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## The Doctrine of Proportionality in a Time of War

E. Thomas Sullivan\*

There has been an increasing number of armed conflicts, and others looming on the horizon, that should cause us to pause and think about why and how we go to war. The list is long: Iraq, Afghanistan, Lebanon, Iran, Syria, North Korea, etc. One especially poignant method of analyzing our decisions to go to war that has not received much attention is based on the Just War doctrine.

The overarching principle behind the Just War doctrine is proportionality: this doctrine observes that (1) any sovereign undertaking a war should measure its response in proportion to the claimed wrong, and (2) the means used to carry out that war should be proportionate to the desired goal. The doctrine was developed by early philosophers who were concerned with the unprincipled, and often brutal, way that sovereigns of their time went to war.<sup>1</sup>

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\* Provost and Senior Vice President, and Julius E. Davis Chair in Law, University of Minnesota. This essay draws on material from a book on the subject of proportionality to be published by Oxford University Press with Professor Richard Frase. I wish to extend appreciation to Brian Atwood, Oren Gross, and David Weissbrodt for their thoughtful review of a draft, and to Nicholas Smith for his careful and thorough research assistance.

1. See, e.g., HUGO GROTIUS, PROLEGOMENA TO THE LAW OF WAR AND PEACE 21 (Oskar Piest ed., Francis W. Kelsey trans., Liberal Arts Press, Inc. 1957) [hereinafter PROLOGEMA] ("Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.").

## I. JUS AD BELLUM – THE DECISION TO GO TO WAR

One of the earliest proponents of the Just War doctrine, Cicero, argued that there was only one justification for going to war: to live “peaceably without suffering injustice.”<sup>2</sup> A war motivated by any other reason was not only irrational, but also more characteristic of beasts than human beings.<sup>3</sup> Later philosophers refined this theory.

St. Augustine and St. Thomas Aquinas both defined the “just cause” required to go to war in terms of wrongs committed by the other side. As Aquinas explained summarily, “[T]hose who are attacked, should be attacked because they deserve it on account of some fault.”<sup>4</sup> Although Aquinas argued that the attacking sovereign could be motivated by an advancement of good or the avoidance of evil,<sup>5</sup> little in his works suggests that wars are justifiably undertaken when no clear fault lies with the country being attacked.

Hugo Grotius added to the work of Aquinas and Augustine to create a fairly comprehensive method to analyze when one is justified in going to war and what means are deemed appropriate to the end desired. Grotius contended that the purpose of waging war was to restore a violated right against those “who could not be held in check by judicial process.”<sup>6</sup> Implicit in his argument is the required exhaustion of all peaceful means, especially judicial processes, to attain justice. In other words, the aggressor must use all human understanding and natural reason to come up with a peaceful solution to the problem. Only when judicial processes and

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2. CICERO, ON OBLIGATIONS bk. 1, § 11, available at <http://www.oup.co.uk/pdf/0-19-924018-3.pdf>. See also ST. AUGUSTINE, CITY OF GOD bk. 19, ch. 12, available at <http://www.ccel.org/fathers/NPNF1-02>; PIERINO BELLI, 2 A TREATISE ON MILITARY MATTERS AND WARFARE 59 (Herbert C. Nutting trans., Oxford, The Clarendon Press; London, H. Milford 1936) (writing that “in war there is no other objective than peace, and there is no peace apart from justice”).

3. CICERO, *supra* note 2, bk. 1, § 11.

4. ST. THOMAS AQUINAS, THE SUMMA THEOLOGICA, Second Part of the Second Part, question 40, art. 1 (Benziger Bros. ed. 1947).

