

USAWC STRATEGY RESEARCH PROJECT

From Anticipatory Counterattack to Anticipatory Self-Defense –  
The Past, Present, and Future of Preemption

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## ABSTRACT

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Statements by the current United States administration and its September 2002 *National Security Strategy of the United States of America* reflect that containment and deterrence are no longer considered reliable strategic options for United States security because they fail to counter the use of weapons of mass destruction by rogue states and terrorist groups. In place of containment and deterrence, the administration identified a policy of preemption as a strategic alternative for responding to and countering such threats. Shifting from a policy of containment and deterrence to a policy of preemption presents issues, concerns, and second order effects a state must take into account before preemptively striking other nation states or their non-state allies in today's international environment. This research paper explores these issues, concerns, and effects through an examination of the concept of preemption. It begins by defining preemption in general terms through the works of selected authors, international law, and the Charter of the United Nations. To further assist in understanding preemption as a strategic security strategy, the paper looks at selected historical examples where preemption was used or considered for use in differing environments as a security strategy. It then provides a comprehensive definition of preemption and discusses hidden consequences associated with a policy or employment of preemptive force. This text closes with thoughts relative to the future of preemption as a national security strategy for the United States.



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## FROM ANTICIPATORY COUNTERATTACK TO ANTICIPATORY SELF-DEFENSE – THE PAST, PRESENT, AND FUTURE OF PREEMPTION

The first questions asked when states go to war are also the easiest to answer: who started the shooting? Who sent troops across the border? These are questions of fact, not judgment, and if the answers are disputed, it is only because of the lies that governments tell. The lies don't, in any case, detain us long; the truth comes out soon enough. Governments lie so as to absolve themselves from the charge of aggression. But it is not on the answers to questions such as these that our final judgments about aggression depend. There are further arguments to make, justifications to offer, lies to tell, before the moral issue is directly confronted. For aggression often begins without shots being fired or borders being crossed.<sup>1</sup>

– Michael Walzer, *Just and Unjust Wars*

Push back in time to the year 1954; five years after the Soviet Union first developed a nuclear weapons capability that ended the United States' monopoly as the sole nuclear power. The United States President is Dwight D. Eisenhower, the First Secretary in Russia is Nikita S. Khrushchev, and the possibility of the use of weapons of mass destruction against the United States, specifically nuclear weapons, is considered an increasing reality. In the minds of America's leadership during this early period of the Cold War, and before the theory of Mutually Assured Destruction (MAD) was conceived, "preemption – or an 'anticipatory counterattack' in SAC jargon – was recognized in Air Force doctrine and in the nation's declared policy on nuclear weapons to be morally justified and even a militarily necessary response to the enemy's preparations for war."<sup>2</sup> In fact, as a means to thwart the use of weapons of mass destruction against the United States, preemption was already being considered as a strategy within the National Security Council document #68 (NSC-68) in April of 1950. "Though it had rejected preventive war, NSC-68 acknowledged the need to be 'on the alert in order to strike with our full weight as soon as we are attacked, and if possible, before the Soviet blow is actually delivered.'"<sup>3</sup>

NSC-68 recognized that the Soviet Union had aircraft capable of delivering a nuclear weapon against key targets in the United States. It also identified "1954 as the year of maximum danger, 'for the delivery of 100 atomic bombs on targets in the United States would

seriously damage this country.”<sup>4</sup> Now fast forward from the policies of the past and threats posed by weapons of mass destruction in the 1950’s to today’s strategies and threats posed by weapons of mass effects in the early years of the twenty-first century. Because it is here that the concept of preemption found in U.S. President George W. Bush’s *National Security Strategy* of September 2002, which has been described in various sources as the most profound modification to U.S. foreign policy in the last 50 years, is beginning to take shape.<sup>5</sup>

During the first month of 2002, as President Bush delivered his State of the Union Address, he branded North Korea, Iran, and Iraq as the “axis of evil.”<sup>6</sup> He further identified the “axis of evil” and their terrorist allies as regimes “arming to threaten the peace of the world” and as regimes that “pose a grave and growing danger” [to the United States].<sup>7</sup> He declared that these regimes were sponsors of terror and that they must be prevented from threatening the United States and its allies with weapons of mass destruction. With a determination reflective of President Eisenhower almost 50 years earlier when faced with a potential threat of Soviet nuclear aggression, President Bush avowed in his address that “the United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most destructive weapons” and that he “will not wait on events, while dangers gather.”<sup>8</sup>

This message was further expanded upon during a speech President Bush delivered to the US Military Academy in June of 2002. During this speech President Bush maintained a focus on a threat posed by adversaries seeking to acquire and use ballistic missile technology and weapons of mass destruction against the United States and its allies. He reflected that “our enemies have declared this very intention, and have been caught seeking these terrible weapons.”<sup>9</sup> He further pointed out that deterrence and containment were not reliable options to counter terrorism, and that we must be ready to take “preemptive action” in the defense of liberty and life.<sup>10</sup>

The message that the United States was intent on acting, preemptively if necessary, against terrorist networks and regimes that sponsor terrorist with weapons of mass destruction or weapons of mass effects was further codified in September of 2002 with the release of *The National Security Strategy of the United States of America*. Within this published National Security Strategy, there is an unmistakable focus on stopping “rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States.”<sup>11</sup> The broad based courses of action to be employed in support of this objective go beyond counter proliferation, nonproliferation, and consequence management preparation. The

administration's stated courses of action clearly include a policy of anticipatory self-defense and preemptive military strikes.

Unlike the Clinton presidential administration's idealist approach to countering terrorism through engagement and general disarmament initiatives, collective security and military alliances, expanded and mutually dependent foreign trade, and foreign aid programs, the new Bush administration has taken on a realist approach. The current administration's *National Security Strategy* has a war focus that has identified a path to peace and security based on acting against "emerging threats before they are fully formed."<sup>12</sup> The Bush administration recognizes that rogue states and non-state actors are willing to take extreme steps in their struggle for power. To counter the threat these states and actors pose to the United States and the international community, the administration is willing to use armed intervention, coercive power, and unilateral military action.

At this point in time much remains unknown as to what will result from the administration's policy stance of anticipatory self-defense and preemptive military strikes. However, with preemption being identified as the U.S. policy answer to counter the use of weapons of mass destruction by rogue states and their terrorist clients, examining this concept from a legal and historical perspective can provide an appreciation for situations where the concept could be justifiably employed in today's international environment. Furthermore, with the United States holding a leadership role in world affairs as challenging as its role in the Cold War, a look at the history of the preemption can assist in understanding the present and future consequences of such a policy. The goal of this analysis is focused on providing an awareness of the issues, concerns, and second order impacts a state must take into account before preemptively striking other nation states or their non-state allies.

Accordingly, this paper will begin by defining preemption in general terms through the works of selected authors, international law, and the Charter of the United Nations. To further assist in understanding preemption as a strategic security strategy, this paper will look at selected historical examples where preemption was used in differing environments as a security strategy. The paper then provides a comprehensive definition of preemption and discusses hidden consequences associated with a policy or employment of preemptive force. This text closes with thoughts relative to the future of preemption as a national security strategy for the United States.

