

Jus ad Bellum and Canada's war in Afghanistan

by

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Chapter 1: Just War and *Jus ad Bellum*

The concept of just war and associated body of theory has a long and varied history. Cicero first questioned the ethics of war when he questioned the brutality of war. It has since evolved into three core elements; *jus ad bellum* (law of war), *jus in bello* (law in war) and *jus post bellum* (law after war). The use of *jus ad bellum*, *jus in bello* and *jus post bellum* has varied over the course of history. Although the employment of just war terms in the public domain today are rare, moral and ethical explanations for decisions to use force are common place.

After the September 11, 2001 (9/11) World Trade Center and Pentagon attacks, President George W. Bush declared war against terrorism. Bush's initial step in entering Afghanistan was to request the Taliban government to hand over the responsible al Qaeda leaders into US custody. When this request was rejected, Bush ostensibly declared war and launched Operation Enduring Freedom (OEF). During this process, the North Atlantic Treaty Organization extended its support to the US through an Article V declaration. Subsequently, beginning with Great Britain, allied nations, including Canada, committed forces in support of OEF. A month later, the United Nations Security Council (UNSC) passed Resolution 1378 (14 November 2001) implicitly legitimizing the overthrow of the Taliban in stating that the UN would play a primary role in establishing an interim government and requested that allied forces participate in the effort. The Resolution stated,

Deeply concerned by the grave humanitarian situation and the continuing serious violations by the Taliban of human rights and international humanitarian law ... *Expresses* its strong support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government ...

Affirms that the United Nations should play a central role in supporting the efforts of the Afghan people to establish urgently such a new and transitional administration leading to the formation of a new government ... *Calls* on Member States to provide: support for such an administration and government, ... urgent humanitarian assistance ... and long-term assistance for the social and economic reconstruction and rehabilitation of Afghanistan and welcomes initiatives towards this end.¹

With a UN mandate and NATO Article V declaration, Canada quietly moved to support the US by providing forces to the campaign. In so doing, explanations of Canada's military commitments to Afghanistan have concentrated upon the UN, NATO and Canada's vital bilateral relationship with the US. There have been ethical and moral arguments about the importance of Canada's commitment, especially in terms of ensuring fundamental human rights in Afghanistan. In addition, political debates emerged regarding the ethical behaviour of the Canadian Forces (CF), especially concerning the issue of detainees. From a wider perspective, ethical and moral arguments, substituted by accepted current values, have been common assessments of Canadian Foreign Policy.

The purpose of this study is to examine the utility of a just war explanation for understanding Canada's decision to commit its forces to the war in Afghanistan. In so doing, the concentration is upon *jus ad bellum* in first identifying the core criteria associated with the concept and then applying them to the Canadian decision. Importantly, this analysis cannot be limited to a single decision. Rather, there are three decisions that need to be evaluated: the initial combat commitment to OEF under Operation Apollo in 2001, the decision to return to Afghanistan as part of NATO's International Security Assistance Force (ISAF) in 2003 and the decision to commit troops to Kandahar in 2005. The Canadian commitment to the UN, NATO and US are

¹ United Nations Security Council Resolution 1368 2001." *United Nations Security Council 2001*. 23 June 2011

important explanations for why Canada entered into the Afghan War. Yet, the key issue is that these explanations have ignored a value-based explanation which is at the core of just war and *jus ad bellum*. Thus, this analysis strives to provide a holistic comprehension by exploring the utility of an ignored body of explanation.

This first chapter is devoted to the development of just war and *jus ad bellum*. The chapter reviews the history of its evolution as the means to identify the core criteria for evaluating the Canadian decisions when entering into the war in Afghanistan. The concept of just war is traced through the Greek and Roman period then follows the work of Augustine, Aquinas, Vitoria, Grotius, up to the developments incorporated in international law over the last century or so. The subsequent chapters provide a brief description of the phases of Canada's involvement in Afghanistan then analyze the phases using *jus ad bellum*'s criteria.

Many articles are written on the justification of the US going to war as a defensive measure, all of which cite 9/11 as an explanation. There is debate in Canada about whether defending Canada's bilateral relationship, NATO commitment and UN mandate was a moral and ethical reason for entering the war. Despite the debate, there has not been any extensive examination into the decision Canada made surrounding the concepts of just war and *jus ad bellum*. Reflecting upon just war and *jus ad bellum* is important in determining if Canada's decision of entering into Afghanistan was considered ethically and morally.

Historical Evolution of Just War and *Jus ad Bellum*

Today, just war, and in particular *jus ad bellum*, is conceptualized through six criteria. These are public declaration of intent, reasonable chance of success, proportionality, last resort, just cause and legitimate authority. These criteria are the product of a long historical evolution. According to John Langan, the Roman Catholic Church has the most historical and official association with just war primarily through the works of St. Augustine.² Yet, just war is also found in ancient Greek and Roman philosophy. Aristotle and Cicero first thought about the consequences of entering into war and the actions during war mainly through ethical studies. As with St. Augustine's contribution, both the Greeks and the Romans sought divine interpretations that justified war. *Jus ad bellum*, the laws of resorting to war, and *jus in bello*, the laws in war, were touched upon in ancient times but were never fully developed nor codified until the 17th century with Hugo Grotius.

Aristotle's contribution to just war comes mainly from his studies in ethics. In *Politics*, Aristotle describes the inner workings of a perfect city. In this city, there are categories of people, one of which is the military class. The military class, according to Richard J. Regan, lived with three principles. The first is about defending one's own lands, nominally the foundation of the just cause criteria. The second principle is about aiding other Greek states that are incapable of ruling themselves, but not taking total control of those states. The last principle is to exert power over non-Greek states that were considered naturally inferior. Regan explains the third principle by quoting

² Langan, John. "The Elements of St. Augustine's Just War Theory." *The Journal of Religious Ethics* Spring 12.1 (1984).

Aristotle, “it is part of nature’s plan that the art of war ... should be a way of acquiring property and that it must be used both against wild beasts and against such men as are by nature intended to be ruled over.”³

While the military class trains for war, war is not the primary purpose of the state. In this context, Aristotle objects to the war-like state of Sparta and believes that Sparta will become a failed state once it can no longer wage war. Regan states, “such a polity will lose its *raison d’être* and peculiar way of life when it achieves or loses dominion over its neighbors.”⁴ Ethically, according to Aristotle, war should be avoided. In other words, war should be waged as a last resort. He could not envision states, like Sparta, leading peaceful, happy or cultured lives. Aristotle states, “a city should not be considered happy, or its legislator praised, when its citizens are trained for victory in war and the subjugation of neighbouring cities.”⁵ The important aspect of Aristotle’s just war is that it is the first known start of the ethics of war. Aristotle advocated that a just war is a “war for the sake of peace.”⁶ This translates to the start of the concept of enduring peace which is an important criterion of reasonable chance of success.

During this time period, sanctions existed in the form of divine intervention. David J. Bederman describes sanctions; “the Greeks continued to believe that the gods would directly punish infractions of their own interests ... the ancient Greeks developed secular means of ensuring good faith, including experiments with anti-deceit clauses in

³ Regan, Richard J. "Justifying War." *Just War: Principles and Cases*. Washington, D.C.: Catholic University of America, 1996,15.

⁴ Regan, 14.

⁵ Aristotle, *Politics*. Trans. Ernest Barker. Ed. R. F. Stalley. Oxford: Oxford UP, 1998, 286.

⁶ Ibid.

treaties.”⁷ The concept that treaties were sanctioned by God did not end with the Greeks. This concept was passed down to the Roman era, which in turn, evolved into sanctions that governments and organizations, like the UN, use today.

The period of ancient Roman rule also developed ideas related to just war. Marcus Tullius Cicero, born in 100 BC, was a Roman philosopher, lawyer and a prominent Roman politician.⁸ Cicero’s ideas about just war coincided with Aristotle’s belief in the primacy of peace. However, wars were justified if they were “waged ... for the purpose of punishment or repelling enemies”⁹ in order to achieve lasting peace. Cicero believed this was accomplished with war; “in other words, peace was something to be constantly defended when won. Peace, then, was not merely absence of war; it was a condition that in practice resulted from war, and which would always demand a warlike stance.”¹⁰

Cicero believed in the superiority of the Romans (as Aristotle did of the Greeks). He believed war should be fought to control or rule others. He, also, believed that ruling others was beneficial to Rome as a way to prevent war. In other words, wars should be fought as preventative wars. His primary belief was that wars were fought not only for defense but to restore and create lasting peace. Cicero agreed with Aristotle that war was to be fought for the insurance of peace. He “characterised war as an ultimate expedient

⁷ Bederman, David J. "Religion and the Sources of a Law of Nations." *International Law in Antiquity*. Cambridge England: Cambridge UP, 2001, 70.

⁸ Everitt, Anthony. "Introduction." *Cicero: the Life and times of Rome's Greatest Politician*. New York: Random House, 2001.

⁹ Regan., 16.

¹⁰ Hadrill-Wallace, J.M. "War and Peace in the Earlier Middle Ages." *Transactions of the Royal Historical Society* 5th ser. (1975): 154-74. *Cambridge Journal*. Feb. 2009. Accessed 11 July 2012, 158.

and declared the goal of war to be the unperturbed life in peace.”¹¹ In other words, Cicero associated war with peace which is a portion of reasonable chance of success.

In Rome, for a war to be just, the war had to have the approval of “a corporation of special priests”¹² called the *collegium fetialium*. This is the first step of the legitimate authority criteria of *jus ad bellum*. These wars were justified if the offending state was found guilty of disregarding its obligations to the Roman Empire. The priests were reasonable in requests for a stay of execution if the offending state requested it. Although, once the allotted time had passed and the violation not repaired, then a just war would be fought. Once the priests approved the war, the decision was still ultimately a “political decision [that] was left with the senate and the people.”¹³ By having the priests sanction the war, the war became sanctioned by the Gods. This concept is known today as *justum bellum*.¹⁴

Approximately 400 years after Cicero’s death, St. Augustine developed and wrote formal documents relating to just war.¹⁵ St. Augustine, a bishop in the Roman Catholic Church, drew his arguments for just war from the Old and New Testaments and Cicero.¹⁶ St. Augustine believed wars should not be fought in self-defence due to the Christian belief that all life should be preserved, even an evil life. War should not be a selfish act

¹¹ Nussbaum, Arthur. "Just War A Legal Concept." *Michigan Law Review*. Dec 42.3 (1943). Jstor. Accessed 29 Jan. 2011, 454.

¹² *Ibid.*, 455.

¹³ *Ibid.*, 454.

¹⁴ *Ibid.*

¹⁵ Langan, 19.

¹⁶ Murnion, William E. "A Postmodern View of just war." *Intervention, Terrorism and Torture: Contemporary Challenges to just war Theory*. Ed. Steven Lee. Dordrecht: Springer, 2006, 24. Cicero discusses St. Ambrose in his just war theory development. However, this paper does not focus on St. Ambrose mainly due to St. Ambrose reiterating Cicero’s just war theories. Louis Swift wrote an informative article on St. Ambrose’s contributions to just war. Swift states that St. Ambrose was a typical Roman thinker for the time and, therefore, followed Cicero’s beliefs. "St. Ambrose on Violence and War." *Transactions and Proceedings of the American Philological Association*, 101 (1970).

and self-defence is based on a selfish act.¹⁷ Wars have a spiritual purpose. In this aspect St. Augustine did not believe that wars should be for personal self-defence but in defence of the church especially for disciplinary reasons. This is another stage in the development of wars fought for a just cause. Stevenson wrote that wars were fought against sinners in order to restore peace¹⁸ which is the foundation of reasonable chance of success. When war was fought in defence of the divine, instead of human needs, war was just.

St. Augustine and the church did not have a pre-supposition towards peace or war.¹⁹ He addresses the just cause of war within a religious realm. To St. Augustine there were only two views of the world; one within Christianity and one without. He saw that wars were just when fighting on behalf of the "City of God."²⁰ A war divinely authorized and on behalf of God was just. Importantly, a war divinely authorized had to be inspired for appropriate reasons. St. Augustine particularly believed that within the Old Testament just cause for wars could be authenticated. He viewed war, as Langan states, "primarily in spiritual and attitudinal terms rather than a threat to human interests and survival or as the doing of actions which are evil."²¹ It is important to note that St. Augustine, above all else, advocated peace; thus, wars were to be fought only as a last resort. William R. Stevenson writes that St. Augustine believed that "recourse to war,

¹⁷ Hartigan, Richard Shelly. "Saint Augustine on War and Killing: The Problem of the Innocent." *Journal of the History of Ideas* 27.2 (1966), 200.

¹⁸ *Ibid.*, 59.

¹⁹ Langan, 31.

²⁰ Stevenson, William R. *Christian Love and just war: Moral Paradox and Political Life in St. Augustine and His Modern Interpreters*. Macon, GA: Mercer UP, 1987, 13. The City of God is the name of the book which St. Augustine wrote.

²¹ Langan, 22.

even when appropriate should ... be the last resort of prudent people.”²² As with Aristotle and Cicero, wars were fought to restore peace.

To better understand St. Augustine’s principals, war as a last resort and peace as the ultimate objective is key. St. Augustine states that it is, “the desire for peace that war was waged.”²³ Peace, in the fifth century, was defined as those who possessed faith. St. Augustine described universal peace as “tranquility of order ... the peace of the body ... the peace of the irrational soul ... peace between mortal man and God ... peace between men... peace as an ordered agreement among those who dwell together concerning command and obedience ... [and] the peace of the city.”²⁴

It stands to reason that if earthly pleasures should only revolve around God, then justice must also. This leads to St. Augustine’s first principle of just wars. St. Augustine believes that the undertaking of just wars relies on the sins of the enemy; “even when we wage just war, our adversaries must be sinning.”²⁵ A just war fought to protect God’s virtue and rules, and against sin, “for even the wars which arise from human passion cannot harm the eternal well-being of God nor hurt His saints; for in the trial of their patience ... they are rather benefited than injured.”²⁶

The second principle incorporates human passions. The human capacity for evil is explained as not being part of a just war. Langan explains it as an, “assessment of the evil of war in terms of the moral evil of attitudes and desires.”²⁷ St. Augustine cautioned

²² Stevenson, 12.

²³ Ibid., 28.

²⁴ Ibid., 35.

²⁵ Ibid., 15.

²⁶ St. Augustine quoted in Langan, 22.

²⁷ Ibid., 19.

against waging war for revenge, power or for the sake of violence. He viewed the love of violence and need for power as a human passion and not a divine reason for waging war. Violence in war is just when the war is fought as punishment on behalf of the Church but not for the love of violence; “It is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good men undertake wars.”²⁸ Similarly, Robert L. Holmes’s writes that St. Augustine defined a just motivation for war not based on human emotions, but by “emphasizing purity of soul and motivation.”²⁹

St. Augustine’s writings are a guide for people to look for justification for war and to strive for the correct balance of violence and proper authorization to wage war. This leads to the “authorization for the use of violence”³⁰ which is legitimate authority and is the beginning of two forms of justice in just war; *jus ad* and *jus in*. St. Augustine believed that violence in war was performed not in self-defence but for punishment on behalf of God. During St. Augustine’s time, authority rested in a divinely authorized monarchy. He writes how God created a hierarchical society that validated the punishment of sinners. Stevenson suggests that, “to assuage the misery ... and to punish the sinners ... God permitted political authority; God ordained herarchical [sic] arrangements of human beings and a home for the legitimate use of force.”³¹ Violence is an acceptable means to an end when seeking moral peace and war as unavoidable in the maintenance of morality. St. Augustine wrote “let it be necessity, not choice, that kills

²⁸ Langan, 22.

²⁹ Elshtain, Jean Bethke. *Just War Theory*. New York: New York UP, 1992, 200.

³⁰ *Ibid.*, 19.

³¹ Stevenson, 60.

your warring enemy.”³² He repetitively sought responsibility in the use of violence; yet, violence is condoned if on behalf of the moral good of the majority. Langan termed this as “violence used as a lesser evil.”³³ St. Augustine’s use of and permissibility for the use of violence rests within the hands of a higher authority; God’s sanctioned representative and not within the hands of the general population. St. Augustine firmly believes that wars should be fought as a last resort and for maintaining morality. St. Augustine states that, “wars should be waged by the good, in order to curb licentious passions by destroying those vices which should have been rooted out and suppressed by the rightful government.”³⁴

St. Augustine’s primary focus is the spiritual aspects of just wars. His fourth principle further elaborates spirituality. During this timeframe religious war, for the purpose of converting non-Christians, was a common practice. He firmly believed if redemption was not possible through understanding and patience then wars were justified; “we often have to act with a sort of kindly harshness, when we are trying to make unwilling souls yield, because we have to consider their welfare rather than their inclination.”³⁵ This is what Langan calls the dualist epistemological approach. It is dualistic in its approach as a positive war for spiritual conversion and a just act in that war is used as a method to save the non-Christians from the inability of seeing the appropriate way to live.³⁶ To St. Augustine peace meant the incorporation of Christian faith because a life without faith was not a life of peace.

³² Langan, 26.

³³ Ibid.

³⁴ Ibid., 25.

³⁵ Ibid.

³⁶ Ibid. 35.

St. Augustine also advocated an understanding of the church's teachings in relation to entering into, and attitudes towards war. For war to be just it must be fought to achieve a peace through understanding God's will. Therefore, war was an act of peace. Even so, this does not provide a clean justification for war in the Christian manner of thinking. Therefore St. Augustine turned to the Old Testament.³⁷ St. Augustine discussed how respectable Christian people were not only pacifists but also soldiers. Christians could and should, when sanctioned by God, fight wars. Frederick H. Russell explains it as, "the just warrior restrained sinners from evil, thus acting against their will but in their own best interest. [St. Augustine] recogniz[ed] that the legitimacy of warfare had to be grounded in evangelical precepts..."³⁸ St. Augustine assumed a paternalistic attitude towards war; there were times that punishment needed to be meted out when the person sinning did not know any better and this responsibility fell onto the shoulders of innocent Christian soldiers.

In order for St. Augustine's just war to be successfully implemented there must be the capability of the population to accept legitimate authoritarian decisions. This element can be understood within the context of the time. The fifth century was not a time that men had "come of age."³⁹ Authoritarian rule and decision making was the accepted practice. Considering that the decisions of the rulers were sanctioned by God, the decision to wage war was just. This absolved soldiers, who were fighting against their Christian nature, from the sin of waging wars. The moral responsibility of violence and war rested firmly on the shoulders of the ruler.

³⁷ St. Augustine used the New Testament as a means to authenticate Christians serving in the military and the use of violence not as a means of identifying just wars. See Langan page 26 and 36.

³⁸ Russell, Frederick H. *The Just War in the Middle Ages*. Cambridge: Cambridge UP, 1977, 17.

³⁹ Langan, 34.

St. Augustine is best known as the developer of just war theory. Through his writings he furthered the concepts of just cause, last resort, reasonable chance of success and legitimate authority. He was a firm believer that just cause was self-defence when defending the church. However, war was not to be used as a first resort. St. Augustine argued that the church advocated peace first and thus did not have a presumption towards war. In other words, war was a last resort. During St. Augustine's time, legitimate authority laid with the monarchy that represented God and the church. As with Aristotle and Cicero, St. Augustine viewed war as a measure to restore and ensure peace.

The next stage in just war development was during the medieval period. Medieval just war emerged at the end of the crusades and is closely associated with St. Thomas Aquinas. This phase takes the spiritual authorization of war out of the religious realm and replaces it with natural law. Murnion states, "natural law provided a rational armature for divine law."⁴⁰ It is this step in just war that codifies the ethics surrounding war, thereby, making it possible to be carried throughout future centuries.

Jus ad bellum and *jus in bello* is easily traced to Aquinas' just war contributions. The terms, themselves, were not used during Aquinas' time nor was *jus in bello* expanded upon during this time. Aquinas began with the pursuit of the concept that there are people who should be exempt from the war effort. These people would be the clergy and religious citizens. Murnion states that, "the pope and Holy Roman emperor ... sought to exempt clerics and religious from the effects of war by defining them as innocents

⁴⁰ Ibid.

