

EXERCISE/EXERCICE

Master of Defence Studies Research Project

Managing an Asymmetric World – A Case for Preventive War

By /par Maj D.R. Williams

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Chapter 1 – Introduction

At 10:16 p.m. on March 19th, 2003, President George W. Bush announced to the American people that the United States and her coalition partners had initiated military operations against Iraq.¹ The President explained that the threat posed by Iraq was too great to ignore, adding “We will meet that threat now, with our Army, Air Force, Navy, Coast Guard and Marines so that we do not have to meet it later with armies of fire fighters and police and doctors in the streets of our cities.”²

The threat of which the President spoke was, of course, Weapons of Mass Destruction (WMD). The coalition victory in the 1991 Gulf War and the subsequent dispatch to Iraq of teams of United Nations weapons inspectors had revealed to the world the extent of Saddam Hussein’s illicit weapons programme. Specifically, it had become clear that notwithstanding his protestations to the contrary, Hussein had long sought nuclear weapons, and that had it not been for Israel’s much-maligned destruction of the Osiraq nuclear facility in 1981, he would likely have achieved his goal during the 1980s.

Following the coalition’s Gulf War victory in 1991, Saddam Hussein played a decade-long game of cat and mouse with weapons inspectors, and the world community at large. Punctuated by periods of reduced American and British patience and increased political and military tension, Hussein’s game continued apace until the terrorist attacks of September 11th, 2001, when international dynamics abruptly entered a new era. It would seem that Saddam Hussein did not fully appreciate the nature of this near-instant evolution. While the United States quickly learned that al-Qaeda was directly

¹ President George W. Bush, Address to the Nation on Operation Iraqi Freedom (March 19, 2003).

² President George W. Bush, Address to the Nation on Operation Iraqi Freedom (March 19, 2003).

responsible for the near three thousand deaths in New York, Washington and Pennsylvania, the more profound response involved the awakening in the United States of a sense of fear and vulnerability. It was this sense of vulnerability, coupled with United Nations Resolution 1441 and Chief Weapons Inspector Hans Blix's December 20th, 2002, declaration that Iraq had not, yet again, met its disclosure obligations, that drove the United States down the path of action.^{3,4}

President Bush's expressed goal in Iraq was to remove from the international community a regime that appeared to threaten not only the security of the United States, but the world community at large. Speaking to the United Nations in September 2002, the President told the General Assembly that "Saddam Hussein's regime is a grave and gathering danger."⁵ As the bombs began to fall in 2003, the President explained that the "nation enters this conflict reluctantly – yet our purpose is sure. The people of the United States and our friends and allies will not live at the mercy of an outlaw regime that threatens the peace with weapons of mass murder."⁶ Saddam Hussein had demonstrated on several occasions his willingness to use chemical weapons, having employed them against Iran during the eight year Iran-Iraq war, and against his own Kurdish citizens in the 1980s. In short, he had underlined his proclivity for resorting to the type of weapon he thought would best suit his purpose at the time. With the wounds of September 11th still raw, the United States was not prepared to leave Hussein with any options on the subject of WMD. Referring to the possibility of cooperation between the Iraqi regime

³ United Nations Security Council Resolution 1441 (November 8, 2002).

⁴ John Shovelan, Australian ABC Local Radio Broadcast (December 20, 2002).

⁵ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

⁶ President George W. Bush, Address to the Nation on Operation Iraqi Freedom (March 19, 2003).

and terrorist organizations, President Bush explained that “trusting in the sanity and restraint of Saddam Hussein is not a strategy, and it is not an option.”⁷

In terms of solidifying public support for American military action, Saddam Hussein’s widely recognized support for Palestinian terrorists provided the linkage that President Bush required to focus the United States’ post-Sept 11th energies on Iraq. International frustration with the Iraqi regime’s diplomatic feints was deep-rooted as the end of 2002 approached, and no state stood with Iraq on the question of WMD program disclosure. While the international community was deeply divided on how to proceed, the vast majority imploring the United States to allow United Nations weapons inspectors more time, none claimed that Iraq had, in fact, met its obligations.⁸

After months of diplomatic negotiation and posturing, from both sides of the issue, the United States led a coalition into Iraq intent upon removing Saddam Hussein’s regime, and the proliferation threat they had reason to believe it represented. That evidence of these programs has not been uncovered some nine months after the fall of Iraq to coalition forces is beyond the scope of this paper. Similarly, while aspects of the coalition action shall be used for illustrative purposes, it is not the intent of this essay to critique the Anglo-American decision to launch their attack. Instead, this paper examines the potential implications of what was the first political and military action of its kind – the first preventive war. Specifically, this essay argues that the threat of preventive war, provided the legitimacy of past and similar action, can be used to shape the actions of so-called rogue regimes and others, increasing stability in an anarchical international system. With broad support, preventive war can serve to demonstrate the international

⁷ Joseph Cirincione, “Can Preventive War Cure Proliferation?” *Foreign Policy* 137 (July/August 2003): 67.

community's resolve in its dealings with pariah states, which ought to moderate the actions of these regimes by introducing in their leadership a measure of second-thought.

Preventive war is a subject that can evoke a great deal of emotion from those who choose to argue its merits or shortcomings. It is an issue that demands examination from several directions. Most pundits limit the scope of their arguments, typically addressing one or two of the several important elements. In order to more fully develop this paper's position, we shall draw upon the inputs of a variety of writers to present both sides of various aspects of the issue, allowing a more complete assessment of the utility of preventive war. We will begin by clarifying the term, providing a definition of preventive war that clearly sets it aside from other political and/or military options open to the state. Having established its meaning, we will examine preventive war's status before international law, to determine whether it is, or should be, a legal option to be exercised. Third, we shall explore whether preventive war can be "just" or "moral". Having demonstrated that it can be a legal, just and, therefore, credible tool, we will examine how preventive war might be employed to increase stability and enhance world order.

⁸ Hans Blix, Report to the United Nations (January 27, 2003).

Chapter 2 – Preventive War Defined

The gravest danger our Nation faces lies at the crossroads of radicalism and technology...as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed. We cannot defend America and our friends by hoping for the best. So we must be prepared to defeat our enemies' plans, using the best intelligence and proceeding with deliberation. History will judge harshly those who saw this coming danger but failed to act. In the new world we have entered, the only path to peace and security is the path of action.⁹

For most readers, it will be evident that the concept of prevention by means of violence is one that can be counted upon to generate a great deal of debate. Its allusion to aggressive action is alone enough to foment discomfort in any liberal democracy. As such, prior to assessing, for example, its validity before international law, a task we shall undertake in Chapter 3, it is necessary to define preventive war, so that subsequent discussions with respect to the issues of legality and utility may be more easily joined.

It is a fact that there is considerable confusion regarding the word “prevention.” The words preventive and preemptive are often used interchangeably, sometimes with intent, and sometimes without. Often, it appears that actions that would, in fact, be preventive, are erroneously labeled as preemptive due to common misunderstanding of the concepts in question. The purpose of this brief chapter is to define both terms, to establish a solid foundation for the arguments presented later in the paper. We shall begin, however, with a short discussion of the primary American policy document that touches on the concept of preventive war, and has generated a great deal of debate for having done so, namely Washington's 2002 *National Security Strategy*.

National Security Strategy

The *National Security Strategy*, released one year after the Sep 11th al-Qaeda attacks, formally put the world on notice that the United States had embarked on a journey of pro-active self-defence, intended to aggressively ensure that its enemies are denied the opportunity to repeat the barbaric successes of 2001. While the *National Security Strategy* makes a number of assertive pronouncements with respect to steps that the United States is willing to take to remove what it considers to be threats to itself and its allies, there is a healthy dose of the term “self-defence” to offset the stated and implied readiness to act in advance of future attacks against American citizens and/or interests, unilaterally if necessary. Interestingly, the document appears to vacillate between the words “preempt” and “prevent”, all the while emphasizing that both are rooted in what is, fundamentally, a defensive effort. For example, on the subject of disrupting and destroying terrorist organizations, the *National Security Strategy* states “we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.”¹⁰ This one sentence makes reference to virtually all of the issues cited by those opposed to the United States’ new doctrine. It seems clear that the authors have foreseen this opposition, particularly given the manner in which they have skillfully employed words that repeatedly return our attention to the issue of security. Use of the words and phrases “will not hesitate to act alone,” “exercise our right of self-defence,” “acting preemptively” and “prevent” present a wide variety of options, which is precisely the point, leaving the door open to a number of interpretations. The truth of

⁹ United States, *The National Security Strategy of the United States of America* (Washington: The White House, 2002), v.

the matter is that the *National Security Strategy*, much like policy speeches delivered by senior Administration officials, is designed to send a variety of messages, to a variety of audiences.^{11,12} The strategy speaks to the American people and it speaks to foreign governments. It speaks to rogue states and terrorist organizations, and to multilateral bodies such as the United Nations. The *National Security Strategy* must, and does, cover the issue of security in such a way as to leave open any of a number of options, allowing for a sufficient degree of governmental freedom of action.

Definitions

Prevention and preemption, while used seemingly interchangeably in the National Security Strategy, are terms that can and must be properly differentiated. Writing for the *Washington Quarterly*, Freedman states that “prevention provides a means of confronting factors that are likely to contribute to the development of a threat before it has had the chance to become imminent,” where imminence is defined as “likely to happen without delay”.^{13,14} Preemption, on the other hand, is defined simply as striking an enemy as it prepares to attack, i.e. attack is imminent.¹⁵ The state, in this case, is left to decide whether it should absorb the first strike before mounting its response, or take the initiative and deliver the first strike itself.

It is quickly apparent that imminence is the key factor differentiating between preventive and preemptive action, and it is imminence that has been the subject of great debate between experts in international law for hundreds of years. United States

¹⁰ United States, *The National Security Strategy*..., 6.

¹¹ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

¹² President George W. Bush, Speech to West Point Graduates (June 1, 2002).

¹³ Lawrence Freedman, “Prevention, Not Preemption,” *The Washington Quarterly* 26, No. 2 (Spring 2003): 106.

¹⁴ Webster’s New World Dictionary (1984).

Secretary of State Daniel Webster's 1842 argument in the case of the *Caroline* stands as one of the most familiar discussions of imminence.¹⁶ Webster's view, however, was that one's right to anticipate attack was limited to mounting a response at the last possible moment, similar to a reflex action.¹⁷ Walzer suggests that if there were a "spectrum of anticipation," Webster's approach would occupy one end, and preventive war the other since, unlike a reflexive action, preventive war involves responding to a danger that is expected to arise in the future and, therefore, involves considerable choice and foresight.¹⁸

At first glance, it is curious that the *National Security Strategy* appears to substitute these terms one for the other. However, recognizing the importance of imminence in customary international law, the rationale for attempting to blend the two terms is understandable. In short, international law has recognized the legitimacy of near-reflex preemptive action for centuries, whereas the case for preventive action is a far more complex one to make. Again, imminence is at the heart of the issue and shall, for that reason, be addressed again in the next and subsequent chapters.

¹⁵ E.J. Duncan, L.B. Currie, "Preventive War" and International Law After Iraq," (May 22, 2003): 4.