5. *Id.*

6. PROLOGEMA, *supra* note 1, at 18. Quite similarly, Sir Robert Phillimore, Member of Her Majesty’s Honorable Privy Council and Judge of the High Court of Admiralty, described war as an “exercise of the international right of action, to which, from the nature of the thing and the absence of any common superior tribunal, nations are compelled to have recourse, in order to assert and vindicate their rights.” 3 SIR ROBERT PHILLIMORE, COMMENTARIES UPON INTERNATIONAL LAW 77 (2d ed. 1873).

reason fail is one justified in resorting to force.<sup>7</sup>

Grotius's list of prerequisites to a just war exceeds that of other philosophers, signaling his commitment to avoiding war at all costs. Those requirements include: a just cause, the necessity of waging war to attain the just cause,<sup>8</sup> a determination of the probability of success,<sup>9</sup> the right intention by the defender,<sup>10</sup> a public declaration of war by the proper authority,<sup>11</sup> and a proportional response to aggression.<sup>12</sup>

Grotius provided some examples of reasons for going to war that would probably be labeled "just" under his theory. Those include: self-defense,<sup>13</sup> indemnity,<sup>14</sup> punishment,<sup>15</sup> response to a committed or imminent injury,<sup>16</sup> and protection of others.<sup>17</sup> If it was unclear whether the war was justified, Grotius demanded that the doubt be resolved in favor of "peaceful" measures.<sup>18</sup>

Notably, Grotius wrote specifically about situations in which one country is feeling threatened by another country, but there is not a specific aggression or material threat present to easily justify war. Grotius concluded that wars conducted for expediency's sake were not justified.<sup>19</sup> It is impossible to obtain complete security in life, he argued, and one country's growth or

7. See CICERO, *supra* note 2, bk. 1, ch. 2, § 1.

8. PROLOGEMA, *supra* note 1, bk. 2, ch. 22, § 4 ("For to authorize hostilities as a defensive measure, they must arise from the necessity, which just apprehensions create; apprehensions not only of the power, but of the intentions of a formidable state, and such apprehensions as amount to a moral certainty.").

9. *Id.* bk. 2, ch. 24, § 4.

10. HUGO GROTIUS, *THE RIGHTS OF WAR AND PEACE INCLUDING THE LAW OF NATURE AND OF NATIONS* (1625) bk. 2, ch. 22, § 17 (A.C. Cambell trans., M. Walter Dunne 1901).

11. *Id.* bk. 1, ch. 3 §§ 4–5.

12. See PHILLIMORE, *supra* note 6, at 77–78 (establishing the requirements of a just war as follows: a war must be waged by proper authority, to restore a violated right and order among the states, and the means "must be in strict conformity with this end").

13. GROTIUS, *supra* note 10, bk. 2, ch. 1, § 2.

14. *Id.*

15. *Id.*

16. *Id.* bk. 2, ch. 1, § 16.

17. HUGO GROTIUS, *DE JURE BELLI AC PACIS (ON THE LAW OF WAR AND PEACE)* (1625) bk. 1, ch. 2, § 8 (Francis W. Kelsey trans., Oxford: Clarendon Press 1925), <http://www.lonang.com/exlibris/grotius/gro-102.htm> ("Now it is in the love of innocent men that . . . just wars have their origin. . . . The teachings of Christ in regard to loving and helping men ought, therefore, to be carried into effect unless a greater and more just love stand in the way.").

18. GROTIUS, *supra* note 10, bk. 2, ch. 23, §§ 6–10.

19. *Id.* bk. 2, ch. 1, § 17.

military expansion, without more, does not justify another's resort to aggression.<sup>20</sup> Sovereigns must rely on "divine" providence and defensive precaution to achieve security, he argued.<sup>21</sup>

#### A. BUSH'S POLICY OF PREEMPTIVE STRIKE

Against this backdrop, we should consider President Bush's explicit acceptance of the possibility that preemptive wars may be justified. In the document, *The National Security Strategy of the United States of America*,<sup>22</sup> President Bush explained how his national policy would, in part, combat terrorist threats:

We will disrupt and destroy terrorist organizations by . . . defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.<sup>23</sup>

Although the idea of preemptive war is not new, it is worth commenting on because at no other time has an American president so explicitly accepted the idea of justified preemptive strikes. In fact, President Dwight D. Eisenhower rejected outright the idea of a preventative war.<sup>24</sup> At the same time, it is true that no previous president has ever forsworn the use of a preemptive strike, even the first use of tactical nuclear weapons in the European theater.<sup>25</sup>

This is the case because, it is argued, forswearing the first use of such weapons would weaken the "deterrence" rationale.<sup>26</sup>

20. *Id.*

21. *Id.*

22. THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (Sept. 2002) [hereinafter NAT'L SECURITY STRATEGY].

23. *Id.* at 6.

