

USAWC STRATEGY RESEARCH PROJECT

**PREEMPTIVE WARFARE – A VIABLE  
STRATEGIC OPTION**

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## ABSTRACT

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In the aftermath of September 11, 2001, the United States national military and security strategy has been shaped to address our vulnerabilities to asymmetric attacks posed by international terrorism and weapons of mass destruction. This paper will examine the specific wording included in the National Security Strategy, National Military Strategy, and National Strategy to Combat Weapons of Mass Destruction. Further, it will explore policy and strategy in regard to ends, ways, means, and associated risks to strategy development and implementation. Additionally, preemption will be discussed in terms of historical context, moral and legal aspects, and the current case of Iraq. The paper will conclude with a consideration as to why preemption must remain a viable option. Finally, it will provide recommendations for future legitimacy.



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## PREEMPTIVE WARFARE – A VIABLE STRATEGIC OPTION

In the aftermath of the terrorist attacks of September 11, 2001, the United States national military and security strategy began to take a new shape to address vulnerabilities to asymmetric attacks posed by international terrorism and weapons of mass destruction (WMD). During the State of the Union address in 2002, President Bush declared “I will not stand by while peril draws closer and closer. America will not permit the world’s most dangerous regimes to threaten us with the world’s most dangerous destructive weapons.”<sup>1</sup>

### EVOLUTION OF THE “BUSH DOCTRINE”

In June of the same year at the commencement address at West Point, the President explained the basis of the nation’s new strategy, “We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge.”<sup>2</sup> Thus, the policy of preemptive warfare emerged in what has been termed the “Bush Doctrine.”

This doctrine is articulated in the 2002 National Security Strategy (NSS):

And as a matter of common sense and self-defense, America will act against such emerging threats [WMD] before they are fully formed. In the new world we have entered, the only path to peace and security is the path of action.<sup>3</sup>

We will disrupt and destroy terrorist organizations by: defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. ...we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists....<sup>4</sup>

The United States National Military Strategy (2004) further stated “...the United States, its allies and its interests may necessitate actions in self-defense to preempt adversaries before they can attack.”<sup>5</sup> “The potentially horrific consequences of an attack against the United States demand action to secure the Nation from direct attack by eliminating certain threats before they can strike.”<sup>6</sup>

The National Strategy to Combat Weapons of Mass Destruction (December 2002) reiterated “U.S. military forces and appropriate civilian agencies must have the capability to defend against WMD-armed adversaries, including in appropriate cases through preemptive measures.”<sup>7</sup>

These national strategy documents clearly focus on emerging threats from terrorists, terrorist organizations, and WMD, while essentially voiding the strategies of deterrence and containment that worked during the Cold War against the former Soviet Union.<sup>8</sup> As has become so apparent, arms control negotiations and treaties cannot be solely relied on either since

nations and regimes seeking WMD will be the ones least likely to follow legal commitments. In that respect, Iraq, Iran, and North Korea come to mind.<sup>9</sup> While never specifically excluded from any former president's options, this marks the first time that preemption has been openly endorsed as national strategy.

The roots for this current strategy can be traced to a post-cold war foreign policy document of the early 1990s written by Zalmay Khalilzad, an assistant to Paul Wolfowitz, the Undersecretary of Defense for Policy. This policy envisioned a future where the United States backed and oversaw the world order. Collective security, relied on throughout the Cold War, would no longer remain a tenet of American strategic thinking. The new policy also focused heavily on WMD threats and proliferation with the idea of preempting impending attacks.<sup>10</sup>

### **ENDS, WAYS, AND MEANS**

The NSS began to lay the foundations of ends, ways, and means to support the national strategy. With a little scrutiny and extrapolation, the ends and ways are specified as defend the peace [end/objective] by fighting terrorists and tyrants [way/course of action]. The means might include the national power elements of military, legal, information, and intelligence options. Preserve the peace [end/objective] by building good relations among the great powers [way/course of action]. The means might include the national power elements of diplomatic, financial, and economic options. Extend the peace [way/objective] by encouraging free and open societies on every continent [way/course of action]. The means might include the national power elements of diplomatic, financial, and economic options. As noted, preemption is also espoused as a way or course of action that supports the first objective above. The means to conduct and support preemptive warfare involves the use of the military element of national power.