(harmless ones) because of the canonical proscription against members of their status bearing arms.”⁴¹

Anthony Coates believes that Aquinas was not advocating war but furthering limits of entering into war. Coates states, “the concentration on *jus ad bellum* does not imply a preference for justification over restraint. On the contrary, the prime purpose of *jus ad bellum* is the restraint of war.”⁴² Aquinas followed a similar path as St. Augustine in establishing that war should be a last resort and should have moral presuppositions. From this point, Aquinas seeks to “raise, not lower, the moral threshold of war.”⁴³ Aquinas’ *jus ad bellum* has three core elements; authorization of war through a legitimate source (kings or the pope), just cause and right intention.

Aquinas’ authorization for war from a non-secular source is a new element. Authority now rests with a ruler of the highest power who has legitimate control over the population. Aquinas explains that the general population does not have the right to declare war; the only person who can legitimately declare war does not have a superior.⁴⁴ Aquinas believes the sovereign must have a high moral and virtuous understanding. It was the kings and queens who understood morality and virtue and would act in a manner that was for the common good. Even though Aquinas had taken just war out of the religious realm, his fundamental concepts still reflected Christian conduct. Reflecting Aquinas, Alex J. Bellamy writes, “private individuals may not legitimately declare war

⁴¹ Murnion, 26.

⁴² Rodin, David and Henry Shue. "Is the Independent Application of *Jus in bello* the Way to Limit War?" *Just and Unjust Warriors: the Moral and Legal Status of Soldiers*. Oxford: Oxford UP, 2008, 181.

⁴³ Coates, A. J. "Legitimate Authority." *The Ethics of War*. Manchester, U.K.: Manchester UP, 1997, 131.

⁴⁴ Bellamy, Alex J. *Just Wars: from Cicero to Iraq*. Cambridge: Polity, 2008, 48.

because they have superiors with greater rights and do not have the right to mobilize the people into an army ... only kings with no superiors had the authority to wage war.”⁴⁵

The second core element is just cause. Just cause for war could be for punishing a person who had not taken the appropriate steps of righting a wrong, re-appropriating stolen property or territory and retribution for injustices.⁴⁶ Just cause relates to tyrannical rulers who did not rule in a moral, virtuous or just fashion. As such there was just cause to wage war against tyrannical rulers and tyrannical rulers did not have the right to defend themselves. According to Aquinas, “a just war is ... one that avenges wrongs, when a nation or state has to be punished for refusing to make amends for wrongs inflicted by its subjects, or to restore what it has seized unjustly.”⁴⁷

The last of Aquinas’ core elements is waging war for the right intentions. Aquinas’ right intention is similar to St. Augustine’s concept of not fighting for human passions. Aquinas states that wars should not be fought for revenge, lust, power or acquisition of goods.⁴⁸ Wars should only be waged as a reinforcement of justice. He thought that right intentions fell into the category of “either achieving something good or of avoiding something evil.”⁴⁹ When entering into war there must be virtuous and moral intent and that a just cause must be the preservation of justice.

The next shift in just war came when the nation-state developed and the exploration of Asia, Africa and the Americas occurred. Murnion notes that just war

⁴⁵ Bellamy, 39.

⁴⁶ Ibid.

⁴⁷ Aquinas cited in Renick, Timothy Mark. ““Just War” and Double Effect.” *Aquinas for Armchair Theologians*. Louisville, KY: Westminster John Knox, 2002, 100.

⁴⁸ Bellamy, 39.

⁴⁹ Ibid., 100.

changed in two aspects. One was the re-incorporation of divine law into the justification of war. Martin Luther's contribution to just war was minute and born out of the Protestant and Catholic conflict. His contribution was to justify Christian soldiers and war. Luther reincorporated a divine reason for war. As Murnion states, "the justice of the cause – the repression of heresy – was supposed to vindicate a remorseless prosecution of the war."⁵⁰ Luther's contribution allowed a soldier the choice if he wanted to fight if he knew a war is unjust. Morality for a soldier was important to Luther. He struggled to find a way to protect soldiers. In this manner, Luther incorporated St. Augustine's idea that wars were fought as punishment against sinners, which exonerated the soldiers who knew they were fighting only on behalf of God. J. Daryl Charles states, "the soldier fulfills his office by punishing the wicked ... this serves the greater good of families and communities ... [therefore war is] both a Christian and an act of love."⁵¹

The Spanish influence occurred with the exploration of the New World during the 16th century. Exploration combined with the continental religious wars further developed the natural law concept. During this period "a hypothetical law postulated to be common to all peoples by virtue of their humanity"⁵² was called *jus gentium*. To Francisco de Vitoria, natural law was reason, justice and universal morality,⁵³ and he is considered the founding father of contemporary international law by many scholars.⁵⁴ Vitoria pursued the concept of natural law in order to find a common ground to aid in negotiations between the warring Catholics and Protestants and as a way to determine legitimacy in

⁵⁰ Murnion, 26.

⁵¹ Charles, J. Daryl. "Just-War Thinking in the Late Medieval and Early Modern Period." *Between Pacifism and Jihad: Just War and Christian Tradition*. Downers Grove, IL: InterVarsity, 2005, 51.

⁵² Murnion, 27.

⁵³ *Ibid.*, 51.

⁵⁴ Bellamy, 50.

conflict against non-Christians. Vitoria had a particular interest in developing just war due to Spain's colonization of the Americas.

Even though Vitoria discussed who had legitimate authority to wage war, his primary focus was on just cause and the conduct of war. Vitoria continued to incorporate the monarch but clarified the monarchy, chosen by God as the legitimate authority which equated to just wars legitimized by God. When considering conduct in wars, he furthered *jus in bello* by postulating that the military can justly, though unintentionally, harm innocents and in cases when justice is positively affirmed then "intentional though indirect harm"⁵⁵ to innocents is acceptable. Just cause was attained when the waging of war did not exceed the sum of the offending action; in other words, proportionality. As Bellamy states, "war was only justifiable if the injury it sought to redress was greater than the probable evil the war would unleash."⁵⁶

Another influential Spanish just war theorist was Francisco Suarez. Suarez furthered the concept of international law, by advancing the notion that each nation is sovereign. Suarez also promoted just war through Christian beliefs. Legitimate authority for Suarez was the same as Vitoria. It rested in the hands of the monarch who was divinely chosen. Despite this, Suarez did not advocate the Church as the legitimate source to govern the world. Howard M. Hensel argues that, "Suarez rejected as "vain inventions" the assertion that "the Christian Emperor, or – at least – the supreme Pontiff, has direct temporal dominion over the whole world".⁵⁷ In so doing, he removed the

⁵⁵ Murnion, 27.

⁵⁶ Bellamy, 52.

⁵⁷ Hensel, Howard M. "Part 1: The Western Just War Tradition." *The Prism of just war: Asian and Western Perspectives on the Legitimate Use of Military Force*. Farnham, Surrey, England: Ashgate, 2010, 44.

personal aspect of war. For Suarez, a just cause to enter into war must be impersonal and for the furtherance and defence of the common good.

Most important to the evolution of just war was when international law formerly emerged. Grotius advocated for a natural “hypothetical common law of all nations or peoples”⁵⁸ and religion to be a right for all people, no matter what religion. As such, Grotius placed limitations on those who are considered legitimate authorities, states and the role of religion in the justification of war. Grotius also directly incorporated *jus ad bellum* and *jus in bello* into just war. He developed six criteria for *jus ad bellum* upon which the contemporary understanding resides. Notably, Grotius placed more emphasis on *jus in bello* than *jus ad bellum*.

Grotius’ first criterion is similar to Vitoria’s concept, where war had to be preventative or to right a wrong. This criterion is directly related to just cause. Grotius wrote that the sole just cause for war is self-defence. This includes the prevention of harm towards a person or objects; “the first cause of a just war is an injury not yet done which menaces body.”⁵⁹ Defence against personal harm is also considered just cause; “if any one be [sic] in danger of receiving a buffet, or the like ... hold that he has a right to protect himself by killing his enemy.”⁶⁰ Thus, defending the population against an aggressive attack is just. The last justified self-defence is associated with property. It is just to defend property and good against thieves and invaders; “I [Grotius] do not deny that in order to preserve our goods, the robber, if need be, maybe be killed.”⁶¹ Thus,

⁵⁸ Bellamy, 52.

⁵⁹ Grotius, Hugo. *Grotius on the Rights of War and Peace: An Abridged Translation*. Trans. William Whewell. Vol. 1. Cambridge: Cambridge UP, 1853, 62.

⁶⁰ *Ibid.*, 64.

⁶¹ *Ibid.*, 65.

defending territory is also a just cause. The term Grotius uses to describe their offences is civil injury. Civil injuries are injustices performed against a community or the people of a state; “breach[es] and violation[s] of public rights and duties which affect the whole community considered as a community, and are distinguished by the harsher appellation of crimes and misdemeanours.”⁶²

Grotius renamed sovereign authority to legitimate authority. In order to be legitimate, the authority has to have laws for the citizens, enforce those laws and have legal counsel to help aid and guide the authority ruling the nation. Grotius states that sovereign authority:

Consist[s] of three parts which form the necessary substance of every state; and those are the right of making its own laws, executing them in its own manner, and appointing its own magistrates.⁶³

This leads to the right of the sovereign power to address civil injuries. These types of injuries provide a just means for the sovereign authority to wage war. Grotius states a, “distinguishing mark ... of a sovereign power ... the right of making war and peace.”⁶⁴

The third criterion is the state needs to declare its intention.⁶⁵ Grotius believed that stating intent removes war from the private sphere and brings it to the public. As an advocate of peace, Grotius hoped that by declaring a state’s intention it might prevent war from occurring. He argued that making a public announcement about waging war would remove the exclusivity of those who made the decision, provided an avenue for the opponents to surrender and provided the offenders advanced knowledge which would

⁶² Ibid.

⁶³ Ibid., 131.

⁶⁴ Ibid.

⁶⁵ Charles, 65.

give the offending nation the opportunity to reconsider its position.⁶⁶ Grotius believed that “this in itself may have the effect of ultimately preventing war.”⁶⁷

The fourth criterion is proportionality. Grotius did not believe that punishment should outweigh the crime. When incorporating proportionality into *jus ad bellum*, a war should not be fought for inconsequential reasons making only grave injustices as a just cause for war.⁶⁸ Grotius provides three options to determine if a war is proportional;

[first] the matter under consideration seems to have an equal effectiveness for good and for evil ... [and] has somewhat more of good than the evil has evil ... [second] if the good and evil ... seem to be equal ... [third] if the good and evil seem to be unequal ... then the thing is to be chosen only if its effectiveness for good is greater when compared ... [to] the evil itself.⁶⁹

These options provide the opportunity to consider the decision to wage war if the war outweighs the risk of war and the injustice that occurred. Grotius believed that ensuring a war was proportional would avoid genocide and disproportionate retribution against the offending nation. Grotius believed that, “when a war leads to the “slaughter of a people” [a]nd ... war [is] undertaken for “trivial reasons, or to exact unnecessary penalties” ... [then] war [should] not to be undertaken.”⁷⁰

The fifth condition for just war is that the state must have a “reasonable chance of success.”⁷¹ This condition and the previous condition are interconnected. Success must include proportionality into the equation of the injustice caused and the outcome of the war. Charles states, “proportionality is governed by a just political aim toward which war

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ May, Larry. "The Principle of Proportionality." *Aggression and Crimes Against Peace*. New York: Cambridge UP, 2008. 119.

⁷⁰ Ibid., 20.

⁷¹ Ibid.

must be directed ... there must result from war a balance of good over evil.”⁷² The only viable outcome for a just war is lasting peace; “if war is undertaken for the sake of peace ... then war itself will lead us to peace.”⁷³ Grotius notes to fight a war without a foreseeable peace is not a just war; “in the very heat of war the greatest security and expectation ... must be in the unabated desire, and invariable prospect of peace, as the only end for which hostilities can be lawfully begun.”⁷⁴ Thus, a war should only be fought if reasonable chance of enduring peace can be obtained.

The last principle for a just war is that war must be a last resort. Grotius believed that only in exceptional cases should war be waged. Here Grotius states that even when there is danger present, war should be a last resort. Similar to declaration of intent, Grotius believed that last resort provided an avenue to rectify wrongs; “if any one [sic] direct against us violence ... delay allows recourse to many remedies.”⁷⁵ Grotius adamantly believed that war should be avoided and, thus, last resort was meant to ensure that all means to avoid war were attempted. Kimberly Hudson states: “for Grotius, the last resort hurdle is cleared only if diplomacy, courts and arbitration cannot solve a dispute that rises to the level of just cause for war: “where the power of law ceases there war begins”.”⁷⁶ Last resort also provides the opportunity to ascertain that all the criteria of *jus ad bellum* have been met prior to entering into war.

Grotius was the first to formalize the concept of *jus ad bellum*, afterwards it changed minutely. It was not until after WWI and the League of Nations that *jus ad*

⁷² Ibid.

⁷³ Grotius, 3.

⁷⁴ Ibid., 343.

⁷⁵ Ibid., 63.

⁷⁶ Hudson, Kimberly A. "Other *Jus Ad Bellum* Categories." *Justice, Intervention, and Force in International Relations: Reassessing Just War Theory in the 21st Century*. London: Routledge, 2009, 93.

bellum was internationally codified. As with just war tradition, the codification of the laws of war was established over time. The first introduction was influenced by the 1874 Brussels Conference⁷⁷ but not codified until the 1899 Hague Convention: *Convention (II) with Respect to the Laws and Customs of War on land and its Annex: Regulations Concerning the Laws and Customs of War on Land*. The 1899 Hague Convention's primary concentration was *jus in bello*. However, the first sentence in the convention demonstrates the beginning stages of an international interest in regulating the use of force. This sentence states the signatories are primarily, "seeking means to preserve peace and prevent armed conflicts among nations."⁷⁸

Convention III of the 1907 Hague Convention adopted Grotius' third condition regarding the resorting to force. This is the necessity of declaring the intention of war if hostilities erupted between signatory countries. Article one of the Convention states, "hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum with conditional declaration of war."⁷⁹ Article two states the assigned neutral countries were to be notified about the intent of hostilities and that the hostilities could not begin prior to their notification, thus, providing a declaration of intent. Convention II in 1899 and Convention III in 1907 are important first steps in codifying *jus ad bellum* internationally.

⁷⁷ "International Humanitarian Law - Hague Convention II 1899." *International Committee of the Red Cross*, para 1.

⁷⁸ *Ibid.*

⁷⁹ "International Humanitarian Law - Hague Convention III 1907." *International Committee of the Red Cross*, para 4.

Seven years after the 1907 Hague Convention, WWI began. Following the devastation from the war, world leaders began the process of regulating the use of force. The Treaty of Versailles and the League of Nations were instrumental in this development. The Treaty of Versailles' Articles 12 through 16 relate to the League of Nations, especially considering the use of force. The League's main interest was in the preservation of peace; "to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war."⁸⁰ Article 12 and 13 related to the Hague Conventions' concept of arbitration prior to a declaration of war; "the Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council."⁸¹ Articles 14 and 15 reference the arbitration committee and their responsibilities. In particular, Article 15 states that, "the Council shall endeavour to effect a settlement of the dispute ... if the dispute is not thus settled, the Council ... shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto."⁸² Article 16 discusses the consequences of a signatory country resorting to war without the approval of the Council.⁸³ The consequences include sanctions, including but not limited to, economic and trade against the offending state(s).⁸⁴

⁸⁰ Avalon Project - The Covenant of the League of Nations." *Avalon Project - Documents in Law, History and Diplomacy*, 16 Feb. 2011, Introduction.

⁸¹ *Ibid.* Article 12.

⁸² *Ibid.*, article 14 and 15.

⁸³ *Ibid.*, article 16.

⁸⁴ *Ibid.*

In 1928 another step in the codification of war was signed, with the Kellogg-Briand Pact. The Pact had 63 signatories which was “a record number for that period.”⁸⁵ This Pact has three articles. The first article denounces the use of force to solve interstate disputes. Article 1 reads, “the High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.”⁸⁶ Disputes were required by the signing parties to be solved through peaceful methods and the Pact only forbids wars between signatory countries.⁸⁷

After a succession of failures of the League and at the end of WWII, the League turned its powers over to the newly formed UN. Many of its legal principles remained, including the desire to regulate the resort to force. Just like the introduction to the League’s charter, the UN seeks “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.”⁸⁸ The UN codifies *jus ad bellum* in several articles. The first is article 2 (4) which states that the signatory countries shall abstain from the use of threat or participating in the act of war against the principals outlined in the UN Charter.⁸⁹ Similar to the League’s Charter, Article 41 of the Charter states that the first step, prior to resorting to force, is imposing sanctions on a state that is acting in an inappropriate manner.⁹⁰ Article 51, directly discusses one of St.

⁸⁵ Dinstein, Yoram. "The Contemporary Prohibition of the Use of Inter-State War." *War, Aggression and Self-Defence*. Cambridge England: Cambridge UP, 200, 83.

⁸⁶ "Kellogg-Briand Pact 1928." *Yale University*. Ed. William C. Fray and Lisa A. Spar. 1996. Web. 24 May 2011.

⁸⁷ Chapter 4 in Dinstein book provides a brief explanation of the Kellogg-Briand Pact articles. The articles can be seen at <http://www.yale.edu/lawweb/avalon/imt/kbpact.htm>.

⁸⁸ "Charter of the United Nations." *Welcome to the United Nations: It's Your World*. 17 Feb. 2011, preamble

⁸⁹ *Ibid.*, article 2 para 4.

⁹⁰ *Ibid.*, article 41.

Augustine and Grotius' categories of *jus ad bellum* and 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."⁹¹

NATO incorporates the UN's Article 51 into its charter, and Article V incorporates collective defence. Member states shall be called upon to support member countries if an attack from non-member countries occurs. The Article states,

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.⁹²

Contemporary *Jus ad Bellum* Criteria

Although neither the Hague Convention, League, UN or NATO enunciated in detail the criteria for *jus ad bellum*, the conventions of *jus ad bellum* are central to the morality of entering into war. In total, *jus ad bellum* today has six criteria. The first criterion is public declaration or intention to declare war. This step's inception began with Grotius. As Grotius argued, this is to provide the opportunity for the offending state to rectify its behaviour. Today, the notification is not only directed towards the leader but also towards the general public.⁹³ Laurie Calhoun discusses how the declaration of a

⁹¹ "Charter of the United Nations." article 51.

⁹² "NATO and the Scourge of Terrorism." *North Atlantic Treaty Organization*. 8 Feb. 2005. Accessed 08 July 2012.

⁹³ Calhoun, Laurie. "Legitimate Authority and "Just War" in the Modern World." *Peace Change*. 27.1 (2002): 37-62. *Wiley Online*. 17 Feb. 2011, 40.

state's intent has two different dimensions today. One is the declaration as merely a formality. At this stage in a dispute, the offending nation is already aware of how its actions are affecting the opposing country. Calhoun notes that at this point in the conflict, "[the declaration] is unlikely to have any effect."⁹⁴ The second dimension is the controversy surrounding the necessity of the declaration due to the speed in which war occurs today. Calhoun quotes William V. O'Brien who states, "any examination of modern wars will show that the importance of a declaration of war has diminished greatly ... because of the split-second timing of modern war, it is often undesirable to warn the enemy."⁹⁵ Yet, current just war theorists still include declaration as part of *jus ad bellum*. Calhoun states,

"a public declaration of war conveys to the population of the offending nation a unity of purpose in the population ... it announces to their counterparts that 'an injustice has been committed and we are prepared to resort to arms to correct it' ... in recent times leaders preparing their countries for war have made graphic their own observance of the public declaration requirement. For example, Bush proclaimed in his speech of January 16, 1991; Saddam was warned over and over again to comply with the will of the United Nations ..."⁹⁶

It is important to note that a declaration needs to occur prior to going to war in order to allow the offending state the time necessary to rectify the offense.