24. GEOFFREY PERRET, EISENHOWER 449–50 (Random House 1999).

25. See Todd E. Pettys, *Our Anticompetitive Patriotism*, 39 U.C. DAVIS L. REV. 1353, 1404 (2006) ("The president always has the right and always *has* had the right [to launch a] pre-emptive strike. . . . No president through all of American history has ever ceded, and nor would I, the right to pre-empt in any way necessary to protect the United States of America.") (alterations in original) (quoting Senator John Kerry, Presidential Debate in Coral Gables, Florida, 40 WEEKLY COMP. PRES. DOC. 2175, 2188 (Sept. 30, 2004)).

26. See American Society of International Law Proceedings, *Strategic Deterrence and Nuclear War*, 76 AM. SOC. INT'L L. PROCEEDINGS 23, 26 (Apr. 22–24,

But clearly, not ruling out a preemptive strike is not the same as asserting it as an explicit, muscular foreign policy. Moreover, an overly aggressive explication of preemptive strike can have a counterintuitive effect on deterrence. It can cause other nations to take action to deter a preemptive strike—as in the case today of Iran and North Korea. In short, the intended deterrent effect can be undercut.

The new “preemptive” doctrine is said to be an adaptation of centuries-old international law.<sup>27</sup> As Grotius had explained and customary international law had adopted, one need not wait until being attacked to justify going to war.<sup>28</sup> But in order to justify such a preemptive strike, the threat had to be specific and “imminent.”<sup>29</sup>

Citing September 11th as a small example of the destruction that terrorists can accomplish, President Bush argued that “[t]he greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, *even if uncertainty remains as to the time and place of the enemy’s attack.*”<sup>30</sup>

At first blush, the idea of a preemptive strike against an uncertain attack seems at odds with the basic thrust of Just War principles. Under traditional Just War theory, an imminent attack is usually one that a sovereign can readily observe, like the mobilization of troops or artillery in such a way as to almost certainly signal an attack.<sup>31</sup>

The current administration stretches the idea of what is imminent, seemingly for purposes of justifying a preemptive strike. Under the guise of “adapt[ing] the concept of imminent threat to the capabilities and objectives of today’s adversaries,”<sup>32</sup> the Bush Administration has justified preemptive attacks on

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1982) (comments by Eugene V. Rostow, Director, U.S. Arms Control and Disarmament Agency).

27. NAT’L SECURITY STRATEGY, *supra* note 22, at 15 (“For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack.”).

28. GROTIUS, *supra* note 10, bk. 2, ch. 1, § 16.

29. See NAT’L SECURITY STRATEGY, *supra* note 22, at 15; see also *supra* notes 19–21 and accompanying text.

30. NAT’L SECURITY STRATEGY, *supra* note 22, at 15 (emphasis added).

31. *Id.* at 15 (“Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack.”).

32. *Id.*

“emerging threats” or gathering dangers.<sup>33</sup> This extension of the concept of imminent threat implicates the standard of evidence used to justify a preemptive strike.<sup>34</sup> The missing weapon of mass destruction (WMD) in Iraq,<sup>35</sup> or a one percent probability of a threat, as described in Ron Suskind’s recent book, *The One Percent Doctrine*,<sup>36</sup> arguably would not meet this standard.