¹⁶ Michael Walzer, *Just and Unjust Wars* (Basic Books, 1977), 74.

¹⁷ *Ibid*, 75.

Chapter 3 – Preventive War and International Law

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, or in any other manner inconsistent with the Purposes of the United Nations.¹⁹

There can be no single or simple set of fixed rules for using force...each and every case is different.²⁰

The campaign against terrorism will be long, arduous and will require radical new thinking.²¹

The Charter of the United Nations begins with the statement that member states are “determined to save succeeding generations from the scourge of war.”²² Though its membership now exceeds 190 states, each of whom ostensibly agree with the principles outlined in the document their governments have ratified, war has not been erased from the face of the planet and can be expected to continue for the foreseeable future. What explains this lack of progress toward peaceful existence? Is this a fair question, accurately reflective of today’s situation? Have we, “the peoples of the United Nations,” actually made progress?²³

Depending upon how progress is measured, perhaps. If we take the view that the

¹⁸ *Ibid*, 75.

¹⁹ Office of the Judge Advocate General, “1945 Charter of the United Nations, Chapter I-Purposes and Principles, Article 2(4),” in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 57.

²⁰ Robert P. George, “...A Just War in Iraq,” *The Wall Street Journal*, (December 6, 2002).

²¹ NATO Secretary General Lord Robertson, Opening Statement at Press Conference following a meeting of the North Atlantic Council, 26 Sep 01.

²² Office of the Judge Advocate General, “1945 Charter of the United Nations, Preamble,” in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 56.

²³ Office of the Judge Advocate General, “1945 Charter of the United Nations, Preamble,” in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 56.

number of international conflicts tells the tale, we might become despondent, for such conflicts, particularly between small states, seem to have gained life since the end of the Cold War. As well, the rate of intra-state conflict has risen during the same period. On the other hand, if we measure stability by the activities of central multilateral organizations such as the United Nations, perhaps there is room for optimism. The fact is that since the end of the Cold War, the United Nations and its Security Council have seen a rebirth, buoyed by a new era of cooperation between Russia and the rest of the world, in particular the United States. While the results of this cooperation and the consequent air of international community are, as yet, incomplete, the indications have been promising at times.

There have been, however, events that have tested this community. The most divisive of these was America's 2003 foray into Iraq. Specifically, the debate has centered on the legality of preventive war, and it is this issue that is the subject of this chapter. While the case of Iraq is illustrative, and shall be used as such in this and subsequent chapters, the intent here is not to argue the legality of that action in particular, but to make the case for the legality of preventive war, in general.

International law is most interesting largely because much of it remains contested, in many cases there not having been sufficient precedent to establish sound legal underpinnings. As well, international treaties are often worded in such a way as to allow some flexibility with respect to interpretation, this nuance sometimes the price of agreement. The issue of preventive war is a case in point. While one writer or legal scholar will present a convincing argument on one side of the issue, another will make an equally impressive argument to the contrary. If an internationally recognized judicial

body had determined, for example, that preventive war was illegal, the current debate would likely be limited to the discussion of how the law might be amended to more accurately meet the needs of the international community. However, this has not happened. Instead, we see national leaders, legal scholars and others debating the issue in the media and at the United Nations. It seems likely that it will be some time before a determinative judgement is rendered on this issue, largely because there is not a central arbiter of international law to whose jurisdiction all states submit. Arguably, United Nations Security Council resolutions are among the most legitimate international pronouncements of disapproval, but they are not considered to be determinative judgements, and “have never been accorded such status in international law.”²⁴

Self-Defence, Anticipation and Imminence

It is in the context of this uncertainty, where the legality of preventive war is contested, that this chapter argues that international law is sufficiently flexible to find preventive war a legal action under specific and, arguably, extreme circumstances. To establish this case, we shall review the legal concept of self-defence and, specifically, anticipatory self-defence. As well, we shall continue the discussion of imminence begun in Chapter 2. Finally, we shall review the circumstances under which the launch of a preventive war might be considered a legal undertaking.

The *National Security Strategy*, widely considered to be the formal expression of what is commonly referred to as the “Bush Doctrine,” is steeped in the language of self-defence. Phrases like “as a matter of common sense and self-defense” are found sprinkled throughout the text, a carefully crafted message to ensure the reader

²⁴ Timothy L.H. McCormack, *Self-Defense in International Law* (New York: St. Martin’s Press, 1996), 25.

understands the document's defensive foundation.²⁵ More specifically, the language of the *National Security Strategy* is that of anticipatory self-defence. The main question before pundits appears to centre on the issue of time. That is, how far in advance of an actual threat is it reasonable for a state to claim that it is defending itself against that threat? For example, in the case of America's 2003 defeat of Saddam Hussein's regime, is it legitimate for the United States to claim that it acted in self-defence?

To do justice to this question and others associate with preventive war, we must first clarify what the international community considers to be the legal application of self-defence. For this, we must consider existing documents, primarily the Charter of the United Nations, and precedent. Article 51 of the United Nations Charter states:

Nothing in the present Charter shall impair the inherent right of individual or collective defence 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.²⁶

The so-called "restrictive view" of Article 51 places emphasis on the phrase "if an armed attack occurs," arguing that the Charter offers no allowance for preventive or anticipatory self-defence, in any form.²⁷ Some legal scholars adhere to this interpretation but are, at the same time, prepared to allow a minor concession.²⁸ They argue that while the defending state may take action in advance of an attack, it may only do so once the "last irrevocable act" has been made by the aggressor.²⁹ In the language of Article 51 this suggests that defensive action may only be taken "if an armed attack

²⁵ United States, *The National Security Strategy*..., v.

²⁶ Office of the Judge Advocate General, "1945 Charter of the United Nations, Chapter VII-Action With Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression, Article 51," in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 61.

²⁷ Timothy L.H. McCormack, *Self-Defense in International Law*..., 122.

²⁸ *Ibid*, 130.

*has begun to occur.*³⁰ Numerous writers have suggested that today's weapons, particularly nuclear tipped, long-range ballistic missiles, offer insufficient warning to allow continued adherence to this interpretation of the United Nations Charter. Citing the sophistication of current weaponry, Brownlie suggests that "the difference between attack and imminent attack may now be negligible."³¹ Note that, as stated earlier, the question of imminence is key to the anticipatory self-defence debate, and is at the heart of today's struggle to define military action as preemptive or preventive. We shall return to this issue shortly.

Those who adhere to the restrictive interpretation of Article 51 would conclude that any action launched in the name of self-defence would be illegal unless in response to an attack or, at the very least, the commission of a so-called last irrevocable act. These writers appear to be in the minority. In short, the restrictive view appears out of phase with today's realities. McCormack expressed his concern with the restrictive view as follows:

Applying the restrictive view could result in a guarantee of the attacking state's freedom to resort to the first and possible fatal use of nuclear weapons by denying the threatened state the right to take effective action.³²

Continuing this train of thought, Kaplan argues the point as follows:

Such a constricted conception of self-defence, however, was not recognized prior to the passage of the United Nations Charter and, as some writers have suggested, such an interpretation is inappropriate in the present nuclear age.³³

²⁹ *Ibid*, 130.

³⁰ *Ibid*, 125.

³¹ *Ibid*, 131.

³² *Ibid*, 124.

³³ N.J. Kaplan, "The Attack on Osiraq: Delimitation of Self-Defense Under International Law," *New York Journal of International and Comparative Law* 4 (1982): 140.

Thomas and Sally Mallison make several important points on this issue, particularly with regard to the underpinnings of the United Nations Charter. Specifically, they point out that Article 51 was meant to incorporate the customary law with respect to self-defence, including anticipatory self-defence.³⁴ With this insight, it is not surprising that the Mallisons are among those arguing for greater latitude in the area of self-defence. They express their case as follows:

Self-defence is most clearly justified in law in response to an armed attack. The legal criteria however, also permit reasonable and necessary anticipatory self-defense. Anticipatory self-defense is regarded as a highly unusual and exceptional action that may be employed only when the evidence of a threat is compelling and the necessity to act is overwhelming.³⁵

The foundations in customary international law for anticipatory self-defence are well established, and may be illustrated using an example from the Second World War. Following the French Government's armistice with Germany in 1940, many vessels of the French Navy took refuge in Alexandria, Egypt, Oran, French North Africa (now Algeria) and Martinique.³⁶ Shortly thereafter, each location's French naval commander was presented with three British proposals, each aimed at keeping the French vessels from being incorporated into the German Navy. The third proposal, only to be utilized after the two less extreme proposals had been refused by the French commander, was that the ships would be attacked and sunk. In Oran, the commander rejected the first two options, and his ships were destroyed. Given that British naval and air power were all

³⁴ W. Thomas Mallison, Sally V. Mallison, "The Israeli Aerial Attack of June 7, 1981, Upon the Iraqi Nuclear Reactor: Aggression or Self-Defense," *Vanderbilt Journal of Transnational Law* 15, No. 3 (Summer 1982): 420.

³⁵ *Ibid*, 419.

³⁶ *Ibid*, 422.

that stood between the German armies and invasion of Great Britain, this action was determined to be justified anticipatory self-defence.³⁷

The Mallisons go on to say that while the legal right to anticipatory self-defence exists, the burden of proof to be met by the state exercising it is more stringent than required to justify self-defence in response to an actual armed attack.³⁸ As such, any state claiming to have exercised its right to self-defence must present a case that satisfies the legal tests, of which there are three. First, a state must demonstrate that it exhausted all peaceful means of resolving the conflict in question.³⁹ Second, it must satisfy the requirement of necessity, for which the tests are severity and proximity. Severity requires the state claiming to have acted in self-defence to show that its adversary intended, for example, to use WMD in an attack against it.⁴⁰ Proximity requires that the state “show that this was the last opportunity it had to guarantee its protection from the real threat.”⁴¹ Finally, the state must satisfy the requirement for proportionality.⁴²

Having established the legality of anticipatory, or preemptive, self-defence, we must determine whether the same logic may be used to move the markers from preemption to prevention. Again, Freedman’s suggestion that “prevention can be seen as preemption in slow motion, more anticipatory and forward thinking” is instructive for establishing the relationship between the two.⁴³ As alluded to above, the question of imminence is, arguably, the crux of this matter.

³⁷ *Ibid*, 423.

³⁸ *Ibid*, 424.

³⁹ *Ibid*, 419.

⁴⁰ Timothy L.H. McCormack, *Self-Defense in International Law...*, 296.

⁴¹ *Ibid*, 298.

⁴² *Ibid*, 295.

⁴³ Lawrence Freedman, “Prevention, Not Preemption...”, 107.

