terrorists to respond in self-defence against any state ‘harbouring’ them.”¹¹⁹ In Steven Ratner’s article *Jus ad Bellum and Jus in Bello after September 11*, published five months before the war on Iraq commenced, he discusses the legal criticisms of the use of force by the United States since 9/11. In it he discusses the general international acceptance of the United States stretched view of the use of force against Afghanistan from the perspective of self-defence, however with President Bush’s declaration of Iraq as one of the ‘axis of evil’ states the international community has “resisted a policy that would require stretching *jus ad bellum* even further.”¹²⁰ The stretching he refers to is that there was little concrete evidence that there was a link between Iraq and the 9/11 attacks therefore the United States was attempting to link Iraq’s acquisition of WMDs and supporting terrorism thus leading the Bush administration to a “more daringly and potentially quite dangerously”¹²¹ attempt to justify the argument for anticipatory self-defence. Finally, Ratner points out the international community’s resistance to United States actions against Iraq and its intolerance for any further pushing of the *jus ad bellum* envelope and should the United

¹¹⁸ George W. Bush, *Statement by President Bush in his Address to the Nation*, 11 September 2001. Available from <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html>; Internet; accessed 24 March 2012.

¹¹⁹ Steven R. Ratner, “Jus ad Bellum and Jus in Bello after September 11,” *The American Journal of International Law*, Vol 96, no. 4 (Oct, 2002): 907.

¹²⁰ *Ibid.*, 920.

¹²¹ *Ibid.*

States decide to use force without UN authorization will “constitute the next iteration in the process in determining international expectations regarding the use of force.”¹²² The fallout of the invasion of Iraq has definitely generated much discussion and criticisms thus clearly demonstrating that the UN’s refusal to authorize the use of force was with good reason and furthermore, the disastrous events following the invasion attest to this fact.

The United States had always argued the position that they had legal authority “stemming from the combined effect of Security Council resolutions 678, 687 and 1441.”¹²³ UNSCR 678 was the legal authority for the use of force to remove Iraq from Kuwait and “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent resolutions and to resort international peace and security in the area.”¹²⁴ Once Iraq was removed from Kuwait and Iraq agreed to a ceasefire the UN adopted UNSCR 687 which established the ceasefire and established the Iraq’s obligations to continue to eliminate WMD and allow weapons verification teams access to the country. Finally, on 8 November 2002, UNSCR 1441 was adopted due to the “fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991).”¹²⁵ This resolution was a final warning to Iraq to comply with

¹²² Steven R. Ratner, “Jus ad Bellum and Jus in Bello after September 11,” *The American Journal of International Law*, Vol 96, no. 4 (Oct, 2002): 921.

¹²³ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 553.

¹²⁴ United Nations. *Security Council Resolutions 1990. UNSCR 678*. Available from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement>; Internet. Accessed 11 February 2012.

¹²⁵ United Nations. *Security Council Resolutions 1991. UNSCR 687*. Available from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>; Internet. Accessed 11 February 2012.

resolution 687 and that if it did not it would be in further “material breach” and could face “serious consequences.”

In Craig White’s book *Iraq, The Moral Reckoning: Applying Just War Theory to the 2003 War Decision*, he provides an analysis of the legal arguments for the war in Iraq. In it he provides the arguments of well qualified legal experts that UN resolutions provided the legal authority for the use of force and subsequently dispels their arguments. Some of the main arguments these legal experts were making are as follows; first that “combined effect”¹²⁶ of UNSCR 678, 687 and 1441 provided the authority to use force against Iraq due to their breach of conditions in the resolution. Secondly, UNSCR 687 “suspended but did not terminate the authority to use force under Resolution 678,”¹²⁷ and that if the United States determines that Iraq is in “material breach” of the resolution they are authorized to use force. Lastly, UNSCR 1441 states that Iraq was in “material breach” of Resolution 687 thus authorizing “the use of force to secure Iraqi compliance with its disarmament obligations.”¹²⁸ Craig White refutes these arguments, first in regards to Resolution 678, he argues that situation had fundamentally changed in that this resolution was adopted under the conditions that Iraq occupied Kuwait and “was not to be read as a standing authorization for the use of force against Iraq for other reasons,”¹²⁹ such as a regime change in Iraq. Secondly, Resolution 687 “does not mention ‘suspension’ of authorization to use force,”¹³⁰ however, the UN body will “remain seized of the matter

¹²⁶ Craig M. White, *Iraq: The Moral Reckoning: Applying Just War Theory to the 2003 War Decision*, (Lexington Books; Lanham, Maryland, 2010): 114.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*, 119.

¹²⁹ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 557.

¹³⁰ Craig M. White, *Iraq : The Moral Reckoning : Applying Just War Theory to the 2003 War Decision*, (Lexington Books; Lanham, Maryland, 2010), 123.

and take such further steps as may be required”¹³¹ should Iraq not comply with the resolution. This statement in the resolution clearly demonstrates that the authorization for the use of force still lies with the UN Security Council. Finally, UNSCR 1441 did not provide authorization for the use of force as previously argued. In fact it clearly states that “it [Iraq] will face serious consequences as a result of its continued violations of its obligations”¹³² thus leaving the decision to the Security Council to determine when to use force. Furthermore in a joint statement from China, France and Russia following the adoption of Resolution 1441 clearly demonstrates that the authorization for the use of force still resides with the Security Council stating that Resolution 1441 “excludes any automaticity in the use of force”.¹³³ Clearly the authority for the use of force was not authorized by the UN.