It is here that the Bush Administration’s idea of what constitutes an “imminent threat” seems to stand most at odds with Grotius. While their differences may be viewed as merely semantic, it is important to remember the great cost of waging a war.<sup>37</sup> When making the decision to go to war because of terrorist threats or otherwise, sovereigns would do well to ensure that their response is “proportional” to the injury caused or the magnitude of the imminent threat. As Grotius urged, prudence dictates that doubts about the justification of a particular war should be resolved in favor of peace.<sup>38</sup>

## II. JUS IN BELLO – MEANS OF WAGING WAR

Only after all the prerequisites are met, and after all non-violent attempts at resolving the conflict peacefully have failed, may the aggressor appropriately call its decision to go to war “just.”<sup>39</sup> This label of Just War is not a carte blanche to inflict just any type or amount of damage that the aggressor may see fit. The means by which a war is to be carried out are subject to stringent proportionality requirements under the Just War doctrine that dictate both which kinds and how much damage may justifiably be inflicted on one’s opponent.

Grotius posited that the war should be “carried on with not

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33. *Id.* (“[I]n an age where the enemies of civilization openly and actively seek the world’s most destructive technologies, the United States cannot remain idle while dangers gather.”).

34. See GROTIUS, *supra* note 10, bk. 2, ch. 1, § 17.

35. See Jim Rutenberg, *Conceding Missteps, Bush Urges Patience on Iraq*, N.Y. TIMES, Oct. 26, 2006, A1.

36. RON SUSKIND, *THE ONE PERCENT DOCTRINE* (Simon & Schuster 2006).

37. Colin L. Powell, *U.S. Forces: Challenges Ahead*, 71 FOREIGN AFFAIRS 32, 40 (1992) (“Wars kill people. That is what makes them different from all other forms of human enterprise.”).

38. GROTIUS, *supra* note 10, bk. 2, ch. 23, §§ 7–10. See also *id.* ch. 24, § 4 (contending that even if a just cause for going to war has been established, countries should still refrain from using force if possible).

39. See *supra* note 7 and accompanying text.

less scrupulousness than judicial processes are wont to be.<sup>40</sup> Thus, not only should the decision to go to war be measured and limited by the same type of measured response inherent in judicial processes, but the means with which that war is carried on should also be checked by measured calculation and prudence.

Grotius proposed a three-step analysis that warring countries should use when determining which military actions are proportionate and thus available to them. First, the country should determine whether the action will create more harm than good.<sup>41</sup> If the action will cause more harm than the good, the means are not justified. If, however, the action will propel the country toward its objective without creating too much "evil," then the means may be justified. Second, if it cannot be determined whether more good or more evil will come of the action, the country may only utilize the means in question if it tips the balance in favor of the good and away from the evil.<sup>42</sup> Finally, before the action is taken, the country must determine whether the likelihood of the good occurring is great enough to outweigh the magnitude of the potential harm.<sup>43</sup> Thus, if the probability of success for that particular mission is small, and in attempting it a large number of lives may be lost or a great deal of property may be destroyed, that particular action should not be taken.

Grotius summarized this three-step process into a fairly simple and accessible analogy. Doctors use weak medicine for weak diseases, and stronger medicine for serious diseases.<sup>44</sup> This is known today as the "classic dose response curve."<sup>45</sup> For a mild headache, two pills will do. As the pain increases, so does the dose. More severe problems may require more intrusive solutions.

Importantly, Grotius limited the means deemed appropriate for any military action to those necessary to successfully completing the given objective.<sup>46</sup> If the goal could be completed without inflicting injury to person or property, any means used

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40. PROLEGOMENA, *supra* note 1, at 18.

41. GROTIUS, *supra* note 10, bk. 2, ch. 24, § 5.

42. *Id.*

43. *Id.*

44. *Id.*

45. See GOODMAN & GILMAN'S PHARMACOLOGICAL BASIS OF THERAPEUTICS 34 (11th ed. 2006).

46. GROTIUS, *supra* note 10, bk. 3, ch. 1, § 2.

that would result in damage would be viewed skeptically.

The requirement of "proportionality" both in the decision to go to war and the means of carrying it out marks perhaps Grotius's biggest contribution to protecting human life and dignity. By limiting the scope of damage that may be inflicted during a Just War, Grotius recognized the sanctity of human life and introduced a strong dose of "humanitarianism" into a field of thought not traditionally known for its respect for human life or concern for collateral damage.