### **DEFINING PREEMPTIVE WARFARE**

By definition, "preemptive warfare involves the initiation of military action because an adversary's attack is believed to be imminent."<sup>11</sup> On the other hand, preventive war is defined as "warfare undertaken when a state sees its relative advantage declining, sees the inevitability of war, then chooses to initiate the war while it still maintains a perceived advantage."<sup>12</sup> From the perspective of the United Nations Charter, preventive warfare is clearly illegal and never justified.

The distinction between preemptive and preventive warfare is not always clear and the lines may blur at times. For example, WMD capability may become well developed before it is recognized as an "imminent threat," therefore less vulnerable to interruption and interdiction

before use. WMD programs are most vulnerable to successful interdiction when they are in the earliest stages of development, but then they may not be characterized as “imminent threats.” From the perspectives of international law and the court of world opinion, the current United States preemptive strategy must withstand the scrutiny of justifications for war encompassed in the United Nations Charter.

### **HISTORICAL PERSPECTIVES**

It should first be understood, however, that the idea of preemptive warfare is not new. Many have argued that preemption is unprecedented and against all principles that the United States has articulated as its core value system.<sup>13</sup> Yet, as far back as biblical times, the concept of preemption can be found. The Old Testament of The Bible articulates violence as a means to enforce justice and this is not substantively different than current day use in the international arena. The book of Exodus, (Chapter 22, Verse 2), allows that “if a thief is caught breaking in and is struck so that he dies, the defender is not guilty of bloodshed.” Broadly interpreted, this biblical judgment authorizes striking before being struck. The act of breaking in can be perceived as an immediate threat, therefore, the defender is justified to respond preemptively. Likewise, WMD capabilities greatly expand the space over which a threat can extend and the extent to which preemption may apply.

Consider other contemporary examples. Notable to the United States is the Cuban Missile Crisis of 1962. President Kennedy was fully prepared to conduct offensive military operations in order to destroy Soviet missiles located in Cuba; he implemented a “defensive quarantine” in advance of actual Soviet or Cuban use of force.<sup>14</sup> Although the United Nations Security Council debated the issue, there was no clear consensus on whether the United States had operated in opposition to the United Nations Charter.

The Six Day War of 1967 is another example of preemptive warfare. In June of that year, Israel initiated a preemptive strike against the United Arab Republic, which had been massing troops on its border areas in preparation for attack. Once again, the United Nations Security Council was divided on the legality of the action within the Charter framework.<sup>15</sup>

The United States has been involved in several other preemptive actions. These include the United States sponsored Bay of Pigs invasion in 1961, the invasion of Grenada in 1983, the invasion of Panama in 1989, the intervention in Haiti in 1994, and the combined NATO and United States actions against Yugoslavia in 1999. This list is not all inclusive; it could include other humanitarian and covert operations that are much less visible.<sup>16</sup>

## **MORAL AND LEGAL ASPECTS**

The legitimacy of preemption as a national strategy revolves around the fundamental issues of morality and legality. Customary international law which predates Chapter VII, Article 51 of the United Nations Charter, has always extended self-defense beyond an actual attack to an imminent threat.<sup>17</sup> Traditionally, it has also included the elements of necessity and proportionality; that is, there should be no other means to resolve the situation and the use of force does not exceed what is reasonable<sup>18</sup> These conditions, however, are not easily established. The more contemporary terminology of “anticipatory self-defense” often arises in analysis of preemptive actions.

Morality is generally determined by what has been termed “Just War Theory,” espoused by the United States Conference of Catholic Bishops in “The Challenge of Peace” statement. This statement cites seven conditions to be fulfilled in order to justify going to war.

First, the cause must be just. The most obvious “just cause” is defense against aggression, while another would be to stop grave violations of the basic rights of whole populations. Second, competent authority must be involved. War can only be waged by a legitimate government, with responsibility for keeping order. Third, there must be comparative justice. The values at stake must be sufficiently critical to override the presumption against killing, and when right is not all on one side, the injustice suffered by one party must significantly outweigh that suffered by the other. Fourth, right intention is necessary. Force may only be used for just reasons, such as to achieve peace and reconciliation. Fifth, the probability of success should be considered. No matter how just the cause may be, if resorting to arms will be futile, it is wrong to go to war. Sixth, proportionality is a necessary consideration. The expected costs of going to war, in terms of loss of life and destruction, must be outweighed by the good expected to be achieved. Finally, force must be a last resort. Only after all peaceful alternatives have been tried and exhausted should force be exercised.<sup>19</sup>

This framework, while noble in its aspirations, is very subjective and leaves much to interpretation. Many could argue as to whether or not the criteria had been met. Some would wish to appeal the decision making process to a higher authority. Others would say that there is no time to go through this laborious process given the nature of transnational terrorism, WMD, and the short amount of time to react.