As a result of this analysis an interesting question that comes to mind is why would the United States press for authorization from the UN Security Council when they argue so vehemently that such authorization already existed in the former UNSCR 678, 687 and 1441. In his televised speech from the White House on 17 March 2003 President Bush stated that “under resolution 678 and 687, both still in effect, the United States and our allies are authorized to use force in ridding Iraq of weapons of mass destruction.”¹³⁴ By the mere fact that the United States repeated its attempt at providing differing interpretations to the UN Charter and UNSCR which were “typically viewed as hard law

¹³¹ United Nations. *Security Council Resolutions 1991. UNSCR 687*. Available from <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>; Internet. Accessed 11 February 2012.

¹³² United Nations. *Security Council Resolutions 2002. UNSCR 1441*. Available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf?OpenElement>; Internet. Accessed 11 February 2012.

¹³³ Craig M. White, *Iraq : The Moral Reckoning : Applying Just War Theory to the 2003 War Decision*, (Lexington Books; Lanham, Maryland, 2010), 128.

¹³⁴ *Ibid.*, 40.

due to their status as universally ratified and widely invoked treaties”¹³⁵ it demonstrates a desperate determination to achieve a questionable agenda. Without proper authority from the UN, one risks having a questionable war. As Alia Brahimi states in *Jihad and Just War in the War on Terror*, regarding Just War criteria, they are “individually necessary and conjointly sufficient to secure a just war: ‘They are like dominoes; when one falls they all go down’.”¹³⁶ The United States was aware of the lack of international authority and was attempting to get UN approval for their invasion which would provide an international stamp of approval to their questionable cause. Therefore, UNSCR 678, 687 and 1441 “did not endow the Coalition with Right Authority to invade Iraq in March 2003.”¹³⁷ Ultimately, the United States relied on false assumptions of UN authority through existing UNSCRs and further substantiated by Congressional Authorization for Use of Military Force Against Iraq Resolution.¹³⁸ Based on the assessment of *legitimate authority* a JWI of -2 is assigned.

NET BENEFIT

Net benefit must weigh the benefits of waging war to ensure that the result of removing Saddam Hussein by use of military force, the resulting destruction of infrastructure and loss of life will net a benefit for the Iraqi people, the region and global security. In the end the question to be asked is if the *just cause*, in this case the war on terror, is worth going to war. As this paper has discussed earlier, all criteria must be met

¹³⁵ Steven R. Ratner, “Jus ad Bellum and Jus in Bello after September 11,” *The American Journal of International Law*, Vol 96, no. 4 (Oct, 2002): 914.

¹³⁶ Alia Brahimi, *Jihad and Just War in the War on Terror*, (New York: Oxford University Press, 2010), 39.

¹³⁷ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 557.

¹³⁸ The Library of Congress. “Authorization for Use of Military Force Against Iraq Resolution.” Available from <http://thomas.loc.gov/cgi-bin/bdquery/z?d102:HJ00077:@@L&summ2=m&>; Internet. Accessed 06 March 2012.

in order for a war to be just. The *just cause* for this war was not the strongest thus makes meeting the criterion of *net benefit* more difficult to assess. This section will assess this criterion by means of looking at the benefit of the war compared to the cost in lives and what results were ultimately achieved.

When it comes to human lives it is one of the most difficult things in determining proportionality or *net benefit*. Determining proportionality is not merely a mathematical calculation it requires “the moral and political judgement of leaders before the commencement of a war.”¹³⁹ To illustrate the difficulty in assessing this criterion, during a press conference US Secretary of Defence Donald Rumsfeld was asked whether the bombing of a prison was disproportionate. In his response he had difficulty phrasing the proper response but ended in defeat stating, “[i]t’s – ah – your question’s too tough for me. I don’t know what ‘proportionate’ would be.”¹⁴⁰ This supports the argument of substantiating or assessing the proportionate response with the use of force when it comes to human lives. There are many different estimates on Iraqi civilian deaths in Iraq as indicated in Table 2. What is important to note with the Iraqi civilian deaths is that there is little data on the first two years following the invasion. Table 3 illustrates the coalition casualties during the war which are far less than the Iraqi civilian. What is important to note from these statistics is the relatively low casualty rates in the first month of the invasion compared to the escalating deaths in the months and years that followed. The question asked in this instance is if the amount of Iraqi civilian deaths worth the benefit

¹³⁹ Alia Brahim, *Jihad and Just War in the War on Terror*, (New York: Oxford University Press, 2010), 43.

¹⁴⁰ Kateri Carmola, “The Concept of Proportionality: Old Questions and New Ambiguities,” in *Just War Theory: A Reappraisal*, ed. Mark Evans, 93-113. (Edinburgh University Press Ltd. Cornwall: MPG Books Ltd, 2005), 94.

removing Saddam Hussein from power. The opinions are varied and “[t]he picture is decidedly mixed.”¹⁴¹ For those opposed such as Richard Mouw, president of the Fuller Theological in Pasadena, California, in where he believes that the Just War criterion of *net benefit* was not be met and “that a military strike will ultimately do more good than harm.”¹⁴² In a televised address, former German Premier, Gerhard Schroeder publicly asks the question, “does the level of threat posed by the Iraqi dictator justify war, which will result in the deaths of thousands of innocent men, women and children? My answer remains: no.”¹⁴³ In these cases there was a belief that there were alternative means such as further inspections and sanctions as opposed to invasion.