The second and third criteria are proportionality and reasonable chance for success. The purpose in a just war is not to exterminate a society, ethnicity or government, but to rectify the offense and recreate a peaceful society. Recreating a peaceful society is important as a basis of just war theory and, in particular, the reasonable chance of success' criteria of ensuring lasting peace. Michael Brough, John

⁹⁴ Ibid., 41.

⁹⁵ Ibid., 40.

⁹⁶ Ibid.

W. Lango and Larry Van Der Lindon state that part of reasonable chance of success relies on the basis of just cause and “on a broader ... account, a just war entails a possibility of creating an enduring peace.”⁹⁷ It also takes into account proportionality. When weighing cost versus benefit, proportionality looks to justify the benefit of waging war compared to the cost of the offensive action. This includes the economic, social, political costs and the cost of life, particularly, civilian life. This is known as “the principle of double effect,” described by Calhoun as, “bad consequences such as civilian deaths are permissible during wartime ... so long as they are unintended.”⁹⁸

Proportionality is also a criterion in *jus in bello*. Different from *jus ad bellum*, proportionality for *jus in bello* is defined as the, “means that the methods used in war must be proportional to the ends and limited to achieving the just goal of the war. The best example of this type of question is the case of the atomic bombs [used] on Hiroshima and Nagasaki.”⁹⁹ The similarity between proportionality in *jus ad bellum* and *jus in bello* is seen when *jus ad bellum* limits war’s consequence; “a State cannot seek to annihilate another State in defending itself when that defence could be effectuated with significantly less loss of life.”¹⁰⁰ It is important to remember that proportionality is incorporated into *jus ad bellum*’s reasonable chance of success. Reasonable chance of success takes into account that the punishment, in other words the methods used to ensure peace, are not disproportionate to the offence. The previous example of Hiroshima and Nagasaki demonstrates an arguably disproportionate method used to ensure peace. Simplistically,

⁹⁷ Brough, Michael W., John W. Lango and Larry Van Der Linden. *Rethinking the Just War Tradition*. Albany: State University of New York, 2007, 245.

⁹⁸ Calhoun, 42.

⁹⁹ Shapcott, Richard. "The Ethics of Harm: Violence and Just War." *International Ethics: A Critical Introduction*. Cambridge, UK: Polity, 2010., 168.

¹⁰⁰ May, 119.

the deaths that occurred from the nuclear bomb outweighed the deaths that occurred at Pearl Harbour. Thus, the methods used to ensure peace in Japan may not have met *jus ad bellum*'s criteria of reasonable chance of success.

Proportionality is difficult to calculate mainly due to the inability to predict the consequences of war.¹⁰¹ Brough, Lango and Van Der Lindon state, “the anticipated goods [peace] of waging war must be proportionate or commiserate to its expected evils. On the common interpretation, this means that the anticipated benefits of war must outweigh its harms.”¹⁰² Contemporary proportionality debates centres on whether proportionality still belongs within just war theory; “in light of the history of controversies about how to measure [proportionality], it is not surprising that some just war theorists have contested whether the proportionality principle provides significant moral guidance.”¹⁰³ Due to the controversy and the arbitrary nature of evidence, contemporary analysis of proportionality is excluded from this *jus ad bellum* analysis.

The concept behind reasonable chance of success is to provide an enduring peace by paying attention to if the war is winnable, if the benefits outweigh the costs of waging war and limiting the war to correcting the injustice.¹⁰⁴ Reasonable chance of success does not translate to ensuring the injured party has the biggest guns and thus the ability to win the war. It takes into account if the society is ready for the changes that will be implemented after the war. For example, ensuring that the history of the offending country is conducive for political change will then create an environment for lasting

¹⁰¹ Brough, 245.

¹⁰² Ibid, 242.

¹⁰³ Ibid., 246.

¹⁰⁴ Bell, Daniel M. "When Fight? Last Resort and Reasonable Chance of Success." *Just War as Christian Discipleship: Recentering the Tradition in the Church Rather than the State*. Grand Rapids, MI: Brazos, 2009, 195. Daniel Bell's book provides an in-depth discussion on reasonable chance of success.

peace. If enduring peace is not viable then the reasonable chance of success criteria cannot be met, thus creating an unjust war. It is important to note that reasonable chance of success does not simply translate to which country has the biggest guns.

The fourth criterion in *jus ad bellum* is war as a last resort. Last resort does not necessarily mean that there have been incremental steps at reconciliation. Last resort, especially in a war of self-defence, may be the first and only option when going to war. Robert Phillips argues, “we need to understand that there is a suppressed hypothetical in this restraint, namely, if time and other relevant conditions permit, other means short of force might be tried, but we are not to be locked into a series of steps beginning with the most pacific means and gradually escalating in the direction of force.”¹⁰⁵ However if possible, steps need to be taken to avoid war. One method that began during Aristotle’s time was sanctions. Sanctions are a contemporary measure to ensure war as a last resort. Article 42 of the UN Charter states, “should the Security Council consider that measures provided for in Article 41 [sanctions] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”¹⁰⁶ This principle is designed to stop states from initiating a war and not to stop a state from defending itself through defensive action.¹⁰⁷ The UN does not use the term last resort instead it has classified it as necessity.

The next criterion is just cause. As demonstrated, just cause within the UN Charter is self-defence. Yet, Article 3 of the Charter provides two other justifications for

¹⁰⁵ Robert Phillips quoted in Calhoun, 45.

¹⁰⁶ "Charter of the United Nations," article 42. Emphasis added.

¹⁰⁷ Calhoun, 45.

war. These are threats to peace and acts of aggression.¹⁰⁸ Threats to peace and acts of aggression are ambiguous terms. As Calhoun demonstrates these could mean anything between acts against ideologies, resources or values.¹⁰⁹ An example of the ambiguity can be seen when al Qaeda justified the attacks on the US as a means of defending its religion. Quintan Wiktorowicz and John Kaltner explained al Qaeda's motives as, "the only motive these young men had was to defend the religion of Allah, their dignity and their honor. It was not done as a service to humanity or as an attempt to side with Eastern ideologies opposed to the West. Rather, it was a service to Islam."¹¹⁰ Faith based people can interpret an attack against their religion as just cause. Considering that religions can be interpreted differently creates the ambiguity around religious wars as a just cause. This ambiguity does not rest solely with religion. Borders or interpretation of legalities can all be interpreted differently among nations.

Almost all of the founders of just war agreed that legitimate authority is essential in resorting to force. For St. Augustine, Luther and Grotius, authority rested in a monarch in varying relationships with the church. Aquinas removed religion from authority. Legitimate authority, according to some scholars,¹¹¹ is the final step in ensuring that a war is just. However, when you consider the previous *jus ad bellum* criteria an argument can be made that legitimate authority should be acknowledged prior to declaring the intention of going to war. Today's legitimate leaders govern constitutional states. Yet, when considering that many uprisings today are related to humanitarian causes then legitimate authority may also rest in a rebel group or people's

¹⁰⁸ "Charter of the United Nations," article 3

¹⁰⁹ Calhoun, 47.

¹¹⁰ Wiktorowicz, Quintan and John Kaltner. "Killing in the Name of Islam: Al-Qaeda's Justification for September 11." *Middle East Policy* 10.2 (2003): 76-92. *Wiley Online*. 17 Feb. 2011, 83.

¹¹¹ Laurie Calhoun for example. As is demonstrated in her article on page 48.

army. In a democracy, sovereignty rests with the people. The argument rests upon a democratically appointed leader. By being democratically elected a leader has legitimate authority when representing the people. Calhoun states, “when leaders are democratically determined they are often thought to be “legitimate”.”¹¹² The trend today is that legitimate authority rests with states or within the collective authority of the UN Security Council (UNSC). This example can be seen when states, such as the US, sought UNSC’s approval prior to entering into the war in Afghanistan¹¹³ or the Kosovo conflict in 1999.¹¹⁴ However, it is important to note that the standard for legitimate authority rests with the person who governs the country.

Conclusion

The criterion for *jus ad bellum* that is analyzed in Canada’s war in Afghanistan is public declaration of intent, just cause, last resort and reasonable chance of success. Proportionality will not be examined due to the inability to calculate the cost and effect of launching the war in Afghanistan at the onset. Legitimate authority, requires only brief consideration due to its legitimacy being established in the Canadian constitution and by virtue of international recognition of Canada through such international organizations as the United Nations. Showing that the Canadian government and thus, the Prime Minister is a legitimate authority demonstrates *jus ad bellum*’s legitimacy through the three Afghanistan phases.

¹¹² Ibid., 49.

¹¹³ "United Nations Security Council Resolution 1378." *United Nations Security Council Resolutions 2001*. Accessed 17 Feb. 2011.

¹⁰⁴ "United Nations Security Council Resolution 1244." *United Nations Security Council Resolutions 1999*. Accessed 17 Feb. 2011.

Public declaration of intent will be analyzed by looking at UNSC Resolutions leading up to and during Operation Apollo, determining if the government made official announcements and reviewing media reports. Public declaration will also look at NATO's response to 9/11 and if there was an official announcement about the war. Sanctions imposed by UNSC and the Canadian government is analyzed as a modern method of public declaration of intent, and then analyzed to see if the sanctions were appropriate for Operation Apollo. Sanctions are also considered as a means to demonstrate last resort prior to entering into the war. Just cause through self-defence will be reviewed by analyzing the Canadian and American relationship in terms collective and defence security agreements. Reasonable chance of success determines if the perpetrators of the 9/11 attack were the sole targets when Operation Apollo was launched. Since enduring peace is a criterion of reasonable chance of success, an analysis of the method taken to ensure lasting peace will also be examined.

Chapter 2: Operation Apollo

The first phase of the war in Afghanistan is the initial onset of the war between 2001 and 2003 called Operation Apollo. Art Eggleton, Minister of National Defence, announced on October 8th that 2000 CF personnel would be deployed on behalf of Operation Apollo.¹¹⁵ Operation Apollo lasted from October 2001 until October 2003 and was created to aid in the US led OEF. Canadian participation prior to the October deployment date was limited to troops already deployed overseas who were only authorized to participate in training exercises.¹¹⁶

The 2001 deployments were done unobtrusively. These included Navy ships that offered a range of support that included replenishment ships, sea patrol against al Qaeda insurgents' fleeing Afghanistan and defence warships protecting vulnerable ships.¹¹⁷ The first troops deployed were the 3rd Battalion Princess Patricia's Light Infantry (3-PPCLI). 3-PPCLI was sent to Kandahar to work in coalition with the US's 187th Infantry Regiment, 3rd Brigade, 101st Airborne Division.¹¹⁸ 3-PPCLI's role consisted of security and combat roles. The Canadian Army website describes 3-PPCLI's missions as, "three complex air-assault operations into harsh, mountainous terrain, [that] contributed successfully to a fourth and set the standard ... for security operations on the Kandahar airfield."¹¹⁹ Subsequently, the 1st PPCLI were sent to aid with combat missions early

¹¹⁵ "The Canadian Forces' Contribution to the International Campaign Against Terrorism." *National Defence and the Canadian Forces*. 7 Jan. 2004. 26 Feb. 2011.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Smith, Lt. Petra. "Battle Group to Be Honoured for Service in Afghanistan." *Canadian Army*. 07 Nov. 2003. 03 Mar. 2011.

March.¹²⁰ The Air Force supplied a strategic airlift detachment that provided “medical evacuation, sustainment and re-supply, rapid delivery of operationally required items and movement of personnel into the theatre of operations.”¹²¹

The criterion of legitimate authority, in contrast to the others, can be examined for all the phases of Canada’s war in Afghanistan. Demonstrating that the Canadian government and Prime Minister is a legitimate authority is essential. The first criterion for a legitimate authority is the separation of church and state as demonstrated when Grotius secularized legitimate authority.¹²² In 1854, Canada’s separation between church and state took on a legal aspect. The separation evolved due to the vast lands owned by the clergy in support of the Church of England. Therefore, in an effort to release the lands from the church, Canada implemented a law to reverse the Church’s hold on land.¹²³ The law was written as “it is desirable to remove all semblance of connexion between Church and State.”¹²⁴

One facet of legitimate authority today is a democratic government and democracy is an important criterion of legitimate authority. Even though the face of democracy has changed since Confederation, the Canadian government is still elected by the people thus ensuring this aspect of legitimate authority is met. Legitimate authority also includes the implementation and enforcement of laws. The development and implementation of all laws are scrutinized by multiple levels of government including the

¹²⁰ “The Canadian Forces’ Contribution to the International Campaign Against Terrorism.”

¹²¹ Ibid.

¹²² Despite this being a criteria for legitimate authority there rests today governments that are theocratic regimes, such as Iran. These governments are generally recognized as legitimate authorities by the UN.

¹²³ Handy, Robert T. "The "Lively Experiment" in Canada." *The Lively Experiment Continued*. By Sidney Earl Mead and Jerald C. Brauer. Macon, GA: Mercer UP, 1987, 208.

¹²⁴ Ibid.

final approval from the Queen's representative.¹²⁵ The enforcement of laws in Canada is accomplished through a variety of agencies such as the Department of Public Safety, Justice, the Canadian Security Intelligence Services, the Royal Canadian Mounted Police, Customs and Revenue Services and Provincial and Municipal Police.¹²⁶

A relevant example of Canadian law is Canada's legal incorporation of UN sanctions in 1945 through the United Nations Act, which mandated Parliament to legislate any sanctions imposed by the UNSC.¹²⁷ The United Nations Act facilitates the legislation of UN sanctions and mandates by removing normal parliamentary legislative procedure to approve a new legislation. Section 2 of the act,

provides, inter alia, that "[w]hen, in pursuance of Article 41 of the Charter of the United Nations ... the Security Council decides on a measure to be employed to give effect to any of its decisions and calls on Canada to apply the measure, the Governor in Council may make such orders and regulations as appear to him to be necessary or expedient for enabling the measure to be effectively applied."¹²⁸

Another criterion for legitimacy is having legal counsel to assist in governing the nation. The Justice Department and the Supreme Court qualifies as legal counsel. The Prime Minister has other agencies available to counsel her/him on war matters such as the Department of National Defence (DND) and the Department of Foreign and International Trade (DFAIT).

Another contemporary aspect of legitimacy is recognition by other states and the international community, which includes being a member state of collective security or

¹²⁵ "Canada's System of Justice." *Department of Justice*. 21 July 2001. 03 June 2011, para 6. The Queen's federal representative is the Governor General and provincially it is the Lieutenant Governor. Though the Queen provides final approval, the Queen or her representatives rarely go against Parliamentary recommendation.

¹²⁶ For more information on the variety of agencies see Blythe Camenson's book *Careers for Legal Eagles and Other Law-and-Order Types*, 83 – 101.

¹²⁷ "United Nations Act." *Foreign Affairs and International Trade Canada*. 3 June 2011. 21 June 2011.

¹²⁸ *Ibid.*

collective defence agreements. Canada is involved in the UN and NATO which have a direct effect on Canada's role in Afghanistan. Thus, the key criteria for legitimate authority is the separation of church and state, the implementation and enforcement of laws, and the recognition from states, the international community and through collective security and defence agreements. Considering that Canada abides by all the key criteria then the Canadian government is a legitimate authority.

Public Declaration of Intent

Canada's only formal public declaration of war was in 1939 when Canada declared its intent to wage war against Germany.¹²⁹ Even though Canada was part of the British Commonwealth, Canada's decision and declaration to enter the war came a week after Britain's decision. Despite declarations not being common practice for Canada, this does invalidate public declarations of intent. Instead, Canada has adopted a modern way of declaring war through UNSC Resolutions and NATO mandates.¹³⁰

Prior to establishing public declaration of intent, it is important to establish that bin Laden, and thusly, al Qaeda and the Taliban recognized the UN. It is clear through bin Laden's publicly broadcasted messages that he recognized the UN. He publicly recognized the UN as an internationally recognized organization, although not its legitimacy.¹³¹ In December 1998, bin Laden acknowledged UNSC Resolutions when he

¹²⁹ Chartrand, René, and Ron Volstad. "Canada at War." Introduction. *Canadian Forces in World War II*. Oxford: Osprey, 2001. 4.

¹³⁰ Even though NATO plays an important role in Canadian operations in Afghanistan, NATO did not assume control of the Afghanistan mission until August 2003. Despite citing Article 5 in October 2001, NATO did not participate in Afghanistan until August 2003. "The Canadian Forces' Contribution to the International Campaign Against Terrorism." *National Defence and the Canadian Forces*. 7 Jan. 2004. 26 Feb. 2011

¹³¹ Laden, Osama Bin. *Messages to the World: the Statements of Osama bin Laden*. Ed. Bruce B. Lawrence. London: Verso, 2005, 67.

stated that a Muslim person who recognizes UN Resolutions “do not [sic] understand their religion.”¹³² Earlier, bin Laden also noted the devastating effects of UN sanctions in Iraq.¹³³ On October 6, 2001, bin Laden discussed how the US does not acknowledge nor abide by “Resolutions and policies of international law.”¹³⁴ Bin Laden also acknowledges Canada as a threat, particularly due to its alliance with the US. Translated tapes by the CIA found bin Laden asking in November 2002, “why are your governments, especially those of Britain, France, Italy, Canada, Germany and Australia, allying themselves with America in its attacks on us in Afghanistan?” This statement demonstrates bin Laden’s awareness of Canada, its role in Afghanistan as well as being an ally of the US.

Bin Laden’s leadership of al Qaeda occurred slowly. John Esposito claims that in the late 1980s, bin Laden created and managed a militant camp called al Qaeda in Afghanistan.¹³⁵ Bin Laden was not interested in being the leader of the ideological Islamic movement now known as al Qaeda.¹³⁶ It was not until the mid-1990s that bin Laden became the leader of al Qaeda. With the new leadership, its mandate changed from not only saving Afghanistan from invaders but to convert the world to the Islamic faith. If this could not be accomplished, then the invaders would be enemies. Bin Laden emphasized that the US was the worst offender against the Muslim faith and people. Dennis B. Fradin states, “he [bin Laden] called Americans “Crusaders” ... “to kill the

¹³² Ibid.

¹³³ Bin Laden describes the deaths of thousands of children in Iraq due to the sanctions the UN imposed. Ibid., 31.

¹³⁴ Ibid., 169.

¹³⁵ Esposito, John L. *Unholy War: Terror in the Name of Islam*. New York: Oxford UP, 2002, 11

¹³⁶ Ibid., 11.

Americans and their allies – **civilians** and military – is an individual duty for every Muslim”.”¹³⁷

In 1996, the Taliban created an Islamic government that took control of Afghanistan.¹³⁸ The Taliban government was immediately recognized by three members of the UN; Pakistan, United Arab Emirates and Saudi Arabia.¹³⁹ Afghanistan was represented in the UN after the Taliban assumed control, but it was not the Taliban government that held a seat. It was the previous government that continued to represent Afghan interests. M.J. Gohari states, “for years after the Taliban’s capture of Kabul, most nations continued to recognize the Rabbani government; the Afghanistan seat at the United Nations was filled by a representative of the leader toppled by the Taliban.”¹⁴⁰ Cooperation between al Qaeda and the Taliban occurred shortly after the Taliban assumed control of Afghanistan. After bin Laden declared war on the US the alliance between the Taliban and al Qaeda deepened.¹⁴¹ The Taliban had hoped that bin Laden would rebuild Afghanistan’s infrastructure and in return the Taliban provided protection to bin Laden.¹⁴²

In 1996, the UNSC passed its first Resolution 1076 (22 October 1996) concerning Afghanistan. The Resolution acknowledged that conflict in the region was increasing and stressed the importance of a peaceful resolution. The Resolution, “*express[ed]* concern over the continuation and recent intensification of the military confrontation in

¹³⁷ Fradin, Dennis B. *September 11, 2001*. New York: Marshall Cavendish Benchmark, 2010, 15.

Emphasis by author.

¹³⁸ Gohari, M. J. "Afghanistan's History." *The Taliban: Ascent to Power*. Karachi: Oxford UP, 2001, 9.

¹³⁹ Mowbray, Joel. "Tolerating Tyrants." *Dangerous Diplomacy: How the State Department Threatens America's Security*. Washington, D.C.: Regnery Pub., 2003, 66.