As articulated in the NSS, terrorism and WMD have made the use of preemptive warfare both problematic and necessary to defend the homeland, surely a vital national interest. Contemporary asymmetric warfare is quite different from that envisioned by customary international law and the Just War Theory. Formerly, acts of aggression have taken place on a

large, conventional scale with customary procedures, allowing victimized parties the time and knowledge to prepare for battles.<sup>20</sup> When considering the nature of international terrorism and WMD, the distinction between actual and imminent attacks becomes much less clear, as in the case also of a chemical or biological attack.<sup>21</sup> It may take days, weeks, or months to determine that these weapons have been used as the horrible and catastrophic consequences emerge. A restrictive view of immediacy could eliminate any justifiable self-defense measures.<sup>22</sup>

In view of these new threats, the determining factor between legitimate and illegitimate first strikes is not an issue of imminent attack, but one of sufficient threat.<sup>23</sup> In the case of terrorism, if the acquisition of WMD cannot be prevented or deterred, preemptive force must be used. The mere possession of WMD by hostile non-state actors gives cause for direct action.<sup>24</sup> Again, the NSS vital interests include defending the nation and peace, denying sanctuary to terrorists, and resisting aggression, all of which justify preemptive warfare as a course of action to protect the nation while preserving the peace, the desired end-state.<sup>25</sup>

The search for an orderly, principled system of international law and practice is almost as old as conflict itself.<sup>26</sup> International law and the concept of self-defense were primarily shaped by the infamous Caroline case in 1837. During this time, Canada was under British rule and an anti-British insurrection was taking place. The British believed that a ship named the Caroline, owned by United States nationals, was supporting the insurrection. British soldiers boarded the ship at Fort Schlosser in New York, killed several Americans, and burned the ship.

United States Secretary of State Daniel Webster condemned the attack in a letter sent to the British Government. After various exchanges, both sides agreed that to act under self-defense and act preemptively as the British had done, the elements of necessity and proportionality must be met. In a contemporary effort to establish a workable system, the Charter of the United Nations was adopted. Chapter VII is most applicable to the discussion of preemption. Article 51 prompts the great debate on whether or not preemption is legal and states in part: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."<sup>27</sup>

On one side, some claim that the intent of this article was to explicitly limit the use of force in self-defense to circumstances in which an armed attack has actually occurred. But according to this interpretation, preemption would be unlawful in any form. A state would have to have sustained an armed attack before it could respond.<sup>28</sup> This makes no sense, particularly when one considers the range of destruction and devastation in the wake of a WMD attack. Theoretically, a state must suffer total annihilation and never be in a position to respond.

Others reject this interpretation and argue instead that the Charter intent was never meant to restrict preexisting customary international law and the right of anticipatory self-defense. It can also be reasonably claimed that the reference to an "inherent right" is in keeping with the customary right of anticipatory self-defense. Stephen Schwebel, the U.S. judge on the International Court of Justice, noted in his dissent in *Nicaragua v. U.S.*, Article 51 does not say "if and only if, an armed attack occurs."<sup>29</sup> In any case, the language is ambiguous and subject to much interpretation and varied practice.

Under the Bush Doctrine, issues of imminent threat and just cause can be viewed with many criteria such as the enemy being controlled by a despotic ruler with a record of aggression and threatening directly or through proxies, neighboring people or nations. Also, the enemy seeks weapons of mass destruction to use against or threaten others, but is stoppable now, and delaying attack only increases the cost of action later. Additionally, the enemy is unresponsive to persuasion, negotiation, deterrence, or conciliation.<sup>30</sup>

More contemporary issues that challenge Article 51 might include whether a state fighting a war on terrorism must declare war on another state and whether states can declare war on non-state actors such as transnational terrorists. Further, regime change as part of preemption to deny WMD proliferation may be considered a proportional response. Also, the ability of a state to violate another state's sovereignty while pursuing WMD along with the usefulness of the current United Nations Charter are questions to be resolved.<sup>31</sup>

#### **THE CASE OF IRAQ**

The current United States war in Iraq presents the most recent and ongoing example of preemptive warfare. It could be reasonably argued that the war was simply an extension of previous United Nations resolutions and sanctions from the First Gulf War of 1991 and therefore not a new or preemptive war. Since the Iraqis had fired on coalition aircraft numerous times since the cease fire agreement, the war was still ongoing. However, the concept and strategy, as well as a course of action for the United States to attain national objectives, is worth examining as an example of preemption.