TABLE 2.
Iraqi Civilian Casualty Estimates for the Second Gulf War

	Casualties	Time Period
1. <u>Iraq Family Health Survey</u>	151 000	March 2003 to June 2006
2. <u>Lancet survey</u>	601 027	March 2003 to June 2006
3. <u>Associated Press</u>	110 600	March 2003 to June 2009
4. <u>Iraq Body Count project</u>	105 052	March 2003 to Jan 2012
5. <u>Opinion Research Business survey</u>	1 033 000	March 2003 to Aug 2007

Source - http://en.wikipedia.org/wiki/Casualties_of_the_Iraq_War

¹⁴¹ Albert L. Weeks, *The Choice of War: The Iraq War and the Just War Tradition*, (ABC-CLIO, LCC; Santa Barbara, California, 2010), 107.

¹⁴² Bill Broadway, “Evangelicals’ Voices Speak Softly About Iraq,” *Washington Post*, 25 January 2003, Available from <http://www.washingtonpost.com/ac2/wp-dyn/A40893-2003Jan24?language=printer>; Internet; accessed 25 March 2012.

¹⁴³ Alia Brahimi, *Jihad and Just War in the War on Terror*, (New York: Oxford University Press, 2010), 66.

TABLE 3.
Iraqi Coalition Casualties – Second Gulf War

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2003	0	0	92	80	42	36	49	43	33	47	110	48	580
2004	52	23	52	140	84	50	58	75	87	68	141	76	906
2005	127	60	39	52	88	83	58	85	52	99	86	68	897
2006	64	58	34	82	79	63	46	66	77	111	78	115	873
2007	86	85	82	117	131	108	89	88	70	40	40	25	961
2008	40	30	40	52	21	31	13	23	25	14	17	16	322
2009	16	18	9	19	25	15	8	7	10	9	11	3	150
2010	6	6	7	8	6	8	4	3	7	2	2	1	60
2011	6	3	2	11	2	15	5	0	4	4	2	0	54
2012	0	1	0	0	0	0	0	0	0	0	0	0	1

Source - <http://icasualties.org/Iraq/ByMonth.aspx>

Of the opposing view, the Bush administration believed that this “axis of evil” posed an imminent threat to the United States due its development of WMD and links to terrorism. In Eric Patterson’s book, *Just War Thinking*, he states that “proportionality is the idea that we should respond proportionally to the threats based on the likelihood and potency of the threat.”¹⁴⁴ The United States had fought the Taliban in Afghanistan due to the terrorist links and their responsibility in the planning and execution of the attacks of 9/11. The United States believed that Iraq posed an imminent threat. In his speech to the graduating class of West Point in June 2002, President George W. Bush eluded to his intentions with Iraq when addressed the class, that “[c]ontainment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on

¹⁴⁴ Eric Patterson, *Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats*, (Lanham, MD: Lexington Books, 2007), 50.

missiles or secretly provide them to terrorist allies.”¹⁴⁵ This indicates that he believed that Iraq posed a risk to the United States and that America “will oppose them with all our power.”¹⁴⁶ If considered at face value that the threat posed by Iraq to the United States was real, then the invasion “was justified based on proportionality.”¹⁴⁷ Having the luxury of historical hindsight, these face value arguments can be refuted. In his book, *At the Center of the Storm*, , Director George Tenet, following his retirement from the CIA, stated that the Bush administration never had “a significant discussion regarding enhanced containment or the costs and benefits of such an approach versus full-out planning for overt and covert regime change.”¹⁴⁸ In the book *Just War Theory, A Reappraisal*, Kateri Carmola argues that the Iraq war “is now widely seen as a disproportionate and illegal response to an unclear threat.”¹⁴⁹ She qualifies this statement based upon the facts that not only was the threat unclear but that following the invasion no WMD were found and there was no link to terrorism thus leading to the *disproportionate* conclusion. Similarly, in Alia Brahimi’s book, *Jihad and Just War in the War on Terror*, he states that the Bush administration believed that “more good would result”¹⁵⁰ from the invasion in terms of regime change, freedom of the oppressed Iraqi people and the removal of the WMD threat. In Brahimi’s view, “the administration’s

¹⁴⁵ George W. Bush, *President Bush Delivers Graduation Speech at West Point*, 01 June 2002. Available from <http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020601-3.html>; Internet; accessed 25 March 2012.

¹⁴⁶ *Ibid.*

¹⁴⁷ Eric Patterson, *Just War Thinking: Morality and Pragmatism in the Struggle Against Contemporary Threats*, (Lanham, MD: Lexington Books, 2007), 66.

¹⁴⁸ Michiko Kakutani, *An Ex-C.I.A. Chief on Iraq and the Slam Dunk That Wasn’t*, 27 April 2007. Available from <http://www.nytimes.com/2007/04/28/books/28kaku.html?pagewanted=all>; Internet; accessed 27 March 2012.