¹⁴⁰ *Ibid.*

¹⁴¹ Stein, Janice Gross., and J. Eugene Lang. *The Unexpected War: Canada in Kandahar*. Toronto: Viking Canada, 2007, 32.

¹⁴² Bin Laden from this point is associated with al Qaeda and thus will not be referred to separately.

Afghanistan.”¹⁴³ The UN called “upon all States to refrain from any outside interference in the internal affairs of Afghanistan, including the involvement of foreign military personnel.”¹⁴⁴ The next relevant Resolution, 1189 (13 August 1998), condemns acts of international terrorism. Although not directly related to Afghanistan, it would have a direct effect on Afghanistan and the War on Terror. The UNSC reaffirmed non-interference by states with reference to Afghanistan in 1998 in Resolution 1193 (28 August). Resolution 1214 (8 December 1998) states that the Security Council is “deeply disturbed by the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and the planning of terrorist acts and reiterating ... the maintenance of international peace and security.”¹⁴⁵

Bin Laden is specifically named in the next relevant UNSC Resolution, 1267 (15 October 1999). It documents US allegations against bin Laden for terrorist acts in 1998 against US embassies and attempts to kill US citizens living outside of the US. It also incorporates forceful language that condemns the Taliban for harbouring bin Laden and his terrorist training camps, and gave the Taliban and bin Laden a month to submit to UN requests. If not, then further action would be taken.¹⁴⁶ This would entail the invocation of Chapter VII of the Charter concerning sanctions designed to,

deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban [and] freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban ... and ensure that neither they nor any other

¹⁴³ "United Nations Security Council Resolution 1076." *United Nations Security Council Resolutions 1996*. 17 June 2011, 6.

¹⁴⁴ *Ibid.*,14.

¹⁴⁵ "United Nations Security Council Resolution 1214." *United Nations Security Council Resolutions 1998*. 20 June 2011, 12.

¹⁴⁶ "United Nations Security Council Resolution 1267." Section 3.

funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly.¹⁴⁷

The Resolution, also, calls upon UN members to apply sanctions against the Taliban.¹⁴⁸

Resolution 1363 (30 July 2001) strenuously cited Chapter VII and the responsibilities of the members of the UN and their appropriate methods of sanctions against Afghanistan.¹⁴⁹

The Canadian government did not formally announce its intent to impose UN sanctions¹⁵⁰ following Resolution 1267 (1999) of the Security Council. Instead, the government, through DFAIT and the Justice Department, invoked the United Nations Act and established the United Nations-Al-Qaida and Taliban Regulations in 1999.¹⁵¹ The Taliban, bin Laden and associates' assets were frozen and "the supply, sale and transfer of arms and technical assistance"¹⁵² was prevented. The regulation declared technical assistance as, "instruction, training, consulting services or technical advice or the transfer of know-how or technical data ... includes blueprints, technical drawings, photographic imagery, computer software, models, formulas, engineering designs and specifications,

¹⁴⁷ Ibid., 4 (a).

¹⁴⁸ Ibid.

¹⁴⁹ Resolution 1363 in July 2001 began explicitly with the citation of Chapter VII and created several terms to monitor sanctions and the implementation of the measures assigned to access the risk of international terrorism emanating from Afghanistan. "United Nations Security Council Resolution 1363." *United Nations Security Council Resolutions 2001*. 21 June 2011.

¹⁵⁰ The research parameters set were through the Canadian Newsstand database with the dates chosen after October 15, 1999 and ending on October 31, 2001 with the search terms looking for embargo, sanctions, Taliban and Bin Laden. The newspapers chosen were the Calgary Herald, Globe and Mail, Vancouver Sun, Toronto Sun, Montreal Gazette and the Ottawa Citizen. There was only one paper that remarked of Canada voting in favour of the sanction. This was in the Globe and Mail, May 9, 2001 and the article was titled "If Cornered, Taliban Regime will Try to Bite" by Geoffrey York.

¹⁵¹ "Terrorists." *Department of Foreign Affairs and International Trade Canada*. 23 June 2011, 2.

¹⁵² Ibid.

technical and operating manuals and any technical information.”¹⁵³ Canada never sold arms to Afghanistan. Instead, the regulation was put in place as a symbolic measure.

James Laxer notes that in October 2001, there was no public debate or House of Commons debate to determine if Canada should enter into combat.¹⁵⁴ Instead, the legal foundation in which the Canadian government accepts the authority and legitimacy of the UN and, as such, UNSC Resolution 1368 (12 September 2001), was the basis for Canada to enter into combat. This Resolution reiterates “the inherent right of individual or collective self-defence in accordance with the Charter.”¹⁵⁵ In sections 1, 3 and 5, the Resolution condemns the attacks, asks other States to work alongside the UN to bring to justice the personnel and organizations responsible for the attacks and defines its readiness to take the “necessary steps to respond to the terrorist attacks of 11 September, 2001.”¹⁵⁶ Resolution 1368 (2001) thus provides the basic just cause through self-defence for Canada entering into the war in Afghanistan.

Following Resolution 1388, the US launched OEF by deploying troops into Afghanistan. On October 8, 2001, Canada began Operation Apollo by immediately deploying a Canadian Naval task force to the region and deploying 2,000 troops into Afghanistan.¹⁵⁷

¹⁵³ "United Nations Al-Qaida and Taliban Regulations, SOR/99-444." *Canadian Legal Information Institute*. 14 Nov. 1999. Accessed. 08 July 2012.

¹⁵⁴ Laxer, James. "Canada in Afghanistan: War First, Rationale Later." *Mission of Folly: Canada and Afghanistan*. Toronto: Between the Lines, 2007, 4.

¹⁵⁵ "United Nations Security Council Resolution 1368," 2.

¹⁵⁶ Ibid. Sections 1, 3 and 5. The next Security Council Resolution, 1373 is a reaffirmation of the sanctions and a plea that all nations, not just member states, impose sanctions against terrorist, their camps and organizations. "United Nations Security Council Resolution 1373." *United Nations Security Council Resolutions 2001*. 24 June 2011

¹⁵⁷ "The Canadian Forces' Contribution to the International Campaign Against Terrorism." *National Defence and the Canadian Forces*. 7 Jan. 2004. Accessed 26 Feb. 2011.

On December 5, 2001 UN Secretary General Kofi A. Annan endorsed the Bonn agreement which announced a new, interim Afghanistan government which in turn requested the UN to enter into the country and re-establish security. Annex I of the Agreement incorporates the announcement of sending a UN military force into Afghanistan;

the participants in the UN talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations mandated force. This force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate be progressively expanded to other urban centres and other areas.¹⁵⁸

On December 6, 2001 Resolution 1383 (6 December 2001) incorporated the Bonn Agreement and affirmed the Security Council's commitment to take "further action" to help secure the Afghanistan territory.¹⁵⁹ Thus, the UN not only agreed to secure Afghanistan using whatever measures necessary, it also declared that troops would enter into Afghanistan.

The second declaration of intent came when NATO invoked Article V of the Washington Treaty. On September 12, 2001, NATO issued a statement declaring that if the 9/11 attacks proved to have occurred from a foreign entity then NATO would invoke Article V. NATO stated, "on September 12, 2001, ... if it is determined that the attack against the United States was directed from abroad, it shall be regarded as an action covered by Article V of the Washington Treaty."¹⁶⁰

¹⁵⁸ "Agreement of Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions." *Naval Postgraduate School*. 23 June 2011, Annex I.

¹⁵⁹ "United Nations Security Council Resolution 1383 2001." *United Nations Security Council 2001*. 23 June 2011.

¹⁶⁰ "NATO and the Scourge of Terrorism."

Taking into consideration that Canada, since 1945, agreed to give the UN the power to determine the course of international security and peace and that in 1945 Canada enacted legislation to incorporate the UNSC's decisions, then it can be determined that the UN's declarations of intent can be viewed as Canadian intent also. However, the general Canadian public was not aware that Canada, as a member state, was actively participating in Afghanistan. Public knowledge of Canadian participation occurred when a reporter, John Ibbitson, wrote an article about the treatment of prisoners of war.¹⁶¹ A picture associated with the article showed military personnel with prisoners. The Minister of Defence, a week later, identified the personnel in the picture as Canadian Joint Task Force 2 military personnel.¹⁶² As such, Canadian participation and, by association, intent was made public by the media, not the legitimate authority. Thus, this public declaration of intent was not legitimate and does not meet the *jus ad bellum* criteria.

Last Resort

War waged in self-defence does not always provide the opportunity to apply sanctions to the attacking country. However, steps need to be performed to ensure the necessity of war thus ensuring last resort prior to engaging in conflict. Seeking other measures to rectify a wrong can be done peacefully, diplomatically and coercively in the form of negotiations or sanctions. Kimberley N. Trapp states, "necessity ... operate[s] to limit the right to use force in self-defence in two ways. The first ... [is] whether a use of force is necessary at all – particularly where there are alternative (peaceful and

¹⁶¹ Ibbitson, John. "Prison Camp Faces Rights Challenge." *Globe and Mail* [Toronto] 22 Jan. 2002, International News sec.: A1

¹⁶² "Eggleton Confirms JTF2 Has Taken Prisoners in Afghanistan." *CBC News*. 30 Jan. 2002. 28 June 2011.

diplomatic) mechanisms for protecting a State's fundamental interests."¹⁶³ Diplomatic measures were taken against al Qaeda and the Taliban in the forms of sanctions implemented through the UN.

Prior to 9/11, sanctions had already been imposed against al Qaeda and the Taliban. The UN sanctions, discussed above, were implemented by member states and specifically targeted al Qaeda and the Taliban. The sanctions demonstrate that prior to waging war steps were taken to discourage the initiation of war and consequently, the terrorist attacks prior to 9/11. This demonstrates steps associated with last resort. After 9/11, these sanctions were reiterated by the UN and reinforced by its member states through UN Resolution 1373 (28 September 2001).

Canada implemented the 1999 Security Council Resolutions and the 2001 Resolution. Nevertheless, the sanctions did not stop the 9/11 attacks from occurring. The UN and Canadian sanctions proved to be insufficient and the Taleban government could not, or would not enforce international sanctions against al Qaeda.¹⁶⁴ Trapp notes that "when a host State is unwilling ... to prevent its territory from being used as a base of terrorist operations ... the victim State is left with little choice."¹⁶⁵ Thus, reconciliation was not possible and the initial operation launching the war in Afghanistan was one of last resort and self-defence out of necessity.

¹⁶³ Trapp, Kimberley N. "Back to Basics: Necessity, Proportionality and the Right of Self-Defence Against Non-State Terrorist Actors." *International & Comparative Law Quarterly* 56.01 (2007). *HeinOnline*. 5 July 2011, 146

¹⁶⁴ As has been shown since the September 11th attacks, the Taliban government was harbouring and supporting the al Qaeda terrorist actions. The Taliban government was the recognized government of Afghanistan until it was overthrown in December 2001. There are many books available that provides more information on the rise and fall of the Taliban. For example, *Toughing it Out in Afghanistan* by Michael E. Hanlon or *The Rise and Fall of the Taliban* by Kelly Barth.

¹⁶⁵ Trapp, 147.

Just Cause

Self-defence codified in Article 51 of the UN Charter, is generally defined as defending a nation against aggressive attacks. However, this does not mean it has to be an attack from an enemy nor necessarily a hostile attack. Yoram Dinstein states that self-defence does not solely rely on acts of aggression. He states that “extreme circumstances of self-defence – when the very survival of a State is imperilled – do arise from time to time, but the exercise of self-defence is by no means confined to such catastrophic scenarios.”¹⁶⁶

Bush’s famous quote that “either you are with us or you are with the terrorists”¹⁶⁷ made it clear that war was imminent against all US adversaries. On September 18th Bush received congressional approval to use any and all force necessary to punish the people responsible for the 9/11 attacks. Two days later on September 20, Bush announced to a joint session of Congress and the American public that the nation was at war.¹⁶⁸ With foresight, Bush claimed this would be a different type of war. It would be a protracted, media visible war with indeterminate goals and with the use of new methods to combat terrorism.¹⁶⁹ In October the US sent a letter to the UN with regard to military action against al Qaeda and the Taliban and a plea to its allies to aid in the US’ war effort,

On behalf of [the US] Government, [the permanent representative of the US to the UN] report[s] that the United States of America, together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defence ... In response to these attacks, and in accordance with the inherent

¹⁶⁶ Dinstein, Yoram. "The Concept of Self-Defence." *War, Aggression and Self-Defence*. Cambridge: Cambridge UP, 2005, 175.

¹⁶⁷ "President Bush Addresses the Nation." *Washington Post - Politics, National, World & D.C. Area News and Headlines*. 20 Sept. 2001. 23 Feb. 2011, para 26.

¹⁶⁸ Ruschmann, Paul. *The War on Terror*. Philadelphia: Chelsea House, 2005, 11

¹⁶⁹ *Ibid.*, 15

right of individual and collective self-defence, United States armed forces have initiated actions designed to prevent and deter further attacks on the United States. These actions include measures against Al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan.¹⁷⁰

The final step came on November 14th when the UN passed Resolution 1368 (2001) determining that all steps necessary be taken to protect citizens worldwide against terrorist activity and to suppress further terrorist attacks.¹⁷¹

Canada's bilateral defence relationship with the US provides a legitimate *jus ad bellum* case for entering into Afghanistan. Canada and the US have a long varied history of continental defence cooperation. During WWII, Canada and the US formed the Permanent Joint Board on Defence (PJBD) to "facilitate cooperation in defence production and infrastructure projects."¹⁷² Today, the PJBD still exists and is an essential avenue for high ranking military officers and diplomats to remain in contact. Following the PJBD, several other steps were taken, including the Military Cooperation Committee, the Basic Security Plan, Canada-US Military Study Group and the Canada-US Regional Planning Group.¹⁷³ Another important defence agreement is the North American Aerospace Defence Command (NORAD). NORAD is a defence agreement that requires either country to come to the aid of the other in case of an attack. NORAD is a binational command, aerospace warning and control (defence) for North America and is fully integrated and indivisible, with certain national caveats.¹⁷⁴ This multifaceted defence relationship between Canada and the US is a vital consideration of self-defence in linking

¹⁷⁰ Negroponte, John D. "Letter Dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council." *United Nations Security Council*. 07 Oct. 2001. Accessed 30 June 2011.

¹⁷¹ "United Nations Security Council Resolution 1368."

¹⁷² "Northern Command and The Evolution Of Canada - US Defence Relations." *National Defence and the Canadian Forces*. 7 July 2008. Accessed 09 July 2012.

¹⁷³ *Ibid.*

¹⁷⁴ For example, in the case of a 9/11 type threat, the President has delegated the decision to intercept a hijacked plane to NORAD command. For Canada, authority remains with the Prime Minister.

their security together. As such, the 9/11 attack was an attack against the US and Canada, and on 9/11, a Canadian was in command of NORAD and authorized the air response.

After 9/11, the US stated that the War on Terror was a necessary war of self-defence. This invocation initiated action against terrorist groups and explicitly named the Taliban and al Qaeda in Afghanistan.¹⁷⁵ When the US announced its intention to wage war, Canadian response was sympathetic though not necessarily enthusiastic. Despite Canada's initial aid and support after 9/11, this did not stop Bush's snub of Canada in his address to thank many nations for their response to the 9/11 attacks. This failure provides one element of Canada's self-defence in participating in the Afghan war. When the US began imposing security measures to protect the US, it turned its attention to the Canada-US border.¹⁷⁶ This circumstance demonstrates Dinstein's self-defence relating to the peril of a state when considering economic sanctions against Canada. Canada needed to demonstrate solidarity with its ally to ensure economic safety; "a terrorist attack on U.S. soil (no matter how small) will have a major, immediate, and primarily negative impact on American, Canadian, and international economies."¹⁷⁷ Frank P. Harvey notes the importance of Canada to demonstrate its commitment to American security, "To prevent Washington from relying exclusively on a set of patterned, unilateral responses after each attack, Ottawa need[ed] to acquire ... an unambiguous commitment to American

¹⁷⁵ Negroponte, John D. "Letter Dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council." *United Nations Security Council*. 07 Oct. 2001. 30 June 2011.

¹⁷⁶ Whitaker, Reg. "Keeping Up with the Neighbours? Canadian Responses to 9/11 Historical and Comparative Context." *Osgoode Hall Law Journal* 41.2 & 3 (2003): 241-66. *HeinOnline*. 18 Nov. 2010, 254.

¹⁷⁷ Harvey, Frank P. "Canada's Addiction to American Security: The Illusion of Choice in the War on Terrorism." *American Review of Canadian Studies* 35.2 (2005). *Frank and Taylor*. Accessed. 4 Aug. 2012, 11.

security.”¹⁷⁸ As such, when the Canadian government made the decision to enter into the war, it needed to consider economic safety. This was demonstrated by committing Canadian troops to Afghanistan to support OEF.

Dinstein describes how self-defence can be an act of self-help and discusses that when a state invokes the right to self-defence and is self-help it does not have to be solely in the capacity of resorting to violence. “Self-help ... may resort to non-forcible measures, such as severing diplomatic relations with another State or declaring a foreign diplomat *persona non grata*.”¹⁷⁹ Reg Whitaker states that Canada faced war on two fronts; terror and the economy. Canada’s decision to enter into combat was partially to avoid economic sanctions by the US.¹⁸⁰ If Bush chose to close the border between Canada and the US, Canada’s economy would suffer which furthers the concept that Canada entered into Afghanistan in self-defence as an act of self-help. Elinor Sloan supports Dinstein’s argument by stating that the US is an economic as opposed to a military threat to Canada. She states that “to the extent that a potential security threat has existed, it has been an economic one and the Canadian government’s imperative for decades now has been to ensure the country maintains its access to the American Market.”¹⁸¹

Whitaker argues that the threat of closing the border between Canada and the US would cause “an economic cost unacceptable to Canada.”¹⁸² To ensure US safety, Bush was willing to take a “\$158 billion U.S. federal deficit” by closing the border if Canada

¹⁷⁸ Ibid.

¹⁷⁹ Ibid., 176.

¹⁸⁰ Whitaker, 253.

¹⁸¹ Sloan, Elinor. "Defense and Security." *The Oxford Handbook of Canadian Politics*. Ed. John C. Courtney and David E. Smith. New York: Oxford UP, 2010, 488.

¹⁸² Whitaker, 254.

did not undertake to provide a more secure border.¹⁸³ The probability of the US closing the border increased with the implementation of the Patriot Act in October 2001 which established further security and immigration measures.¹⁸⁴

Canada relies heavily on trade with the US as a means of economic survival. Since NAFTA came into effect, the Canadian and American markets have become integrated; “in the wake of NAFTA, Canada restructured parts of its economy to better integrate with the US.”¹⁸⁵ Statistics demonstrate, “that over 70 percent of our trade is with the US [which] belies the fact that the Canadian economy is more closely integrated than ever with that of our southern neighbour.”¹⁸⁶ Considering that the Canadian economy relies on trade with the US, it is vital to maintain a cohesive working relationship. Industry Canada notes, “since September 11, 2001, the Canada–US border has “thickened,” threatening the viability of the fully integrated NAFTA business model. The problem is that “for Americans the border is a security issue; for Canadians it is a vital business artery”.”¹⁸⁷

Border security change began with increased inspections at the border and tough political rhetoric on border crossing policies.¹⁸⁸ The first step in securing the border consisted of increasing the number of custom and immigration agents. Peter Andreas states that, “the Patriot Act ... tripl[ed the] ... agents deployed to the northern border.”¹⁸⁹ The Coast Guard now inspects all vessels entering the US from the Great Lakes “and

¹⁸³ Ibid.

¹⁸⁴ "USA Patriot Act." *USA Patriot Act 2001*. 26 Mar. 2012.

¹⁸⁵ "Canada - US Economic Ties." *Industry Canada*. 14 July 2008. Accessed 09 July 2012.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Andreas, Peter. "A Tale of Two Borders: The U.S.-Mexico and U.S.-Canada Lines After 9/11." *Centre for Comparative Immigration Studies* 77th ser. (2003), 1.