## PREEMPTION DEFINED

Defining the concept of preemption is necessary to understand exactly what the term means and how it differs from a preventive attack, a phrase sometimes incorrectly used in the place of preemption. Providing a basic definition also establishes a baseline for further discussions and analyses of the concept. In his 1982 book *Surprise Attack*, Richard Betts points out that a “preemptive attack is designed to seize the initiative upon receipt of strategic warning that the enemy is preparing an attack of his own.”<sup>13</sup> It is an attack that “occurs when both parties see war coming, but one jumps the gun in order to gain a military edge.”<sup>14</sup> On the other hand, he also asserts that “preventive war is waged in anticipation of eventual vulnerability, not against immediate threats, and is designed to engage the enemy before he has improved his capabilities.”<sup>15</sup> “Basic to a decision to engage in preventive war is the prediction that the potential military strength of one’s own state is declining in comparison with the military strength of the enemy,’ and the belief that all other options for averting the threat to security have been exhausted.”<sup>16</sup> Richard Betts further qualifies his distinctions between a preemptive and a preventive attack in a 1986 article published in *International Security*, noting that “a preemptive strike is one made in immediate anticipation of enemy attack; a surprise attack against an enemy who is not yet preparing his own attack may be *preventive*, but not preemptive.”<sup>17</sup>

Alternatively, Michael Walzer, in his book *Just and Unjust Wars*, places preemptive strikes and preventive war on two different ends of a “spectrum of anticipation.”<sup>18</sup> He uses the line of reasoning of Secretary of State Daniel Webster in the *Caroline* case of 1842 to explain that “in order to justify pre-emptive violence...there must be shown ‘a necessity of self defense ... instant, overwhelming, leaving no choice of means, and no moment of deliberation’”<sup>19</sup> Walzer does explain that this characterization of preemption is at one end of his spectrum of anticipation and not particularly useful when considering if a threat is imminent because “there is often plenty of time for deliberations, agonizing hours, days, even weeks of deliberation, when one doubts that war can be avoided and wonders whether or not to strike first.”<sup>20</sup> Essentially, the longer a state takes to deliberate on the nature of the threat and the more distant the danger becomes, the more foresight and free choice a state is provided and the more a state stretches to the other end of Walzer’s “spectrum of anticipation” and into the realm of preventive war. In explaining the difference between preemptive attacks and preventive war, it appears Walker uses a notion of time to distinguish between the two concepts. Essentially, “preventive war looks to the past and the future,” while preemption may be more directly tied to threats of the

present.<sup>21</sup> In either case, be it preemption or preventive war, Walzer appears to consider anticipatory action in the form of military force appropriate when faced with a threat of war and a situation where inaction magnifies the risk to a nation.

A more recent definition of preemption can be drawn from a *Congressional Research Service (CRS) Report for Congress* on the topic of preemptive military force published in September of 2002. In the CRS report, a preemptive use of military force is referred to as the taking of military action by one nation against another nation so as to prevent or mitigate a presumed military attack or use of force by that nation against the other nation.<sup>22</sup> However, when this characterization of preemption is compared against Betts' definition of a preemptive attack or Walzer's discussions of preemption with respect to his "spectrum of anticipation," it becomes evident that description used in the CRS report lacks the sharpness needed to separate a preventive action from a preemptive action.

The CRS definition, like the definitions associated with Betts and Walzer's preemptive and preventive actions, shares a feature of anticipation or presumption of a threat of warfare by one party that compels the threatened party to respond. However, the CRS definition does not highlight the difference in the nature of the threat of war that is associated with Betts and Walzer's preemptive and preventive actions. In the case of Betts and Walzer's preemption, the threat of war is linked with an impending or imminent attack highlighted by a strategic or unambiguous warning that requires an immediate response to ensure a level of success and state survival. In the case of a Betts and Walzer's preventive war, the threat of war is based on a perceived increase in the threat's future capability that will unhinge the current balance of power to the detriment of the threatened party unless some action is taken in the future to maintain the balance.

With consideration of Betts' distinct definitions of a preemptive and preventive attack, Walzer's "spectrum of anticipation," and the general features associated with the CRS definition of a preemptive use of military force, we can formulate a general description of preemption. For our purposes at this point, preemption will be characterized as *the exercising of a use of force against a perceived imminent threat to state survival in a situation where time is limited*. This initial description will be further developed through discussions of international law, the Charter of the United Nations, and historic events.

## **INTERNATIONAL LAW RELATED TO PREEMPTIVE ACTION**

International law provides an additional means to refine a definition of preemption and understand the conditions for its application as a justifiable security strategy. It is appropriate to

note here that a quick search of the Internet or a review of various news papers can produce innumerable articles reflecting both negative and positive viewpoints on the Bush administration's reasoning for a preemption strategy. For example, an article in *The Statesman* asserts that the administration's basic reasoning for preemptive policy ignores, amongst many things, concepts of "national sovereignty, international law, and multinational negotiation."<sup>23</sup> Even an article in the *Financial Times* characterizes the Bush administration's decision to act preemptively as short-sided and counter to the long term benefit of America's national interest.<sup>24</sup> Yet, other articles reflect that "preemption, defined as the anticipatory use of force in the face of an imminent attack, has long been accepted as legitimate and appropriate under international law."<sup>25</sup> This portion of this paper primarily focuses on articles, Internet searches, and texts with a link to international law that are in support of a right of preemptive military attacks.

Prior to the formation of the United Nations and the approval of its charter, international law recognized the right of a nation-state to independently and offensively use force, and if deemed necessary, to wage war. "As one scholar summarized: It always lies within the power of a State to endeavor to obtain redress for wrongs, or to gain political or other advantages over another, not merely by the employment of force, but also by the direct recourse to war."<sup>26</sup> Conversely, the use of power and force for defensive purposes, to forestall an attack, for self-protection, and as a means of self-defense is clearly recognized within classical international law. For example, within Volume 1 of *International Law Chiefly as Interpreted and Applied by the United States*, Charles Hyde states:

"An act of self-defense is that form of self-protection which is directed against an aggressor or contemplated aggressor. No act can be so described which is not occasioned by attack or fear of attack. When acts of self-preservation on the part of a State are strictly acts of self-defense, they are permitted by the law of nations, and are justified on principle, even though they may conflict with the ... rights of other states."<sup>27</sup>

It is important to note and highlight that this quote points out that force used for self-defense or self-protection can be used against a "contemplated aggressor" and when there is a "fear of attack." In essence, Hyde's statements recognize the right of a state to use force preemptively in anticipation of being attacked. Even Elihu Root, a US Secretary of War and Secretary of State, and one of the founders of the American Society of International Law, declared in 1914 that it is "the right of every sovereign state to protect itself by preventing a condition of affairs in which it will be too late to protect itself."<sup>28</sup>

Similar rights related to the use of preemptive force were captured in law related publications as early as 1625 and 1758. In a 1625 manuscript identified as *Book II of The Law of War and Peace*, Hugo Grotius, the father of international law, points out that self-defense is not limited to an actual attack, but can be applied in anticipation of an attack. In his words, Hugo Grotius explains that “[i]t be lawful to kill him who is preparing to kill.”<sup>29</sup> Michael Walzer, in a section on “Preemptive Strikes” in *Just and Unjust Wars*, utters a similar message with the thought that “a state under threat is like an individual hunted by an enemy who has announced his intention of killing or injuring him. Surely such a person may surprise his hunter, if he is able to do so.”<sup>30</sup> Emmerich de Vattel delivers this same message in his 1758 text entitled *The Law of Nations* with the words:

“The safest plan is to prevent evil, where that is possible. A Nation has the right to resist the injury another seeks to inflict upon it, and to use force ... against the aggressor. It may even anticipate the other’s design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor.”<sup>31</sup>

Of note within de Vattel’s words is a warning associated with the exercising of force in anticipation of perceived threat. In essence, he gives notice that one must not act on uncertainties, and that without corroboration of a valid threat, a use of force may not accurately be considered preemptive or preventive, but an act of unprovoked hostility.

The right of a nation to conduct a preemptive attack is further illustrated within the words of the Secretary of State Daniel Webster in connection with the famous *Caroline* incident. This incident, which provides the modern origins of the concept of “anticipatory self-defense,” is associated with an 1837 night attack and sinking of an American ship, the *Caroline*, in U.S. waters by British forces.<sup>32</sup> At the time of the attack, which resulted in the death of one of the ship’s passengers and the ship’s eventual destruction, the *Caroline* was allegedly being used to provide supplies to supporters of a rebellion against British rule in Canada. The British government justified its actions as a means of self-defense.

During associated diplomatic exchanges between the United States and Great Britain in the years following the incident, U.S. Secretary of State Webster expressed two conditions that must be met before a preemptive use of force can be considered legitimate under international law. Essentially, he stated the use of force must be an act of self-defense “in which the necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moment of deliberation;” and, “the force used in such circumstances has to be proportional to

the threat.”<sup>33</sup> Like *Just War Theory*, he identified the elements of necessity and proportionality as being fundamental to a legitimate preemptive use of force under international law.

With the added realities of international law, we can refine the earlier basic and initial characterization of a preemptive attack formed after a review of selected literary works. At this point, a preemptive attack will be described as *the exercising of a necessary and proportional use of force as a means of self-defense or self-protection in response to a credible, anticipated, and imminent threat to state survival in a situation where time is limited*. This adjusted description adds the characteristics of necessity and proportionality, the attributes of self-defense and self-protection, and the concept of responding to a credible threat. Each of these qualities was identified as an essential part of the basis for a legal and legitimate use of preemptive force.