¹⁴⁹ Kateri Carmola, “The Concept of Proportionality: Old Questions and New Ambiguities,” in *Just War Theory: A Reappraisal*, ed. Mark Evans, 93-113. (Edinburgh University Press Ltd. Cornwall: MPG Books Ltd, 2005), 105.

¹⁵⁰ Alia Brahimi, *Jihad and Just War in the War on Terror*, (New York: Oxford University Press, 2010), 43.

failure to prepare adequately for the chaos and the carnage of the post-invasion period”¹⁵¹ shows a lack of moral responsibility in the use of force.

The *net benefit* criterion for the Iraq war is varied. On the one hand those opposed to the use of force saw that the loss of life in Iraq was not worth the questionable cause for the war, whereas from the Bush camp, they believed that Iraq posed an imminent threat to the United States and the use of force and the benefits of ridding Iraq of Saddam Hussein, terrorism and WMD were of a greater net benefit. Unfortunately, the lack of planning led to much more suffering for a cause which proved false in the end. Based on the assessment of *net benefit* a *JWI* of -2 is assigned.

LAST RESORT

In order to resort to the use of force the United States needed to ensure that all means to achieve their cause were “exhausted or proven to be ineffective.”¹⁵² On the one side the UN had adopted resolutions to force Saddam Hussein to allow UNSCOM weapons inspectors into the country to monitor Iraq’s elimination of WMD and was starting to show progress. On the other hand the United States was painting a picture of an imminent threat from Iraq and was pressing the UN to authorize the use of force. This section will assess the *last resort* criterion by examining if the measures of UN resolutions were allowed sufficient time to be effective and if the threat was so imminent that it was required to use force as soon as they did.

Since the end of the First Gulf War Iraq has been under a series of UN Resolutions detailing Iraq disarmament direction, specifically resolution 1441 which

¹⁵¹ Alia Brahim, *Jihad and Just War in the War on Terror*, (New York: Oxford University Press, 2010), 44.

¹⁵² Christian Enemark and Christopher Michaelson, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 561.

gave Iraq “a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council.”¹⁵³ In his report to the Security Council on 7 March 2003, lead Weapons Inspector Hans Blix reported that Iraq had been slowly cooperating with the arms inspectors and that it “would not take years, nor weeks, but months.”¹⁵⁴ Positive progress was being made since the adoption of Resolution 1441 and pressure from the international community. In his report to the Security Council, Han Blix stated that “[s]ince 27 November 2002, when inspections in Iraq had resumed, relatively few difficulties had been faced relating to process, notably, prompt access to sites.”¹⁵⁵ He attributes this ‘prompt access’ to the pressure from the international community thus demonstrating that international pressure was having a promising effect. In Christian Enemark and Christopher Michaelson article *Just War Doctrine and the Invasion of Iraq*, they argue that there “were at least two alternatives to going to war.”¹⁵⁶ First, was to allow inspectors to be supported by a small US force to enable the inspection or until they were denied access and the “second alternative, recommended by France, Germany and Russia, was to impose on Iraq a tougher program of ‘coercive inspections’ backed by a 50,000 strong international force.”¹⁵⁷ A point of argument for these alternatives is that it may have been difficult to persuade the United States or Iraq to comply with allowing troops into their country. Though we cannot know for certain if the UN had given more

¹⁵³ United Nations. *Security Council Resolutions 2002. UNSCR 1441*. Available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf?OpenElement>; Internet. Accessed 11 February 2012.

¹⁵⁴ United Nations, *United Nations Inspectors Report to Security Council on Progress in Disarmament of Iraq*, 07 March 2003. Available from <http://www.un.org/News/Press/docs/2003/sc7682.doc.htm>; Internet. Accessed 25 March 2012.

¹⁵⁵ *Ibid.*

¹⁵⁶ Christian Enemark and Christopher Michaelson, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 561.

¹⁵⁷ *Ibid.*

time for Iraq to fully comply with the resolution and perhaps Saddam Hussein would have later blocked Weapons Inspectors, what seemed evident is that there was still time “to attempt a combination of diplomatic efforts and forms of coercion short of full-scale invasion.”¹⁵⁸ Regardless, there are many that believe that the resolutions were slowly starting to work and there was an apparent imminent threat to justify this pre-emptive or more suitably, preventative war.

In a stark comparison the coalition, led by the United States, was describing a far more desperate situation which required immediate action. Starting from the National Intelligence Estimate (NIE) 2002 to President George W. Bush’s speech at WestPoint in June 2002 and to the UN in September, to Colin Powell’s speech to the UN in February 2003, the Bush administration unleashed its “information campaign to justify going to war.”¹⁵⁹ At a commencement address to West Point graduates President Bush “laid out a new doctrine – a ‘Bush doctrine’ – on national strategy”¹⁶⁰ which announced that the old Cold War doctrine of deterrence was obsolete and that the United States could no longer wait for terrorist threats to materialize thus the requirement for pre-emptive action. President Bush’s speech to the UN described the urgency to act against Iraq due to its non-compliance with UN resolutions and attempting to strike fear in the Security Council stating “[a]nd if an emboldened regime were to supply these weapons to terrorist allies,

¹⁵⁸ Jordy Rocheleau, “From Aggression to Just Occupation? The Temporal Application of Jus Ad Bellum Principles and the Case of Iraq,” *Journal of Military Ethics*, (Vol 9, no 2, 2010): 131.