¹⁸⁹ Ibid., 7.

escorts gas and oil tankers.”¹⁹⁰ In turn, these measures dramatically affected the Canadian economy by “inhibit[ing] legitimate travel and trade [more] than terrorists. Security, in other words, has become a new kind of trade barrier ... U.S. border security response immediately following the September attacks was the equivalent of the world’s most powerful country imposing a trade embargo on itself.”¹⁹¹ This resulted in the December 12, 2001 bilateral 32-Point Smart Border Declaration and Security Plan. The primary purpose of the plan is to increase security while attempting to re-establish trade flow across the border.¹⁹² In an effort to demonstrate loyalty to the US and to re-establish trade flow Canada’s commitment in Afghanistan was essential.

Despite evidence that the Canadian government acted out of self-defence immediately following 9/11, there is little evidence that prior to 2002 al Qaeda or the Taliban directly threatened Canada. However, there is evidence of threats against the US and its allies which include Canada. Sloan discusses how Canada began demonstrating its intention to remain an ally and aide in the protection of the US as early as Mackenzie King, in 1938. King pledged “that Canada would ensure that no enemy forces could “pursue their way either by land, sea or air to the United States across Canadian territory.”¹⁹³ This pledge continued into the war in Afghanistan by including the protection against terrorist activities emanating within Canada. However, intimidation from al Qaeda, due to Canada being a US ally, provides sufficient self-defence to enter into the war in Afghanistan.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Winterdyk, John, and Kelly W. Sundberg. "Shifts in Canadian Border Security." *Border Security in the Al-Qaeda Era*. Boca Raton: CRC, 2010, 24.

¹⁹³ Sloan, 493.

Committing troops to the war in Afghanistan aided in ensuring that enemy forces would not attack the US. This is important due to the integrated infrastructures between Canada and the US. For example, energy is one of the essential services that is integrated with the US. The energy supplied by Canada is electricity, and oil. Canada is the largest supplier of energy to the US; “Canada provided energy exports to the U.S. valued at \$76.27 billion.”¹⁹⁴ Canada provides 87 percent of the US’s natural gas imports.¹⁹⁵ Science, technology and innovation is also integrated with the US. Science, technology and innovation engineers are posted in embassies within the US. This provides a direct line of communication between government official, academics, private firms and their Canadian counterparts.¹⁹⁶

Another indication of al Qaeda being aware of Canada, after bin Laden named Canada as an ally of the US, is homegrown terrorists. Homegrown terrorists are defined as citizens of the country who plot terrorist acts usually against their own country. However, definitions vary and some definitions include citizens plotting attacks against another country from within in their own country. According to the FBI homegrown terrorism is defined as,

the use, planned use, or threatened use, of force or violence by a large group or individual born, raised, or operating primarily within the United States...in furtherance of political or social objectives.¹⁹⁷

Though this concept is considerably more predominant for the later phases of Canada’s war in Afghanistan, the preliminary indications of homegrown terrorists

¹⁹⁴ "Canada-U.S. Relations." *Government of Canada*. 12 May 2011. Accessed 12 July 2012, Canada-U.S. Energy.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid., Science, Technology and Innovation.

¹⁹⁷ Nelson, Rick "Ozzie" and Ben Bodurian. "A Growing Terrorist Threat?" *Center for Strategic and International Studies*. 8 Mar. 2008. Accessed. 27 Mar. 2012, v.

emerged during Operation Apollo with the exception of one homegrown terrorist who became famous before 9/11. This was Ahmed Ressam known as the Millennium bomber. Ressam entered Canada with a false passport from France, was caught then sought refugee status.¹⁹⁸ While his application was under review Ressam attended an al Qaeda training camp where he began planning the 2000 bomb attack against Los Angeles Airport.¹⁹⁹ By the time his refugee status was denied, he had assumed the name Benni Antoine Noris and could easily move around Canada and enter into the US using a Canadian passport. Ressam and an accomplice created a bomb in Vancouver with the intent of Ressam exploding it in a passenger waiting area at the Los Angeles airport.²⁰⁰ Ressam was caught by a US Customs and Immigration officer who insisted on searching Ressam's car. The importance of Ressam is the al Qaeda connection to Canada and Canada's ally status with the US.

Contrary to Ressam's Canadian status, Michael Zekulin argues that terrorist activities differ from the past since they now mainly target Western countries, are coming from Canadian citizens or permanent residents with Islamist ideological perspectives.²⁰¹ This is demonstrated with six well-known cases of homegrown terrorists that have were caught, extradited or tried in Canada beginning in 2004, shortly after the ISAF mission commenced.²⁰² These six cases are directly related to the war in Afghanistan and for the purposes of Operation Apollo, it is important to note that the investigation into Said

¹⁹⁸ Lamey, Andy. "The Legend of Ahmed Ressam." *Frontier Justice: The Global Refugee Crisis and What to Do About It*. Doubleday Canada, 2011, 275.

¹⁹⁹ Ibid.

²⁰⁰ Ibid., 277.

²⁰¹ Zekulin, Michael. "Terrorism in Canada." *Journal of Military and Strategic Studies* Spring 13.3 (2011), 3.

²⁰² Ibid., 1.

Namouh demonstrated that he became a permanent resident of Canada in 2002 which coincides with the concept that al Qaeda was aware of Canada as an adversary.²⁰³

Reasonable Chance of Success

All of the historical theorists for just war agree that war must have the ultimate goal of peace. This transformed into an important aspect of reasonable chance of success. In the war in Afghanistan, reasonable chance of success incorporates the use of force targeted solely on the perpetrators and suppliers of the 9/11 attack, which have been defined as the Taliban and al Qaeda. According to Benjamin Lambert, “the U.S. government quickly determined that it was the work of the wealthy Saudi Arabian exile, Osama bin Laden and his al Qaeda terrorist network.”²⁰⁴ Carl Condetta, working for the Project for Defence Alternatives, concluded that the Taliban was targeted for aiding bin Laden and al Qaeda. He states,

After 11 September ... two possible goals for military action against the Taliban [were suggested]: First, to punish them (in a limited way) for their association with bin Laden and coerce their cooperation in bringing him to justice; Second, to topple them, both as a form of punishment and in order to open the way for a new government in Afghanistan that would fully cooperate with US action against Al Qaeda.²⁰⁵

On September 20, 2001, eight days after the passing of the UNSC’s Resolution 1368 (2001), Eggleton sent 100 Canadian forces personnel to aid the US led OEF.²⁰⁶ Events happened quickly after as NATO invoked Article V and Canada committed an

²⁰³ Ibid., 3.

²⁰⁴ Lambeth, Benjamin S. *Air Power Against Terror: America's Conduct of Operation Enduring Freedom*. Santa Monica: RAND, 2005, xiii. In the introduction on pages 6 - 7 Lambert discusses in detail how the US deciphered that it was al Qaeda and Bin Laden who were behind the attacks.

²⁰⁵ Condetta, Carl. "Strange Victory: A Critical Appraisal of Operation Enduring Freedom and the Afghanistan War." 30 Jan. 2002. 26 Mar. 2012, 10.

²⁰⁶ "The Canadian Forces' Contribution to the International Campaign Against Terrorism."

additional 2000 troops to OEF by October 8th.²⁰⁷ Considering that, initially, the Canadian role in Afghanistan was participating in the OEF campaign, it is essential to determine if OEF was solely targeting the Taliban and al Qaeda. This will help determine if enduring peace could be assured thus ensuring reasonable chance of success was met.

Immediately following 9/11 President Bush and his war council produced a four phase plan of attack, which also included increasing homeland security and forming an international coalition to fight against terrorism.²⁰⁸ The initial phase was to launch a military attack against al Qaeda and consisted of air strikes against al Qaeda. Lambeth notes that, “the initial round would be an air-dominated military offensive to take down bin Laden’s al Qaeda network.”²⁰⁹ This was done with the additional task that if the Taliban government did not hand over al Qaeda leaders then the Taliban government would also be targeted; “the President further made it clear that the Taliban must hand over al Qaeda leaders immediately or that the former would “share in their fate” and that this demand was not open to negotiation.”²¹⁰ This initial strategy falls within the realm of ensuring peace by solely targeting the people responsible for the 9/11 attacks and the government that harboured and supported the terrorist group.

The initial Canadian combat mission targeted al Qaeda activities occurring within Afghanistan which corresponded with the first phase of Bush’s plan. The campaign began by targeting the al Qaeda area of Kandahar.²¹¹ These missions targeted military

²⁰⁷ Ibid., 11.

²⁰⁸ Ibid., 41.

²⁰⁹ Lambeth, xiv.

²¹⁰ Ibid., 15.

²¹¹ Ibid., xvi.

operations and equipment, such as, radar, early detection systems and militant camps.²¹² Reasonable chance of success can be seen when less than 65 days after the campaign began, Kandahar was in allied hands and 102 days later the Taliban government was removed from power.²¹³ The objective was to eliminate both the Taliban government and al Qaeda, establish a new government and ensure against further attacks to the US and its allies. The removal of the Taliban government and the withdrawal of al Qaeda forces into the eastern mountainous areas of Afghanistan did not succeed in ending the conflict. Instead, al Qaeda's withdrawal created new targeted areas.²¹⁴

Operation Anaconda, under OEF, began in March of 2002. Canada participated as a member of the coalition forces. Operation Anaconda's primary goal was to target Taliban insurgents and al Qaeda.²¹⁵ Even though it was the last major operation during this phase of the war, smaller counterinsurgency operations continued until Canada's combat role withdrawal in 2003.²¹⁶

It is difficult to consider cost to benefit related to reasonable chance of success in terms of targeting. Moreover, this consideration links directly to *jus in bello* consideration, which is beyond the scope of this analysis. Also considering that proportionality is disputed due to the difficulty determining costs and benefit, only regional actors to ascertain the possibility of lasting peace will be analyzed to demonstrate reasonable chance of success through political channels.

²¹² Ibid.

²¹³ Ibid., xx.

²¹⁴ Ibid., xxi.

²¹⁵ Ibid., 221.

²¹⁶ Ibid.

The Taliban consists mainly of Pashtun tribesmen and Pakistan has the second largest Pashtun population. As such, the likelihood of the Taliban surviving depended upon Pakistan being an ally in the war. Pakistan was vital to ensure a peaceful outcome in the war which was assured when Pakistan's President General Musharraf offered to back the US in the war. This was reinforced in a joint statement by Musharraf and Bush who, "welcomed the revival of this longstanding partnership" as a "vital element" in the construction of regional and global stability and peace."²¹⁷ Until 9/11, Pakistan was an ally of the Taliban; "the main source of diplomatic and military support for the terrorist Taliban ruling neighboring Afghanistan."²¹⁸ Pakistan and the Taliban supported each other after the withdrawal of the Soviet Union in 1989.²¹⁹ The Great Britain Foreign Affairs Committee states; "it is well known Pakistan supported and empowered the rise of the Taliban ... as a means of imposing some order and stability on the chaos of post-Soviet warlord dominated Afghanistan and was one of three states to give diplomatic recognition to the Taliban."²²⁰

The main reason for Pakistan's strategic position was its alliance with the Taliban.²²¹ A. Z. Hilali states that General Musharraf, "extended assistance to the United States in its war against terrorism and said that the country was proud to take a stand among the international community."²²² The support came in the form of applying

²¹⁷ Ibid., 2.

²¹⁸ Hadar, Leon T. "Pakistan in America's War on Terrorism Strategic Ally or Unreliable Client?" *Policy Analysis* 436 (2002), 1.

²¹⁹ Great Britain: Parliament House of Commons: Foreign Affairs Committee. "Pakistan's Support for the Taliban." *Global Security: Afghanistan and Pakistan: Eighth Report of Session 2008 - 2009*. Surrey: Stationary Office Limited, 2009, 169.

²²⁰ Hadar, 1.

²²¹ Ibid.

²²² Hilali, A. Z. "Renewal of US-Pakistan Partnership." *US-Pakistan Relationship: Soviet Invasion of Afghanistan*. Burlington, VT: Ashgate, 2005, 249.

sanctions against al Qaeda and the Taliban and providing intelligence, ground facilities and air space for the US.²²³ The sanctions included freezing al Qaeda banking assets in Pakistan. Musharraf's commitment to support the US was also designed to remove military and economic sanctions the US had imposed earlier against the government.²²⁴

In 1998, Canada decided to stop financial aid to Pakistan due to its nuclear arms program. However on October 1, 2001, the Canadian government decided to reinstate financial aid to Pakistan and to "convert up to \$447 million in outstanding loans to be used for development programs."²²⁵ During Operation Apollo Canadian aid did not centre on Pakistan's support for in the war. Instead, it focused on disaster and humanitarian relief.²²⁶ The US' commitment with Pakistan is based on Pakistan's offer of assistance during the war while the US provides financial and political support to humanitarian causes in Pakistan.

Pakistan's incorporation as a US ally in the war caused India to lose its status as a primary supporter of the US.²²⁷ This was due to Pakistan lobbying against India. Thus, when India's parliament was the target of a terrorist attack, India accused Pakistan of being the culprit in the attack.²²⁸ Political posturing by the US resulted in Pakistan's attempt to curb tension between India and Pakistan. However, this was short lived when India stated that they were willing to invade Pakistan territory if another terrorist attack

²²³ Hadar, 2.

²²⁴ Ibid., 259. The sanctions imposed were the suspension of US aid and the cessation of arms supply. This equated to the loss of US\$564 million in aid. Pg 234.

²²⁵ "Case Studies in Sanctions and Terrorism: Pakistan." *Peterson Institute for Economic Studies*. Accessed 10 July 2012.

²²⁶ Ibid.

²²⁷ Chary, Manish Telikicheria. "Foreign Relations." *India: A Nation on the Move: An Overview of India's People, Culture, History, Economy, IT and More*. Bloomington: IUUniverse, 2009, 265.

²²⁸ Ibid., 266.

occurred. As a result, India was not recruited to help in the war in Afghanistan due to Pakistan's important strategic position.²²⁹

Iran was not lobbied as a US supporter. President Bush's axis of evil speech included Iran as Bush "had changed the policy of rapprochement, decided to isolate Arafat and listed Iran in the "axis of evil".²³⁰ Excluding Iran from being a potential US ally in the war was due to a dispute over Iran's possible nuclear arms development. During Bush's "axis of evil" speech, he vowed to prevent it [Iran] from acquiring nuclear arms."²³¹ Russia was also not lobbied to support the US. Russia was an interested party that wanted to be a US partner in the war. "Russian leaders wanted in 2001 and, more pressingly in 2002 ... to be a 'partner' of the US in the ... war ... [to] underscor[e] and promot[e] Russia's own importance."²³² Russia also immediately wanted to insert; "their own nationalist interests in the world stage."²³³ It is important to understand that Russia's interests did not include discouraging states from participating in the war, Russian nationalist interests were to reassert itself as an important international contributor.²³⁴ Russia was not strategically positioned to provide the aid that the US needed. Turkmenistan, Uzbekistan and Tajikistan are countries who have had a strong Russian influence, are developing states and supportive partially due to ethnic links of the Northern Alliance opposed to the Taliban. As such these countries could not significantly aid in ensuring lasting peace by aiding the US.

²²⁹ Ibid.

²³⁰ Fayazmanesh, Sasan. "The Neoconservatives, Dual Rollback and Israel." *The United States and Iran: Sanctions, Wars and the Policy of Dual Containment*. London: Routledge, 2008, 115.

²³¹ Segell, Glen. "Iran." *Axis of Evil and Rogue States: The Bush Administration, 2000-2004*. London: Glen Segell, 2005, 214.

²³² Buckley, Mary, and Robert Singh. "The Russian Context." *The Bush Doctrine and the War on Terrorism: Global Responses, Global Consequences*. London: Routledge, 2006, 59.

²³³ Ibid.

²³⁴ Ibid.

As a large and politically situated country China could be seen as a strategic ally for the US. However, the American and Chinese relationship prior to 9/11 was strained. President Bush was apprehensive of China's military intentions in Taiwan.²³⁵ Leading up to 9/11 the Chinese government was undergoing a change in political leadership. China was not in a position to strategically aid the US. Robert Sutter states, "the terrorist attacks on America in September 2001 diverted the U.S. attention away from China [and China was] preoccupied with leadership transition and other issues in China."²³⁶ China also has a varied Islamic history with a particularly large number living in northwest China. Therefore, China was not solicited to aid the US in the war.

Conclusion

As demonstrated, the Canadian government is a legitimate authority who has the right to declare war. However, being legitimate is not enough when considering entering into war. Today, a public declaration of intent is not a public statement. It is done through the UN Security Council Resolutions, NATO mandates and, for Canada, passing legislations that sanction the war. Prior to the beginning of the war in Afghanistan, multiple UN Security Council Resolutions were passed which authorized and encouraged members of the UN to impose sanctions against al Qaeda and the Taliban. After the 9/11 attacks, the Resolutions changed from sanctions to "whatever means necessary" to remove the Taliban and al Qaeda from Afghanistan.

²³⁵ Sutter, Robert G. "U.S.-China Policy Priorities and Implications for Relations in the Twenty-first Century." *U.S.-Chinese Relations: Perilous Past, Pragmatic Present*. Lanham, MD: Rowman & Littlefield, 2010. 123.

²³⁶ Ibid.

The early sanctions the UN imposed against al Qaeda and the Taliban were the beginning steps of defining that the war in Afghanistan as a last resort. Prior to war, incremental steps of negotiation or reconciliation were not a possibility. Despite the early sanctions imposed by the UN, al Qaeda and the Taliban government did not cease their terrorist activities. After 9/11, reconciliatory steps were no longer an option. Canada had two reasons to be able to justify the war in Afghanistan as being one of self-defence and thus meeting the just cause criteria of *jus ad bellum*. Once the US declared self-defence upon launching the war which was approved by the UN and NATO, Canada, being a member of collective security and defence agreements with the UN and NATO, was justified in entering into a combat role. Article 51 of the UN Charter and Article V of the NATO Charter, both state that when an attack on a member country happens then collective self-defence is authorized. The second justification for self-defence is economic security. After the September 11th attacks occurred, the US was not opposed to closing the borders between Canada and the US. Thus, to ensure that Canada's economy continued to thrive, aiding in the US's War on Terror and entering into combat in Afghanistan further ensured Canada's economic safety.

An important criterion in *jus ad bellum* is reasonable chance of success. When the war in Afghanistan was first launched the primary targets were al Qaeda and the Taliban, who were responsible for the 9/11 attacks. The next criterion for reasonable chance of success is ensuring enduring peace. One method is the US' agreement with Pakistan to aid in stabilizing the region. This further legitimizes *jus ad bellum* by providing another method to ensure that enduring peace is achieved.

Chapter 3: Operation Athena

In February 2003, Minister of National Defence John McCallum stated, “Canada has been approached by the international community for assistance in maintaining peace and security in Afghanistan.”²³⁷ The government responded by committing Canada to the UN mandated, and subsequently NATO led ‘peacekeeping’ mission in Afghanistan, under the codename Operation Athena. Operation Athena consisted of two phases. Phase I was not a combat mission. It was ostensibly peace support and occurred from July 2003 to July 2005. Approximately a month after Phase I began, NATO took command of ISAF. During the two years of Phase I of Operation Athena, Canadian troops were focused on “helping the Afghan Transitional Authority maintain a safe and secure environment in Kabul while the Loya Jirga developed and ratified a constitution for Afghanistan.”²³⁸ They were subsequently responsible, along with its NATO partners, for the safety and security of Afghan nationals and government officials during the first democratic elections in 2004.²³⁹

While continuing to operate under ISAF, the mandate of Phase II reverted to combat in August 2005.²⁴⁰ Six months after Canada re-entered into a combat role, the five year *Afghanistan Compact* was created. The *Compact* was a joint Karzai government, ISAF and OEF agreement that included providing security, economic development, governance and human rights in Afghanistan.²⁴¹ According to the

²³⁷ "House of Commons Committees - NDDN (39-1) - Canadian Forces in Afghanistan - Chapter 2 - The Mission." *Parliament of Canada*. June 2007. Accessed. 28 Mar. 2012.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ "International Operations: Operation Athena." *National Defence and the Canadian Forces*. 12 Aug. 2011. Accessed 13 Sept. 2011.