Given its importance in the self-defence equation, the question of imminence has attracted much attention since the September 11th attacks. Setting the stage for the legal debate to come, President Bush told 2002 West Point graduates that “we face a threat with no precedent,” clearly making the point that a new approach is warranted.⁴⁴ The *National Security Strategy*, released three months later, goes further to establish this argument, as follows:

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat – most often a visible mobilization of armies, navies, and air forces preparing for attack. We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.⁴⁵

The United States does not make this case in isolation. Australian Prime Minister John Howard, making the point that the United Nations Charter was written at a time when states threatened each other with armed forces, which no longer need be the case, suggested that “the body of international law has to catch up with that new reality.”⁴⁶

Both the *National Security Strategy* and the Australian Prime Minister make clear that this new way of thinking is meant to counter new threats to international security. This is an important point and ought to lessen the concern of those who believe that a move in the direction of prevention will unloose the application of armed force on an unsuspecting world. The Brookings Institute report entitled “The New National Security Strategy and Preemption” states that while the National Security Strategy speaks of both preemption and prevention, “the idea principally appears to be directed at terrorist groups

⁴⁴ President George W. Bush, Speech to West Point Graduates (June 1, 2002).

⁴⁵ United States, *The National Security Strategy*..., 15.

as well as extremist or “rogue” nation states.”⁴⁷ Again, from a legal perspective, we are drawn back to the question of precedent. If, for example, President Bush is correct when he says that the United States faces a threat “without precedent,” it seems clear that international law must be updated to allow for the codification of appropriate defensive measures. In the meantime, the over-riding truth, as accepted by customary international law, is that states are entitled to defend themselves.

At the beginning of this chapter it was suggested that preventive war would be utilized only in specific and extreme situations. The difficulty associated with setting the bounds of imminence suggests that this is the factor that shall define those situations. It is illustrative to review the aftermath of Israel’s bombing of the Osiraq reactor. At the time, the international community broadly condemned Israel, arguing that even if Iraq had planned to build a nuclear weapon, it was likely a year from fielding such a device and, as such, the test of imminence was not met. However, this point of view was not shared by many legal experts, including McCormack, because it failed to adequately recognize that Israel’s ability to defend itself would have been compromised in the extreme had Iraq been given the opportunity to decentralize its nuclear activities.⁴⁸ Once Osiraq became functional, and Iraq became capable of producing plutonium, it would have been infinitely more difficult to track, and defend against the resultant weapons.

Can the same argument not be made to support the US-led war against Iraq? Recall that the debate at the United Nations at the end of 2002 and in the early weeks of 2003 was not on the subject of Saddam Hussein’s efforts to produce WMD, but on the timing of potential military action. It was largely taken for granted that Iraq possessed at

⁴⁶ E.J. Duncan, L.B. Currie, ““Preventive War” and International Law...”, 4.

⁴⁷ *Ibid*, 4.

least chemical and biological weapons, particularly after Hans Blix's January 2003 report to the United Nations found, among other things:

- Iraq seems not to have genuinely accepted the disarmament demands;
- Iraq has failed to account for 6,500 chemical warfare bombs; and
- Iraq has failed to prove it has destroyed all its anthrax.⁴⁹

The European Council's February 2003 statement again made clear that the international community believed Iraq to be in possession of unconventional weapons. The statement read, in part, "Baghdad should have no illusions: it must disarm and cooperate immediately and fully. Iraq has a final opportunity to resolve this crisis peacefully."⁵⁰

Given the broad consensus on the subject of Iraq's failure to comply with the will of the international community, the argument used by Israel in 1981 would seem applicable. That is, since the consensus opinion was that Hussein possessed such weapons, it seemed likely that he would, as he had in the past, use them. At the very least, he might make them available for others to use. Either way, it seems likely that the target would be the United States or one of its allies, such as Israel. Speaking to the United Nations in September 2002, President Bush claimed that "Iraq continues to shelter and support terrorist organizations that direct violence against Iran, Israel and Western governments."⁵¹ While the suggested link between Hussein and al-Qaeda remains largely unsubstantiated, his close relationship with Palestinian terrorist groups is well-established. Such relationships, which raise the valid concern that he might share

⁴⁸ Timothy L.H. McCormack, *Self-Defense in International Law*..., 298.

⁴⁹ Hans Blix, Report to the United Nations (January 27, 2003).

⁵⁰ Conclusions of the European Council (February 17 2003).

⁵¹ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

his capabilities, coupled with the biological and chemical weapons the international community believed to be in Iraq's possession, meant that "trusting in the sanity and restraint of Saddam Hussein is not a strategy, and it is not an option."⁵²

A question we might ask is whether rogue states and terrorist organizations, by their continued existence, can be considered to represent an imminent threat. Certainly, in the case of international terrorist groups, we would have to answer in the affirmative. Given that their reason for being is, by definition, violence, we can project that their attacks will materialize at some point in the future. Also, since intelligence on the subject of future attacks is imperfect, and we know that groups such as al-Qaeda will employ the most deadly means at their disposal, we must, in our own defence, assume that the next attack will occur as soon as it can be orchestrated. The *National Security Strategy* states that the United States makes "no distinction between terrorists and those who knowingly harbor or provide aid to them."⁵³ The Iraqi regime's support for Palestinian terrorists suggests that cooperation with al-Qaeda was within the realm of the possible, placing Iraq squarely in this group of countries of interest. Is this an unreasonable position for the United States to adopt?

In the past twenty-five years, two major events have tested the bounds of imminence. Tellingly, both involved Iraq. In the first, the United Nations, in the form of a unanimous Security Council Resolution (487), found that Israel had gone too far.⁵⁴ We have seen that international legal experts disagreed. In the second, most United Nations members were similarly against the action. Again, legal scholars are divided. What is clear is that the concept of imminence remains contested. Certainly, there is recognition

⁵² Joseph Cirincione, "Can Preventive War Cure Proliferation...", 66.

⁵³ United States, *The National Security Strategy*..., 5.

within international political circles that imminence must be adapted to account for, in the words of the *National Security Strategy*, “the capabilities and objectives of today’s adversaries.”⁵⁵

This leads us to a review of the circumstances under which preventive war might be employed within the current legal construct, albeit with continued debate on the subject of imminence. Recall that at the beginning of this chapter it was suggested that preventive war would only be considered in specific and extreme circumstances. First, the legal tests for self-defence must be addressed. Have all peaceful means for resolving the conflict been exhausted? While this is a difficult line to draw, because there might always be an additional peaceful step to take, the state(s) preparing to launch a preventive war must be able to show that they have made concerted and repeated efforts to address the issue peacefully. Again, the 2003 Iraqi example is illustrative. The United Nations, the world’s most inclusive body, had repeatedly, over a period of twelve years, made its demands of Iraq abundantly clear. In the end, while Hussein continued to dance around the issue of weapons inspections, it must be said that the Iraqi regime had been given every opportunity to cooperate.

The second test, necessity, is sub-divided into severity and proximity. Severity requires the state preparing to act to show that the belligerent state intends to use the weapons in question against it.⁵⁶ As we have seen in Article 51, where the United Nations Charter covers self-defence, this may be expanded to include allies. Again, using Saddam Hussein’s regime as an example, it is well understood that Israel would be the likely target of an Iraqi WMD attack. Given Israel’s size, and the fact that a well-

⁵⁴ United Nations Security Council Resolution 487 (June 19, 1981).

⁵⁵ United States, *The National Security Strategy*..., 15.

placed nuclear detonation “would result in the virtual annihilation of the State of Israel,” this is clearly a severe threat.⁵⁷

The second sub-category of necessity, namely proximity, is more difficult to establish and is closely related to imminence. Proximity implies having reached the last opportunity to guarantee protection from a real threat.⁵⁸ In his 2002 article entitled “The Immorality of Preventive War,” Arthur Schlesinger asks in relation to a potential war with Iraq, “what is the clear and present danger, the direct and immediate threat?”⁵⁹ He suggests that the actions of the United States and Britain during the last decade have effectively contained Iraq, rendering large-scale military action unnecessary.⁶⁰ Similarly, Gu Guoliang stated with respect to Iraq that “no imminent military threat to the United States” had been detected.⁶¹ On the other hand, Joseph Cirincione argued that “Iraq posed a serious threat to Iran, Israel, Kuwait, Saudi Arabia and the international security system.”⁶² Clearly, the American Government shared Cirincione’s perspective, its position hardened by Hans Blix’s revelation that Iraq had illegally tested missiles with a range in excess of 150 kms.⁶³ President Bush categorized the danger presented by Iraq as “grave,” although in the same speech he suggested that war could be avoided if Iraq were to finally accede to UN demands.⁶⁴

Arnold Wolfers, writing for the *Political Science Quarterly* in 1952, suggested the following with respect to how different states might assess the threat to themselves:

⁵⁶ Timothy L.H. McCormack, *Self-Defense in International Law...*, 296.

⁵⁷ *Ibid*, 298.

⁵⁸ *Ibid*, 298.

⁵⁹ Arthur Schlesinger, “The Immorality of Preventive War,” *News at Home* (August 26, 2002): 1.

⁶⁰ *Ibid*, 1.

⁶¹ Gu Guoliang, “Redefine Cooperative Security, Not Preemption,” *The Washington Quarterly* 26, No. 2 (Spring 2003): 138.

⁶² Joseph Cirincione, “Can Preventive War Cure Proliferation...”, 67.

⁶³ Hans Blix, Report to the United Nations (January 27, 2003).

Nations tend to be most sensitive to threats which have either experienced attacks in the recent past or, having passed through a prolonged period of an exceptionally high degree of security, suddenly find themselves thrust into a situation of danger.⁶⁵

Assessing proximity, there exists the concern that one state might be overly sensitive to a given threat, causing it to exaggerate the danger to itself. It is for this reason, particularly in the case of preventive war, that the threat ought to be assessed in the context of the United Nations or, at the very least, before a broad multinational coalition. In this way, balance is introduced to the debate, mitigating any one country's heightened level of concern. As well, this serves the goal of adding to the legitimacy of any decisions made.

The third test, proportionality, is conceptually more straightforward. The literal meaning is unambiguous. In practise, particularly in the context of self-defence, proportionality speaks to the level of effort expended to achieve stated goals, and the manner in which that effort is applied. In the example of Israel's raid against Osiraq, the strike was limited to the structures of the reactor itself, leaving other facilities located on the site undamaged. By almost any measure, the strike was proportional.

In a preventive war, the proportionality test would be far more complex than that for a limited military strike. We must also consider that preventive war may list regime change as one of its goals, further complicating the achievement of the desired end-state, unless the military forces of the targeted country refuse to fight. Whatever the scenario, it ought to be the case that if the Laws of Armed Conflict are observed, proportionality will be achieved.

⁶⁴ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

In summary, this chapter has suggested that the road to a legitimate preventive war must involve the international community. Multilateral negotiations over a significant period of time must precede any move to war so that legitimacy is maximized and any one country's heightened sense of vulnerability is mitigated. A multilateral approach also serves to add credibility to demands made of the offending state. Certainly, disagreement within the international community, particularly amongst its major players, is bound to embolden the regime in question, making it less likely that it will accede to demands for disarmament, for example. Certainly, in the case of Iraq in early 2003, the lack of consensus at the United Nations and within the Security Council must have provided Saddam Hussein with some amusement and might have led him to believe that his days in power were not so limited as, in fact, they were.

⁶⁵ Arnold O. Wolfers, "'National Security' as an Ambiguous Symbol," *Political Science Quarterly* 67, no. 4 (December, 1952): 486.