Opponents of the war claim that it was illegal and was simply a means to create regime change, therefore, not in compliance with the requirements of the United Nations Charter, specifically Article 51. Others claim that the war did not meet the necessity and proportionality elements of anticipatory self-defense, nor was there approval from the United Nations Security Council. United Nations Secretary General Kofi Annan declared the war illegal based on the

United Nations Charter, which requires Security Council approval before any nation goes to war or strikes preemptively.<sup>32</sup>

Proponents of the war cite intelligence that demonstrated Saddam Hussein possessed stockpiles of WMD, therefore, an imminent threat existed. They also claim links between Iraq and the terrorist organization al – Qaida. Both of these assertions have since proven to be questionable or false. There is no doubt that at one time Iraq possessed WMD, but opponents of the war now claim that inspections, sanctions, and diplomacy worked to rid Iraq of those weapons. They further claim that the connection between al – Qaeda and Iraq was nebulous at best.

In an USA Today article, George A. Lopez rather succinctly observed, “This preemptive war [Iraq] has skewered the United Nations, bred resentment among our allies and overburdened our resources. Moreover, the failure to find prohibited weapons in Iraq should embarrass a U.S. Congress that surrendered its war powers responsibility to presidential preemptive logic.”<sup>33</sup>

### **THE CASE FOR PREEMPTION**

There can be little argument that in certain situations, particularly in regard to terrorism and WMD, preemption must remain a viable option. The evolution of modern weapons and nature of terrorism heighten the need for anticipatory self-defense.<sup>34</sup> With the availability and portability of various types of WMD, there is a very real possibility of an attack within the borders of the United States. The time required to avert such an attack would have to be reduced to days or hours rather than months. This limited reaction time, along with the destructive magnitude of such weapons and porous borders, combine to make preemption a necessity.<sup>35</sup> The United States has been, and will continue to be, the target of ongoing and consistent attacks by international terrorists who seek to destroy the country.<sup>36</sup>

In order to achieve national objectives and protect vital interests, preemptive warfare is but one course of action or way to do so. The concept of preemption as defined in the NSS is not a new concept, but one that has reemerged to meet the challenges and threats of a new world order. Globalization has made it much simpler and easier for transnational terrorists to acquire and potentially use WMD against the United States. In response to this threat, preemption must remain a viable option. Consider the following identified threats from Vice Admiral Jacoby’s statement to the Senate Armed Services Committee:

Al-Qaida and other terrorist groups remain interested in acquiring Chemical, Biological, Radiological and Nuclear (CBRN) weapons. ...There is continuing terrorist interest in acquiring and using WMD, especially biological, chemical, and radiological weapons. ...DIA believes the number of weapons in China, India, Pakistan, and North Korea will grow. We are also concerned about Syrian interest in nuclear technologies that could support a weapons program. ...Contributing to the threat is potential development of new agents with toxicities exceeding those of traditional agents. ...These weapons are easier to develop, hide, and deploy than nuclear munitions. ...Kim Chong-il believes the speed and success of Operation Iraqi Freedom (OIF) underscores the ineffectiveness of the North's [North Korea] conventional forces and the value of nuclear weapons.<sup>37</sup>

When the world is examined realistically, it is fair to say that there are more than the five traditionally known states with nuclear capability. The United States must be prepared to preempt such threats if traditional means such as diplomacy fail to deter adversaries. There can be no greater strategic imperative or morally defensible argument than for the United States, its allies, and the global community at large, to preclude the use of such weapons against innocent civilians and communities.<sup>38</sup> In his article, "Preemption in the War against Terrorism," Abraham Sofaer stated:

The importance of preemption as a part of our national strategy should not be underestimated....The historical record indicates very strongly that most terrorist attacks on the US can be anticipated and prevented well before they occur if the President uses preemption rather than attempts to anticipate exactly where and when each attack will take place.<sup>39</sup>

## **RISK**

All evidence indicates that interpretation and application of the U.N. Charter in respect to preemption is subject to many parochial views. Even so, preemptive warfare creates inherent global risks since many nations possess WMD. Some nations will continue to harbor terrorists and provide sanctuary to terrorist organizations. In short, the proliferation of WMD and the global dispersion of terrorists seem to offer threatened nations nearly unlimited justification for preemptive strikes. These risks are directly associated with the ends, ways, and means framework expressed in the NSS.