¹⁵⁹ Albert L. Weeks, *The Choice of War: The Iraq War and the Just War Tradition*, (ABC-CLIO, LCC; Santa Barbara, California, 2010), 67.

¹⁶⁰ Fred Kaplan, *Daydream Believers: How a Few Grand Ideas Wrecked American Power*, (Hoboken, New Jersey: John Wiley and Sons Inc, 2008), 126.

then the attacks of September the 11th would be a prelude to far greater horrors.”¹⁶¹ The following month NIE 2002 was released. It reported that Iraq continued to develop WMD, had chemical and biological weapons, was a few years from a nuclear capability, had UAVs to deliver these threats and suggested that these weapons could be given to terrorist groups to strike at the United States. Even though there still were no WMD located months after the invasion, George Tenet in a CIA statement in August 2003 stood by their assessment by stating “[w]e stand by the judgments in the NIE.”¹⁶² Finally, Colin Powell delivered the final speech before the war in Iraq to the UN Security Council on February 2003 in which he shows the proof that Iraq is in violation of the UN resolutions, that the time for action is near and that a “Saddam Hussein in possession of weapons of mass destruction for a few more months or years is not an option, not in a post-September 11th world.”¹⁶³ Though the United States presented an ominous picture of what potential evil Iraq was capable of, we cannot look past the fact that the sober second thought of the members of the UN were not convinced of the intelligence nor of the imminent threat that Iraq posed to the United States.

This section on the criterion *last resort* has demonstrated that there seems to have been more room to allow the UNSCR 1441 to achieve the desired effect of having Iraq dismantle its WMD programs. The international community was not convinced of the

¹⁶¹ George W. Bush, *Statement by President Bush: United Nations General Assembly*, 12 September 2002. Available from <http://www.un.org/webcast/ga/57/statements/020912usaE.htm>; Internet; accessed 14 March 2012.

¹⁶² George Tenet, *Statement on the 2002 NIE on Iraq's Continuing Programs for WMD*, 11 August 2003, Available from <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2003/pr08112003.htm>; Internet. Accessed 06 March 2012.

¹⁶³ Colin Powell, *Briefing Security Council, US Secretary of State Powell*, 05 February 2003, Available from <http://www.un.org/News/Press/docs/2003/sc7658.doc.htm>; Internet; accessed 10 March 2012.

imminent threat that the United States was so intensely advertising. Based on the assessment of *last resort* a JWI of -2 is assigned.

This section set out to assess the five Just War criteria as it pertains to the Second Gulf War. Table 4 illustrates the scores allocated to each criteria and the average score assigned based on this assessment. This quantitative assessment represents the author's opinion based on the span on his research and as such has assessed the Second Gulf War as unjust.

TABLE 4.
Summary of scores for the Second Gulf War in each criterion and the JWI

	JWI
1. Just Cause	-2
2. Right Intention	-1
3. Legitimate Authority	-2
4. Net Benefit	-2
5. Last Resort	-2
Average JWI	-1.8

This section has demonstrated that the Second Gulf War was an unjust war by not meeting all the just war criteria. The *just cause* section demonstrated that the United States *just cause* for the invasion of Iraq was based on pre-emptive in self-defence due to the imminent threat posed by Iraq's WMD development and their support to terrorists groups. At face value and the evidence at hand at the time, perhaps the United States had *just cause*, however, the lack of proof of WMD and the links to terrorism following the invasion and the lack of support from the UN reflected a low JWI rating. From the *right intention* criterion, this section argued that the intentions to go to war must meet the cause or aim of war. The United States intentions in this case were regime change thus

establishing democracy, freeing the Iraqi people and removing WMD and terrorism links. Again, this section demonstrated that at face value the intentions of regime change and their associated benefits of democracy and civil freedoms were noble but the lack of a plan or vision of the post Iraq invasion were lacking as demonstrated following the invasion. The next criterion, *legitimate authority*, proved to be a very contentious principle to meet. This section argued that the United States did not have the *legitimate authority* to use force on Iraq despite their belief it existed under Article 51 of the UN Charter and UNSCR 678, 687, and 1441. Under Article 52 of the UN Charter the United States believed that they had the authority to use pre-emptive action due to the imminent threat posed by Iraq's WMD and links to terrorism. This section demonstrated that the imminent threat did not exist thus not legitimizing the authority to use force. In essence the United States argued that the authority already existed under Resolutions, however, this argument was questioned due to the United States persistence on acquiring authority to use force from the UN when they claimed it already existed. The *net benefit* criterion was assessed from a temporal perspective similar to most other criterion in that the criterion was assessed from the conditions at the start of the invasion and afterwards during the occupation. This section first demonstrated that the initial invasion was achieved at little loss to human lives thus achieving good proportionality however as seen months later during the occupation, there was an escalation of US and Iraqi casualties as the occupation progressed through the years. Finally, the *last resort* criterion assessment demonstrated that the United States did not allow adequate time for resolution 1441 to achieve the desired results despite UN Weapons Inspector team lead Hans Blix indicating that Iraq was starting to comply. This section also argued that the imminent threat which

the United States was painting was not as imminent as perceived thus not requiring rushing into an invasion before allowing the resolution to achieve its goals. The overall average of the second Gulf War in this case is -1.8 or moderately unjust.