### **PREEMPTION AND UNITED NATIONS CHARTER CONSIDERATIONS**

As a result of the signing of the *Charter of the United Nations* on 26 June 1945, and its coming into force on 24 October 1945, a review of pre-United Nations international law alone will not give a full appreciation of the legalities associated with a use of preemptive force. At face value, indicators are that the *Charter of the United Nations* has produced a more restrictive environment related to the conditions in which individual states can employ force, preemptively or otherwise, under international law. Accordingly, a review of the Preamble and selected articles found within the *Charter of the United Nations* will be conducted as a part of this section to identify what impacts the Charter has on the concept of preemption.

The Preamble of the *Charter of the United Nations* identifies the United Nations as a body “determined to save succeeding generations from the scourge of war” by establishing “conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”<sup>34</sup> The Preamble also reflects “that armed force shall not be used, save in the common interest.”<sup>35</sup> Subparagraph 3 of Article 2 requires Members of the United Nations to “settle their international disputes by peaceful means,” while Subparagraph 4 of this article mandates that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”<sup>36</sup>

But in those instances where the integrity or independence of a state is threatened, Articles 39 and 42 of Chapter VII of the *Charter of the United Nations* identify the framework for the execution of preemptive force to maintain peace and security. First, Article 39 authorizes the Security Council to “determine the existence of any threat to peace, breach of the peace, or

act of aggression and ...make recommendations, or decide what measures shall be taken ... to maintain or restore international peace and security.<sup>37</sup> Of note is the fact that the Security Council will not only take reactive steps in response to acts of aggression to restore peace; they will also act to counter threats to peace and take proactive actions to maintain the security of a nation. And in those cases where a threat to peace is recognized and nonviolent measures are deemed to be inadequate, Article 42 allows the Security Council to “take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.”<sup>38</sup> These paragraphs within the Charter allow for the execution of preemptive force by the United Nations when there is a threat to peace that cannot be resolved through peaceful measures.

Because the *Charter of the United Nations* appears to place responsibility directly on the Security Council for the execution of preemptive force, some may question if the Charter currently allows for the use of preemptive force by a nation or group of nations without a United Nations authorization. To resolve this matter, one merely needs to look at Article 51. This article acknowledges that a nation or collection of nations can use force as a means of self-defense. Article 51 of the Charter reflects that:

“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, until the Security Council has taken measures necessary to maintain international peace and security.”<sup>39</sup>

At first glance, because of Article 51’s wording, it can be argued that this particular clause of the Charter essentially restricts a right to self-defense to those situations where an actual assault upon a nation has taken place. Taken literally, the words appear to remove the option of anticipatory or preemptive action by individual states. Professor John Moore, during a May 2002 Federalist Society conference, disagreed with this supposition. During the conference he stated that Article 51 of the United Nations Charter “was not intended to alter in any way the full pre-Charter right of individual or collective defense against aggression.”<sup>40</sup> He argues that to appreciate fully use of force considerations under the United Nations Charter a person must look beyond the basic words of the Charter. Instead of the basic text, a person must review previous instances of where force was used and accepted or condemned by the international community. If this is accomplished, and Article 39, 42, and 51 are considered together, it becomes evident that as long as the use of force is both necessary and proportional, force can be used in response to a direct attack, and also in anticipation of an imminent attack

In short, “when you are attacked or, in the case of anticipatory defense, there is an extraordinary imminent threat of severe attack, there is a right of individual and collective defense.”<sup>41</sup> And as a matter of course, Security Council approval would be the best solution in a case when a nation considers the use of preemptive force; however, such approval is not required when the use of force is taken as an anticipatory self-defense action.

## **HISTORIC EXAMPLES OF PREEMPTION AS A SECURITY STRATEGY**

An examination of the current literature identifies a variety of events in the post World War II period that can be characterized as having a potential relationship to the concept of preemption. Reviewing selected events from this period can further clarify an understanding of the concept of preemption. In some cases the global community deemed preemptive uses of force as legitimate; in others it condemned similar uses of force as an unprovoked act of aggression. Yet in other cases, when preemptive action was warranted, it was not employed as a result of opposing factors. Finally, in some cases the literature misapplies the term to a situation where the encounter, military or otherwise, is better labeled a preventive action or an act of intervention to restore peace and security.

For example, historical events such as U.S military operations in the Dominican Republic in 1965, Operation Urgent Fury in Grenada in 1983, and Operation Just Cause in Panama in 1989 were examined as possible cases of preemption. However, after reviewing the circumstances that led to the use of military force in each of the situations, it becomes apparent that the use of force was not within the context of the definition of preemption. Although the use of force in each of these three instances could be considered necessary and proportional, and time was limited in each situation, there was no credible anticipation of an imminent threat to state survival that required a preemptive use of force. Rather, the use of force was more interventionist in nature and focused on countering threats to U.S. citizens and U.S. foreign interest posed by political instability in each of these nations. In essence, the use of U.S. military power in these cases was supported by the Monroe doctrine which served as the foundation of U.S. policy in Latin America and opposed meddling and intrusions by nations outside of the Western hemisphere. As a result, these events will not be considered for examination with respect to the concept of preemption.

However, historic events such as the Cuban Missile Crisis of 1962, the Six Day War of 1967, and the Israeli destruction of the Osirak nuclear reactor site in Iraq in 1981 were identified as examples where the concept of preemption can be applied to understand its implications in three considerably different settings. The Cuban Missile Crisis provides a tool to examine a

situation where a preemptive attack that would have been reasonably warranted was dismissed and an alternative course of action was employed. On the other hand, the Six Day War provides an event where a preemptive attack was warranted and Israel's execution of the attack fully met the definition associated with preemption. Alternatively, the Israeli raid on a nuclear reactor site in Iraq provides an experience to examine a situation where one state felt fully justified as defining its actions as a legitimate case of preemption, yet others felt equally compelled to denounce the attack as an act of aggression and outside the scope of preemption. Each of these events will be reviewed in more detail in the following paragraphs.

#### CUBAN MISSILE CRISIS OF 1962

The one significant, well documented, case of note, where 'preemptive' military action was seriously contemplated by the United States, but ultimately not used, was the Cuban missile crisis of October 1962. When the United States learned from spy-plane photographs that the Soviet Union was secretly introducing nuclear-capable, intermediate-range ballistic missiles into Cuba, missiles that could threaten a large portion of the Eastern United States, President John F. Kennedy had to determine if the prudent course of action was to use U.S. military air strikes in an effort to destroy the missile sites before they became operational...<sup>42</sup>

– Richard F. Grimmett, *U.S. Use of Preemptive Military Force*

Events that led the United States to consider preemptive action against Cuba began in April 1961 when 1,400 Cuban exiles that were trained by the CIA executed an unsuccessful attempt to invade Cuba at a location known as the Bay of Pigs. The invasion was conducted as part of the United States government's goal of destroying the new Cuban regime headed by Fidel Castro. Castro had previously overthrown the U.S.-friendly Batista regime in January of 1959 and was hostile to American offers to establish normal relations. The Bay of Pigs fiasco further soured any possibilities for normalized U.S.-Cuban relations, bolstered the relationship between Cuba and the Soviet Union, and resulted in a Soviet diplomatic note cautioning the United States that the Soviet Union would support Cuba in the event of any future American sponsored attacks against Cuba. Further communications between the Soviet and U.S. governments produced assurances from the Soviet Union that they "would not deploy offensive

forces to Cuba” and a later U.S. warning to the Soviet Union “that the U.S. would consider any deployment of offensive missiles to Cuba as ‘a grave threat to peace’.”<sup>43</sup>

Despite the Soviet and U.S. communications, a U.S. U-2 spy plane over flight of Cuba on 14 October 1962 identified that the Soviets were building four medium range ballistic missile sites and two intermediate missile sites.<sup>44</sup> As a result, the members of President Kennedy's National Security Council Executive Committee (EXCOM) debated the reasons behind the Soviet Union's actions and possible response options. “Determining the Soviet motive was crucial. If the Soviets intended to use the missiles to launch a surprise attack, the United States had no choice but to use force to remove them immediately. On the other hand, if the Soviets intended to use the missiles for some sort of political blackmail, the United States might find a way to deal with the situation without any actual shooting.”<sup>45</sup> “If the principal Soviet objective in putting missiles into Cuba was strategic in the broadest political sense, so was the American objective in getting them out.”<sup>46</sup> One option considered to counter the threat posed by the missiles in Cuba was a preemptive “surgical” air strike against known sites. The preemptive air strikes would be focused on eliminating the missiles before they posed an operational threat to the United States. Other options considered by EXCOM included a diplomatic approach to Castro and/or Khrushchev, an invasion of Cuba, a “do nothing” policy, and a blockade of Cuba.<sup>47</sup> As history now demonstrates, President Kennedy ultimately decided upon a naval blockade of Cuba (called a quarantine for legal reasons) that began on the 24 October 1962.

