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A Defining Moment in the Parsing of War

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On Tuesday, President Bush described the hideous events of that morning as “an apparent terrorist attack on our country.” By Wednesday, however, he called them “acts of war.”

On one level, the difference in language captures the confusion evoked by the horror of watching the World Trade Center disintegrate before our eyes. While the term terrorism suggests a single hijacking or suicide bomb, the scope and scale of these coordinated attacks turned our world upside down in ways that only the metaphors of war -- particularly Pearl Harbor -- could express.

But looking back, Pearl Harbor now seems simple. The kamikaze pilots wore their country’s uniforms and flew dive bombers into our ships of war. We had a clear enemy and a clear response. Congress did not even have to declare war -- it only had to respond to the declarations of war issued by Germany and Japan. But in Tuesday’s attack, the targets were civilians. The attackers wore no uniforms and undoubtedly came from several countries, even countries with whom we have good relations. And they attacked us not for dominion or empire, but for who we are and what we stand for. Their fight is closer to the Crusades of the Middle Ages -- which were also thought of as attacks against infidels -- than to any modern war.

So if this is war, then it is indeed a “new kind of war,” as Bush has said. And it is up to us to define and wage it in ways that are effective but that clearly distinguish us from our adversaries.

From a legal perspective, the difference between calling what has happened war and calling it terrorism is considerable. It is the difference between military conflict and criminal justice (of the sort meted out just months ago on the terrorists who bombed the World Trade Center in 1993). It is the difference between bombing a state and punishing an individual or several individuals. And it should mean the difference between acting together with other nations and going it alone.

International law has a framework for hunting down hijackers and terrorists. More than 150 states have signed treaties designed to prevent terror in the skies. They have pledged to make hijacking a criminal offense and either to prosecute or extradite hijackers found within their territories. The U.N. General Assembly has also condemned terrorism and upheld the obligation to prosecute all terrorists.

International law also has a framework for managing war between states. It is the cornerstone of the post-World War II order enshrined in the U.N. Charter, built on the premise that all states must refrain from the use of force against other states. In the case of an act of aggression (a condition easily met in this situation), the Security Council must authorize an armed response

by one or many nations. States retain their right of self-defense, particularly in response to an armed attack, but only “until the Security Council has taken measures necessary to maintain international peace and security.”

Thus to move from the careful constraints of the criminal justice process, which the FBI has been scrupulously observing, to the politics and diplomacy of using force against or at least within another state, means reaching beyond our borders. It means working with our allies and our former and sometime adversaries on the Security Council to devise and legitimate a collective response, just as we did in the Persian Gulf War. Should the Security Council balk, we must at least turn to NATO -- and on Wednesday, the 19 member countries agreed the alliance would support any U.S. response to the attacks.

Using force also means subjecting ourselves to the laws of war, to the strictures in the Geneva Conventions that are enshrined in our own military code of justice. That requires us to fight soldiers rather than civilians. We must harm those who have harmed us, and do so as directly as possible. The terrorists may not wear uniforms or represent a state, but their coordinated planning and militaristic actions lend them the status of soldiers.

These legal constraints are not designed to enshrine some utopian ideal. They make sound political sense. America has been singled out for harm, but fighting this evil effectively will require collective action and cooperation at many levels of government, from law enforcement to intelligence gathering to military support. And fighting consistently with the laws of war will ensure that we do not inflict indiscriminate terror in our turn.

These constraints also mean that this war cannot be fought like recent wars, or so-called interventions, with bombs dropped on targets seen only on computer screens. If this is indeed war, it will involve soldiers, sailors and pilots ready to put their lives on the line. Fighting a war on terrorism also means being ready to prove, consistent with the standards required in our own courtrooms, that our targets are in fact terrorists -- or their direct supporters.

Terrorism is a matter for the courts and prosecutors. War is up to our military forces. But which best describes what we face now? Last week, President Bush acknowledged the legal conundrum this new kind of war poses. “This government will adjust,” he said. We “will call others to join us, to make sure this act, these acts, the people who conducted these acts and those who harbor them, are held accountable for their actions.”

Rhetoric about “ending states” flies in the face of the international legal system. We should instead be affirming the values that make us strong. Our response must be as carefully crafted as the terrorists' attack.