GULF WAR I AND GULF WAR II COMPARISON

The intent of this section is to provide a comparative analysis of the two Gulf Wars by comparing and contrasting each criterion against each other. This paper has demonstrated that the First Gulf War was a just war due to it meeting all the Just War criteria and the Second Gulf War was unjust due to failing to meet these same criteria. The First Gulf War will be used to contrast the differences between the Second Gulf War highlighting why these criteria were not met as well as the importance in meeting these criteria. Table 5 provides a summary of the JWI assigned for both Gulf Wars. Table 6 are the results of a survey of 106 “experts”, Ph.D.s working on international affairs. This table provides a relative comparison of this author’s assessment and those in the professional field. Most JWI assessment for the Just War criteria are relatively similar with the exception of *legitimate authority* for the Gulf War II.

TABLE 5.
Summary of scores for the First and Second Gulf War in each criterion and the JWI

	JWI GW1	JWI GW2
1. Just Cause	+2	-2
2. Right Intention	+2	-1
3. Legitimate Authority	+3	-2
4. Net Benefit	+1	-2
5. Last Resort	+2	-2
Average JWI	+2	-1.8

TABLE 6.
Comparing Gulf War I and Gulf War II
Results of a survey of 106 “experts” (Ph.D.s working on international affairs)

	JWI GW1	JWI GW2
1. Just Cause	+1.9	-1.7
2. Right Intention	+1.6	-1.3
3. Legitimate Authority	+2.2	-0.6
4. Net Benefit	+2	-2
5. Last Resort	+1.2	-1.5
Average JWI	+1.78	-1.42

Source: Just War Survey by W. Dorn, D. Mandel and R. Cross, 2010-11

If a nation is going to take up arms against another nation then it has the “onus of proving that the justice of its cause outweighs the inevitable calamity that war would bring.”¹⁶⁴ The *just cause* for the First Gulf War was to restore peace and stability in the Gulf region or in classic Just War terms, to right a wrong in that Iraq had invaded Kuwait. In contrast, the *just cause* for the Second Gulf War was a highly criticised pre-emptive action against Iraq due to the imminent threat posed by Iraq, a threat of WMD and Iraq’s links to terrorism. The First Gulf War was a ‘black and white’ case in meeting the justness of a cause whereas the Second Gulf War challenged the limit to pre-emptive attacks against a debatable threat. Consequently, a JWI +2 for the First Gulf War and a JWI of -2 for the second was assigned.

Right intentions to fight a war must be in line to support the cause of the war. In the case of both wars President Bush Senior’s and Junior’s administrations had the *right intentions*, both were in line with their respective national security strategies for the period which not only benefited their own interests but the important economic and regional stability of the Gulf region. In the case of the First Gulf War the intention of

¹⁶⁴ Christian Enemark and Christopher Michaelsen, "Just War Doctrine and the Invasion of Iraq," *Australian Journal of Politics and History* 51, no. 4 (Dec 2005): 546.

removing Iraqi forces from Kuwait was simple, straight forward and met the cause of the war. For the Second Gulf War the Bush administration had the *right intentions* at face value but failed to have a plan to enable their intentions. That is a plan following the occupation of Iraq and transforming it into a stable democracy. Consequently, a JWI +2 for the First Gulf War and a JWI of -1 for the second was assigned.

In the analysis of *legitimate authority* this paper argued that both administrations pursued the same authorities to use force against Iraq. In the first instance the United States sought authority first and foremost from the UN under Resolution 678 and secondly from Congressional authority. The UN being an international recognized body provided the sanctioned authority for the use of force and the United States through their legitimate political body provided the legal use of force authorized by Congress through the War Powers Resolution. In contrast for the Second Gulf War, President Bush did not garner the authority from the UN for the Second Gulf War. Ultimately, the only authority he was granted was from Congress under the War Powers Resolution. The United States believed that the existing UN resolutions gave them the authority to use force, yet nevertheless, despite believing they had the authority, they still pressed the UN to authorize the use of force which seems curiously odd. Instead the Bush administration, following the new Bush doctrine of pre-emption and the supposed fear of an imminent attack, acquired their authority from only within their nation. This failure to get the proper internationally recognized authority and the resulting international criticism for failing to do so clearly demonstrated the importance of *legitimate authority*. As Albert Weeks states in *The Choice of War: The Iraq War and the Just War Tradition*, “[n]o loyal American would question our ultimate right to act alone in our national interests;

but responsible leadership would not turn to unilateral military action before diplomacy had been thoroughly explored.”¹⁶⁵ These stark differences in authority support the assessed JWI of +2 and -2 respectively.

In the case of *net benefit* for both wars it is difficult to calculate the comparative benefits of the loss of human lives to the long term gains of the use of force. Both Gulf War plans and initial execution were carried out in a relatively efficient military manner leveraging the military technology of precision guided munitions and the targeting of key infrastructure. The First Gulf War was a longer campaign which inflicted more Iraqi military casualties and took its toll on civilians but the Bush administration believed that any further delay in the invasion would result in greater suffering and regional instability. The Second Gulf War leveraged even more advanced technologies but it was the failure of planning for the post Saddam Hussein regime which led to an insurgency and increased Iraqi and coalition deaths in the long run. Therefore the *net benefit* was thrown off balance from the original plan thus resulting in disproportional ends. Had there been a plan post occupation there could have been far less Iraqi suffering thus assessing the *net benefit* more in their favor. Consequently, the JWI of +1 and -1 respectively reflect this assessment.