China could rightfully use the American example and rhetoric to invade Taiwan. The Russians could decide to move into Georgia; indeed they have announced that they will strike terrorist bases in any region of the world in response to the recent terrorist attack in Beslan. Colonel-General Yuri Baluyevsky, Chief of the Russian General Staff declared "as for carrying out preventive strikes against terrorist bases, we will take all measures to liquidate terrorist

bases in any region of the world.<sup>40</sup> Israel might determine that preemptive strikes against Palestine or surrounding Arab countries are justified.

While the United States is accusing Iran of pursuing nuclear arms through the guise of civilian nuclear power generation, the Iranian Defense Minister recently stated, "We won't sit with our hands tied and wait until someone does something to us. ...Some military leaders in Iran are convinced that the pre-emptive measures that America is talking about are not their right alone."<sup>41</sup> Some believe that the threat of American preemption cause nations pursuing WMD to move more quickly and secretly. India might use America's example to attack President Musharraf of Pakistan over the Kashmir region or seek to destroy Pakistan's WMD. What could the United States then say – "well done?"<sup>42</sup>

## **RECOMMENDATIONS**

The United States must retain and refine several elements of national power to protect itself and its vital interests while providing greater legitimacy for preemptive warfare. The military, diplomatic, legal, and intelligence elements require the most attention. The military element must continue the process of transformation in order that the United States maintain the capability to strike targets precisely and rapidly while minimizing collateral damage and demonstrate the recognition of proportionality. United States counterterrorist actions must be cognizant of anticipatory self-defense issues and Just War theory.

Continual development of capabilities that quickly permit the identification, targeting, and destruction of targets that are both fixed and mobile is essential. Even the development of low-yield nuclear weapons may enhance the ability to strike targets located below ground in hardened facilities that heretofore were inaccessible with conventional weapons. Policy makers will simply have to decide if the threat is great enough to accept the risk of collateral release from such weapons. The increased ability to strike such targets will begin to minimize the advantage some adversaries may have gained from United States complacency pre 9/11.<sup>43</sup>

On the diplomatic front, the United States must commit the time and effort to dissuade potential adversaries from pursuing WMD acquisition and undertaking offensive actions. This can be accomplished with a series of escalating steps, time permitting. These steps may include negotiation, coalition and consensus building, signaling, intimidation, recalling ambassadors, and breaking diplomatic relations. Former Secretary of State Dr. Henry Kissinger urged diplomacy to offset possible second order effects and warned "it is not in the American national interest to establish preemption as a universal principle available to every nation."<sup>44</sup>

An additional step that can be undertaken is specified in a task force report by the Council on Foreign Relations. "Above all else, the United States needs a system of public diplomacy that is able to reach key decision-makers and ordinary citizens abroad more effectively. It is no longer enough to speak only through official diplomatic channels; America must be able to speak directly to foreign publics."<sup>45</sup> By leveraging diplomacy with the people and nations of the world, the United States gains legitimacy in its actions while enticing others to participate in a multinational approach which is a key component in legitimizing preemption.<sup>46</sup>

The legal element currently deserves the most attention since the ambiguity and many interpretations of the United Nations Charter have created a perception of United States unilateralism. The United Nations is ensnared in an outdated, consensually based international legal structure with imprecise concepts that have not kept pace with present-day threats and realities.<sup>47</sup> The United Nations Security Council has never clarified exactly what constitutes appropriate and necessary self-defense under the provisions of the Charter.<sup>48</sup> There should, however, be no doubt about the legal ability of the Security Council to address and respond militarily to anything it deems a threat to international peace and security under Chapter VII of the Charter, including internal issues of a sovereign nation.<sup>49</sup> The Security Council is the only body with universal membership empowered by international law to act, with military action if necessary, to deter and defeat threats to international order and prosperity.<sup>50</sup>

Unfortunately, the United Nations has consistently shown that it is impotent and inept at addressing and responding to a clearly defined crisis. This has been evident in situations like Rwanda in 1994, the current situation in the Darfur region of Sudan, and its complicity in the Oil for Food Program scandal involving Iraq. The United Nations must understand its role in world affairs and acknowledge that a new type of warfare with weapons of unimaginable consequences has evolved. These new threats require flexible guidance and interpretation for the justifiable and legitimate invocation of Article 51.<sup>51</sup> Passing resolution after resolution is no substitute for action.