### III. INTERNATIONAL TREATIES ADOPTING PROPORTIONALITY

The Just War doctrine continued to be developed by later philosophers who modified and added to the framework that Grotius had provided. It was not, however, until the latter half of the 19th century that the international community formally adopted, albeit in a limited context, the principle of proportionality. The Geneva Convention of 1864 marked the first major international attempt to use the principle of proportionality to limit the suffering caused during the prosecution of a war.<sup>47</sup> The convention specifically addressed the way that wounded soldiers were treated,<sup>48</sup> even providing safe harbor to families who took care of the wounded in their homes.<sup>49</sup>

The Hague Conventions of 1899 and 1907 provided for more applications of the principle of proportionality to the means of war.<sup>50</sup> Importantly, the conventions called for a tight fit between the military actions taken and the military objective.<sup>51</sup>

Up until this time, the principle of proportionality was used

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47. Geneva Convention of 1864, reprinted in PHILLIMORE, *supra* note 6, at 157-60.

48. *Id.* art. I, reprinted in PHILLIMORE, *supra* note 6, at 157.

49. *Id.* art. V, reprinted in PHILLIMORE, *supra* note 6, at 158.

50. Hague Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631, available at <http://www.icrc.ch/IHL.nsf/FULL/195?OpenDocument>.

51. The Hague Convention specifically prohibited any seizure or destruction of enemy property, "unless such destruction or seizure be imperatively demanded by the necessities of war". *Id.* art. 23(g). Belligerent parties were called to avoid destruction of religious buildings and buildings dedicated to art, science, and other charitable purposes, historic monuments, hospitals, and places where the sick and wounded reside, unless they are used for military purposes. *Id.* art. 27.

only in international treaties to limit the means with which war was carried out, failing to provide any proportionality limits on the decision to actually enter into war. The limit came in the UN Charter, which prohibits the threat of or use of force<sup>52</sup> except in cases of self- or collective defense.<sup>53</sup> Thus, even when a country is unjustifiably attacked, it should measure its response to that attack proportionately to ensure it responds in an appropriate manner. It is important to note that the doctrine of self-defense is embedded in Article 51 of the UN Charter.<sup>54</sup>

The UN Charter, moreover, also expresses the principle that military force only should be used upon authorization of the UN Security Council,<sup>55</sup> except in the case of the inherent right of individual or collective self-defense.<sup>56</sup> These provisions allow the argument that until the Security Council has taken the necessary measures, a country may act in self-defense.

The U.S. attacks on Iranian oil platforms during Operation Praying Mantis in the late 1980s provide an example of how the principle of proportionality helps measure the appropriateness of a military response.<sup>57</sup> Two incidents prompted the United States to mount a military attack on Iranian property and ships. First, a Kuwaiti vessel flying under an American flag was hit by a missile allegedly launched by Iran.<sup>58</sup> Second, a U.S. vessel, the U.S.S. Samuel B. Roberts, was hit by a mine and nearly

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52. U. N. Charter art. 2, para. 4, available at <http://www.un.org/aboutun/charter>.

53. *Id.* art. 51.

54. The classic definition found there derives from the *Caroline* case that occurred in 1837. The *Caroline* incident occurred when a Canadian naval force attacked a U.S. ship—the *Caroline*—that was carrying supplies from New York to armed rebels plotting against the liberation of French Canada on the Canadian side of Niagara Falls. See Nicholas J.S. Davies, *The Crime of War: From Nuremberg to Fallujah*, ONLINE JOURNAL (2004), [http://onlinejournal.com/artman/publish/article\\_82.shtml](http://onlinejournal.com/artman/publish/article_82.shtml). Davies quotes the foreign ministers' negotiated response and recognition of the principle of proportionality that would govern the remainder of the conflict:

"Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization," and . . . this can only be legally overridden by "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation," and "the act . . . must be limited by that necessity, and kept clearly within it."

*Id.* (second omission in original).

55. U.N. Charter art. 2 & ch. VII.

56. *Id.* art. 51.