The details of the recommendations provided to President Kennedy by EXCOM, subsequent U.S. actions, and the Soviet reaction are well document and not significantly germane to this paper. What is important to note is the rationale for some of the alternative solutions that offset a decision to execute a preemptive attack in a situation where the conditions needed for a preemptive strike against the missile sites in Cuba were met. The United States had photographic evidence that confirmed the Russians were emplacing offensive missiles in Cuba. Next, the nature and destructiveness of offensive nuclear missiles within immediate striking distance of the U.S. eastern coastal region through the nation's relatively soft underbelly posed a considerable threat to major population centers within the United States. Finally, the competitive and political nature of the Cold War, Cuba's hostility toward the United States, and the Soviet deployment of offensive weapons to Cuba in contrast to verbal statements to the contrary provided legitimate fears of a forthcoming attack. Accordingly, the executive branch of the United States government could have made the case that a preemptive “surgical” air strike option to counter the missile threat was a proportional use of force and

appropriate to counter a credible threat. Despite these particulars, President Kennedy opted to consider other options short of a preemptive strike.

At the forefront, one reason for opting for an alternative to preemption was the precedence such an action would establish. In essence, if the U.S. justified a preemptive attack against Cuba as a legitimate right of anticipatory self-defense, the same principle could be used by a number of other nations to justify and legitimize an unlimited range of aggressive uses of force. Furthermore, Robert Kennedy, the President's brother and an influential voice in the EXCOM, felt that a surprise attack against Cuba would equate to a "Pearl Harbor in reverse" and he did not want the President to be the "Tojo of the '60s."<sup>48</sup> Another reason against a preemptive strike was the lack of an effective Air Force "surgical air strike" doctrine. The Air Force could not guarantee the destruction of all the missiles with precision air strikes, or provide assurances it could overcome a potential Cuban retaliatory strike, even with a massive and substantial air strike. Failing to execute a decisive preemptive strike against the missile sites in Cuba could have resulted in an aggressive and offensive military escalation and reprisal. There was a genuine likelihood that a preemptive strike on Cuba would generate into a full blown nuclear exchange between the world's two nuclear superpowers, the United States and the Soviet Union. "As some recently declassified documents show, the United States and Soviet Union narrowly averted nuclear war, and almost certainly would have gone to war after an invasion of Cuba."<sup>49</sup> With these stakes in mind, a military action less forceful than preemption and increased diplomatic exchanges were initiated, leading to a peaceful resolution.

#### SIX DAY WAR OF 1967

On the morning of 5 June 1967, a little less than five years after the Cuban Missile Crisis and on the other side of the world, Israel took a different approach to threats to its sovereignty by launching a preemptive attack on Egypt and other Arab states. As will be shown, the motivation for the Israeli attack fits within the context of the definition of a preemptive attack this paper has formed. In essence, Israel exercised a proportional use of force as a means of self-defense and self-protection in response to a credible, anticipated, and imminent threat to state survival in a situation where time was limited. Basically, the Six Day War of 1967 was initiated by "a preemptive strike against massive Arab military mobilization, an obvious threat rather than a presumed one..."<sup>50</sup>

The nature of the threat to Israel's survival as an independent nation can be traced back to the date of its establishment on 14 May 1948. On that date the newly formed State of Israel was attacked by military forces from the countries of Egypt, Trans-Jordan, Iraq, Syria, Lebanon,

and Saudi-Arabia.<sup>51</sup> The intent of the invasion was the elimination of the State of Israel. As history has recorded, the Arab military invasion into Israel did not achieve its desired end-state, but instead resulted in an enlarged Israel and an armistice in 1949. Despite this, the threat to Israel's existence would linger and intensify in the years that followed, with events between 13 May and 4 June 1967 serving as a final catalyst for Israel's preemptive attack of 5 June 1967.

During the initial days of the three week period leading to Israel's attack, the USSR and Syria were spreading fictitious reports reflecting a build-up of Israeli forces on the Syrian-Israeli border. By 13 May 1967, Soviet officials were supplying intelligence reports to the Egyptians that provided indicators of Israel's preparation for an attack in force across the Syrian border on 17 May. Reports reflected the numbers of Israeli forces ranging from ten to eighteen brigades; but in reality, there were no Israeli troop concentrations on the border at that time.<sup>52</sup> Information countering the Soviet reports and reflecting a lack of an Israeli military build-up on the border was being provided to the Egyptian government from the beginning of the crisis. A United Nations Supervisory Organization had verified the allegations were false and the Secretary-General of the United Nations confirmed this fact through written communications with the Egyptian delegate to the United Nations. Despite this, by 15 May 1967, Egypt had mobilized and began moving what would become a ground force of two armored and five infantry divisions that consisted of 90,000 men and 900 tanks to the Sinai and began transferring Egyptian MIGs to forward airfields that would be within twelve minutes of flying time to Jerusalem and Tel Aviv.<sup>53</sup>

To further complicate the situation, on 16 May, Egypt initiated actions and made demands that would lead to the withdrawal of a United Nations Emergency Force that had been occupying positions and maintaining peace between Egypt and Israel for ten years. Egypt would subsequently occupy these positions. By 19 May, Radio Cairo was broadcasting hostile propaganda supporting Israel's destruction; and on 22 May, Egypt announced its intentions to deny Israel freedom of navigation through the Straits of Tiran and to prevent the passage of goods destined for Israel. "The Israelis had enjoyed freedom of passage through the Strait of Tiran ever since their occupation of Sinai in 1956. They had stated publicly and unequivocally as far back as 1957 that any interference with that passage would be *casus belli*. Israel's position was well known in Egypt."<sup>54</sup> By 25 May, Radio Cairo increased the level of anti-Israeli hostility in its broadcast and began bringing the restoration of "honor of Palestine" into the information campaign against Israel.<sup>55</sup> In addition, between 23 May and 4 June, Egypt would initiate pacts with Jordan and Iraq, and troops from Egypt, Saudi Arabia, Kuwait, Syria, Iraq, Lebanon, and Jordan would be arrayed against Israel.

During this period, from 15 May until 5 June 1967, Israel looked to the United Nations and other global and political powers to take the lead in reopening the Tiran Straits for Israeli use and to reduce the immediate and imminent threat posed by Egyptian led forces on the Sinai border. By the morning of 5 June 1967 it was evident to the Israeli government that an outside solution would not be forthcoming.<sup>56</sup> Lacking outside political support to counter Egypt's escalation of military force or to remove the Egyptian imposed southern maritime blockade, and with a looming threat posed by Arab armies formed under a unified command, the leadership of Israel perceived the existence of a true threat to the nation's survival. As a result, on the morning of 5 June 1967, Israel preemptively attacked and defeated Egypt and her Arab allies in six days, and subsequently occupied the Sinai Peninsula, the West Bank, and the Gaza Strip. Israel would claim its anticipatory attacks were defensive and necessary to preempt an Arab invasion. Neither the United Nations Security Council nor its General Assembly would condemn Israel for its actions.

With consideration of the information provided, it can be argued that Israel's actions in the Six Day War of 1967 equated to a justified and legitimate preemptive attack. The Israeli use of force was necessary and proportional to a threat perceived as credible, anticipated, and imminent. The Israeli use of force was employed as a means of self-defense and self-protection, and taken to ensure the survival of Israel in a situation where time appeared to be limited. A later military action by Israel in 1981, that Israel would argue was equally preemptive, would not share a similar sense of legitimacy, United Nations support, or qualification as a preemptive attack.