United Nations Secretary General Kofi Annan indicated in an address to the General Assembly that the Security Council needed to be expanded to better reflect and respond to globalization issues including guidelines for authorizing preemptive military attacks.<sup>52</sup> He went on to further state:

...But it [The U.N.] needs change – perhaps radical change – if it is to meet the challenges to come....because of globalization we live in a world of interconnected threats and mutual vulnerability between rich and poor and weak and strong....It is hardly possible to overstate what is at stake, not only for this organization but for all the peoples of this world, for whose safety this organization was created.<sup>53</sup>

In his article "When Is It Right to Fight?" Gareth Evans stated:

While it is obviously optimal for any military action to be both unquestionably legal under international law and more or less universally accepted as legitimate (as was the case, for example, with the 1991 Gulf War), it is fair to suggest that military action which is technically illegal but widely perceived to be legitimate (as with Kosovo in 1999) does far less damage than action which is generally perceived to be neither legal nor legitimate (Iraq 2003)....If there is general confidence that Security Council decisions on the use of force will be made for the right reasons, giving attention to the full range of threats with which major countries are currently preoccupied...then those who are currently tempted to bypass the system will be much less tempted to do so....<sup>54</sup>

He further proposed five criteria of legitimacy the Security Council might use when considering a claim of self-defense under Article 51 or the use of force authorized by the U.N. under Chapter VII of the Charter. First, based on the seriousness of the threat, is the threatened harm to state or human security of a kind, and sufficiently clear and serious, to prima facie justify the use of military force? Second, is there a proper purpose and is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved? Third, is it a last resort and has every non-military option for meeting the threat in question been considered, with reasonable grounds for believing lesser measures will not succeed? Fourth, are proportional means employed and is the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question? Fifth, have the balance of consequences been considered and is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?<sup>55</sup>

Finally, the United States national intelligence system must be reorganized to better anticipate and predict threats to the national interests identified in the NSS. The failure of intelligence to accurately determine the nature and scope of the Iraqi weapons program gave impetus to the President to lead the nation into a war with Iraq. The subsequent failure to locate WMD in Iraq has totally undermined the strategy of preemption and credibility in the world. The United States will be unable to determine what threats are legitimate and imminent without good intelligence-gathering activities. Otherwise, the element of necessity will not be demonstrable or provable.<sup>56</sup> Further, Vice Admiral Lowell E. Jacoby, U. S. Navy, Director of the Defense Intelligence Agency, stated to the Senate Armed Services Committee in February of 2004 that "we must mitigate the impact of surprise by devoting resources to broad situational awareness and quickly generate needed intelligence on any security issue as disturbing trends or opportunities are identified."<sup>57</sup>

The proliferation of WMD and related technologies present several distinct challenges to the intelligence community. First, there is improved deception and denial efforts by would be proliferants. Second, increasing access to dual-use technologies effectively mask proliferant's intentions. Third, the availability of expertise from which proliferants can advance WMD and missile programs is growing. Finally, the pace of technological progress is accelerating as information and advanced technologies become increasingly available worldwide.<sup>58</sup>

The 9/11 Commission Report recommendations have provided a good start, but intelligence problems must be met with resolve and commitment to legitimate preemptive warfare. Understanding an adversary capability is much easier than determining their targets and timing for an attack. It is hoped that intelligence reform will provide improved collection and analysis efforts to preclude terrorist attacks against the U.S., allies, and interests around the world; however, even the best efforts are prone to failure at the worst possible time. The use of WMD against the United States homeland must never be dismissed. States with the greatest proclivity towards proliferation are many times the ones with closed or restrictive societies that make actionable intelligence difficult to come by. The United States must be prepared to act with little warning when a threat becomes imminent.<sup>59</sup>

## **CONCLUSION**

To control and synchronize the use of preemptive warfare, the United Nations must assert its leadership in providing the legal framework and legitimating authority for preemption. Unless and until it does so, the United States will have no choice but to act unilaterally when the homeland is threatened, thereby giving other nations the impetus to also act preemptively. The United States must encourage, cajole, prod, or otherwise assist the United Nations in asserting its rightful role in defining the proper application and control of preemptive warfare.