²⁴¹ *Ibid.*

Department of National Defence, the new combat mandate was “to support the development and growth of Afghanistan’s governmental institutions, especially its national security forces [and] join the extensive efforts by governmental and non-governmental organizations ... to rebuild its shattered communities.”²⁴²

Awareness of Canada’s combat role during Operation Apollo increased exponentially with the fratricide incident at Tarnak Farms in April 2002. The CF were conducting a training exercise in Afghanistan when two US fighter pilots mistakenly took the exercise as an attack by the Taliban. The pilots dropped a bomb on Canadian soldiers which resulted in eight injuries and four deaths.²⁴³ It was voted as the number one story by reporters in Canada due to its unique media attention.²⁴⁴ In contrast, US media attention of the incident was non-existent and Bush did not initially publicly acknowledge it.²⁴⁵ It took Canadian media attention for Bush to do so. This caused Canadians to question why Canada was fighting an American led war when the US would not acknowledge Canada’s role immediately following 9/11 or the injuries and deaths caused by the fratricide.²⁴⁶ This influenced Prime Minister Jean Chrétien’s decision to end Operation Apollo and pull out of Afghanistan. Peter Pigot describes the Canadian decision,

a month after the incident, on May 21, the Chrétien government announced it would bring the troops home in July and they wouldn’t be replaced. This declaration was against the wishes of the United States ... but Canada had

²⁴² Ibid.

²⁴³ There are many books and articles that detail the incident. For further reading Michael Friscolanti’s *Friendly Fire: The Untold Story of the US Bombing that Killed Four Canadian Soldiers in Afghanistan* and for a political aspect on the incident; *Killing Canadians (II): The International Politics of the Accident* by Patricia Molloy.

²⁴⁴ Molloy, Patricia. "Killing Canadians (II): The International Politics of the Incident." *Canadian Journal of Cultural Studies* Fall 14 (2005), 6.

²⁴⁵ Ibid.

²⁴⁶ Pigott, Peter. *Canada in Afghanistan: The War so Far*. Toronto, ON: Dundurn Group, 2007, 92.

fulfilled its 9/11 obligations with the loss of only four soldiers – that by accident.²⁴⁷

At this time, NATO was in the process of transforming its military and strategic positioning.²⁴⁸ NATO was now preparing “a new assessment of the threat posed by terrorism ... proposals for improving the Alliance's preparedness against terrorism involving chemical, biological, radiological or nuclear weapons... [and] examining the implications of terrorism for national defence plans in the context of NATO's force planning system.”²⁴⁹ NATO's first incorporation of its new role and foray outside of the European continent was in Afghanistan when it assumed command of the ISAF.²⁵⁰

NATO entered into Afghanistan through the request of the Karzi government and with the approval of the UN.²⁵¹ Importantly, NATO's role in Afghanistan followed a UNSC mandate but was not overseen by the UNSC or UN.²⁵² Its role began in August 2003 with ISAF's mandate to “protect the population, neutralise insurgent networks, develop the Afghan National Security Forces and promote effective governance and supporting socio-economic development.”²⁵³ Canada was the second country to take command of ISAF.

²⁴⁷ Pigot, 92.

²⁴⁸ "Statement on Combating Terrorism: Adapting the Alliance's Defence Capabilities , 18-Dec.2001." *North Atlantic Treaty Organization*. 18 Dec. 2001. 13 Feb. 2012, para 2. NATO's official documentation demonstrates that NATO had been undergoing a transformation since the end of the Cold War. These transformation include areas such as strategically allying itself with Euro-Atlantic Partnership Council, increasing NATO's ability to deploy militarily outside of the North Atlantic regions and improvement to intelligence sharing.

²⁴⁹ *Ibid.*, para 4.

²⁵⁰ Morelli, Vincent and Paul Belkin. "NATO in Afghanistan: A Test of Transatlantic Alliances." 7-5700 (2009): 1-40. *Congressional Research Services*. 3 Dec. 2009. Accessed 14 Feb. 2012, Summary.

²⁵¹ *Ibid.*

²⁵² "NATO - ISAF's Mission in Afghanistan." *North Atlantic Treaty Organization*. Accessed 14 Feb. 2012, ISAF Tasks

²⁵³ *Ibid.*

The reasons for re-entering into a combat mission in Phase II, according to a statement in the House of Commons, were political and military. Insurgency attacks in Afghanistan had increased in 2004 and with the CF tasked to provide Afghanistan security, a combat role was essential.²⁵⁴ Politically the decision also flowed from Canada's decision not to participate in the war in Iraq and the political problems this incurred. This has been debated as the catalyst of entering into combat for Phase II of Operation Athena. The lead countries entering into Iraq, the US and the United Kingdom, wanted Canada's participation in Iraq. With significant opposition, the Liberal government was against entering into another American led war.²⁵⁵ According to Stein, "Ottawa's decision to send two thousand troops back to Afghanistan on the eve of the Iraq War was, as Sheila Copps ... confirmed, "a neat political way of squaring the problem" ... the political problem ... was how to support Washington in its "War on Terror" without supporting the war in Iraq."²⁵⁶

Canada's decision not to participate in the US Ballistic Missile Defence (BMD) program provided another catalyst for Canada to change its mission in Afghanistan.²⁵⁷ On February 24, 2005, Pierre Pettigrew announced in the House of Commons and Prime Minister Martin announced to the media that Canada would not join the BMD program.²⁵⁸ This decision further strained Canada and US relations despite the US not

²⁵⁴ Schmitz, Gerald J. "Historical Context and Canada's Evolving Role." *Canadian Policy Towards Afghanistan to 2011 and Beyond: Issues, Prospects, Options*. Parliament of Canada. 27 Sept. 2010. Accessed. 23 Apr. 2012, sec. 2

²⁵⁵ Stein, 73.

²⁵⁶ Ibid.

²⁵⁷ Schmitz, Sec 2.

²⁵⁸ "CBC News Indepth: Ballistic Missile Defence." *CBC News*. CBC/Radio Canada, 28 Feb. 2006. Accessed 24 Apr. 2012.

needing Canada for its BMD program.²⁵⁹ As noted by Paul Martin, “the most important factor for Canada was this; as a practical matter, the United States did not need Canada’s help or co-operation to mount the BMD system. ... At its root, what the Bush administration wanted was our political and diplomatic support.”²⁶⁰ Jonathan Paquin states that, “in order to improve diplomatic ties with the Bush administration, which had deteriorated following Canada’s refusal to ... participate in the Ballistic Missile Defence (BMD) system, the Martin government accepted this dangerous mission, even if Afghanistan was not on the top of its foreign policy priorities.”²⁶¹

Even though Canada removed its combat troops from Afghanistan, the UN remained actively involved in Afghanistan. However, the UN’s role remained essential in providing legitimacy, but its leadership diminished once NATO assumed control of ISAF. This began when UNSC Resolution 1386 (20 December 2001) discussed the establishment of ISAF. It noted, “the United Kingdom offer contained therein to take the lead in organizing and commanding an International Security Assistance Force.”²⁶² UNSC began incrementally handing the management of ISAF to specific countries beginning with the United Kingdom starting in May 2002²⁶³ followed by Turkey in

²⁵⁹ In 2004, Canada and the US agreed on NORAD acting as the early warning system instead of BMD.

²⁶⁰ Martin, Paul. "Tough Calls." *Hell or High Water: My Life In and Out of Politics*. Toronto: Emblem Editions, 2009, 385.

²⁶¹ Paquin, Jonathan. "Canadian Foreign and Security Policy: Reaching a Balance Between Autonomy and North American Harmony in the Twenty-First Century." *Canadian Foreign Policy* (2008): 99-109. *University of Laval*. Accessed 24 Apr. 2012. www.fss.ulaval.ca/cms/upload/pol/fichiers/cfp_article.pdf, 101.

²⁶² "United Nations Security Council Resolution 1386." *United Nations Security Council Resolutions 2001*. Accessed 09 Jul. 2012.

²⁶³ "United Nations Security Council Resolution 1413." *United Nations Security Council Resolutions 2002*. 21 Sept. 2011.

November 2002 with the last UN command being delegated jointly to Germany and the Netherlands in 2003 with help from NATO.²⁶⁴

Public Declaration of Intent

In October 2002 with encouragement from the UN, NATO agreed to help Germany and the Netherlands prepare for the November 2002 command.²⁶⁵ The joint command continued to comply with UNSC Resolution 1444 (27 November 2002) to “provid[e] security and law and order throughout the country.”²⁶⁶ Once the joint command occurred, NATO’s aid to Germany and the Netherlands was in a support position in areas such as communications and information sharing. The official announcement and public declaration of intent occurred on February 12, 2003, during a NATO meeting when the Minister of Defence announced that 2000 troops would be deployed as part of the NATO led peacekeeping operation.²⁶⁷ This followed a series of initial steps, with Canada’s support as part of the consensual decision making process by the alliance.

NATO formerly stated in June its intention to take over command of the ISAF mission in November 2002. After this initial statement, a ministerial communiqué discussed the steps that NATO was taking to prepare for its role in Afghanistan.²⁶⁸ When NATO took command of ISAF in August 2003, the ISAF mandate and operating

²⁶⁴ "United Nations Security Council Resolution 1444." *United Nations Security Council Resolutions 2002*. 21 Sept. 2011.

²⁶⁵ "ISAF Afghanistan International Security Assistance Force Chronology." *North Atlantic Treaty Organization*. Accessed 21 Sept. 2011.

²⁶⁶ "United Nations Security Council Resolution 1444."

²⁶⁷ Teeple, Nancy. "Canada in Afghanistan 2001 - 2010: A Military Chronology." Department of National Defence. Dec. 2010. Accessed 20 Oct. 2011. 16.

²⁶⁸ "NATO to Assume Command of the International Security Assistance Force (ISAF) in Kabul on Monday, 11 August 2003 , 11-Aug.-2003." *North Atlantic Treaty Organization*. 3 Nov. 2008. 2 Sept. 2011.

procedures did not alter the mission mandate in place by the UN.²⁶⁹ The new NATO mission was to continue to “assist the Afghan Transitional Authority in providing stability and security in Afghanistan.”²⁷⁰ While Canadian troops had been active in Afghanistan since July 2003 under ISAF, it was not until February 9, 2004 that Lieutenant General Rick Hillier took command of ISAF.²⁷¹

During the 2nd session of the 37th Parliament in the House of Commons, the Martin government discussed the changing role in which Canada would assume command of ISAF during Phase II. This was the only phase the Canadian role was discussed in Parliament. David Pratt, Minister of National Defence, commented that, “we have learned recently that Canada has offered to assume overall command of the next rotation of the ISAF mission in Afghanistan.”²⁷² On May 16th, Minister of Foreign Affairs Bill Graham, in the Standing Committee on Foreign Affairs and International Trade (SCFAIT), announced that the CF was extending its mission in Afghanistan as well as continuing the current Kabul mission.²⁷³ Graham stated,

we will be deploying a provincial reconstruction team to the city of Kandahar ... beginning in August of this year, in accordance with our commitment to NATO ... This team will ... reinforce the authority of the Afghan government in and around Kandahar and to assist in the stabilization of the region ... in early 2006 we will be deploying an army task force ... These forces will conduct operations to strengthen the security situation in the country.²⁷⁴

²⁶⁹ Ibid.

²⁷⁰ "Change of Command in Afghanistan." *North Atlantic Treaty Organization*. 3 Nov. 2008. 1 Sept. 2011.

²⁷¹ Ibid.

²⁷² "37th Parliament 2nd Session." 06 Oct. 2003. Debates (Hansard). Accessed 15 May 2012. This was stated during the first phase of Operation Athena but it is important to note that they were discussing the next rotation in war which means Phase II of Operation Athena.

²⁷³ "38th Parliament, 1st Session Standing Committee on Foreign Affairs and International Trade Evidence." *Parliament of Canada*. 16 May 2005. Accessed 26 Apr. 2012, sec. 1015.

²⁷⁴ Ibid.

The use of the term “stabilization” and “strengthening security” demonstrates the change from a humanitarian, rebuilding role and entailed, without saying so, combat. A month after the government statement, a NATO communiqué indicated that NATO forces would be entering into the southern region of Afghanistan which included the area Canada commanded in Kandahar province. The communiqué stated that, “two Provincial Reconstruction Teams (PRTs) have very recently come under NATO command and two newly established PRTs will follow in the summer ... [thus] planning for a further expansion of ISAF to stage 3, [Kandahar in] the South [sic].”²⁷⁵

NATO made several announcements of its expanded role in Afghanistan. In 2004, a NATO press release stated that the North Atlantic Council approved additional Provincial Reconstruction Teams (PRT) in an expanded area in Afghanistan: “these five PRTs are part of a progressive process ... by the North Atlantic Council to expand ISAF in a flexible manner to include other PRTs in the future.”²⁷⁶ These new five PRT roles were formally confirmed at the NATO summit meeting in Brussels in February 2005. NATO’s press release for the summit indicated that NATO was entering into the volatile western area of Afghanistan.²⁷⁷ At the summit meeting, Prime Minister Martin acknowledged the difficulties in building a secure Afghanistan without an increased NATO presence. He stated, “when NATO is asked to take on military responsibilities, we are learning that stabilization and security, while essential, are not sufficient to tackle

²⁷⁵ "Final Communiqué: Meeting of the North Atlantic Council Defence Ministers Session." *North Atlantic Treaty Organization*. 09 June 2005. Accessed 27 Apr. 2012.

²⁷⁶ *Ibid.*

²⁷⁷ "NATO Press Release (2005) 022 - 22 Feb. 2005." *North Atlantic Treaty Organization*. 22 Feb. 2005. Accessed 27 Apr. 2012.

new threats.”²⁷⁸ Martin proceeded to announce that Canada was committed in ensuring Afghanistan will achieve a stable, peaceful state by creating the PRTs in Kandahar which would be deployed in the summer of 2005.²⁷⁹

Sanctions, originally in place by the UN, were still in effect during Phase I and further reiterated in UNSC Resolution 1455 (17 January 2003). This Resolution extended the sanctions implemented in Resolution 1267 (1999) for another year.²⁸⁰ As with Operation Apollo, Canada under the United Nations Act incorporated UN sanctions and continued to do so after NATO took command of the mission. Contrary to Canada’s Operation Apollo, the media reported on Phase I sanctions against the Taliban and al Qaeda, but did not discuss the United Nations Act based sanctions that Canada imposed. These sanctions continued to be imposed against specific people known to be members of the Taliban or al Qaeda, as well as the groups themselves.²⁸¹

UN and Canadian sanctions against the Taliban and al Qaeda continued to be in effect when the ISAF mandate changed in Phase II. On January 30, 2004, the UN reiterated and updated the sanctions in UNSC Resolution 1526 (30 January 2004). The sanctions remained against “Usama bin Laden, members of the Al-Qaida organization

²⁷⁸ "NATO Speech: Statement by the Rt. Hon. Paul Martin Prime Minister of Canada at the NATO Summit - 22 February 2005." *North Atlantic Treaty Organization*. 22 Feb. 2005. Accessed 26 Apr. 2012.

²⁷⁹ *Ibid.*

²⁸⁰ "United Nations Security Council Resolution 1455." *United Nations Security Council Resolutions 2003*. Accessed 21 Sept. 2011.

²⁸¹ According to the preceding articles there are 324 individuals and 92 groups that were on the sanctioned list as of January 18, 2002. Canadian sanctions are not specifically discussed; however, the UN sanctions are mentioned. During the timeframe leading up to NATO taking command and Lt. General Hillier being in command of ISAF there were only four articles related to sanctions. "Taliban Backer Offers the U.S. Information; Investigators 'Jumping with Joy' Over Data." *Toronto Star* [Toronto] 17 Jan. 2002, Ontario ed., News sec.: A11. *Canadian Newsstand Major Dailies*. 28 Sept. 2011, "Canada's Help for U.S. Isn't a Blank Cheque." *Toronto Star* [Toronto] 12 Mar. 2002, Ontario ed., Editorial sec.: A26. *Canadian Newsstand Major Dailies*. 28 Sept. 2011, "Ottawa Fails to Identify Terrorists for UN List." *National Post* [Don Mills] 13 Dec. 2002, National ed., World sec.: A19. *Canadian Newsstand Major Dailies*. 28 Sept. 2011. "Brief." *Toronto Star* [Toronto] 18 Jan. 2003, Ontario ed., News sec. *Canadian Newsstand Major Dailies*. 28 Sept. 2011.

and the Taliban and other individuals, groups, undertakings and entities associated with them.”²⁸² The UN reiterated and reconfirmed in 2005 the sanctions with UNSC Resolution 1617 (29 July 2005) on July 29, 2005. Utilizing the United Nations Act, the Canadian government re-implemented and updated the sanctions on July 7, 2004 through SOR/2004-160²⁸³ and again on June 23, 2006 through SOR/2006-164.²⁸⁴

Even at the height of Operation Apollo, the media began to speak about the next mission. This began as early as January 1, 2002 and then increased exponentially following the friendly fire incident in April 2002. News reports on January 1st, 2002 talked about the government contemplating a smaller Canadian peacekeeping role in Afghanistan.²⁸⁵ On January 2, 2002, Defence Minister Art Eggleton maintained that Canada would continue to have a role in Afghanistan though it was a role that would no longer be combat and would likely begin in 2003.²⁸⁶

After Eggleton announced Canada’s new role at the NATO summit meeting, this prompted the media to report on Phase I’s new role. It was on February 13, 2003 that the news exploded about Canada’s new Afghan mission. The media reported that Canada would not enter into a combat role but return to its historic peacekeeping role later in the

²⁸² “United Nations Security Council Resolution 1526.” *United Nations Security Council Resolutions 2004*. 30 Jan. 2004. Accessed 27 Apr. 2012.

²⁸³ “Regulations Amending United Nations Afghanistan SOR/2004-160.” *Canada Gazette*. 7 July 2004. Accessed 27 Apr. 2012.

²⁸⁴ “Regulations Amending United Nations Afghanistan SOR/2006-164.” *Canada Gazette*. 23 June 2006. Accessed 27 Apr. 2012.

²⁸⁵ Campbell, Clark. “Ottawa Mulls Smaller Role in Afghan Peace Mission.” *The Globe and Mail* [Toronto] 01 Jan. 2002, International News sec.: A1.

²⁸⁶ MacKenzie, Hilary, and Mike Shanin. “Canadian Troops Left Out of Afghan Peacekeeping Force: No Canadians Included in Team Sent to Scout Conditions in Kabul.” *The Ottawa Citizen* [Ottawa] 02 Jan. 2002, Final ed., News sec.: A01. Accessed 13 Sep. 2011.

summer.²⁸⁷ The news continued with minor updates on the status of the Afghanistan mission until the CF date of departure in July.²⁸⁸ The media explained UN sanctions to the public while NATO provided news releases of NATO's new role, Canada's appointed command and the continuation of UN implemented sanctions.

Initially for Phase II, there was no significant media coverage of the mission change. Then on January 9th 2005, Jim Farrell of the *Times - Colonist* in Victoria, wrote about the likelihood of Canadian troops leaving Kabul and entering into Kandahar; "if Canadian troops move from Kabul back to Kandahar in 2006 -- and it appears likely they will -- the Canadians will find a changed city and an American-run base that is almost unrecognizable."²⁸⁹ On May 15th the media reported that the newly appointed Chief of Defence Staff, Lt-General Richard Hillier, had committed an increase to Canada's ground commitment and these troops would likely be deployed to Kandahar. Mike Blanchard of the *Edmonton Journal* wrote,

the army is sure to play a key role in Canada's future defence blueprint because [the Honourable Minister of Defence Bill] Graham has said the bulk of any new personnel would go to land forces. Canada also plans to send more troops to Afghanistan later this year to help rebuild the Taliban-dominated Kandahar region.²⁹⁰

²⁸⁷ Blanchard, Mike. "Troops Bound for Afghanistan." *Ottawa Citizen* [Ottawa] 13 Feb. 2003, Final ed., News sec.: A1

²⁸⁸ With the exception of an increase in reports at the beginning of May when it was announced that Canada would assume command of ISAF for six months, news reports diminished. This statistic is from the Canadian Newsstand doing a search for Canada, Afghanistan, Command and ISAF from March – June 2003.