#### ISRAEL'S PREEMPTIVE RAID ON AN IRAQI NUCLEAR REACTOR

On 7 June 1981, a formation of eight F-16 and six F-15 Israeli Air Force fighter jets attacked and destroyed a nearly completed French-built nuclear reactor located inside of Iraq. Israel would later claim their attack on the reactor, code named Osirak, was conducted as a means of self-defense and justified under international law. Israel rationalized an anticipatory self-defense argument on the belief that the reactor was being built to produce nuclear weapons that Iraq would use against them. Even though Israel considered the attack a preemptive right of self-defense, and selected authors support Israel's contention, the general consensus is that Israel's actions equated to an illegitimate act of aggression outside of the norms associated with preemption. This event provides an example of anticipatory attack by one nation upon another that, although described as a preemptive act, cannot be truly justified as such, and in reality closer resembles a preventive attack. Understanding, in general terms, why Israel considered

the raid a preemptive strike and why the United Nations and a majority of reviews on the event did not reach the same conclusion provides another tool to examine the characteristics of the concept of preemption.

First, as mentioned above, the Israeli perspective was “that the reactor was a bomb factory and that Iraq intended to use atomic weapons to destroy Israel.”<sup>57</sup> Israel supported this claim with arguments that the nuclear site under construction was larger than what Iraq needed to meet economic energy demands, that the site would supply sufficient quantities of weapons grade nuclear material, and the site provided the technological equipment needed to develop a nuclear device. Israel was also aware that Iraq had access to personnel knowledgeable in the creation of a nuclear device. Moreover, throughout the majority of Israel's limited history, Iraq had made no secret of its commitment to the removal of Israel from the Arab territories. Israel felt the nuclear facility at Osirak would provide Iraq a major tool to eliminate its existence.

Next, Israel sensed the threat of a nuclear attack was inevitable and that time to act was limited. Israel was in a paradoxical and perplexing situation. Possibly drawing upon its own history and experiences in the area of nuclear weapons development, Israel did not have any confidence in international safeguards related to the prevention of a proliferation of nuclear weapons or the International Atomic Energy Agency's (IAEA) ability to uncover clandestine nuclear weapons projects. In addition, Israeli efforts to counter a potential production of nuclear weapons by its Arab neighbors through regional negotiations and the United Nations had met with negative results. As a result, it considered international and regional efforts to prevent Iraq from developing a nuclear threat to Israel as ineffective. On the other side of the coin, international law dictated that Israel delay any armed attack until Iraq's nuclear threat to its survival was “manifestly imminent.”<sup>58</sup> Israel felt that waiting until a nuclear threat became “manifestly imminent” would be futile. In essence, because of Israel's limited and confined size and the destructive characteristics of a nuclear device, and the improbability that Israel could effectively counter Iraq's nuclear weapons capability once nuclear devices had been developed and deployed, it consider itself the victim of a genuine and nontraditional imminent threat that required a military response.

All together, Israel justified the strike on the Iraqi nuclear reactor as a preemptive action based on the perception of a credible and imminent threat (the nuclear weapon capabilities provided by an oversized nuclear reactor, Iraqi policies toward Israel, and an environment that precluded awaiting a traditional “manifestly imminent” threat), a necessity to act because others could not or would not (a lack of IAEA safeguards and a feasible political solutions), and the

ability to use force proportional to the threat (a limited and targeted strike). In Israel's view, a unilateral, proportional, and limited preemptive action was considered necessary.

However, others did not view the "preemptive strike" on the Iraqi nuclear reactor in the same manner as Israel. "The United States joined in a Security Council resolution condemning the raid as illegal. British Prime Minister Margaret Thatcher was characteristically blunt: 'Armed attack in such circumstances cannot be justified. It represents a grave breach of international law.'"<sup>59</sup>

"Most of the arguments against Israel's claim to self-defense focused on the requirement of the necessity for self-defense and in particular on the proximity of the threat."<sup>60</sup> First off, Israel's "preemptive" attack could not be justified as an act of self-defense because no immediate or imminent threat existed by international legal standards. Counter arguments to the Israeli position would show that Israel's suspicions associated with the nature of Iraq's objectives tied to its nuclear reactor development and use, the insufficiency of international non-proliferation safeguards, and Iraqi intentions behind the fervor of the Israeli-Iraqi relationship were generally based upon Israeli speculation and assumptions. Without substantial proof to counter Iraq's claim that its development of a nuclear reactor was for peaceful and non-military purposes, and lacking evidence that Iraq was not in compliance with its obligations associated with the Nuclear Nonproliferation (NPT), Israel could not substantiate a necessity or justification to aggressively attack Iraq. Furthermore, although Israel claimed Iraq had made comments reflecting an intention to destroy it with nuclear weapons, "CRS research showed that several of these were taken out of context and others could not be found."<sup>61</sup>

Overall, Israel could not validate its arguments that Iraq was on the verge of developing nuclear weapons capability for immediate use against the State of Israel. By failing to demonstrate the existence of an imminent threat to its survival existed, Israel was unable to legitimize its anticipatory actions as an inherent right of self-defense under Article 51 of the *Charter of the United Nations*. The reality was that Iraq did not possess any nuclear weapons or have an active facility and current capacity to manufacture them. Estimates indicated it would have taken the Osirak reactor weeks, and possibly years, to produce the amount of plutonium needed to make a nuclear device once the ongoing construction of the reactor was finished. As a result, Israel's use of force against Iraq corresponded to a violation of Article 2(4) of the *Charter of the United Nations*.

Israel's attack on the nuclear reactor at Osirak appears to have been focused on preventing Iraq from boosting its political and military power in the region, and not as an act of anticipatory self-defense tied to an imminent threat to its sovereignty. As a result, Israel's raid

on an Iraqi nuclear reactor cannot be considered in terms of preemption, but more in terms of an illegitimate act of aggression and more closely associated with a concept of a preventive attack. The raid further highlights the need to ensure the threat to a state's survival is based on more than long term fear, supposition, and conjecture, but rather on hard and undeniable facts, before a preemptive act of self-defense is executed.

### **PREEMPTION – A COMPREHENSIVE DEFINITION**

With insights from the Cuban Missile Crisis of 1962, the Six Day War of 1967, and the 1981 Israeli raid on an Iraqi nuclear reactor, we can establish that unless a state exhausts reasonable alternatives available to it, a preemptive use of force may be deemed illegitimate, can be denounced in the world's diplomatic arena, or could amplify the threat to state survival. For example, in the case of Israel and the Six Day War, the United Nations had exited the area of confrontation following the request and demands of Egypt. Furthermore, UN efforts to prevent aggression in the area were unsuccessful and other nations were not taking proactive steps to prevent a military confrontation. Israel was generally left with only two options. They could throw themselves at the mercy of those campaigning for its destruction, or take the action now reflected as a matter of history, a legitimate preemptive attack. As for Israel's action prior to their attack on the Iraqi nuclear reactor, most authors conclude that Israel had not exercised the full realm of the diplomatic, political, and negotiation options open to it prior to attacking. This, in addition to the other factors discussed, led to a condemnation of Israel and a determination that its aggressive actions were regarded as outside of the bounds of a legitimate preemptive strike. Finally, President Kennedy opted to hold off on a preemptive strike against Cuba, to employ a less offensive military option, and to accept a level of risk by employing an extended use of political element of national power, specifically political negotiation, as a means to resolve the threat facing the United States. As an example of a successful crisis management, "President Kennedy was able to offer Soviet Premier Khrushchev a face-saving exit from his overextended missile deployments."<sup>62</sup> Failing to do this would have left open the potential for a global nuclear war that would have unmistakably threatened the survival of the United States.

With consideration of a prerequisite for a nation to exhaust reasonable alternatives available to it prior to executing a preemptive use of force, the definition of a preemptive attack formed earlier is adjusted to reflect the following:

A preemptive attack is the exercising of a necessary and proportional use of force as a means of self-defense or self-protection in response to a credible, anticipated, and imminent threat to state survival in a situation where time is limited and waiting, or executing any action other than a preemptive strike, greatly magnifies the risk to state survival.