Finally from the *last resort* criterion, the First and Second Gulf War are almost at opposite ends of the JWI. The First Gulf War provides a good example at the lengths and efforts the international community, specifically the UN, to adopt stern resolutions against Iraq and actively pursued diplomatic efforts to dislodge Iraq from Kuwait. The United States carefully considered the political pressures from within and internationally

¹⁶⁵ Albert L. Weeks, *The Choice of War: The Iraq War and the Just War Tradition*, (ABC-CLIO, LCC; Santa Barbara, California, 2010), 148.

when Iraq was at times capitulating to some of the conditions within the resolutions thus attempting to further delay military actions. In the end Iraq failed to meet the terms set within the resolution and any attempts at further soft and hard power initiatives would result in more suffering for the people of Kuwait and continued regional instability. In this case all reasonable efforts were exhausted before the use of force was necessary. The Second Gulf War is a stark contrast to the first. In this case the United States was pressing for a UN resolution for the use of force due to the imminent threat which Iraq posed which was later proved to be incorrect. Secondly, they believed that the authority existed within existing resolutions since the First Gulf War and that they had authority under self-defence in the UN Charter under Article 51. Despite the reports from UN Weapons Inspector Hans Blix that indicated that the UNSCR 1441 was starting to advance and that it needed more time to achieve the desired results the United States pressed for immediate reaction. It can be argued if there had been a real existing imminent threat than the use of force would have been not been questioned, however, the large amount of criticism regarding this conflict demonstrates that not all efforts were exhausted before action was taken. Therefore the JWI of +2 and -2 respectively have been assigned.

This section provided a comparative analysis of the *jus ad bellum* criteria of the First and Second Gulf War demonstrating the importance of meeting each criterion and the consequences when failing to do so. The First Gulf War all criteria were in the positive range with an average JWI score of +2 or moderately just. In contrast the Second Gulf War criteria were all in the negative range with an average JWI of -1.8 or moderately unjust.

CONCLUSION

This paper set out to apply the *jus ad bellum* criteria to the First and Second Gulf Wars in order to demonstrate that the first Gulf War was a just war and the Second Gulf War was unjust due to failing meet the just war criteria. It did so by using the JWI to provide a quantitative assessment of the five *jus ad bellum* criteria of *just cause*, *right intention*, *legitimate authority*, *net benefit* and *last resort*. These wars were examined using the Just War criteria which were conceived and evolved through the centuries of warfare, changes in society and technology. These criteria are not exclusive on to their own but need to be all met in order for war to be just and are not just a ‘check in the box’ requirement to satisfy the conditions for war. The changes to the global threat, specifically terrorism, has complicated how wars are fought lending to the difficulty in knowing where the enemy is and when and where he will strike. This paper used many varied sources in order to provide a reasonable assessment of each war and how well they met each Just War criteria. The sources were varied enough to allow for a reasonable subjective assessment of both conflicts. By using the JWI this allowed for more flexibility in terms of assessment of each criterion due to the allowance of a scale from -3, strongly unjust, to +3, strongly just. Furthermore, the average score of the five assessed criteria for each Gulf War allowed for a generalized assessment of the justness of each conflict.

The first section of this paper assessed the First Gulf War, a war which occurred under the circumstances of the belligerent country of Iraq invading the sovereign country of Kuwait. It was a war in which a wrong needed to be made right. A war where the *just cause* was for peace fought with the *right intentions*, under an international sanctioned

use of force, with sufficient military means to achieve its aim and was not fought until most of the reasonable alternatives short of war were exhausted. The first section demonstrated that the First Gulf War was a just war. It did so by assessing the five just war criteria of which all five were assessed in the positive of the JWI and with an average JWI of +2. This section demonstrated the challenges of justifying a war in the complex international environment where many nations have a voice when it comes for the potential for war. The *just cause* of peace and security was well justified despite some criticisms that the cause of the United States was influenced by their dependence on the region for oil. This war was a clear case of a belligerent country invading a sovereign nation and the international community acting for the sake of regional peace and stability. From the *right intention* criterion this paper demonstrated that at times it is difficult to determine if a nation's intentions are good or just "a political illusion."¹⁶⁶ The United States had much vested in this region, as stated in NSD 54, in that the region was economically important not only to the United States but to the international community. However, their ultimate intention was to remove Iraq from Kuwait in the aim of peace in the region and having the secondary benefit of supporting their NSD. From this assessment a JWI of +2 was assigned. The United States had well founded *legitimate authority* for the use of force both through the international body of the UN with UNSCR 678 and by the United States Congressional approval through the War Powers Resolution. Ultimately, the UNSCR 678 was the most important authority in any use of force because the authority is granted by an internationally recognized body and as such a JWI of +3 was assigned. Next, this section examined the *net benefit* criterion, one of the

¹⁶⁶ Brian Orend, *Michael Walzer on War and Justice*, (Montreal: McGill-Queen's University Press, 2000), 94.