²⁸⁹ Farrell, Jim. "Canadians to Find Kandahar a Changed City." *Times - Colonist* [Victoria] 09 Jan. 2005, News sec.: A6. *Canadian Newsstand*. Accessed 25 Apr. 2012.

²⁹⁰ Blanchard, Mike. "PM Promised Increase in Defence Budget." *Edmonton Journal* [Edmonton] 15 Jan. 2005, News sec.: A9. *Canadian Newsstand*. Accessed 26 Apr. 2012.

On May 17th, most major newspapers in Canada began reporting about Canadian troops being sent into a volatile area of Afghanistan in a combat role. Mike Blanchard's report ran in many newspapers and stated,

the Canadian Forces will deploy 1,000 new troops to Afghanistan early next year as part of a renewed contribution to fight terrorism and expand NATO's security efforts into the country's volatile southern region. The new troops will be stationed in Kandahar, the birthplace of Afghanistan's former Taliban rulers and mark the end of the Forces "operational pause" that gave an over-stretched military a breather from the rapid pace of international missions.²⁹¹

A majority of the articles mentioned the mission change, the increase of troops and a deployment date in July while combining the report with developments in Phase I. Kenny Collins, of the *Ottawa Citizen*, wrote about the prospects for the war in Afghanistan. He stated, "as Canada prepares to move its forces to the troubled Kandahar region, it must consider whether it's making an impact on the war ... unfortunately, that doesn't automatically mean ... our troops ... will have much of an effect on Afghanistan's future, or the future of the world."²⁹² This trend of incorporating the new mission within general news articles on Afghanistan continued until the beginning of July. Afterwards, the articles concentrated on the troops leaving Canada and the dangerous mission they were embarking on. The news articles included quotes from prominent members in government, including the Chief of Defence Staff, Minister of National Defence and the Prime Minister's Office.

²⁹¹ Blanchard, Mike. "Canada to Send 1,000 Troops to Afghanistan." *Leader Post* [Regina] 17 May 2005, News sec.: A3. *Canadian Newsstand*. Accessed 26 Apr. 2012.

²⁹² Collins, Kenny. "Lost in Afghanistan." *Ottawa Citizen* [Ottawa] 10 June 2005, News sec.: A17. *Canadian Newsstand*. Accessed 26 Apr. 2012. Other examples of writing based on occurrence in Afghanistan mentioned briefly the new mission read Bruce Cheadle's "Growing Drug Trade in Afghanistan a Catch-22 for NATO: Graham" June 11, 2005 in the *Kingston Whig*, Chris Wattie's "Henault Begins NATO Job with High Hopes of Canada's Role: New Military Chairman" June 17, 2005 *National Post* and Thomas Walkom's "Danger Zone; U.S. Wants to Win 'hearts and minds' Canadian Soldiers have been on Duty in Afghanistan since Early 2002 But their Mission in the Country is About to Change" June 25, 2005, *Toronto Sun*.

Last Resort

Last resort was not considered within the House of Commons in either Phase I or II of Operation Athena. The earliest defence decisions were discussed within the Harper Government in the 39th Parliament 1st session during the oral questions period on April 17, 2007.²⁹³ Jack Layton, leader of the New Democratic Party, questioned if Prime Minister Stephen Harper was going to table an exit strategy after announcing the extension of the military mission in Afghanistan until 2009.²⁹⁴ Prior to then, Afghanistan was discussed in terms of financial support, condolences for CF deaths, women's rights, proper equipment for Canadian soldiers and General Hillier assuming command of ISAF.²⁹⁵ The nature of military action in Afghanistan was not part of the House of Commons agenda.

Sanctions for Operation Athena imposed by the UN and Canadian implementation through the United Nations Act provide a method of ensuring last resort. At the beginning of Operation Athena, the sanctions from Operation Apollo were still in effect.²⁹⁶ In 2002, the UN reiterated the importance of imposing sanctions through UNSC Resolution 1390 (28 January 2002) and again in 2003 with Resolution 1455 (2003).²⁹⁷ This Resolution stated UNSC's intent to increase the sanctions within the next twelve months. It, "*decides* to improve the implementation of the measures imposed by ... Resolution 1267 (1999) [and] *Decides* that the measures ... will be further improved

²⁹³ "39th Parliament 1st Session " April 2007 *Debates (Hansard)*. Accessed 26 Apr. 2012.

²⁹⁴ *Ibid.*

²⁹⁵ "37th Parliament, 2nd Session Standing Committee on National Defence." Parliament of Canada. 03 Oct. 2003 Accessed 26 Apr. 2012, sec 1120.

²⁹⁶ "Terrorists." *Foreign Affairs and International Trade Canada (DFAIT)*. 7 July 2011. 26 Oct. 2011.

²⁹⁷ "United Nations Security Council Resolution 1390." *United Nations Security Council Resolutions 2002*. 24 June 2011, "United Nations Security Council Resolution 1455."

in 12 months.”²⁹⁸ The Resolution continues to specifically name al Qaeda, the Taliban and their associates; “any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization.”²⁹⁹ Resolution 1526 (2004) reiterated sanctions that were first put into place in 1998 against terrorism in general, the Taliban and al Qaeda in particular. The Taliban, despite being removed from governing Afghanistan, continued being sanctioned due to their association with al Qaeda and new role as combatants.

Just Cause

The bilateral 32-Point Smart Border Declaration and Security Plan prompted Canada to look at methods to improve not only security but also the economy in 2003. As J. L. Granatstein stated, “[as Canadians] our livelihood as a people and our security as a nation depend on getting this relationship right ... with our closest neighbour ... and major trading partner.”³⁰⁰ Hence when the Canadian Council of Chief Executives (CCCE) proposed the North American Security and Prosperity Initiative,³⁰¹ it concluded that there were five areas that need to be concentrated on: “reinventing borders ... maximizing economic efficiencies ... negotiation of a comprehensive resource security pact ... rebuilding Canada’s military capability ... [and] creating a new institutional framework.”³⁰²

²⁹⁸ "United Nations Security Council Resolution 1455."

²⁹⁹ Ibid.

³⁰⁰ Granatstein, J. L. "What Really Matters: Canada's National Interest." *Whose War Is It?: How Canada Can Survive in the Post September 11th World*. Toronto: HarperCollins, 2007, 61.

³⁰¹ "Security and Prosperity: Toward a New Canada-United States Partnership in North America » Canadian Council of Chief Executives." *Canadian Council of Chief Executives*. Jan. 2003. 04 Oct. 2011, 1.

³⁰² Ibid.

Despite the initiatives proposed by the CCCE, exports to the US fell by 4.5 percent in 2003.³⁰³ President Bush's indirect threat to Canada's trade and, consequently, the economy continued into Phase I. US Ambassador Paul Celluci continued to pressure Canada economically about the war. John Herd Thompson explains that,

the U.S. ambassador to Canada, Paul Celluci, told an audience of business people in Toronto that "there is a lot of disappointment in Washington" over the level of Canadian support for the war effort. He warned that Canada might indeed suffer economically for its impertinence, because U.S. concern for "security will trump trade." Unless any Canadian missed his message, Celluci repeated the essence of his remarks before similar audiences in Vancouver and in Calgary.³⁰⁴

Celluci's statement demonstrates the need for Canada to participate in the war to ensure economic security. Thus, as Dinstein stated, self-defence for non-violent motives are justified.

In contrast to Phase I, trade with the US increased by Phase II by \$21,881 billion.³⁰⁵ According to the *Sixth Annual Report on Canada's Trade: Trade Update April 2005*, "higher exports to the United States accounted for about 70 per cent of the overall gain [in exports], as goods exports to that country were up \$21.5 billion."³⁰⁶ This trend continued in 2005 with exports increasing by 6.8 percent in 2005.³⁰⁷ Just as there was no scholarly or public debate about the decline in trade in 2003, there was no scholarly debate about the increase of trade in 2005. However, Steven Globerman and Paul Storer did an overall study of the effects after September 11 on bilateral trade. They

³⁰³ "Fifth Annual Report on Canada's State of Trade: Trade Update 2004." *Department of Foreign Affairs and International Trade*. 15 Mar. 2004. Accessed 3 Apr. 2012, 4.

³⁰⁴ Thompson, John Herd and Stephen J. Randall. "Playing by New American Rules: 2001 - 2007." *Canada and the United States: Ambivalent Allies*. Athens: University of Georgia, 2008. 311.

³⁰⁵ "Sixth Annual Report on Canada's State of Trade: Trade Update 2005." *Department of Foreign Affairs and International Trade*. Modified 02 Feb. 2012. Accessed 30 Apr. 2012, 7.

³⁰⁶ *Ibid.*, 10.

³⁰⁷ "Seventh Annual Report on Canada's State of Trade: Trade Update 2006." *Department of Foreign Affairs and International Trade*. Modified 12 Mar. 2012. Accessed 30 Apr. 2012, sec. The United States.

concluded that, “the disruptive impacts of post-9/11 security developments on Canada-U.S. trade did have significant and negative impact on the growth of Canada-U.S. trade. While this impact apparently dissipated for U.S. exports to Canada by 2004, they persisted for U.S. imports from Canada, at least through the middle of 2005.”³⁰⁸

Collective security and defence agreements continued to operate during Operation Athena. UNSC Resolution 1563 (2004) “welcome[d] the commitment by NATO lead nations to establish further Provincial Reconstruction Teams.”³⁰⁹ In the initial transference, NATO assumed command of ISAF under German Lieutenant General Glimeroth. In February 2004, Canada stepped into command with Lieutenant General Rick Hillier.³¹⁰ With command of ISAF, Canada also continued to honour its commitment to the NATO collective defence agreement, under Article V, the collective security agreement with the UN and aided the US in its self-defence claims.

The dimension of self-defence also remained operative with the increase in al Qaeda and Taliban awareness of Canada and further evidence of homegrown terrorism; “in the ten years since 9/11 we have observed a growing number of terrorist incidents in Canada. Even more troubling is the fact that these incidents all appear to involve Canadian citizens or individuals who have lived in Canada for an extended period of time.”³¹¹

³⁰⁸ Globerman, Steven and Paul Storer. *The Impacts of 9/11 on Canada-U.S. Trade*. Toronto: University of Toronto, 2008, 100.

³⁰⁹ "United Nations Security Council Resolution 1563." United Nations Security Council Resolutions 2004. 14 Sep. 2004. Accessed 24 June 2011.

³¹⁰ *ISAF - International Security Assistance Force*. Accessed. 26 Oct. 2011. Initially NATO only took command of ISAF. This was extended to all of the war in Afghanistan per UN mandate in October 2003.

³¹¹ Zekulin, Michael. "Terrorism in Canada." *Journal of Military and Strategic Studies* Spring 13.3 (2011), 19.

Mahammad Momin Khawaja was another Canadian arrested under the newly created anti-terrorism legislation.³¹² Before Khawaja's arrest in 2004, he had demonstrated terrorist related activity as early as 2003.³¹³ Khawaja was born in Canada, but maintained strong Middle Eastern ties. An investigation demonstrated that Khawaja was participating in plots to bomb a variety of companies and entertainment facilities in London.³¹⁴ The investigation also discovered that in July 2003 Khawaja attended a terrorist training camp in Pakistan and helped fund camp attendees.³¹⁵ Correspondence found during the investigation, "revealed that Khawaja had provided travel assistance to various individuals enroute to terrorist camps in Afghanistan."³¹⁶ The emails seized from his computer depicted his loyalty to the mujahedeen and specifically discussed his adoration of bin Laden. He stated in an email that, "Osama bin Laden is like the most beloved person to me in the whole world. I wish I could kiss his beloved hand."³¹⁷ Khawaja's desire to be an al Qaeda soldier was not an isolated incident and prompted an increase of terrorist related investigations in Canada; "there were mounting reports of [terrorists] target-scouting in Canada [and cited the example of] intelligence officers disrupt[ing] a Toronto cell of the Salafist Group for Call and Combat, an Algerian terrorist faction loyal to bin Laden."³¹⁸

Analysing self-defence through homegrown terrorism in Phase II coincides with Phase I. At this juncture, the primary method of recruiting was through a network of

³¹² Ibid., 3.

³¹³ Ibid.

³¹⁴ Ibid. 4.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Bell, Stewart. "From Homeland to Homegrown." *Cold Terror: How Canada Nurtures and Exports Terrorism Around the World*. [Etobicoke, Ont.]: Wiley, 2007, 251.

³¹⁸ Ibid., 253.

people in direct contact with each other normally through mosques that were known extremist. Marc Sageman states that, “when we look over time at the networks comprising global Islamist terrorism, a clear shift in the modes of interaction emerges. Until 2004, most of the networks were a consequence of face-to-face interactions among friends.”³¹⁹ In 2005, recruiting shifted towards internet chat groups and radical websites. The role of the internet filled a void for youths seeking a safe haven to discuss radical views especially after mosques became closely investigated by a variety of agencies. Sageman describes it as the,

“role of the Internet is a spontaneous evolution. It was not planned by any central organization; it simply coincided with ... the close monitoring of physical meeting spaces ... The hostile environment prevented likeminded young people from physically meeting, so they started exchanging information, views and visions of the future in Internet forums.”³²⁰

This was the case with the two leaders of the ‘Toronto 18.’

Fahim Ahmad was born in Kabul but moved to Canada when he was ten years old.³²¹ He appeared to have adjusted well to living in Canada, until 9/11. After 9/11, he was the focus of derisive anti-Muslim assaults which caused him to turn to spirituality to cope. Michelle Sheppard states that when the, “taunts from other kids started to sting ... he sought solace and guidance at a mosque.”³²² He also sought friendship online. As he delved deeper into the chat rooms, Fahim continued to seek extremist chat groups that promoted his newly found patriotism and anger against the war in Afghanistan.³²³ He

³¹⁹ Sageman, Marc. "Terrorism in the Age of the Internet." *Leaderless Jihad: Terror Networks in the Twenty-First Century*. Philadelphia: University of Pennsylvania, 2008, 109.

³²⁰ Ibid., 110.

³²¹ Sheppard, Michelle. “Toronto.” *Decade of Fear: Reporting from Terrorism’s Grey Zone*. Vancouver: Douglas & McIntyre, 2011, 109.

³²² Ibid. 110.

³²³ Ibid.

discovered a chat room known as *Clear Guidance* where he posted over 750 posts, one of which said, “I need some jihad talks, anything ... I know you guys can hook me up.”³²⁴ Shortly afterwards an al Qaeda recruitment link was provided.³²⁵

Fahim’s high school friend, Zakaria Amara suffered a similar fate after 9/11. Zakaria was born in Jordan and had immigrated to Canada in his early teenage years.³²⁶ At a young age, his religious affiliations bounced between Orthodox Christian and Muslim. With family troubles and the insecurity of the Muslim community Zakaria turned to online chat rooms to escape. Sheppard states that Zakaria, “start[ed] an Internet site called “The Brothers of Meadowvale,” where he led discussions” mainly religious based.³²⁷ Financial difficulties occurred in 2004 and further disillusioned Zakaria and ultimately helped promote his anti-western beliefs.³²⁸ Fahim and Zakaria began planning attacks against multiple locations in Toronto. Zakaria soon became disheartened with Fahim and created his own cell. They both continued to plan terrorist attacks which were forestalled when both of the ‘Toronto 18’ cells were infiltrated by undercover operatives.

At the same time, once al Qaeda’s “senior members were killed or captured,” the functionality of al Qaeda changed.³²⁹ Instead of being a centralized militant group, it became a multi-celled insurgency. As such, face-to-face recruitment and training was no longer available. Sageman discusses how this new wave of homegrown terrorists became “autonomous and unknown to al Qaeda.”³³⁰ Except for Fahim seeking jihadi style chat

³²⁴ Ibid., 111.

³²⁵ Ibid.

³²⁶ Ibid., 112.

³²⁷ Ibid.

³²⁸ Ibid., 112.

³²⁹ Ibid., 127.

³³⁰ Sageman, 140.

rooms, the ‘Toronto 18’ had no direct link to al Qaeda or the Taliban. Though influenced to perform terrorist acts similar to al Qaeda and the Taliban, their plans were not on behalf of those groups. This is what Sageman describes as “Leaderless Jihad.”³³¹ Sheppard states that, “the two ringleaders were seduced by radicals online and romanced by the notion that they were fighting for a greater religious and political purpose.”³³²

Reasonable Chance of Success

Considering if the Canadian mission remained focussed on the perpetrators of the 9/11 attacks is problematic for determining reasonable chance of success. Canada entered into Phase I as ‘peacekeepers’ with a mandate for humanitarian assistance and security building by working in tandem with the Afghan National police force.³³³ The second part of Phase I’s main focus was to ensure that the 2004 elections happened without incident.³³⁴ In Phase II, the final communiqué of the meeting of the North Atlantic Council Defence Ministers in June 2005 discussed NATO’s new role in Afghanistan. The communiqué does not specifically discuss mission targets. Yet, it does discuss continuing to act in accordance with UNSC Resolution 1563 (2004) that restates the necessity to secure Afghanistan by ensuring that terrorist elements operating within its borders are removed, thus, “reaffirming ... its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001 and reiterating its support for international efforts to root out terrorism in accordance with the Charter of the United Nations.” NATO continued to follow UNSC mandates against terrorists and the UN

³³¹ Ibid., title.

³³² Sheppard, 104.

³³³ "International Operations: Operation ATHENA."

³³⁴ Ibid.

named the Taliban and al Qaeda as the responsible parties for the 9/11 attacks, thus ensures at least that the mandate continues to target the 9/11 perpetrators.

Another key element of reasonable chance of success is to ensure peace established through regional allies and this hinged directly on Pakistan. As such, Pakistan and the US worked cooperatively during Phase I of Operation Athena. The US continued to promote Pakistan as a working political ally which is necessary in Phase II's combat mission and to ensure reasonable chance of success is met. Anthony H. Cordesman, Adam Mausner and David Kasten wrote, "the United States drove Al Qa'ida, the Taliban and other Islamist extremist and violent groups into Pakistan."³³⁵ With Pakistan allying with the US in the initial stages of the war in an effort to ensure lasting peace, Pakistan's global position shifted. The Pakistani military government was accepted as legitimate by the US and, as a result, the US stationed CIA operators in Pakistan as a method to insure that the Musharraf government stayed in power; "the CIA deployed its senior staff in Pakistan to help keep Musharraf in power."³³⁶ This put Pakistan in a position that, as Halali stated, "has successfully created a dynamic image in the US and in the Western world because Pakistan is a vital country in the war against terrorism."³³⁷

Canadian strategists with the Canadian Defence and Foreign Affairs Institute determined that Canada's role needed to continue backing NATO's stance in Pakistan. It was determined that Musharraf, "as a political leader... responds to both foreign and

³³⁵ Cordesman, Anthony H., Adam Mausner and David Kasten. "The Impact of Pakistan." *Winning in Afghanistan: Creating Effective Afghan Security Forces*. Washington, D.C.: CSIS, 2009, 26.

³³⁶ Hilali, 260.

³³⁷ Ibid.

domestic pressure.”³³⁸ NATO encouraged allied countries to seek bilateral agreements with Pakistan to aid the war efforts. As such, “the allies believed that the United States, as a global power, needed to provide the leadership and resources” with regard to Pakistan.³³⁹ During Operation Athena, NATO had not specifically committed to engaging Pakistan.³⁴⁰ Bilateral agreements with allied countries also protected Afghanistan sovereignty once the war ended taking into consideration that the agreements are not directly related to Afghanistan peace.