This definition is offered for reflection and as a standard for evaluating past incidents that are discussed in terms of preemption and as a means to gauge whether a future threat may merit consideration for a preemptive use of force. However, and as a note of caution, if future events trigger states to consider or use preemption to preserve their security and protect their interest against anticipated threats, one can expect legal reviews and policy decisions from world bodies, such as the United Nations, to provide more clarity and refinement to the concept preemption.

### **PREEMPTIVE FORCE POLICY CONSEQUENCES**

If preemption is considered as a means to preserve national interest and security, there are other factors beyond the scope and limitations of the definition of a preemptive attack formed above that states must take into account and debate prior to exercising a preemptive use of force. Failing to be justly concerned about these factors can result in an unmanageable precedence with global and regional implications, faulty assessments and flawed decisions concerning the need to use preemptive force, a resistance or unwillingness by allies to cooperate with future endeavors, and unwanted anti-State sentiments. If not managed properly, states employing a preemptive strategy can face consequences and secondary effects that far out-weigh any potential policy benefits.

The first of these factors, the precedence such an action would establish, was considered by President Kennedy during the Cuban Missile Crisis. In President Kennedy's case it was believed that if the United States justified an attack against Cuba as an act of anticipatory self-defense, other states might have been tempted to rely on a similar set of guidelines as a pretense and basis for various aggressive actions. Such a consideration remains valid today. As a hegemonic superpower, the United States advocating a concept of preemption can provide other states and non-state actors an excuse to use a similar doctrine to justify attacks on their enemies or use preemption as a response to threats to their security.

Consider for example, that on 1 December 2002, Australia's Prime Minister John Howard said "that he was prepared to act against terrorists in neighboring countries and suggested that

the U.N. Charter be changed to allow nations to launch preemptive strikes against terrorists planning to attack them.<sup>63</sup> One should also note statements from North Korea's Foreign Ministry Deputy Director Ri Pyong Gap as late as 6 February 2003. In response to North Korea being identified as part of the "axis of evil" and fears that it would be a likely target of U.S. attacks following a U.S. war with Iraq, the North Korean representative threatened that "Preemptive attacks are not the exclusive right of the United States."<sup>64</sup>

Other prospective examples where a concept of preemption could be manipulated can be found in almost any part of the world where regional tensions exist. Ethiopia could shroud an attack against Eritrea under a concept of preemption to resolve a long standing border dispute. Either India or Pakistan could justify a conventional or a nuclear attack against the other as a means to ensure its security against the threat of a nuclear strike. China might also make use of the concept in the case of Taiwan should it refuse to negotiate reunification with China and declared independence. To believe that the United States can restrict the use of a doctrine of preemption for its own use, and deny a similar entitlement to other states, would be a fantasy.

Second, when considering a policy of preemption, it is important to understand that the basis for making a decision to execute a preemptive strike will often lack the clarity and operational intelligence needed to validate a threat to survival as imminent, and also as credible. Answers to critical questions, especially in a crisis situation that would present a need for a preemptive strike, will often be expressed with speculative qualifiers such as maybe, might, or could; qualifiers that will leave a state open to challenges and second guessing of its decision to preempt. Like Clausewitz's "fog of war" and Steven Sloan's "smog of terrorism," the elements of ambiguity and uncertainty will complicate decisions related to the need to execute a preemptive strike. A clearly defined trigger or standard that would define the proper moment in time when a preemptive strike would be justified as a legitimate action does not exist. In essence, "no standard is offered to judge when the US," or any other country for that matter, "would consider the threat dangerous enough to preempt and when it would not – hence there is no answer to others (India? Pakistan? Israel? China?) who might adopt preemption themselves."<sup>65</sup>

Next, in deciding to use preemptive force, a state must also reflect upon the fact that responding with force in anticipation of a threat will be "judged morally, and the expectation of that judgment, of the effects it will have in allied and neutral states and among one's own people, is itself a strategic factor."<sup>66</sup> Comments and challenges related to the "Bush doctrine" and its concept of preemption can be used to expand upon the issues a state will face when it considers or employs a policy of preemption. The administration's preemptive policy has been characterized as arrogant, self-centered, and lacking a consideration of broader foreign policy

issues. As Phyllis Bennis of the Institute for Policy Studies stated, “We can’t have one kind of law...that we impose on the rest of the world and an imperial law, if you will, a law of empire, that applies only to the United States.”<sup>67</sup> Doing so furthers the view of the United States as a cowboy nation ready to quickly draw its military weapon, and to do so outside of the boundaries of international law if it suits its needs.

Second and third order effects of such actions may be felt through a future unwillingness of key members of the United Nations Security Council to support situations where the U.S. advocates a use of force. If the world community equates a use of preemptive force as a U.S. excuse for a premature act of aggression, it may lose confidence in and question the legitimacy of its element of military power. In the end, countries allied to the United States, and other countries such as Iran that are reevaluating their policies toward the West, may resist U.S. foreign policy goals and fail to work as a team with the United States in the global war on terrorism.

Another factor to consider is the unintended impacts a policy of preemption can bring to a State’s status and character. For instance, a use of a preemptive policy by a leading world or regional power can create significant anti-State sentiment. A look at recent comments related to the United States following its public declarations related to the employment of preemptive force as a policy option serve to demonstrate this point. Salman Rushdie’s commentary in an article for the *Guardian*, a popular news source in the United Kingdom, serves as an example. In his remarks he asserts that “this US administration’s preemptive, unilateralist instincts...have alienated so many of America’s natural allies” and that “unilateralist action by the world’s only hyper-power looks like bullying...”<sup>68</sup> In many articles that are tied to the United States recent policy statements related to preemption, the nation has been described negatively in terms such as “Pax Americana,” “a rogue State,” “America-rules-the-world,” and even as a nation using a terrorism of its own style to further its policy options. It has also been reported that “America’s assertion that it can and will use military action pre-emptively...has been criticized in nations all over the globe.”<sup>69</sup>

This type of sentiment is not restricted to the United States. Responses to Australian Prime Minister John Howard’s recent statements that he was prepared to preemptively act against terrorists in neighboring states “drew condemnation from Asian governments.”<sup>70</sup> In addition to the “furious responses in the region,” the Malaysian Prime Minister Mahathir Muhamad “said his country would consider such a move ‘an act of war’ on Australia’s part.”<sup>71</sup> In essence, States that articulate policies with a preemptive option, even for the best of reasons,

can potentially be isolated, distanced, and politically condemned by their global or regional community.

The bottom line when considering preemption as a policy option is two-fold. First, states must have an appreciation of the second and third order consequences associated with formally adopting or employing a policy of preemption. Second, from the perspective of a global or regional superpower, and more significant over the longer term, a universal application of a concept of preemption that is available to every state at a time and place of their choosing may well be counter to the national interest and security the state intends to protect through a policy of preemption.

### **THE FUTURE OF PREEMPTION AS A NATIONAL SECURITY STRATEGY**

At the end of the Cold War the U.S. found itself confronting a world in which the policies of a past bi-polar world no longer seemed to apply. In response, this country's leadership during the 1990's formulated guiding principles and adjusted their national security strategies to reflect America's new role as the world's sole superpower. First, President George H. W. Bush (1989-1993) set forth a vision of a "new world order." President William J. Clinton (1993-2001) followed with security policy that advocated engagement, highlighted international security alliances, and promoted global prosperity. The perception of a protected and generally unchallenged national security environment enjoyed by these two administrations played a significant role in the development of their respective policies.

However, the notion of security provided by two vast oceans and the comfort felt through an assumption that America would have the benefit of time to recognize a threat being mobilized against it were stripped away by the terrorist attacks on American soil in September 2001. The United States was no longer facing the possibility of potential future threats. It now faced an unprecedented and real threat to its national security that, if left unchecked, could once again bring the war home to America's soil. The reality that rogue nations and well financed terrorists could capitalize on the growing proliferation of technology and weapons of mass effects to strike civilian targets without warning forced a need to adjust the security policies of the past. In response, the administration of President George W. Bush formally and publicly promoted a concept of preemption as a foreign policy tool to protect its national interest.