57. Oil Platforms (Iran v. U.S.), 2003 I.C.J. 161 (Nov. 6).

58. *Id.* at 175.

sunk.<sup>59</sup> The United States responded to these acts by attacking two Iranian oil platforms. A battle ensued in which Iran eventually lost two frigates and several speedboats.<sup>60</sup>

The International Court of Justice was called on to determine whether, under Article 51 of the United Nations Charter, the U.S. military response was appropriate. The Court concluded that the oil platforms were not legitimate military targets,<sup>61</sup> and that the attacks, viewed in context of the larger operations of Operation Praying Mantis, were not a proportionate measure of self-defense justified under the Charter.<sup>62</sup>

The principle of proportionality also plays an essential role in controlling the means of warfare under current international law. Additional Protocol I to the Geneva Convention of 1949 is illustrative.<sup>63</sup> As a whole, Protocol I serves to protect those engaged in a war from unnecessary and excessive injury or harm. Implicit in the notions of necessity and excessiveness is a proportionality constraint on the actions of a warring state.<sup>64</sup> If the military benefit to be obtained by an attack does not outweigh the harm done to civilian life or property, the attack is illegal.<sup>65</sup>

Just as Grotius and his predecessors developed a number of factors to consider when analyzing the proportionality of an attack, Protocol I requires a country staging military operations to consider a number of factors: the importance of the military target,<sup>66</sup> the presence of civilian population and infrastructures in the target area,<sup>67</sup> the potential civilian use of the military target,<sup>68</sup> the ability to provide prior notice to the authorities

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59. *Id.* at 175–76.

60. *Id.* at 198.

61. *Id.* at 196–97.

62. *Id.* at 198.

63. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), available at <http://www.ohchr.org/english/law/protocol1.htm>.

64. Protocol I prohibits the use of all means that cannot be directed at a specific military target or cannot be used discriminately. *Id.* art. 51(4).

65. *Id.* art. 51(5)(b).

66. *Id.*

67. *Id.* art. 51.

68. *Id.* art. 52 (creating a presumption in favor of protecting civilian targets when it is suspected but not known that a civilian facility is being used for military purposes).

about the threat to civilian population,<sup>69</sup> the likely short-term and long-term environmental damage,<sup>70</sup> the type of weapons available and their accuracy,<sup>71</sup> and the rights of neutral countries in the target area.<sup>72</sup>

#### IV. MODERN EXAMPLE OF JUST WAR DOCTRINE REVIEW – THE GULF WAR

Ultimately, as Professor Judith Gardam has observed, the principle of proportionality seeks to find a meaningful balance between two important but competing interests: “the swift achievement of the military goal with the minimum losses of one’s own combatants and the protection of the other party’s civilian population.”<sup>73</sup>

By way of illustration, we can look at the conduct of the United States during the first Gulf War. The United States wanted desperately to avoid engaging the Iraqi troops on the ground as much as possible. To accomplish that goal, the U.S. utilized its powerful and technologically superior air forces to destroy and demobilize the Iraqi troops. The plan was successful.

Following weeks of heavy aerial bombardment, the Iraqi Republican Guard provided little resistance to the ground assault, and active hostilities ended just forty days after the first air strike began. Although the U.S.-led liberation of Kuwait has been praised for its swiftness, very little attention has been paid to the damage done to the Iraqi infrastructure and long-term devastating effects on the Iraqi population. Notably, the extensive use of air strikes, arguably, caused a number of civilian casualties, despite advanced technology that allowed for more precise targeting of military targets.

#### V. THE POWELL DOCTRINE: MASSIVE FORCE

During the buildup to the Gulf War, General Colin Powell announced his opinion about the way a war should be waged.

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69. *Id.* art. 57.

70. *Id.* art. 55.

71. *Id.* art. 51(4).

72. *See id.* art. 64.

73. Judith Gail Gardam, *Proportionality and Force in International Law*, 87 AM. J. INT’L L. 391, 409 (1993).

His view built on ideas espoused by former Secretary of Defense Casper Weinberger and centuries of prior military experience.<sup>74</sup> The Powell Doctrine, as it now called, requires a candid evaluation of the circumstances leading up to a war. Powell provided some questions that should guide decision makers before entering into a war:

Is the political objective important, clearly defined and understood?