It was the US that continued to engage Pakistan’s help to ensure enduring peace. In 2003, the US announced a three billion dollar package for political, economic, military and social development.³⁴¹ A portion of the aid was used for military training and to update and upgrade equipment.³⁴² This in turn, aided Pakistan in the war efforts in 2003 especially after Kabul accused Islamabad as the reason for Afghanistan’s instability.³⁴³ Pakistan made an unprecedented move when it placed military troops amongst the tribal regions along the Afghanistan border.³⁴⁴ Unfortunately during this phase, the relationship became volatile due to Pakistan scientists exporting nuclear weapons technology and insurgents crossing the border into Afghanistan; “Pakistani scientists assisting the nuclear programmes of ‘rogue nations’ have brought strong reactions from

³³⁸ Smith, Gordon. "Canada in Afghanistan: Is It Working?" *Canadian Defence and Foreign Affairs Institute* (2007), 6.

³³⁹ Ibid.

³⁴⁰ Morelli, Vincent, and Paul Belkin. "NATO in Afghanistan: A Test of Transatlantic Alliances." 7-5700 (2009): 1-40. *Congressional Research Services*. 3 Dec. 2009. Accessed 14 Feb. 2012., 4.

³⁴¹ Rafique, Najam. "Pakistan-U.S. Relations Since 9/11: Chronology of Events." *The Institute of Strategic Studies Islamabad*. Accessed 04 Apr. 2012.

³⁴² Ibid.

³⁴³ "U.S.-Pakistan Relations." *Council on Foreign Relations*. Accessed 04 Apr. 2012.

³⁴⁴ Rafique.

...[the] US.³⁴⁵ As an ally of the US, Canada's reasonable chance of success was further guaranteed when the US maintained a politically reliable relationship with Pakistan.

During March 2004, President Musharraf reemphasized, to Pakistan's tribesmen bordering Afghanistan, the importance of continuing the fight against harbouring the Taliban and extremist terrorist groups. According to Najim Rafique there were, also, "pitched battles between Pakistani troops and suspected militants in the remote South Waziristan Agency."³⁴⁶ Despite working collaboratively, tension mounted in April after the US ambassador to Afghanistan stimulated an angry response from Musharraf when the ambassador mistakenly stated that "US forces in Afghanistan will move into Pakistan territory to destroy Taliban and other extremist groups if Islamabad cannot do the job by itself. Pakistani leadership must solve this problem, or we will have to do it for ourselves."³⁴⁷ In an effort to maintain the relationship, the US distanced itself from the US Ambassador's statement. This was successful in so far as later in the month a joint military mission created a barrier between Afghanistan and Pakistan in an effort to stop the influx of extremists and the Taliban into Pakistan.

Pakistan remained unstable for the next two months due to a variety of controversial actions by both the US and Pakistan. For example, Pakistan agreed to provide amnesty to a number of extremists and the US permitted a US helicopter to fly into Pakistani airspace.³⁴⁸ However in a continuing effort to maintain the relationship and continue the fight against terrorist activity in the region, the US granted Pakistan

³⁴⁵ Rafique.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

“major non-NATO ally” status.³⁴⁹ A joint statement by Bush and Musharraf reaffirmed “their condemnation of terrorism in all its forms and manifestations ... [and] President Bush is grateful for President Musharraf’s strong and vital support in the war on Terror.”

³⁵⁰ The relationship continued to solidify when the House of Representatives incorporated the first third of the 2003 \$3 billion assistance package.³⁵¹ The joint strategy between Pakistan and the US continued to improve with an increase in military participation throughout 2005 and further strengthened after the earthquake in October 2005.³⁵²

Conclusion

Modern declarations using UNSC Resolutions and NATO announcements provide only a facet of the criteria needed for public declaration of intent. The announcement from DND about the new humanitarian mission, NATO’s announcement of Canada’s command of ISAF in 2004, the Brussels summit meeting in February 2005 and Prime Minister Martin’s announcement that Canada would provide additional CF personnel can be perceived as public declarations of intent for Phase I and II. The House of Commons provided further legitimization for Phase II by announcing that the CF as entering into the southern volatile region of Afghanistan. Two other methods of public declaration of intent were met when sanctions were reiterated by both the UNSC and Canada’s United Nations Act and the media discussed both Phases I and II early.

³⁴⁹ "Joint Statement by President George W. Bush and President Pervez Musharraf of Pakistan: United States - Pakistan Strategic Partnership." *U.S. Government Printing Office*. 04 Mar. 2006. Accessed 16 May 2012, 404.

³⁵⁰ *Ibid.*, 405.

³⁵¹ Rafique

³⁵² *Ibid.*

Phase I and II demonstrate a difference in just cause through self-defence. Though there is still evidence that economic self-defence can be used for Phase I, Canada's 'peacekeeping' role creates an ambiguity if self-defence can be used for peacekeeping roles. There is no definitive evidence of economic threats leading up to Phase II. Phase I continues to demonstrate that al Qaeda was aware of Canada whereas the new trend in homegrown terrorism during Phase II cannot warrant using self-defence as a just cause. Once again, the ambiguity in peacekeeping operations questions whether self-defence can be used in a peacekeeping role. In Phase II, with the trend towards homegrown terrorism not directly linked to al Qaeda self-defence is no longer justified. The exception for Phase II comes with honouring collective security and defence agreements when UNSC Resolution 1563 (2004) and NATO's mandate changed entering into phase II.

Jus ad bellum's last resort does not apply in Phases I or II of Canada's war in Afghanistan. Essentially after Canada ended its combat role in Operation Apollo, last resort was no longer credible. However the criteria for reasonable chance of success are met. The government of Canada, either through Parliament or National Defence, did not release a specific target list. However, when NATO reiterated UNSC's Resolutions, NATO's directive provided specific directions targeting the Taliban and al Qaeda. Thus, combatants targeted justify reasonable chance of success. The US and Pakistan maintained a working relationship, in an effort to ensure a positive outcome for the war provides another justification in reasonable chance of success.

Chapter 4: *Jus ad Bellum* and Canada's war in Afghanistan

Looking at the criteria of *jus ad bellum* demonstrates key and problematic issues. Yet, it is important to note that *jus ad bellum* and thus just war theory continues to be important. This is demonstrated by the codification of self-defence and the moral considerations that occur prior to entering into war. This analysis demonstrated that the criteria in *jus ad bellum* needs to be modernized to validate its use today. Public declaration of intent, legitimacy through collective defence and security agreements and reasonable chance of success are the most problematic. A relatively new and unexplored area that challenges *jus ad bellum* is peacekeeping.

Historically, the creation, implementation and enforcement of laws and separation between church and state are criteria of legitimate authority. The Canadian government meets the historical criteria of legitimate authority by traditionally implementing these criteria and thus has the right to declare war. Legitimate authority is furthered justified by the country being an internationally recognized and democratic country. Canada is both recognized and democratic and as such, meets the criteria of a legitimate authority. In effect, legitimate authority is easy to ascertain today.

Prior to the war in Afghanistan, multiple UNSC Resolutions were passed that authorized and encouraged members of the UN to impose sanctions against al Qaeda and the Taliban. After 9/11, resolutions changed from sanctions to "whatever means necessary" to stop al Qaeda and the Taliban from being able to perform other acts of terrorism. The present-day use of a public declaration of intent is unreliable despite being manifested in contemporary methods including the availability of the House of

Common's sessions. Public declaration of intent is designed to ensure the offending parties are aware of the forthcoming actions against them if reparation for their offence is not imminent and to ensure that the public is aware of the impending actions by the offended government. When analyzing UNSC Resolutions and sanctions, as a valid method of public declaration, consideration of accessibility to the targeted audience is essential. It has been established that bin Laden acknowledged the UN, UNSC Resolutions and sanctions through CIA translated messages. A month after 9/11 bin Laden further demonstrated awareness of international laws and UNSC Resolutions. By this time, bin Laden had assumed leadership of al Qaeda and established an association with the Taliban. Therefore, considering that al Qaeda and the Taliban are one of the intended audiences of the UNSC Resolutions and sanctions, then public declaration of intent is met. However, this does not apply for all phases of the war.

Phase I and II of Operation Athena reiterate the resolutions and sanctions that were issued prior to Operation Apollo. On December 20, 2001, UNSC issued Resolution 1386 (2001) which established ISAF in Afghanistan. In February 2003, the Canadian Minister of Defence announced that the CF would send troops to Afghanistan in a non-combat role. The peacekeeping role would be in conjunction with NATO and NATO was authorized to use 'whatever means necessary' to 'stabilize' Afghanistan as stated in UNSC Resolution 1444 (2002) and restated in NATO's mandate issued in 2002. In 2004, NATO discussed the expansion of ISAF into volatile areas of Afghanistan. One of the NATO communiqués included a statement from Prime Minister Martin about the necessity of committing more troops and changing the peacekeeping role of Operation Athena. As a member of the collective defence agreement with NATO, these

communiqués are issued on behalf of member countries and function as a public declaration of intent. As such, the communiqués are geared towards being official and legitimate declarations of intent.

Although UNSC Resolutions, sanctions, the United Nations Act and NATO are an effective method for declarations, they are not official declaratory announcements from the Canadian government. It was not until Phase II of Operation Athena that the government discussed the war in Afghanistan in SCFAIT. Bill Graham, Chair of SCFAIT, announced that a PRT was going to enter into Kandahar to help stabilize and secure the country.

Terminological ambiguity is demonstrated in Prime Minister Martin's NATO summit announcement and SCFAIT, where combat was not directly discussed. Both employ, 'stabilization and security'. The UNSC Resolutions and NATO mandates also use ambiguous terms such as 'whatever means necessary' which imply combat but is not combat specific. Thus, the terminology does not provide precise intent of the countries involved in Afghanistan. This is problematic when public declaration of intent is designed to forewarn the intention to enter into war and allow the offending country the opportunity to avoid the war.

However, the media provided the public with the information that Canadian troops were in a combat position two months after JTF2 had deployed to Afghanistan in 2001. The new 'peacekeeping' role was discussed in the media prior to entering into Phase. Seven months prior to Phase II the media began reporting the mandate change. These articles discussed the volatility of the area the troops were deployed to and the end

of the peacekeeping phase. Considering that the news reported on Canada's commitment two months after Operation Apollo began, public declaration of intent's purpose to alert the public, prior to entering into combat, is not demonstrated. If public declaration of intent takes into account the date of declaration, then Phase I and II met the criteria. However much the media provides a sense of intent, it is not a legitimate source for public declaration of intent.

The UN and NATO provided a sense of public declaration of intent but these declarations of intent did not come from the legitimate Canadian authority. Being a member of two internationally known collective defence and security agreements provides a modern method of declaration for Canada. The media provides the public with information about intent and specifically uses the term combat. However, the media is not a legitimate authority in the *jus ad bellum* sense. Considering that public declaration of intent does not come from a Canadian legitimate authority but from international organizations, it poses the question if the criteria of public declaration of intent needs to be issued from a standard legitimate authority or if internationally accepted security and defence organizations are acceptable legitimate authorities to declare intent for individual states.

Sanctions fit within last resort as a means of providing warning prior to launching war. The early sanctions UNSC imposed against al Qaeda and the Taliban were the initial steps in defining if the war in Afghanistan was, indeed, started as a last resort. The first UNSC Resolutions and sanctions in 1996 and 1998 forewarned al Qaeda and the Taliban about repercussions if the terrorist activities did not stop. This demonstrates that war was the consequence if al Qaeda and the Taliban failed to stop terrorist activities.

Canadian implementation of the Resolutions and sanctions meet the last resort criteria for Operation Apollo. However after Operation Apollo, Phase I of Operation Athena becomes problematic to determine if last resort was met or if the criteria is even necessary in a peace support role. Regardless, Phase II was a combat role. Last resort is still problematic when considering that last resort was met prior to entering into Operation Apollo and no further incidences, such as 9/11, occurred to justify Canada re-entering into combat. In other words, once Canada left the combat role of Operation Apollo, the criteria of last resort was no longer valid. The *jus ad bellum* criterion of last resort would have continued to be valid if Canada had remained in a combat role throughout Canada's war in Afghanistan. However, the later Resolutions, sanctions and the United Nations Act do not provide the same level of legitimacy prior to Operation Apollo.

Last resort is easier to justify contemporarily but is not legitimate. Internationally accepted organizations such as the UN, provide a contemporary avenue for last resort. This is problematic when the country entering into a war does not follow the criteria for last resort. The country does not ensure the war is fought as a last resort when it relies on collective security or defence agreements to meet the last resort criteria. Historically, wars were fought between two countries; contemporarily wars are now fought between a sub-state actors and a collective security or defence organization. This questions if last resort can be legitimate if collective security and defence agreements provide last resort on behalf of its members. Last resort has historically been an important criterion in *jus ad bellum* and continues to be a vital justification for war today. Thus, legitimizing

collective defence and security agreements, with regard to last resort, also becomes an important aspect of *jus ad bellum*.

Once the attacks occurred on 9/11, Canada's bilateral relationship with the US, collective security and defence agreements and economic security became important factors in Canada's self-defence. Canadian integration with the US is a primary factor in Canada justifying self-defence. Integration can be seen in bilateral defence agreements, such as NORAD, trade agreements, such as NAFTA, and infrastructure integration, such as supplying energy to the US. As demonstrated, immediately after 9/11 the border between Canada and the US was closed and US security concerns became synonymous with a decrease in trade. US security measures, such as the Patriot Act, caused significant concern about Canadian trade and thus, the economy. The unspoken threats from the initial closing of the border and Patriot Act substantiate the necessity of aiding the US in its war efforts and justify self-defence as a just cause criteria for Operation Apollo.

During Operation Apollo, US border security increased exponentially and trade continued to decrease. This prompted initiatives to secure the border and allow trade to flow effortlessly. Regardless of the 32-Point Smart Border Declaration and Security Plan, trade continued to decline and consequently, the Canadian decision to enter into Phase I of Operation Athena can be justified under self-defence. The question arises about this phase's 'peacekeeping role' and if it qualifies as self-defence. Considering that the reason for entering into the war was to ensure trade continued between Canada and the US, 'peacekeeping' may be seen as a method of maintaining the relationship with the US. Therefore, participating in a 'peacekeeping' role to ensure trade is justifiable. Yet

entering into Phase I, trade continued to decline. It was during Phase II that trade increased. Yet, it did not increase to previous 9/11 levels. Despite an improvement in trade, economic self-defence remains viable when considering the decline in trade continued during Phase I.

The UN and NATO collective security and defence agreements and Canada/US bilateral agreements agree to provide defence for member countries. Honouring Canada's commitment to these agreements provided just cause for Canada's decision in entering into Operation Apollo. However, these agreements do not provide validity in Phase I or II in Operation Athena. The initial attacks that justified collective self-defence no longer existed when the mission changed to 'peacekeeping'. Peacekeeping is not designed as a measure of self-defence and other attacks did not occur that justified Phase II's re-entrance into combat.

Direct threats from al Qaeda and the Taliban significantly increase the justification of self-defence. These threats can be seen with an increase in homegrown terrorists in Canada. Operation Apollo does not validate homegrown terrorism as self-defence due to the fact that homegrown terrorists were not known prior to Operation Apollo. Therefore, homegrown terrorists cannot provide a just cause of self-defence prior to entering into the war. An increase in homegrown terrorism was seen during Phase I and II of Operation Athena. Evidence demonstrates that homegrown terrorists were being recruited during Operation Apollo. This not only establishes al Qaeda and the Taliban's awareness of Canada, it also validates a direct threat to Canada. During Phase I, terrorists were recruited by al Qaeda. Phase II presents a new dimension in homegrown terrorism. However by the time Phase II began, al Qaeda was no longer a

centralized militant group and was no longer recruiting in the traditional face-to-face format. Homegrown terrorists were now ideologists seeking to be recognized for their acts by al Qaeda as opposed to al Qaeda recruiting the terrorist. Therefore, the threat no longer came from al Qaeda or the Taliban. This invalidates the self-defence justification with homegrown terrorists in Phase II. This translates to the only phase that Canada can use homegrown terrorists as self-defence is the peacekeeping phase of the war. This, again, poses the question whether *jus ad bellum*'s criteria functions for 'peacekeeping'.

Overall, just cause through economic self-defence is justified for all phases of Canada's war in Afghanistan. It is in Canada's best interest to maintain strong ties with the US to ensure economic stability and maintain prominent allied status through bilateral, collective security and defence agreements. Homegrown terrorist provided sufficient cause for entering into Phase I but not for Operation Apollo or Phase II. Despite demonstrating that the just cause criteria was met, the validity of self-defence diminished as soon as Canada changed its mandate in Phase I and II of the war. Just cause is the most resilient *jus ad bellum* criterion due to the fact that self-defence is codified in internationally accepted organizations and their charters.

Proportionality has traditionally been associated with reasonable chance of success. Due to its controversy and lack of contemporary academic studies, an assessment of proportionality was not provided in this analysis. However, proportionality is incorporated into reasonable chance of success by taking into consideration that peace needs to be achieved only if the methods used will not cause more damage than caused by the offence. When the war in Afghanistan was first launched the primary targets were the terrorists who were responsible for the 9/11

attacks. The terrorists were defined as al Qaeda, bin Laden and the Taliban government. Targeting terrorists is an important criterion for reasonable chance of success. The Canadian mandate mirrored OEF's to remove the Taliban from power, disable al Qaeda's military base of operation in Kandahar and destroy military equipment. These objectives were quickly achieved when al Qaeda was removed from Kandahar and the Taliban government was removed from power. Thus, Operation Apollo, at least in hindsight, met the reasonable chance of success criteria. Considering the insufficient studies relating to peacekeeping and just war theory, reasonable chance of success cannot be considered for Phase I. Considering that peacekeeping does not have a target mandate, it invalidates that criterion in reasonable chance of success. Phase II's targets were stated in UNSC Resolution 1563 (2004) naming terrorists residing in Afghanistan. Specific targets were not named. It can be assumed that the terrorists are al Qaeda and the Taliban but this does meet the formality required to meet just war criteria.

Operation Apollo does not meet the criterion of establishing allies to ensure peace because the relationship with Pakistan was established during Operation Apollo. As a member of NATO, Canada followed NATO's recommendation to create bilateral agreements with Pakistan by reinstating its financial aid. Being an ally with the US, reinstating financial aid and the US alliance with Pakistan helped Canada meet this criterion of reasonable chance for success in Phase I. The relationship continued into Phase II and thus reasonable chance of success was met for Phase II.

Reasonable chance of success is a problematic criterion of just war theory. It is hard to ascertain if enduring peace can be obtained when entering into war. This is demonstrated by viewing previous wars such as Vietnam and Korea. Although the Vietnam and Korean Wars ceased, the outcome of the wars was not the peace envisioned. Political allies are also problematic in reasonable chance of success. Political allies surrounding the war zone are important but cannot be guaranteed. When considering Afghanistan's neighbouring countries, only Pakistan had the essential criteria sought for the war effort. Considering the controversy surrounding reasonable chance of success, this criterion should not be used today or needs to be modernized. If modernized then consideration needs to be given to the cultural temperament of the offending country. This should include if the population itself is conducive towards change and the government has the ability to change.

Notably, peacekeeping poses a problem with just war theory. There is substantial philosophical and theoretical research on just war theory. However, there is no substantial academic research about the application of just war theory and more specifically *jus ad bellum* in conjunction with peacekeeping. If peacekeeping includes forms of combat then a version of *jus ad bellum* should apply. This concept is already developed in forces that are designed to enforce peace such as the police. The police force already takes into account a form of *jus ad bellum*. For example, the police forces provide a sense of declaration by stating their intention of arrest and act in accordance with a legitimate authority. As such, *jus ad bellum* and just war theory needs to have an application of *jus ad bellum* that works in conjunction with peacekeeping.

The only phase that met a majority of *jus ad bellum*'s criteria was Operation Apollo. This demonstrates how problematic *jus ad bellum* is today. A contemporary look at *jus ad bellum* reveals its continued importance in the moral and ethical consideration of war. This does not aid in the fact that *jus ad bellum* has not evolved to include contemporary developments.

The key factors to modernizing *jus ad bellum* includes legitimizing collective security and defence agreements, redefining declaration of intent and reasonable chance of success. A need to create criteria for peacekeeping and *jus ad bellum* will aid in providing a just war when peacekeeping roles are predominant actors in a war. This is important due to the importance of moral and ethical considerations prior to entering into war. Therefore, it is essential to modernize *jus ad bellum* and to codify its criteria to further legitimize the use of force.

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