Although elevating a policy of preemption from a possible contingency operation to a national foreign policy can serve to reassure the nation that its government will take action to counter threats to its security, turning the policy into action does present problems for the administration. Determining and articulating that an application of preemptive force is

necessary, providing evidence that a threat is both credible and imminent, and demonstrating that taking any action short of a preemptive strike will magnify the risk to the nation's survival, while avoiding the negative consequences associated with employing preemptive force, will not be an easy task. Potential recommendations to overcome the dilemmas facing the administration can be found in the definition of preemption and the three historical events that were discussed earlier. It is in the best interest of the administration to take stock in the events of the past as it charts a new path with a policy of preemption in a future that remains characterized by volatility, uncertainty, complexity, and ambiguity.

First, in the case of the Iraq and North Korea, the administration is attempting to maximize the use of alliances and the United Nations to demonstrate that Iraq is in non-compliance with sanctions imposed United Nations, and that North Korea has broken international agreements associated with the Nuclear Non-Proliferation Treaty. By following the example of diplomatic negotiation set by President Kennedy during the Cuban Missile Crisis, and with a comparable deployment of military forces to reinforce the seriousness of the situation, President Bush has allowed for the possibility of resolving each situation without the use of offensive military action. Such actions provide a means for the administration to steer clear of President Kennedy's concern, which remains valid today, of setting precedence for a use of preemptive force. And by continuing to state his case both publicly and through the United Nations, President Bush can avoid the EXCOM's concerns associated with being identified as the "Tojo" of this century.

If diplomatic negotiations via the United Nations fail, President Bush will need to continue demonstrating that both Iraq and North Korea are threats to our national interests and security. By following the example of Israel in 1967 and focusing on the threat each poses to the U.S. homeland and to the economic well-being of the nation, and by further demonstrating that both the Iraqi and North Korean governments function in opposition to basic democracy and human rights, he can possibly demonstrate a necessity for action. Second, by exploiting the intelligence advantages of the United States, much like Israel did in identifying the forces arrayed against it in 1967, the administration may be able to demonstrate that Iraq and North Korea's development of weapons of mass effects pose a credible threat to this nation's interest. However, like Israel's raid into Iraq in 1981, the administration's difficulties will be found in showing that the threat is imminent, that time to act is limited, and following failed actions on the part of the United Nations, any action short of a preemptive strike would dangerously magnify the risk to the nation's interests and security.

At this point, the United States has not demonstrated an exposure to a threat equivalent to the build-up of nuclear-capable intermediate-range ballistic missiles associated with the Cuban

Missile Crisis of 1962. Nor is the country faced with the threat similar to that posed by the mobilized armies that Israel confronted in June of 1967. The current situation is more closely related to Israel's attack on an Iraqi nuclear reactor in June of 1981. In essence, it appears the United States is preparing to engage in a preventive war to counter an anticipated future vulnerability, not an immediate threat. To act preemptively and unilaterally against Iraq or North Korea at this point will most likely be condemned as an act of aggression, not an act of self-defense warranting a preemptive attack. In the case of these two threats, the administration would be well advised to avoid references to preemption and focus more on politically building its case that a multilateral use of force is needed to remedy violations of earlier international agreements and demonstrate the resolve of the international community.

In a very basic sense, preemptive action should be restricted to those rare situations where the employment of the other elements of national power offers a poor probability of success. And even then, preemptive action should be further restricted to situations that meet the strict criterion of the definition formed as a part of this paper. In essence, any preemptive act contemplated by the United States should only be exercised through a necessary use of force and only as a means of self-defense in response to a credible and imminent threat to state survival in a situation where executing any action other than a preemptive strike presents a magnified risk to state survival. The survival and legacy of the emerging Bush Doctrine will most likely be based on how it is applied by the United States, how it is judged against the various interpretations of the Charter of the United Nations (specifically Article 51), how it is viewed in light of the unsettled state of international law in this area, and how it is brought into play by other nations co-opting a similar doctrine for their own use. If properly implemented, an application of preemptive force as a part of the Bush Doctrine will be judged on equal footing and employed by future generations with the same level of success as the doctrines associated with President James Monroe (DR, 1817-25) and President Harry Truman (D, 1945-53).

**WORD COUNT = 10,906**

## ENDNOTES

<sup>1</sup> Michael Walzer, Just and Unjust Wars, 3<sup>rd</sup> ed. (New York: Basic Books, 2000), 74.

<sup>2</sup> George Herken, Counsels of War, (New York: Alfred A Knopf, Inc., 1985), 96.

<sup>3</sup> Ibid. Also see NSC-68: Forging the Strategy of Containment, ed. S. Nelson Drew, analyses by Paul H. Nitze (Washington, DC: National Defense University, 1996), 86.

<sup>4</sup> Richard K. Betts, "A Nuclear Golden Age? The Balance of Power Before Parity," International Security 11, no. 3(Winter 1986-87): 7. Also see NSC-68, in US Department of State, Foreign Relations of the United States: 1950 (Washington, DC: US Government Printing Office, 1977), Volume 1, p. 251.

<sup>5</sup> "Six Degrees of Preemption," 29 September 2002; available from <<http://www.washingtonpost.com/ac2/wp-dyn/A13973-2002Sep27?language=print>>; Internet; accessed 9 November 2002. Also see "Preemptive Military Action," Issues and Controversies, 8 November 2002; available from <<http://www.2facts.com/Tempfiles/i0702430.htm>>; Internet; accessed 20 December 2002. Both of these articles, as well as others located through a search of the Internet, refer to the concept of preemption found in U.S. President George W. Bush's September 2002 *National Security Strategy of the United States of America* as a significant departure from the foreign policies and national security strategies of previous U.S. Presidents.

<sup>6</sup> Office of the Press Secretary, "President Delivers State of the Union Address." The President's State of the Union Address (Washington, D.C.: The United States Capitol, January 29, 2002), 1. Within this speech, President Bush identified the "axis of evil" as North Korea, Iran, and Iraq. North Korea was identified as a regime that was arming itself with missiles and weapons of mass destruction at the expense of its citizens well being. Iran was identified as aggressively pursuing missiles and weapons of mass destruction, exporting terror, and repressing internal hope for freedom. Iraq was singled out as being hostile toward America, supporting terror, plotting to develop biological, chemical, and nuclear weapons, and as a country that had previously used poison gas to "murder thousands of its own citizens."

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Office of the Press Secretary, "Remarks by the President at 2002 Graduation Exercise of the United States Military Academy." President Bush Delivers Graduation Speech at West Point (New York: West Point, June 1 2002), 1.

<sup>10</sup> *Ibid.*, 2.

<sup>11</sup> George W. Bush, The National Security Strategy of the United States of America (Washington, D.C.: The White House, September 2002), 14.

<sup>12</sup> *Ibid.*, v.

<sup>13</sup> Richard K. Betts, Surprise Attack (Washington, D.C.: The Brookings Institute, 1982), 145.

<sup>14</sup> *Ibid.*, 146.

<sup>15</sup> *Ibid.*, 145.

<sup>16</sup> *Ibid.*, 146. Also see Samuel P. Huntington, "To Choose Peace or War: Is There a Place for Preventive War in American Policy?" U.S. Naval Institute Proceedings 83 (April 1957), 360-361.

<sup>17</sup> Richard K. Betts, "A Nuclear Golden Age? The Balance Before Parity," International Security 11, No. 3 (Winter 1986-87), 19.

<sup>18</sup> Walzer, 75.

<sup>19</sup> Walzer, 74. With respect to the referenced argument of Secretary of State Daniel Webster in the *Caroline* case of 1842, and the quote, "in order to justify pre-emptive violence, ..., there must be shown 'a necessity of self defense ... instant, overwhelming, leaving no choice of means, and no moment of deliberation,'" these statements are directly associated with diplomatic exchanges between the United States and Great Britain in the years following the *Caroline* incident. The *Caroline* incident itself is associated with an 1837 night attack and sinking of an American ship, the *Caroline*, in U.S. waters by British forces. The *Caroline* was allegedly being used to provide supplies to supporters of a rebellion against British rule in Canada. The British government justified its actions as a means of self-defense. As a part of the exchanges between the United States and Great Britain following the incident, U.S.

Secretary of State Webster expressed the words in the quote as a condition that must be met before a preemptive use of force can be considered legitimate under customary international law.

<sup>20</sup> Walzer, 75.

<sup>21</sup> Walzer, 81.