Have all nonviolent policy means failed? Will military force achieve the objective? At what cost?

Have the gains and risks been analyzed?

How might the situation be altered, once it is altered by force, develop further and what might be the consequences?<sup>75</sup>

Is there a plausible "exit" strategy in place?<sup>76</sup>

Once the United States decides to enter a war, the Powell Doctrine calls for massive or overwhelming force to be used.<sup>77</sup> This is to ensure that U.S. casualties are minimized and the military objective is accomplished without delay.<sup>78</sup> Although the goals of using such force are certainly admirable, even the terms "overwhelming" and "massive" seem to imply a "disproportionality" that stands at odds with the Just War doctrine and international conventions.<sup>79</sup> Perhaps that is why General Powell prefers the term "decisive" force.<sup>80</sup>

74. Colin Powell served as a military advisor to Secretary Weinberger, who articulated the 6-part Weinberger Doctrine in 1984 that would be used to determine when and how to commit U.S. troops:

(1) vital national interests must be at stake; (2) overwhelming force must be employed to ensure victory; (3) political and military objectives must be clearly defined; (4) force structures and dispositions must be adjusted as events on the ground dictate; (5) there must be "some reasonable assurance" of public and congressional support; (6) force must be the last resort.

ROBERT C. DIPRIZIO, *ARMED HUMANITARIANS* 3 (Johns Hopkins Univ. Press 2002) (citing Casper W. Weinberger, "The Uses of Military Power," address to the Nat'l Press Club, Washington, D.C. (28 Nov. 1984).

75. Powell, *supra* note 37, at 38.

76. DIPRIZIO, *supra* note 74, at 3 ("In time, those sympathetic to what became known as the Weinberger-Powell Doctrine (W-P Doctrine) would interpret 'clear objectives' to mean an 'exit strategy,' which in practice meant a timetable for victory and withdrawal.")

77. Powell, *supra* note 37, at 40.

78. *Id.*

79. *See supra* sections II and III.

80. Interview on *Meet the Press* with Colin L. Powell, Secretary of State, in Washington, D.C. (Sept. 23, 2001), available at <http://www.state.gov/secretary/former/powell/remarks/2001/5012.htm> ("I never talked about overwhelming force, I've always talked about decisive force.")

Although international conventions have moved toward a more systematic analysis of what types of force are justified, Powell has argued that adopting a set of rules to govern how to wage a war is impractical and imprudent.<sup>81</sup> First, establishing clear guidelines lets your enemies know precisely what you will do and how far you are willing to go.<sup>82</sup> Powell argues that apparent ambiguity is an essential part of successful war-making.

Second, adopting guidelines may not allow the United States to use the type of force most prudent in any given situation.<sup>83</sup> He compared adopting a rigid set of rules for war to adopting a company policy mandating elevator use when a fire starts in the company's building. Although the policy is clear and easily administered, it runs into obvious problems when the fire actually begins in the elevator.<sup>84</sup> He argued for a more pragmatic approach to determining the type of force that is appropriate under the situation.

## CONCLUSION

The principle of proportionality may serve as an important restraint on any sovereign's use of force. The principle mandates that a country's decision to use force be in proportion to the committed or imminent wrong. Once the decision to go to war is made, proportionality also requires that the means and methods of warfare be proportionate to the desired military goal. International treaties' express and implicit adoption of proportionality as a governing principle has contributed to greater protection for civilians, non-military property, and military personnel alike. Finally, I note the use of "massive force" and President Bush's willingness to use preemptive strikes to highlight that the principle of proportionality may serve as an effective critique on the way this country enters into and wages war. The Just War doctrine should serve as an important reminder that our actions—in responding to threats or attacks—should be guided by defensive precaution, respect for human life, and a heavy dose of proportionality.

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81. Powell, *supra* note 37, at 37–38.

82. *Id.* at 38.

83. *Id.*

84. *Id.*