Chapter 4 – Preventive War and Just War Theory

Unilateral preventive war is neither legitimate nor moral. It is illegitimate and immoral.⁶⁶

Preventive war is, very simply, the supreme crime that was condemned at Nuremberg.⁶⁷

Both of the statements above were made in the heat of the debate surrounding the United States' policy of preventive war, as articulated in the *National Security Strategy*. Both were made by respected authors. Neither statement is ambiguous. Is it possible that there is another perspective? Can a preventive war be a just war?

“Just War Theory” can be traced through Suarez (1548-1617) and Aquinas (1225-1274) to St. Augustine, in the fourth century Anno Domini.⁶⁸ Each thinker believed that for war to be morally justified, certain conditions must be met. While these rules have grown in number over the centuries, as moral theologians responded to the historical experience of war, they are based on three general norms specified by Augustine, namely just cause, legitimate authority and right intention.⁶⁹ Additional caveats added over time, such as “prospect of success” and “last resort,” serve to round out just war tradition and provide additional clarity.⁷⁰

This chapter will review the fundamentals of just war theory and argue that in specific circumstances, a preventive war can be a just war. As we develop this argument, we shall explain the tenets of legitimate authority, just cause, right intention, prospect of

⁶⁶ Arthur Schlesinger, “The Immorality of Preventive War...”, 1.

⁶⁷ Noam Chomsky, “Preventive War “The Supreme Crime”,” *Information Clearing House* (August 11, 2003): 2.

⁶⁸ Laurie Calhoun, “The Injustice of “Just Wars”,” *Peace Review* 12, No. 3 (September 2000): 449.

⁶⁹ Drew Christiansen, “Whither the “Just War”?” *America* Vol. 188, Issue 10 (March 24, 2003): 8.

⁷⁰ *Ibid*, 8.

success and last resort, and provide examples to illustrate how preventive war might pass these tests.

Jus ad bellum, the just recourse to war, was not born of pacifists. On the contrary, just war theorists recognize that wars will occur. Their goal, however, is to limit the number and provide guidelines to ensure that those which do come to pass are initiated for legitimate reasons. Underlying just war theory is the presupposition that “because it is prima-facie wrong to injure or kill others, such acts demand justification.”⁷¹ Over the centuries, tenets have been added as theorists have attempted to provide additional clarification to governments considering military action against another state. Writing for the *Wall Street Journal*, Robert P. George makes the point, explaining that the principles of just war theory “guide political leaders as to when they must refrain from using military means to achieve their ends.”⁷² It is true, however, that the clear preference of just war theorists is the peaceful resolution of differences, rather than the resort to war. It is this underlying belief that most conflicts can be managed peacefully which motivates just war thinkers to expand their formula. St. Augustine wrote, “It is a higher glory still to stay war itself with a word than to slay men with the sword, and to maintain peace by peace, not by war.”⁷³

Legitimate Authority

We begin our review with the concept of legitimate authority, namely that which will determine or judge whether the other criteria for just war have been met.⁷⁴ Quentin Quade suggests that “the principles of Just War become operative only *after* the classic

⁷¹ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria,” *Theological Studies* Vol 39, No. 3 (1978): 433.

⁷² Robert P. George, “...A Just War in Iraq,” *The Wall Street Journal*, (December 6, 2002).

⁷³ Drew Christiansen, “Whither the “Just War...”, 8.

political question is answered: who should do the judging?”⁷⁵ This responsibility confers upon legitimate authority the status of presupposition for the rest of the criteria, establishing it as the logical first criterion to be addressed.⁷⁶

What, then, constitutes legitimate authority? Certainly, the United Nations ought to qualify and, as has been stated earlier, preventive war ought to be, ideally, sanctioned by as many sovereign states as can be rallied to the cause. However, as Robert P. George states in his essay “... A Just War in Iraq,” “nothing in just war theory places unique authority to prevent aggression in the hands of the “international community.””⁷⁷ He goes on to characterize as “prudent” President Bush’s effort to obtain a United Nations Resolution (1441) requiring the Iraqi regime to abandon the pursuit of WMD and to submit to weapons inspections, but suggests that if the United Nations were to “decline or fail to enforce its just demands, the U.S. and her allies have the right to protect themselves from Saddam’s aggression.”⁷⁸ At first glance, this logic appears sound, particularly given that the United Nations has, in the past, employed coalitions to act in its name when it was incapable of fielding a force of sufficient capability. The 1991 Gulf War stands as an example, wherein 31 states contributed military support.⁷⁹ The difficulty, of course, is that if the authority making the decision to resort to war is a government or group other than the United Nations, other states looking for an excuse to move against their neighbours may use the precedent to justify their own actions.

Duncan and Currie claim that the American example in Iraq has led India to suggest that

⁷⁴ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities...”, 435.

⁷⁵ *Ibid*, 435.

⁷⁶ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities...”, 435.

⁷⁷ Robert P. George, “...A Just War in Iraq,” *The Wall Street Journal*, (December 6, 2002).

⁷⁸ Robert P. George, “...A Just War in Iraq,” *The Wall Street Journal*, (December 6, 2002).

⁷⁹ Helen Thomas, “Preventive War Sets a Perilous Precedent,” *Seattle Post-Intelligencer* (March 20, 2003): 1.

a strong case can be made for military action against Pakistan, while, more broadly, Thomas wonders if the repercussions of the recent American-British action might be felt for decades, leading other states to try and justify their own “preventive wars.”^{80,81} Clearly, legitimate authority is, for the reasons discussed, a key part of the preventive war puzzle. In today’s international political environment, this means that United Nations sanction is critical if preventive war is to be seen as legitimate military action.

Just Cause

The next criterion, just cause, requires that the obligation steering the course to war be serious. James Childress, in *Theological Studies*, explains that “because war involves overriding important prima-facie obligations not to injure or kill others, it demands the most weighty and significant reasons.”⁸² Childress provides examples of obligations that might constitute just cause, including protecting the innocent from unjust attack, restoring rights wrongfully denied and re-establishing just order.⁸³ It is interesting that while Childress’ article was written in 1978, long before international terrorism evolved to its current state, each of the examples he provided fits nicely into the context of combating rogue (or weak) states and/or state-supported terrorism. Protecting the innocent from attack, for example, speaks clearly to the many expected future victims of groups such as al-Qaeda.

⁸⁰ E.J. Duncan, L.B. Currie, ““Preventive War” and International Law..., 5.

⁸¹ Helen Thomas, “Preventive War Sets a Perilous Precedent..., 1.

⁸² James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities..., 436.

⁸³ *Ibid*, 436.

Right Intention

The third criterion, right intention, is shaped by the pursuit of a just cause.⁸⁴

Right intention also encompasses motives, particularly that of focussing on peace as the object, or end of war.⁸⁵ Augustine affirmed that peace is “the ultimate object, end, or intention of war.”⁸⁶ Killing and destruction, then, are but “means to another end – a just or better peace.”⁸⁷ Childress points out that this statement could be misconstrued to support a brutal and total war, as this might result in the most total, future peace. To clarify, he explains that since the object of a just war is peace, restraints are imposed on its conduct to avoid making “the return to peace unnecessarily difficult.”⁸⁸

Can right intention be applied to preventive war? Since the focus of right intention is the establishment of a more stable and lasting peace, it would seem so. If we agree that the United States’ 2003 war with Iraq was preventive, the evidence suggests that coalition forces were, from the beginning, looking toward the future peace. While the failure of diplomatic efforts led to the commencement of hostilities, it can be argued that the speed with which the campaign was conducted was itself a demonstration of the coalition’s rush to re-establish peace. With the removal of a threatening regime its goal, the coalition hoped to accomplish this as rapidly as possible, minimizing death and destruction. Looking beyond the case of Iraq, if the goal of preventive war is to remove a burgeoning future threat from the world stage, it can only serve to improve the chances for peace.

⁸⁴ *Ibid*, 438.

⁸⁵ *Ibid*, 438.

⁸⁶ *Ibid*, 438.

⁸⁷ *Ibid*, 438.

⁸⁸ *Ibid*, 439.

Prospect of Success

The prospect of success criterion is aimed at preventing useless, protracted conflict as, arguably, was seen in Afghanistan during the 1980s.⁸⁹ This tenet is subject to more qualification than many others, largely due to the differences in how success is measured. Childress points out that prospect of success “applies more clearly to offensive than defensive wars,” in that nations considering initiating war ought to carefully consider the likely costs of their adventure, in both lives and treasure, as compared to the gains likely to be won.⁹⁰ In a defensive situation, a state may elect to fight aggressively until its final demise, there never having been any hope of victory. Considering the wide variety of prospect of success caveats we can expect to encounter when reviewing a given situation, Childress sums up as follows:

This criterion appears only to exclude totally useless, pointless, or self-indulgent warfare which reasonable people cannot expect to achieve goals or to express values. Such warfare is excluded because it cannot override the prima-facie duties not to injure or kill others, duties as binding on states as on individuals.⁹¹

The point of reference for this criterion has changed dramatically since the end of the Cold War, in that the United States and its Western allies have only fought wars in which the outcome was not in question. This is largely due to the fact that these countries no longer fight each other and, as such, face only those states whose military capabilities are far inferior to their own – a very different situation from that witnessed during the War of the Spanish Succession, for example, in 1701, and the two World Wars.⁹² Whether or not this trend will continue is an open question, but irrelevant to this

⁸⁹ Drew Christiansen, “Whither the “Just War...”, 8.

⁹⁰ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities...”, 437.

⁹¹ *Ibid*, 437.

discussion. What is of interest, though, is how preventive war incorporates the prospect of success criterion. The United States Department of Defense Dictionary of Military Terms explains that a preventive war is “initiated in the belief that military conflict, while not imminent, is inevitable, and that delay would involve greater risk.”⁹³ Certainly, given this definition, the prospect of success can be expected to be greater the shorter the delay in launching an offensive. Also, given that states considering preventive war have the advantage of time, in a way that those in a preemptive or defensive situation do not, it is possible that the prospect of success criterion would serve to advance any campaign schedule, to ensure maximum advantage. While this appears to work against any claim to the justness of preventive war, we can assume for these purposes that those considering preventive war are also taking account of just war theory at large and, as such, will not violate or discard other criterion. If true, potential schedule advances would be off-set by the requirement to abide by the more controlling criteria, such as just cause and legitimate authority.

Last Resort

The final criterion we shall review is that of last resort which, according to Christiansen, was “intended to curb war-making by demanding the exploration of alternatives to war.”⁹⁴ Childress points out that the prima-facie obligation not to injure or kill others cannot “be overridden if there are other ways of achieving the just aim short of war.”⁹⁵ However, and importantly, he goes on to say that “the requirement that war be the last resort does not mean that all possible measures have to be attempted and

⁹² Michael Walzer, *Just and Unjust Wars...*, 78.

⁹³ United States Department of Defense Dictionary of Military Terms

⁹⁴ Drew Christiansen, “Whither the “Just War...”, 8.