The United Nations must work towards redefining "imminent threat" in the post-September 11 world as globalization forces a convergence between all nations. The capabilities and intent of current day adversaries must be taken into account. Rogue and failed states with access to WMD are becoming the norm. Traditional deterrence may no longer be possible.<sup>60</sup> Time and space prior to an attack are not always discernible and may bring into question the element of imminence and the amount of time to react.<sup>61</sup> The operational implications of new strategic approaches, along with international law, norms, and alliances, must evolve in a way that protects and defends populations world wide while giving legitimacy to preemptive actions taken under the timely and legal authorization of the United Nations.<sup>62</sup> This is captured in the rather

astute statement that “the world is a dangerous place to live, not because of the people who are evil, but because of the people who don’t do anything about it!”<sup>63</sup>

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## ENDNOTES

<sup>1</sup> James Mann, *Rise of the Vulcans* (New York: Penguin Group, 2004), 327.

<sup>2</sup> Ibid.

<sup>3</sup> George W. Bush, *The National Security Strategy of the United States of America* (Washington, D.C.: The White House, September 2002), 2. (Hereafter cited as NSS)

<sup>4</sup> Ibid., 6.

<sup>5</sup> Richard B. Myers, *National Military Strategy of the United States of America* (Washington, D.C.: The White House, 2004), 2.

<sup>6</sup> Ibid., 11-12.

<sup>7</sup> George W. Bush, *National Strategy to Combat Weapons of Mass Destruction* (Washington, D.C.: The White House, December 2002), p. 3.

<sup>8</sup> Mann, 200.

<sup>9</sup> Larry Wortzel, "Arms Control, Deterrence, and Preemption in the Fight against Proliferation," *Hampton Roads International Security Quarterly*, no. 4 (2004): 26.

<sup>10</sup> Mann, 199-200.

<sup>11</sup> D. Robert Worley, *Waging Ancient War: Limits on Preemptive Force* (Carlisle Barracks, PA: Strategic Studies Institute, U.S. Army War College, 2003), vii.

<sup>12</sup> Ibid.

<sup>13</sup> Joyce Appleby and Ellen Carol Debois. "War Issue Imperils Constitution," *Los Angeles Times*, 17 September 2002, 13.

<sup>14</sup> Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," in *Reshaping Rogue States*, ed. Alexander T. J. Lennon and Camille Eiss (Cambridge, MA: The MIT Press, 2004), 25.

<sup>15</sup> Ibid., 26.

<sup>16</sup> Ibid., 33.

<sup>17</sup> Gareth Evans, "When Is It Right to Fight?" *Survival* 46 (Autumn 2004): 64.

<sup>18</sup> Matthew Scott King. "The Legality of the United States War On Terror: Is Article 51 A Legitimate Vehicle for the War in Afghanistan or Just a Blanket To Cover-Up International War Crimes?" available from <<http://www.nsulaw.nova.edu/stuorgs/ISLAJournal/9-2/King-pdf>>; Internet; accessed 1 October 2004.

<sup>19</sup> Peter Singer, *The President of Good and Evil: The Ethics of George W. Bush* (New York: Penguin Group, 2004), 147-148.

<sup>20</sup> King, 473.

<sup>21</sup> Ibid., 475.

<sup>22</sup> Ibid., 473.

<sup>23</sup> Michael Walzer, *Just and Unjust Wars* (New York: Basic Books-Perseus Books Group, 1977), 27.

<sup>24</sup> Worley, 28.

<sup>25</sup> NSS, 1-2.

<sup>26</sup> Evans, 64.

<sup>27</sup> United Nations, "Charter of the United Nations," available from <<http://www.un.org/Overview/charter>>; Internet; accessed 1 October 2004.

<sup>28</sup> Arend, 23.

<sup>29</sup> Ibid., 23.

<sup>30</sup> Franklin Eric Wester, "Preemption and Just War: Considering the Case of Iraq," *Parameters* 4 (Winter 2004): 35.

<sup>31</sup> Joanne M. Fish, Samuel J. McCraw, and Christopher J. Reddish, *Fighting in the Gray Zone: A Strategy to Close the Preemption Gap*, Carlisle Papers in Security Strategy (Carlisle Barracks: U.S. Army War College, September 2004), 3.