<sup>22</sup> Richard F. Grimmett, "U.S. Use of Preemptive Military Force," CRS Report for Congress, 18 September 2002, Order Code RS21311, p.1; available from <<http://www.usembassy.it/policy/crs.htm>>; Internet; accessed 10 December 2002. The actual text from the CRS report reads as "For the purpose of this analysis we consider a "preemptive" use of military force to be the taking of military action by the United States against another nation so as to prevent or mitigate a presumed *military* attack or use of force by that nation against the United States." For the purpose of this Strategy Research Project the words "United States" were replaced with "one nation" and "other nation," respectively, to make the definition more nonspecific and applicable to the task at hand.

<sup>23</sup> Huck Gutman, "Noisome angle to Bush doctrine," The Statesman, 9 October 2002; available from <<http://www.thestatesman.net/page.arcview.php?clid=4&id=3633&usrsses=1>>; Internet; accessed 11 December 2002.

<sup>24</sup> Philip Stephens, "America should take the offer of legitimacy as well as power," Financial Times, 27 September 2002, Comment and Analysis section, p.13.

<sup>25</sup> Michael E. O'Hanlon, Susan E. Rice, and James B. Steinberg, "The New National Security Strategy and Preemption," December 2002; available from <<http://www.brook.edu/comm/policybriefs/pb113.htm>>; internet; accessed 12 December 2002.

<sup>26</sup> David M. Ackerman, "International Law and the Preemptive Use of Force Against Iraq," CRS Report for Congress, 23 September 2002, Order Code RS21314, p.1; available from <<http://www.usembassy.it/policy/crs.htm>> and <<http://www.usembassy.it/pdf/other/RS21314.pdf>>; Internet; accessed 10 December 2002. Also see Hyde, Charles Cheney, International Law Chiefly As Interpreted and Applied by the United States, Volume 3 (1945), page 1686.

<sup>27</sup> Ibid. p. 2. Also see Hyde, Charles Cheney, International Law Chiefly As Interpreted and Applied by the United States, Volume 1 (1945), page 237.

<sup>28</sup> "Six Degrees of Preemption," 29 September 2002; available from <<http://www.washingtonpost.com/ac2/wp-dyn/A13973-2002Sep27?language=print>>; Internet; accessed 9 November 2002.

<sup>29</sup> Ackerman, 2. Also see Grotius, Hugo, The Law of War and Peace, at 1625.

<sup>30</sup> Walzer, 85.

<sup>31</sup> Ackerman, 2. Also see de Vattel, Emmerich, The Law of Nations, Volume IV, at 3.

<sup>32</sup> Louis Rene Beres, "Israel and Preemption: Striking First Under International Law," 30 January 2001; available from <<http://www.tzemach.org/fyi/docs/beres/preempt.htm> >; Internet; accessed 10 December 2002.

<sup>33</sup> Ackerman, 2. Also see a letter from Secretary of State Daniel Webster to Lord Ashburton of August 6, 1842, set forth in Moore, John Bassett, A Digest of International Law, Volume II (1906), at 412; and a letter from Mr. Webster to Mr. Fox of April 24, 1841, 29 British and Foreign State Papers 1129, 1138 (1857), quoted in Damrosch, Lori, International Law: Cases and Materials (2001), at 923.

<sup>34</sup> United Nations, Charter of the United Nations and Statute of the International Court of Justice (United Nations, New York: Department of Public Information), 3.

<sup>35</sup> Ibid., 4.

<sup>36</sup> Ibid., 6.

<sup>37</sup> Ibid., 27.

<sup>38</sup> Ibid., 28.

<sup>39</sup> Ibid., 32-33.

<sup>40</sup> Professor John Norton Moore, "International Law and the Use of Force," The Federalist Society, May 2000, 4; available from <<http://www.fed-soc.org/Publications/Transcripts/useofforce.htm>>; Internet; accessed 12 December 2002. The quotes used are from Professor Moore's portion of the May 2002 Federalist Society conference proceedings. Professor Moore is one of eight people referenced as being at the conference and providing input into the cited article.

<sup>41</sup> Ibid.

<sup>42</sup> Grimmett, 4.

<sup>43</sup> Dan Cadwell, Missiles in Cuba: A Decision-Making Game (New York: Learning Resources in International Studies, 1979), 2.

<sup>44</sup> Ibid., 3

<sup>45</sup> Roger Hillsman, The Cuban Missile Crisis (Westport, CT: Praeger Publishers, 1996), 79.

<sup>46</sup> Ibid., 96

<sup>47</sup> Caldwell, 3.

<sup>48</sup> Evan Thomas, "Bobby at The Brink," Newsweek, 14 August 2000, 51.

<sup>49</sup> Tim Francis-Wright, "Bear Left!: No Jack Kennedy," 14 October 2002; available from <<http://bear-left.com/original/2002/1014kennedy.html>>; Internet; accessed 12 December 2002.

<sup>50</sup> Aluf Benn, "Where First Strikes Are far From the Last Resort," The Washington Post, 10 November 2002, sec. B, p. 3.

<sup>51</sup> Israel Ministry for Foreign Affairs, Information Division, Menace: The Events That Led Up To The Six-day War and Their Lessons, 4. Note, no further publication information (publication source, publication date) was available.

<sup>52</sup> Richard B. Parker, ed., The Six Day War (Gainesville, Florida: University Press of Florida, 1996), 6.

<sup>53</sup> Israel Ministry for Foreign Affairs, Information Division , 11.

<sup>54</sup> Parker, 8.

<sup>55</sup> Israel Ministry for Foreign Affairs, Information Division, 17.

<sup>56</sup> Ibid., 21-22.

<sup>57</sup> Matt S. Nydell, "Tensions Between International Law and Strategic Security: Implications of Israel's Preemptive Raid on Iraq's Nuclear Reactor," Virginia Journal of International Law Volume 24, Number 2 (Winter 1984), 471.

<sup>58</sup> Ibid., 490.

<sup>59</sup> Bruce Ackerman, "But What's the Legal Case for Preemption?" August 20, 2002; available from <[http://www.law.yale.edu/outside/html/Public\\_Affairs/282/yls\\_article.htm](http://www.law.yale.edu/outside/html/Public_Affairs/282/yls_article.htm)>; Internet; accessed 17 December 2002.

<sup>60</sup> Timothy L. H. McCormack, Self-Defense in International Law: The Israeli Raid on the Iraq Nuclear Reactor, (New York: St. Martin's Press, 1996), 292.

<sup>61</sup> Nydell, 472.

<sup>62</sup> Steven J. Cimbala, "Nuclear Crisis Management and Information Warfare," Parameters Volume 29, No.2 (Summer 1999): 122.

<sup>63</sup> "The World; Australia Backs Preemptive Hits on Terrorist," The Los Angeles Times, 2 December 2002, sec A, p 10.

<sup>64</sup> Jonathan Watts, "Korea Threatens US With First Strike," The Guardian, 6 February 2002; available from <<http://www.guardian.co.uk/korea/article/0,2763,889679,00.html>>; Internet; accessed 11 February 2003.

<sup>65</sup> Dave McIntyre, "Understanding the New National Security Strategy of the United States," September 2002; available from <<http://www.homelandsecurity.org/Hls/hlsstrategy/analysis.doc>>; Internet; accessed 23 December 2002.

<sup>66</sup> Walzer, 75.

<sup>67</sup> "Preemptive Military Action," Issues and Controversies, 8 November 2002; available from <<http://www.2facts.com/Tempfiles/i0702430.htm>>; Internet; accessed 20 December 2002.

<sup>68</sup> Salman Rushdie, "Fight the Good Fight," Guardian Unlimited, 2 November 2002; available from <<http://books.guardian.co.uk/review/story/0,12084,823493,00.html>>; Internet; accessed 12 November 2002.

<sup>69</sup> Huck Gutman, "America's New Policy of Preemption, and the World Economy," The Statesman, 9 October 2002; available from <<http://www.commondreams.org/views02/1009-01.htm>>; Internet; accessed 16 November 2002.

<sup>70</sup> "The World; Australia Backs Preemptive Hits on Terrorist."

<sup>71</sup> Virginia Marsh, "Howard stands by 'pre-emptive strike' remark," Financial Times, 6 December 2002, Asian-Pacific Section, p. 9.



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