⁹⁵ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities...”, 436.

exhausted if there is no reasonable expectation that they will be successful.”⁹⁶ This analysis fits the 2003 experience like a glove, in that the majority at the United Nations membership implored the United States to delay its attack in order that weapons inspectors be given more time to determine the extent of the Iraqi regime’s compliance. Given that Hussein had faced the same or similar demands for twelve years without having offered the unqualified cooperation required of him, and that opponents of military action offered no new, different, as yet untried technique for dealing with Iraq, Childress’ comment would suggest that the American / British coalition’s decision to proceed met the criterion of last resort.

More generally, it was earlier argued that in the very rare cases that it might be applied, preventive war can be expected to follow a lengthy series of non-military efforts. From our recent experience with Iraq, we know that the international community will exhaust all avenues to find a diplomatic or, perhaps, economic solution which shall achieve their goals. As such, it is reasonable to expect that preventive war shall be a means of last resort. Certainly, the legitimate authority in question ought to so direct.

This chapter has reviewed the fundamental tenets of just war theory, explaining the role of each in the service of the whole. Five central criterion were then cast in the light of preventive war to show that in specific circumstances, it is difficult to argue that a preventive war is, by definition, patently unjust. No doubt, there are questions that must be rigorously addressed as preventive war is considered. Legitimate authority stands out as one such criterion. However, we have seen that in many cases, the tenets of just war theory seem to fit closely together, making it problematic to apply one in isolation from the others. As such, if legitimate authority and just cause are considered

⁹⁶ James F. Childress, “Just-War Theories: The Bases, Interrelations, Priorities..., 436.

the starting points, we can expect that future discussions of preventive war will be steered in the direction demanded by *jus ad bellum* theorists.

Chapter 5 – Preventive War and International Stability

The threat of preventive war, provided the legitimacy of past and similar action, can be used to shape the actions of so-called rogue regimes and others, increasing stability in an anarchical international system. With broad support, preventive war can serve to demonstrate the international community's resolve in its dealings with pariah states, which ought to moderate the actions of these regimes by introducing in their leadership a measure of second-thought.

Recall that the introduction to this paper explained that to facilitate the development of the above argument, we would first define preventive war, then examine its status before international law and, finally, consider it in the context of just war theory. Those tasks complete, our having established that preventive war can meet the tests of international law, and that it can fall within the guidelines for *jus ad bellum*, it shall now be demonstrated that preventive war can serve the cause of international stability.

We have seen in earlier chapters that states considering initiating a preventive war are rightly faced with the complex task of legitimizing their actions. Of course, as we know from our review of *jus ad bellum*, this is true for all wars. We understand that the tests are international law and just war theory, and that in specific circumstances preventive war can be justified. To ease the process of understanding why preventive war might be considered a practical option and to assist in determining when it might be appropriate, it is instructive to review the evolution of American security doctrine. Doing so allows us to compare preventive war with other doctrinal options and understand why one or another might be appropriate for some situations, but not for others.

In support of this paper's underlying thesis, re-stated above, this chapter argues that the primary goal of preventive war is increased international stability over time. We shall use the review of American doctrinal evolution to demonstrate how preventive war is suited, in specific circumstances, to contribute to the attainment of this goal. Additionally, we will look at preventive war's ability to modify the behaviour of regimes operating at or beyond the extremes of international norms, and discuss preventive war's utility as a means of stemming WMD proliferation, itself a threat to stability. We shall also address the importance of accurate intelligence, a key element in determining the need for preventive war, and essential for building international support for military action.

International terrorism is linked both to rogue states and WMD proliferation and we shall deal with this subject at appropriate junctures. Note that with respect to terrorism, the philosophy underlying this chapter is that at some point in the future, when all states have accepted their responsibility to deny terrorists safe haven for recruitment, training and planning, we shall have moved dramatically closer to achieving the goals outlined in the Charter of the United Nations. The *National Security Strategy* delivers the same message, explaining that terrorist organizations will be destroyed, in part, "by denying further sponsorship, support, and sanctuary ... by convincing or compelling states to accept their sovereign responsibilities."⁹⁷

The Evolution of American Security Doctrine

American security policy has undergone dramatic change since the end of the Cold War and, in particular, during the last three years. During most of the latter half of the 20th century the security policy of the United States involved a combination of

containment and deterrence, both directed, of course, at the former Soviet Union. The justification for this approach was straightforward. Writing on the subject of containment in their 1982 book *American Foreign Policy: Pattern and Process*, Kegley and Wittkopf argue that the Soviet Union is an “expansionist power,” whose goal is world domination.⁹⁸ They go on to say that as the “leader of the free world” and the only state in a position to ward off Soviet aggression, the United States must “manage its affairs so as to increase its power relative to the Soviet Union, in order to better contain Soviet expansion.”⁹⁹

At the root of this containment policy was the ability of the United States to deter direct Soviet aggression. In his article “Deterrence and Perception,” Robert Jervis explains that deterrence is the process of convincing an adversary that “the expected value of a certain action is outweighed by the expected punishment.”¹⁰⁰ Of central importance to deterrence is the issue of expectation. As Jervis explains, there are two elements associated with what he terms “expected punishment.” First, from the perspective of the potential adversary, there is the question of the “perceived cost of the punishment that the actor can inflict.”¹⁰¹ A second issue is the “perceived probability that he will inflict them.”¹⁰² Clearly, if deterrence is to be effective, both sides must share a common understanding of these issues.¹⁰³

⁹⁷ United States, *The National Security Strategy*..., 6.

⁹⁸ Charles W. Kegley, Eugene R. Wittkopf, *American Foreign Policy: Pattern and Process, Second Edition* (New York: St. Martin's Press, 1982), 48.

⁹⁹ Charles W. Kegley, Eugene R. Wittkopf, *American Foreign Policy*..., 49.

¹⁰⁰ Robert Jervis, “Deterrence and Perception,” *International Conflict and Conflict Management*, ed. R. Mathews, A. Rubinoff and J. Stein. Department of Political Science University of Toronto (1984): 32.

¹⁰¹ *Ibid.*, 32.

¹⁰² *Ibid.*, 32.

¹⁰³ *Ibid.*, 32.

As the Cold War developed, deterrence was underwritten by the huge nuclear arsenals maintained by the superpowers. During the 1950s, however, when the world was just beginning to appreciate Stalin's penchant for expansion, and while the Soviet Union was "feverishly working to catch up," there were those in the United States who seriously suggested that the only way to secure America's future would be to initiate a preventive war.¹⁰⁴ In his 1952 paper "'National Security' as an Ambiguous Symbol," Wolfers asked "Should we perhaps go so far as to start a preventive war, when ready, with the enormous evils it would carry with it, if we should become convinced that no adequate security can be obtained except by the defeat of the Soviet Union?"¹⁰⁵ While this course of action was seriously debated at the highest levels of American government, particularly when it became evident that Moscow was close to the development of a thermonuclear capability, it was eventually determined to be too risky.¹⁰⁶

Once the USSR's nuclear strike capability was established, strategic thought within both superpowers considered preemption because, as Freedman explains, the only way to achieve victory in a nuclear war is to destroy the enemy's offensive capability before it can be used.¹⁰⁷ However, given the awesome destructive power of a single warhead and the certainty that surviving weapons would be launched in retaliation for a preemptive strike, with catastrophic results, preemption was abandoned because, quite simply, it seemed likely to bring about the war that it was supposed to prevent.¹⁰⁸

Prevention and preemption, both inherently unstable as national strategic policy underpinnings in the context of superpower rivalry, gave way, therefore, in the mid-

¹⁰⁴ Lawrence Freedman, "Prevention, Not Preemption...", 108.

¹⁰⁵ Arnold O. Wolfers, "'National Security' as an Ambiguous Symbol...", 499.

¹⁰⁶ Lawrence Freedman, "Prevention, Not Preemption...", 108.

¹⁰⁷ *Ibid*, 108.

1960s, to the relative stability of mutual assured destruction. It was during this period that the Cold War came of age. A hardened second-strike capability in both the United States and the Soviet Union, coupled with no effective system for defeating incoming missiles, meant that there was now no way to win a nuclear war, effectively removing the temptation to initiate one, whatever the provocation.¹⁰⁹

Since the end of the Cold War, the relationship between the United States and Russia has evolved considerably. The United States now sees its former military competitor as, at worst, a peer on the international stage and, at best, an ally, whereas it was regarded as a bitter foe only two decades ago. The point, however, when considering the issue of preventive war, is that the USSR of old and Russia of today are vastly different adversaries than those which constitute the United States' contemporary threats. While prevention and preemption may have been at one time, at the very least, theoretical options in the context of a developing superpower rivalry, they quickly became impractical, giving way to containment and deterrence. At this juncture, however, given the unparalleled power of the United States and the relative military impotence of its enemies, we must again ask which of these options constitute valid policy tools. Of fundamental importance to this discussion, of course, is an understanding of the types of enemies now faced by the United States. Jeffrey Record names the three "threat agents" identified by the so-called Bush Doctrine, largely summarized in the *National Security Strategy*.¹¹⁰ These are, namely, "terrorist organizations with global reach, weak states that harbour and assist such terrorist

¹⁰⁸ *Ibid*, 108.

¹⁰⁹ *Ibid*, 109.

¹¹⁰ Jeffrey Record, "The Bush Doctrine and War with Iraq," *Parameters*, (Spring 2003): 5.

organizations, and rogue states.”¹¹¹ The *National Security Strategy* provides a list of five characteristics attributable to “rogue” states. Those most relevant to the subject of preventive war are as follows:

- rogue states display no regard for international law, threaten their neighbours and callously violate international treaties to which they are party;
- rogue states are determined to acquire weapons of mass destruction, along with other advanced military technology, to be used as threats or offensively to achieve the aggressive designs of these regimes; and
- rogue states sponsor terrorism around the globe.¹¹²

Understanding the nature of the threat allows us to better match our response. Is deterrence, for example, applicable in a world where rogue states and terrorist organizations are the primary threat to world peace and security? The *National Security Strategy* explains that the United States’ Cold War adversary was “risk averse,” making deterrence an effective defence.¹¹³ In his speech to West Point graduates in 2002, President Bush made the point that “Deterrence, the promise of massive retaliation against nations, means nothing against shadowy terrorist networks with no nation or citizens to defend.”¹¹⁴ The *National Security Strategy* goes on to say that “our enemies see weapons of mass destruction as weapons of choice,” adding that rogue states “see these weapons as their last means of overcoming the conventional superiority of the United States.”¹¹⁵

Considering deterrence, Lawrence Freedman takes a different approach, although he arrives at the same conclusion. He characterizes deterrence as a “coercive strategy,”

¹¹¹ *Ibid*, 5.

¹¹² United States, *The National Security Strategy*..., 14.

¹¹³ *Ibid*, 15.

¹¹⁴ President George W. Bush, Speech to West Point Graduates (June 1, 2002).