<sup>32</sup> Colum Lynch, "U.S. Allies Dispute Annan on Iraq War," 17 September 2004; available from <<http://www.washingtonpost.com/ac2/wp-dyn/A25685-2004Sep16.htm>>; Internet; accessed 19 September 2004.

<sup>33</sup> George A. Lopez, "Move Past Pre-emption," 12 January 2004; available from <[http://www.keepmedia.com/jsp/article\\_detail\\_print.jsp](http://www.keepmedia.com/jsp/article_detail_print.jsp)>; Internet; accessed 15 September 2004.

<sup>34</sup> King, 481.

<sup>35</sup> Fish, 3.

<sup>36</sup> King, 480.

<sup>37</sup> Jacoby, 4-10.

<sup>38</sup> Jason D. Ellis, "The Best Defense: Counterproliferation and U.S. National Security," in *Reshaping Rogue States*, ed. Alexander T.J. Lennon and Camille Eiss (Cambridge, MA: The MIT Press, 2004), 69.

<sup>39</sup> Abraham D. Sofaer, "Preemption in the War against Terrorism," *Hampton Roads International Security Quarterly*, no. 4 (2004): 20.

<sup>40</sup> "Accidental Blast Blamed in Russia," *Carlisle (PA) Sentinel*, 8 September 2004, sec. A, p. 3.

<sup>41</sup> Reuters, "Iran May Pre-Empt Any Attack on Nuke Program," 20 August 2004; available from <<http://news.yahoo.com/news?tmpl=story&cid.html>>; Internet; accessed 15 September 2004.

<sup>42</sup> Richard Reeves, "The Bush Doctrine: Might Makes Right," 11 October 2002; available from <[http://www.keepmedia.com/jsp/article\\_detail\\_print.jsp](http://www.keepmedia.com/jsp/article_detail_print.jsp)>; Internet; accessed 15 September 2004.

<sup>43</sup> Jason D. Ellis, "The Best Defense: Counterproliferation and U.S. National Security," in *Reshaping Rogue States*, ed. Alexander T.J. Lennon and Camille Eiss (Cambridge, MA: The MIT Press, 2004), 65.

<sup>44</sup> Henry Kissinger, "Consult and Control," *The Washington Post*, 12 August 2002, sec.B, p.1.

<sup>45</sup> Council on Foreign Relations Task Force Report, *Finding America's Voice: A Strategy for Reinvigorating US Public Diplomacy* (New York: Council on Foreign Relations, 2003), 26.

<sup>46</sup> Fish, 16.

<sup>47</sup> *Ibid.*, 3.

<sup>48</sup> King, 469.

<sup>49</sup> Evans, 68.

<sup>50</sup> *Ibid.*, 72.

<sup>51</sup> King, 481.

<sup>52</sup> Edith M. Lederer, "Kofi Annan Warns Members Must Reform U.N.," 8 December 2004; available from <<http://story.news.yahoo.com/news?tmpl=story&cid.html>>; Internet; accessed 8 December 2004.

<sup>53</sup> *Ibid.*

<sup>54</sup> Evans, 74-75.

<sup>55</sup> *Ibid.*, 75.

<sup>56</sup> "Rethinking Preemptive War," 16 February 2004; available from <[http://www.keepmedia.com/jsp/article\\_detail\\_print.jsp](http://www.keepmedia.com/jsp/article_detail_print.jsp)>; Internet; accessed 15 September 2004.

<sup>57</sup> Lowell E. Jacoby, *Current and Projected National Security Threats to the United States*, A Statement For the Record presented to the Senate Armed Services Committee, 26 February 2004, 1.

<sup>58</sup> Ellis, 59.

<sup>59</sup> Ibid., 59-64.

<sup>60</sup> Wester, 24.

<sup>61</sup> Ibid., 37.

<sup>62</sup> Francois Heisbourg, "A Work in Progress: The Bush Doctrine and Its Consequences," in *Reshaping Rogue States*, ed. Alexander T.J. Lennon and Camille Eiss (Cambridge, MA: The MIT Press, 2004), 18.

<sup>63</sup> Albert Einstein, quoted in National War College Student Task Force on Combating Terrorism, *Combating Terrorism in a Globalized World* (Washington, D.C.: National War College, 2002), vii.

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