most difficult criterion to assess due to the fact that it is difficult to calculate the *net benefit* of the loss of life in achieving ones cause. In the case of the First Gulf War the goal were to destroy Iraqi military capability and remove Iraqi forces from Kuwait. The military plan on attacking Iraq was destroying facilities which supported the Iraqi population as well which caused suffering among the population, however, this was outweighed by the option of not acting thus prolonging the suffering of the Kuwaiti people as well as continues regional instability. The war was conducted relatively quickly and maintained its goals of removing Iraq from Kuwait, consequently a JWI of +2 was assigned. Finally, the section demonstrated that the *last resort* criterion is similarly difficult to assess due to the fact that when can one truly consider all means have been reasonably taken before force can be used. This section demonstrated that the United States and the international community took a systematic soft and hard power approach of diplomatic meetings and UN resolutions to pressure Iraq to withdraw forces from Kuwait. The United States leveraged the tools of soft and hard power, tolerated the Iraqi ruses of minor concessions attempting to further delay the decision of the UN to sanction the use of force. In the end it was decided that any further delay would result in greater suffering of the Kuwaiti people and would continue to impair regional and economic stability thus the use of force was needed. Overall this section demonstrated that the United States and the UN met the criteria of *jus ad bellum* with an average JWI of +2 or moderately just, thus making the First Gulf War a just war.

The next section on the Second Gulf War provided a stark comparison to the First Gulf War. It following the same methodology as the first section, however, in contrast, all five were assessed in the negative of the JWI and with an average of -1.8 or

moderately unjust. This was a highly criticised war where the *just cause*, *legitimate authority* and *last resort* were the most questionable Just War criteria. First this section argued that the United States pre-emptive action due to their belief that Iraq posed an imminent threat due to Iraq's WMD and terrorist links was based on questionable intelligence and facts. At face value, should there have been proof of these threats being imminent the cause would have been just but in the end were proven to be false. Next, the United States, at face value, had the *right intentions* of removing Saddam Hussein from power in order to establish democracy, eliminate the WMD, free the oppressed Iraqi people and remove the terrorism link thus providing better regional stability and supporting their cause. However, the lack of a plan following the invasion on how the United States were going to accomplish these goals and the subsequent insurgency following the occupation resulted in JWI of -1 being assigned. Next, one of the most contentious criteria of this assessment was *legitimate authority*. This section argued that the United States did not have the authority to use force against Iraq despite it believing it did under Article 51 of the UN Charter, the right to self-defence and the existing UN resolutions of 678, 687 and 1441. However, the lack of imminent threat for self-defence and the fact that the United States believed the authority under the existing UN resolutions was in fact false. Furthermore, and of curious note, despite the United States claiming they had UN authority through existing resolutions they continued to press the UN for authority. In the end the United States relied on their national authority granted by Congress, their false beliefs in authority in existing resolutions and false presumptions of an imminent threat. From the *net benefit* criterion, this section demonstrated that initially the lightning victory of the war resulted in minimal casualties both on the

coalition and Iraqi civilian's side. Furthermore, the United States believe that the invasion and change in regime would have a greater *net benefit* in the long run due to the establishment of democracy, stability and better existence for the Iraqi people. However, as previously demonstrated, the lack of a post occupation plan resulted in the deterioration of the security situation in Iraq and the subsequent insurgency resulted in large numbers of deaths and instability in the country. Finally, this section demonstrated that the United States did not allow sufficient time for UN resolutions and diplomatic efforts to achieve their objectives. This section demonstrated that UNSCR 1441 was starting to show progress as reported by the lead Weapons Inspector Hans Blix, therefore should have been allowed more time to be successful. In contrast, the United States campaign of attempting to convince the UN of the imminent threat Iraq posed at face value would have potentially validated their going into Iraq when they did, however, the UN was not convinced of the imminent threat thus believed the UN resolutions needed more time.

The last section of this paper provided a comparative analysis of the two Gulf Wars. This section compared and contrast each just war criteria, demonstrating the importance of meeting each criterion and the consequences when they are not met. This section further demonstrated that the failure to meet the *jus ad bellum* criteria for the Second Gulf War resulted in it being an unjust war.

This paper set out to demonstrate that the Second Gulf War was unjust by comparing it to the First Gulf War. This was clearly demonstrated by the average JWI of +2 and -1.8 respectively. Secondly, by arguing that since the United States failed in meeting all Just War criteria the Second Gulf War was an unjust war. In the Second Gulf

War the United States was a nation which had been violated by the horrific events of 9/11 thus their judgment for going to war may have been clouded by the thoughts of vengeance. This is reflected by the statement from Father K'Otienoh in an interview with the New York Times, concerning the fear of Americans following 9/11. "On the one hand they (Americans) take the teachings of the Holy Father very seriously, and on the other hand, there is this actual threat, particularly after Sept. 11, that has put people on edge, and I can understand those fears."¹⁶⁷ This fear may have blinded many to the fact that this war was unjust.

¹⁶⁷ Laura Goodstein, "Threats and Responses: Catholics; Conservative Catholics' Wrenching Debate Over Whether to Back President or Pope," *New York Times*, 06 March 2003; Available from <http://www.nytimes.com/2003/03/06/us/threats-responses-catholics-conservative-catholics-wrenching-debate-over-whether.html?pagewanted=all&src=pm>; Internet; accessed 20 February 2012.

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