¹¹⁵ United States, *The National Security Strategy*..., 15.

designed to alter an adversary's decision-making.¹¹⁶ Of course, as Freedman asserts, "coercive strategies such as deterrence assume that an adversary's relevant calculations can be influenced."¹¹⁷ As Record points out, deterrence may be ineffective against rogue states seeking to acquire WMD, and is "irrelevant against terrorist organizations," largely for the reasons provided by President Bush at West Point.¹¹⁸

What, then, of preemption? In contrast to what he called "coercive strategies" such as deterrence, Freedman terms preemption a "controlling strategy."¹¹⁹ He explains that controlling strategies "do not rely on adversaries making cautious decisions" as, for example, would have been expected of the "risk-averse" Soviet Union in the 1960s.¹²⁰ In contrast, controlling strategies "assume that, given the opportunity, an adversary will use force and therefore cannot be afforded the option in the first place."¹²¹ Summing up the issues, the *National Security Strategy* states:

Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today's threats, and the magnitude of potential harm that could be caused by our adversaries' choice of weapons, do not permit that option. We cannot let our enemies strike first.¹²²

Is preemption a valid means of dealing with these so-called threat agents? It would seem that the answer depends on the "agent" in question. Freedman points out that "no preemptive action has yet been suggested against North Korea,"¹²³ arguably today's most notorious rogue state. The reason for this may be that, in some ways, the

¹¹⁶ Lawrence Freedman, "Prevention, Not Preemption...", 106.

¹¹⁷ *Ibid.*, 106.

¹¹⁸ Jeffrey Record, "The Bush Doctrine and War...", 5.

¹¹⁹ E.J. Duncan, L.B. Currie, "'Preventive War' and International Law After Iraq...", 4.

¹²⁰ Lawrence Freedman, "Prevention, Not Preemption...", 106.

¹²¹ *Ibid.*, 106.

¹²² United States, *The National Security Strategy*..., 15.

quandary faced by the United States with respect to North Korea is similar, though on a smaller scale, to that which it experienced with the Soviet Union. Specifically, it would seem that Western intelligence agencies are unsure as to the sophistication or advancement of North Korea's nuclear programme. Do they have a weapon? Perhaps they have several. Either way, there remains an open question as to the level of success that a preemptive strike might enjoy. Of course, if such a strike were unsuccessful, the peoples of South Korea, Japan and, perhaps, the United States might pay a hefty price for the adventure, in the form of retaliation.

Launching a preemptive strike against terrorists is a very different issue than engaging states, weak or otherwise, largely due to the scale of action required. Generally, given that preemption, by definition, is tied so closely to imminence, knowledge of an impending attack would be gathered by the intelligence or law enforcement community and passed to government. Depending upon the information and the nature of the threat, appropriate forces would be assigned to deal with it. Of course, there are cases where terrorism is state-sponsored or, at the very least, state-supported, elevating the issue to the national / strategic level. Reflecting the policy invoked following the September 11th attacks and the subsequent war to remove the Taliban regime from Afghanistan, the *National Security Strategy* states "We make no distinction between terrorists and those who knowingly harbor or provide aid to them."¹²⁴ While Operation Enduring Freedom demonstrates to the world the United States' determination in the War Against Terrorism, this effort was launched after terrorists had struck and, as such, is not a clear example of preemption unless one takes

¹²³ Lawrence Freedman, "Prevention, Not Preemption...", 113.

¹²⁴ United States, *The National Security Strategy*..., 5.

the position that subsequent attacks are being or have been averted as a result. The international terrorist threat and, by association, that presented by weak states, highlights the practical difficulties associated with preemption. Given the large-scale attacks that groups such as al-Qaeda are plotting, and their stated desire to employ the most deadly and far-reaching means, including WMD, preemption's reliance upon accurate and well-timed intelligence appears to hand too great an advantage to these destructive forces. Writing for *Foreign Affairs*, Ikenberry made the point that "in the age of terror, there is less room for error."¹²⁵ Clearly, counting on just-in-time intervention is not a viable option when the costs of being just-too-late are so grave.

So what options remain? Is it the case that the difficulties associated with preemption move the policy markers toward prevention? Does the medical adage "an ounce of prevention is worth a pound of cure" apply? When it comes to terrorist organizations, it is a fact that they are, by their very existence, a future threat. As such, any long-term, coherent strategy to counter their activities is, by definition, preventive.

The *National Security Strategy* opens with an eleven paragraph introduction signed by President Bush in which he states that "as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed."¹²⁶ While the remainder of the document appears to emphasize preemption, it seems likely that this is "political expediency,"¹²⁷ given that international law, as seen in Chapter 3, has long recognized a nation's right to anticipatory self-defence and, again, preemption

¹²⁵ G. John Ikenberry, "America's Imperial Ambition," *Foreign Affairs* 81, No. 5 (September/October 2002): 50.

¹²⁶ United States, *The National Security Strategy...*, v.

¹²⁷ Hanni M. Cordes, "Does an Ounce of Prevention Really Bring a Pound of Cure? The Debate Over Preventive War Doctrine," National War College Paper: 1.

implies that one is striking an enemy as it prepares to attack.¹²⁸ However, the President's statement rests clearly in the realm of prevention. "Emerging threats," and "before they are fully formed" are phrases that leave little doubt as to the intentions of a country that now recognizes the grave nature of the threats arrayed against it, and the high probability that the next successful attack on American soil may be on a much larger scale than the last. Highlighting what he believes to be the urgency of America's predicament, President Bush states "History will judge harshly those who saw this coming danger but failed to act. In the new world we have entered, the only path to peace and security is the path of action."¹²⁹

The *National Security Strategy for Combating Terrorism*, which elaborates on Section III of the *National Security Strategy*, is similarly clear on the techniques to be used to protect the United States and its allies. Reiterating the policy direction outlined by the *National Security Strategy*, it says at one point "we cannot wait for terrorists to attack and then respond,"¹³⁰ and "when states prove reluctant or unwilling to meet their international obligations to deny support and sanctuary to terrorists, the United States, in cooperation with friends and allies, or if necessary, acting independently, will take appropriate steps to convince them to change their policies."¹³¹

Preventive War in Iraq

The *National Security Strategy* was released six months prior to the launch of Operation Iraqi Freedom and just one week after President Bush spoke to the United Nations General Assembly, stating that "Saddam Hussein's regime is a grave and

¹²⁸ E.J. Duncan, L.B. Currie, "Preventive War" and International Law..., 4.

¹²⁹ United States, *The National Security Strategy*..., 2.

¹³⁰ United States, *National Strategy for Combating Terrorism* (Washington: The White House, 2003), 15.

gathering danger.”¹³² He went on to directly challenge the United Nations to act, expressing his belief that “All the world now faces a test and the United Nations a difficult and defining moment,” asking “Are Security Council resolutions to be honored and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant?”¹³³

Readers will know that after months of debate, the United Nations Security Council would go no further than Resolution 1441 (November 2002), issued in the wake of President Bush’s speech. It warned Iraq of “serious consequences” should it continue to violate its obligations.¹³⁴ With Resolution 1441 in hand, the United States, Britain, Australia and others decided to act without additional United Nations sanction, in what Joseph Cirincione called “the first application of the new theory that preventive war can be an effective instrument against the spread of nuclear, biological and chemical weapons.”¹³⁵

While there is general agreement that the US-led war against Iraq was the first of its kind, based, as it was, on the goal of keeping from Iraq a more developed and dangerous future capability, there has been at least one limited military strike that could be characterized as preventive. This, of course, was Israel’s June, 1981, precision strike to disable the Iraqi nuclear reactor at Osiraq, which was due to become operational shortly thereafter. The Israeli position at the time was that their action was preemptive, arguing that Iraq’s clear effort to develop a nuclear weapons capability, coupled with reckless statements from the Iraqi leadership, indicated a determination on the part of

¹³¹ *Ibid*, 17.

¹³² President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

¹³³ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

¹³⁴ United Nations Security Council Resolution 1441 (November 8, 2002).

Saddam Hussein to target Israel at some point in the near future. Certainly, the statement broadcast by Radio Baghdad during the August 1980 Arab Summit left little doubt with respect to the Iraqi regime's malevolence toward Israel: "President Saddam Hussein has stressed that a decision better than boycotting the states that move their embassies to Arab Jerusalem is to destroy Tel Aviv with bombs."¹³⁶ Recall that the United States Department of Defense Dictionary of Military Terms explains that a preventive war is "initiated in the belief that military conflict, while not imminent, is inevitable, and that delay would involve greater risk."¹³⁷ As Israel discovered following their strike, when their action became the focal point for widespread international condemnation, one of the main tasks facing a state choosing to launch such an attack is that of convincing the international community of the imminence of the threat they are facing.

Recall from Chapter 3 Freedman's statement that "prevention can be seen as preemption in slow motion, more anticipatory and forward thinking."¹³⁸ Preventive war, then, is a concept that places a high demand on advance knowledge of, at minimum, an adversary's medium-term intentions. Single states or coalitions considering initiating a preventive war rely, therefore, on some sort of indication from the delinquent state with respect to those intentions. This appears not to be an unreasonable assumption, given that it seems unlikely, in this day and age, that a preventive war would be launched without significant diplomatic effort having preceded it. This was indeed the case for Israel's 1981 strike and for the US-led attack on Iraq in 2003. The fact is that states do not become rogue or weak, or subject to the negative influences of terrorist

¹³⁵ Joseph Cirincione, "Can Preventive War Cure Proliferation...", 66.

¹³⁶ N.J. Kaplan, "The Attack on Osiraq...", 140.

¹³⁷ United States Department of Defense Dictionary of Military Terms.

¹³⁸ Lawrence Freedman, "Prevention, Not Preemption...", 107.

organizations, overnight. They develop over a period of time, during which the international community can be expected to engage on a number of fronts. Today's communication and surveillance technologies, coupled with the indications which are bound to pass through diplomatic channels, directly or indirectly, mean that the West can expect to have some advance indication of the evolution of such a player on the international scene. As such, there will be a period of time during which diplomatic and economic means, for example, may be employed, so that more extreme measures need not. However, particularly in a day and age where extremely destructive weaponry can be made available to non-state actors, there are likely to be rare cases where the extreme must be considered. These are the cases for preventive war.

International Stability

At the beginning of the chapter, it was asserted that the primary goal of preventive war is increased international stability. Clearly, this goal is very broad, complicated by the fact that it is not short-term in nature. In fact, as much as being considered an option for dealing with rogue states and other destabilizing elements at hand, preventive war ought to be primarily considered as a means of setting the stage for future stability. Those who argue, as Schlesinger has, that preventive war is "illegitimate and immoral" or, like Chomsky, that preventive war constitutes "the supreme crime," might ask whether, in the case of preventive war, the end justifies the means.^{139,140} We know that the underlying hope of the United Nations is world peace. If we accept that properly justified preventive war serves the same goal, we might conclude that the end does justify the means, warts and all. The problem for most, it would seem, is that the "end" is so far

¹³⁹ Arthur Schlesinger, "The Immorality of Preventive War...", 1.

¹⁴⁰ Noam Chomsky, "Preventive War "The Supreme Crime...", 1.

away, and they are concerned with what comes to pass between now and then, particularly given that preventive war can be expected to stir considerable dissent in the short and medium terms.

Earlier in this chapter we saw that the Cold War world of mutual assured destruction proved to be relatively stable, a sort of discipline imposed by the east-west divide. Without such imposed discipline, of course, we now look to the United Nations more than ever before. The United Nations Charter lists the purposes of the body, the first of which is “to maintain international peace and security, and to that end: take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.”¹⁴¹ Many of those who have expressed concern with America’s 2003 war in Iraq have based those concerns on their belief that the United Nations had not sanctioned the activities of the American-led coalition. It has been stated repeatedly in this paper that the ideal preventive war, if it must be fought at all, would be conducted by as large a coalition as possible, ideally under the auspices of the United Nations. As we see above, the Charter allows for the “removal of threats to the peace” and it is clear, given the size of the membership, that there is no better venue from which to attempt to modify the behaviour of belligerent states.

Continuing along the lines of the ideal, what part would preventive war play in the eventual achievement of the United Nations’ goals? In the current vernacular, preventive war ought to be one of many tools in the international community’s toolbox, along with diplomatic and economic mechanisms, to name a few. The *National Security*

Strategy makes several references to a “comprehensive strategy” for increasing world stability, making the point that America’s security is best achieved in the context of improved security around the globe.¹⁴² To that end, it also addresses poverty, which is often linked to terrorism, stating “a strong world economy enhances our national security by advancing prosperity and freedom in the rest of the world.”¹⁴³

It is clear in 2004 that the greatest concern shared by the international community at large, and Western countries in particular, is the possibility that terrorists will gain access to weapons of mass destruction, a capability thus far reserved for states. The introduction to the *National Security Strategy* succinctly makes the point: “The gravest danger our Nation faces lies at the crossroads of radicalism and technology.”¹⁴⁴

Avoiding this so-called crossroads has become, therefore, a central building block in the international campaign for security. Washington’s strategy emphasizes strengthened alliances and the establishment of partnerships with former adversaries, innovation in the use of military forces and modern technology, and increased emphasis on the collection and analysis of intelligence.¹⁴⁵ Notwithstanding this emphasis, it would appear that there remains a great deal of progress to be made in the area of intelligence collection and analysis, given, for example, that coalition forces have proven unable to locate the WMD stockpiles they were sure existed in Saddam Hussein’s Iraq. This apparent failure, and the resultant doubt cast upon the credibility of the Bush and Blair Administrations, given their pre-war charges with respect to the illegal weapons capabilities resident in Iraq, has

¹⁴¹ Office of the Judge Advocate General, “1945 Charter of the United Nations, Chapter I- Purposes and Principles, Article 1,” in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 56.

¹⁴² United States, *The National Security Strategy*..., 14.

¹⁴³ *Ibid*, 17.

¹⁴⁴ *Ibid*, v.

¹⁴⁵ *Ibid*, 14.

contributed significantly to the world community's current stance against preventive military action. Imagine if coalition forces had quickly located the weaponry that Iraq had been accused of developing and stockpiling.¹⁴⁶ It seems likely that such discoveries would have softened the reactions of many to the invasion of Iraq, leaving the door open for a less polarized discussion of the merits of preventive war. As it stands, this apparent intelligence failure can be expected to complicate future coalition-building efforts, should a similar situation develop elsewhere.

In a general sense, international cooperation with respect to intelligence analysis has accelerated in the wake of the September 11th attacks. We occasionally hear of the pay-off, in the form of arrests and terrorists' plans thwarted. However, when these softer approaches fail, the United States has made it clear that America "must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends."¹⁴⁷ America's clear preference, however, is for the United Nations to take the lead. In his September 2002 speech to the United Nations General Assembly, President Bush asserted that the United States wants the United Nations to be effective and successful, making the point that as "the world's most important multilateral body," it is vitally important that its resolutions are enforced.¹⁴⁸

If the goal of preventive war is increased stability, how might it be achieved? It is in answer to this question that the issues of behaviour modification and nonproliferation come together. We have already seen that if the criteria of just war theory are met, the tenet of last resort must be observed. Therefore, the resort to war, theoretically, indicates

¹⁴⁶ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

¹⁴⁷ United States, *The National Security Strategy...*, 14.

that all reasonable options have been exhausted and the rogue regime in question continues its threatening stance. Based upon our recent experience, we can assume that there has been a great deal of diplomatic activity, the pace quickening as the prospect of war increases. As well, we can assume that punitive efforts such as economic sanctions have been tried, to no avail. From this position in our scenario, one wonders why international efforts have been unsuccessful, and it is instructive to turn to the case of Iraq. It seems likely that Saddam Hussein believed that the United Nations would not bring war to Iraq, particularly given the profound, and very public differences of opinion between the Security Council's major players with respect to the way ahead. Recall that this back-and-forth diplomatic tussle with Iraq had been going on, virtually unabated, for twelve years. He probably also believed that the United States and Britain would not act without sanction from the world community. As we know, he was wrong. What have we learned? More importantly, perhaps, is what have other potential rogue states learned.

It seems reasonable to suggest that preventive war is more powerful in reality than it is in theory. This would be true of most things. That the United States and Britain achieved victory so quickly will not have surprised those familiar with the extent of the military mismatch, both in terms of the capability of the deployed forces and the professionalism of those orchestrating the campaign. The only surprise, for some, is that they attacked at all. That they did sends a powerful message. While troubles in Iraq continue, and are unlikely to be resolved for some time, this may be of little comfort to other such regimes. Iran, Syria and North Korea, for example, may be heartened by the difficulties currently being experienced by American forces in Iraq, but they are also likely to better appreciate the fragility of their position. It can be assumed that as long as

¹⁴⁸ President George W. Bush, Speech to the United Nations on Iraq (September 12, 2002).

the United States feels threatened by rogue states, difficulties such as those in post-war Iraq are unlikely to deter it from initiating similar action, should it be considered necessary. The shock of the September 11th attacks brought to the surface a determination that appears unlikely to falter in the near term, particularly while some members of the international community continue to serve as destabilizing influences. One wonders if the current proximity of American forces to Iran and Syria is giving these regimes reason for pause, perhaps modifying their behavior to some extent.

One of the primary features of preventive war, then, is that it sends a message. And now that the theory has been exercised, the message ought to be reasonably clear. What is the message and at whom is it directed? Certainly, it is well suited for any state that refuses to engage in productive discussion with the international community on the subjects of WMD proliferation and international terrorism. Iraq put the issue of proliferation front and centre. Bin Laden did the same for terrorism. Timing and circumstance put these issues together and, on both, we can expect that there will be little compromise. In part, this is because the acrimony over Iraq has made the world hypersensitive to these issues and, if anything, increased the likelihood of closer cooperation when the next such crisis arrives. Notwithstanding current anti-American sentiment so pervasive in the international arena, other world leaders can be expected to want to demonstrate that they are resolute in the face of security threats. As well, given the fundamental belief that the United Nations can become what its creators envisioned, it is very likely that serious effort will be expended to ensure that the United States does not once again feel it necessary to act outside the auspices of the United Nations. The states currently under close scrutiny for proliferation-related issues, Iran and North Korea, can

thank bin Laden for much of the current attention, as al-Qaeda's 2001 attacks brought fear and unfettered imagination to the forefront of Western consciousness.

If we contest that the message is loud and clear, there ought to be evidence that it has been heard. There are, in fact, several indications that this is the case. Most stark is the sudden decision by Libya late in 2003 to forsake its efforts to attain WMD. Would this have happened if Iraq had continued its dance with the United Nations? Indeed, we may never know how big a part the fate of Iraq played in the minds of the Libyan leadership. Surely, the equation was complex, but the timing would appear to support assertions that the rapid demise of the Iraqi regime was a factor.

What of other examples? Have we seen cracks in the North Korean facade since Iraq? While progress is slow, some movement has been generated by the ongoing talks involving the Koreans, China, Russia, Japan and the United States. That said, critics of America's current policy argue that since there has been limited discussion of preventive war in the North Korean context, in part because the extent of their retaliatory capability is unknown, the wrong message might be going to rogue states seeking WMD.¹⁴⁹ Duncan and Currie, in their article "'Preventive War' and International Law after Iraq," state their argument as follows:

If a "preventive war" by the United States against North Korea is perceived to be avoided due to the possession by North Korea of nuclear weapons, then that would be a powerful incentive for non-nuclear states to seek to acquire nuclear weapons to protect themselves against attack and would thus be a stimulus for nuclear proliferation rather than the rule of law.¹⁵⁰

The problem with this argument is that it fails to take into account that the unique circumstances surrounding every situation warrant a modified approach. The fact is that

¹⁴⁹ Joseph Cirincione, "Can Preventive War Cure Proliferation...", 68.

North Korea represents a very different operational problem than that posed by Iraq, independent of its nuclear capability. First and foremost, North Korea is squarely in China's region of influence. A burgeoning superpower, it is crucial that China be closely linked to any solution of the North Korean problem, to indicate its coming of age as an international player. While the United States' involvement serves to prod the North Korean leadership, particularly in light of its recent activism, it is reasonable to suggest that a solution brokered by China would be the most productive. Certainly, it would be positive for China and the world community, enhancing China's reputation on the world stage and signaling the arrival of a valued and engaged partner in the drive for stability in the region and beyond.

The second major difference involves the threat North Korea poses to its neighbours. North Korean topography would permit concealed and well positioned conventional forces to inflict a great number of casualties on the South Korean and Japanese populations in response to an attack. Saddam Hussein was not similarly advantaged by the proximity of large and vulnerable civilian populations. As such, his unspoken deterrent effort was limited to the chance that he might arm Scud missiles with chemical or biological weapons, which he must have known would have led to a dramatic escalation. In the event, while this possibility was taken seriously, Iraqi forces destined to fight on open, desert terrain would have been destroyed before inflicting large numbers of casualties on neighbouring countries.

This is not to say that the concern expressed by Duncan and Currie is unimportant. Of course, that the correct message is sent and received is of crucial importance if preventive war is to make a positive contribution to stability. Delving

¹⁵⁰ E.J. Duncan, L.B. Currie, "Preventive War" and International Law..., 5.

further into the issue, Cirincione states that “to be an effective treatment for proliferation, preventive war must not only remove the direct threat, it must also dissuade would-be proliferators.”¹⁵¹ Time will tell if North Korea and Iran have absorbed the correct message but, again, preventive war is but one of the tools available. Both regions have complex security issues that must be addressed. Saddam Hussein’s Iraq was a serious threat to Iran, as well as Kuwait, Saudi Arabia and Israel.¹⁵² Perhaps the removal of this threat will “spur important counter-proliferation gains and lead to a safer regional security environment.”¹⁵³

Following Cirincione’s point further, dissuading would-be proliferators is a two-sided coin. After all, states hoping to develop a WMD capability will be hard-pressed to succeed unless they receive the cooperation of those who possess the technologies in question. While it is the work of the International Atomic Energy Agency (IAEA) and the Non Proliferation Treaty (NPT) to limit and monitor the movements and uses of nuclear technologies, it is clear that the system is flawed. Iraq and North Korea stand as evidence of the current system’s inadequacies, not to mention India, Pakistan and Israel. Of course, some would argue that the relatively low number of proliferation examples is evidence, instead, of the IAEA’s effectiveness.¹⁵⁴ Regardless, the clear aim of an international non-proliferation regime is the avoidance of proliferation. It is here that preventive war has a deterrent role to play. While our experience with preventive war is limited, hopefully to remain so, there are a couple of critical points that ought to serve counter-proliferation efforts. First, we can expect with reasonable certainty that

¹⁵¹ Joseph Cirincione, “Can Preventive War Cure Proliferation...”, 68.

¹⁵² *Ibid.*, 68.

¹⁵³ *Ibid.*, 69.

¹⁵⁴ Gu Guoliang, “Redefine Cooperative Security, Not Preemption...”, 142.

preventive wars of the foreseeable future, ideally sanctioned by the United Nations, will result in the defeat of the rogue regime in question. Second, we can expect that in the aftermath the international community will learn the origin of technologies that played a part in elevating the threat in the first place. As coalition forces continue their investigations in Iraq, important information ought to be uncovered to assist in the tracking of nuclear contraband. Similarly, it is hoped that Libya's turnaround shall yield information of use in the campaign against proliferation.

A fundamental part of the proliferation equation is, of course, international cooperation. Reviewing the United States' current foreign policy doctrine, Ikenberry wonders if Washington's new approach "will usher in a more hostile international system, making it far harder to achieve American interests."¹⁵⁵ This perspective is shared by many.^{156,157} Similarly, a number of writers suggest that the invasion of Iraq has greatly increased al-Qaeda recruitment, a significant setback for the war on terror.¹⁵⁸ There is little doubt that the American diplomatic corps will be working overtime to heal the wounds opened in 2003. However, as the March 2004 terrorist attacks in Madrid illustrate, America is not alone in the battle against terrorism and, by extension, against unpredictable rogue regimes. While the United States has the most to offer, and the most to gain from this ongoing campaign, it is in the interests of the entire international community to bridge the current gaps. As cooperation improves, and the international community becomes more interdependent, it will become steadily more difficult for various destabilizing influences to operate freely.

¹⁵⁵ G. John Ikenberry, "America's Imperial Ambition...", 56.

¹⁵⁶ Helen Thomas, "Preventive War Sets a Perilous Precedent...", 1.

¹⁵⁷ Noam Chomsky, "Preventive War "The Supreme Crime...", 2.

¹⁵⁸ *Ibid*, 3.

In summary, the ideal preventive war is, of course, one that need not be fought, where regimes that threaten world peace can be convinced of the international community's determination to be free of such threats. Next on the list is the position in which we hope we now find ourselves, where the first and last preventive war is complete, having established for the world a precedent that may be used to modify the behaviour of regimes otherwise intent upon acting against the will of the international community. This chapter has argued that given the doctrinal options and today's threats preventive war can be an effective tool for building lasting world peace. It will be some time, however, before the international community learns the effectiveness of the United States' approach. In the meantime, it is in the interests of all to re-establish a dynamic and meaningful rapport so that future efforts to shape the world order are made with a unified voice. To that end, the current difficulties between players on the international stage ought to make clear that should similar action be required in the future, it would be best conducted with the United Nations at the lead.

Chapter 6 – Conclusion

Preventive war is a concept with a rare ability to polarize debate. This debate is not limited to the chambers of the United Nations. Nor is it limited to political scientists or experts in international law. Since shortly after September 11th, 2001, this debate has been joined by people of all walks of life, from around the world. It remains a heated debate that has generated a great deal of important thought and reflection.

This paper has argued that preventive war can serve the cause of international stability. We have seen that there are important issues of legality to be considered, and that just war theory must be carefully applied to the equation. It has been argued that preventive war can pass these demanding tests. Most importantly, we have seen that if preventive war is to be productively applied to the cause of stability, it ought to be done with broad international support to ensure the clarity of the international community's message.

The first, and hopefully last, preventive war was fought in Iraq in 2003. Elements of this example have been used to illustrate several issues related to preventive war. The continuing difficulties in Iraq ought not be confused with the debate surrounding preventive war doctrine. Many commentators are tempted to cast these issues together. However, if the preventive war debate is to remain productive, we must avoid this mistake.

The ultimate success of this application of preventive war may not be known for many years. Only in hindsight shall we gain the perspective to accurately judge the issue. In short, its success or failure as a means of enhancing international stability can only be

measured after we study the outcome of future international security crises. Only then shall we be in the position to properly assess our progress, or lack thereof. However, although there are likely to be turbulent periods in the near future, this writer believes that the path to international stability and a more pervasive sense of peace and cooperation between states is straighter now than it was just a short time ago.

Bibliography

- Arend, Anthony Clark. "International Law and the Preemptive Use of Military Force." *The Washington Quarterly* 26, No. 2 (Spring 2003): 89-103.
- Blix, Hans. "Blix Reports to the UN." (January 27, 2003)
Channel 4 Web Site; available from
wysiwyg://215/http://www.channel4.com/news/2003/01/week_5/27_war.html;
accessed 11 February 2004.
- Bush, President George W. "Remarks by President Bush at 2002 Graduation Exercise of the United States Military Academy, West Point, New York." (June 1, 2002)
Mtholyoke Web Site; available from
<http://www.mtholyoke.edu/acad/intrel/bush/westpoint.htm>; accessed 3 September 2003.
- Bush, President George W. "A Grave and Gathering Danger." (September 12, 2002)
National Review Web Site; available from
<http://www.nationalreview.com/document/document091202.asp>; accessed 3 September 2003.
- Bush, President George W. "President Bush Addresses the Nation." (March 19, 2003)
Whitehouse Web Site; available from
<http://www.whitehouse.gov/news/releases/2003/03/20030319-17.html>; accessed 7 September 2003.
- Buzan, Barry. *People, States and Fear, Second Edition*. Boulder, Colorado: Lynne Rienner Publishers, 1991.
- Calhoun, Laurie. "The Injustice of "Just Wars"." *Peace Review* 12, No. 3 (September 2000): 449-455.
- Childress, James F. "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria." *Theological Studies* Vol 39, No. 3 (1978): 427-445.
- Chomsky, Noam. "Preventive War "The Supreme Crime"." *Information Clearing House* (August 11, 2003): 1-6
Information Clearing House Web Site; available from
Wysiwyg://88/http://www.informationclearinghouse.info/article4416.htm;
accessed 11 December 2003.
- Christiansen, Drew. "Whither the "Just War"?" *America* Vol. 188, Issue 10 (March 24, 2003): 7-12.

- Cirincione, Joseph. "Can Preventive War Cure Proliferation?" *Foreign Policy* 137 (July/August 2003): 66-69.
- Conclusions of the European Council (February 17 2003)
Delchn Web Site; available from
<http://www.delchn/cec.eu.int/en/whatsnew/european%20council/%20%20Iraq.pdf>;
accessed 11 February 2004.
- Cordes, Hanni M. "Does an Ounce of Prevention Really Bring a Pound of Cure? The Debate Over Preventive War Doctrine." National War College Paper, National Defence University: 1-13.
- Duncan, E.J. and Currie, E.J. "'Preventive War' and International Law After Iraq." (May 22, 2003)
Globelaw Web Site; available from
http://www.globelaw.com/Iraq/Preventive_war_after_iraq.htm; accessed 11 December 2003.
- Freedman, Lawrence. "Prevention, Not Preemption." *The Washington Quarterly* 26, No. 2 (Spring 2003): 105-114.
- George, Robert P. "...A Just War in Iraq." *The Wall Street Journal*. New York, December 6, 2002.
- Guoliang, Gu. "Redefine Cooperative Security, Not Preemption." *The Washington Quarterly* 26, No. 2 (Spring 2003): 135-145.
- Ikenberry, John G. "America's Imperial Ambition." *Foreign Affairs* 81, No. 5 (September/October 2002): 44-60.
- Jervis, Robert. "Deterrence and Perception." Edited by R. Matthews, A. Rubinoff and J. Stein. *International Conflict and Conflict Management*, Department of Political Science, University of Toronto (1984): 31-43.
- Kaplan, Neil J. "The Attack on Osiraq: Delimitation of Self-Defense Under International Law." *New York Journal of International and Comparative Law* 4 (1982): 131-156.
- Kegley, Charles W. and Wittkopf, Eugene R. *American Foreign Policy: Pattern and Process, Second Edition*. New York: St. Martin's Press, 1982.
- Mallison, W. Thomas and Mallison, Sally V. "The Israeli Aerial Attack of June 7, 1981, Upon the Iraqi Nuclear Reactor: Aggression or Self-Defense." *Vanderbilt Journal of Transnational Law* 15, No. 3 (Summer 1982): 417-448.

- McCormack, Timothy L.H. *Self-Defense in International Law*. New York: St. Martin's Press, 1996.
- Office of the Judge Advocate General. "1945 Charter of the United Nations, Preamble." in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training, 56-66. Ottawa: DND, 2001.
- Office of the Judge Advocate General. "1945 Charter of the United Nations, Chapter I-Purposes and Principles, Article 1." in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training, 56-66 Ottawa: DND, 2001.
- Office of the Judge Advocate General. "1945 Charter of the United Nations, Chapter I-Purposes and Principles, Article 2(4)." in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training, 56-66. Ottawa: DND, 2001.
- Office of the Judge Advocate General. "1945 Charter of the United Nations, Chapter VII-Action With Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression, Article 51." in *Collection of Documents on the Law of Armed Conflict*, 2001 ed., ed. Directorate of Law Training, 56-66. Ottawa: DND, 2001.
- Record, Jeffrey. "The Bush Doctrine and War with Iraq." *Parameters*, (Spring 2003): 4-21.
- Robertson, Lord. "Opening Statement." (September 26, 2001)
NATO Web Site; available from
<http://www.nato.int/docu/speech/2001/s010926b.htm>; accessed 25 February 2004.
- Schlesinger, Arthur. "The Immorality of Preventive War." (August 26, 2002)
HNN Web Site; available from
<http://hnn.us/articles/924.html>; accessed 11 December 2003.
- Shovelan, John.
Australian ABC Local Radio Transcript (December 20, 2002)
ABC Local Radio Web Site; available from
<http://www.abc.net.au/am/s751319.htm>; accessed 11 February, 2004.
- Thomas, Helen. "Preventive War Sets a Perilous Precedent." *Seattle Post-Intelligencer* (March 20, 2003)
Seattle Post-Intelligencer Web Site; available from
[wysiwyg://120/http://seattlepi.nwsourc.com/opinion/113317_thomaswar.shtml](http://www.seattlepi.com/opinion/113317_thomaswar.shtml);
accessed 11 December 2003.

United Nations Security Council Resolutions
United Nations Web Site; available from
http://www.un.org/Docs/sc/unsc_resolutions.html; accessed 25 February 2004.

United States. *The National Security Strategy of the United States of America*.
Washington: The White House, 2002.

Walzer, Michael. *Just and Unjust Wars*. Basic Books, 1977.

Wolfers, Arnold O. ““National Security” as an Ambiguous Symbol,” *Political Science Quarterly* 67, no. 4 (December 1952): 481-502.