

USAWC STRATEGY RESEARCH PROJECT

DOCTRINE OF PREEMPTION: ANALYSIS
AND IMPLICATIONS FOR SOUTH ASIA

by

Brigadier Tahir Ashraf Khan
Pakistan Army

Dr. Larry Goodson
Project Adviser

This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

The views expressed in this student academic research paper are those of the author and do not reflect the official policy or position of the Department of the Army, Department of Defense, or the U.S. Government.

U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 18 MAR 2005		2. REPORT TYPE		3. DATES COVERED -	
4. TITLE AND SUBTITLE Doctrine of Preemption Analysis and Implications for South Asia				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Tahir Khan				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army War College, Carlisle Barracks, Carlisle, PA, 17013-5050				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT See attached.					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 28	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

ABSTRACT

AUTHOR: Brigadier Tahir Ashraf Khan

TITLE: Doctrine of Preemption: Analysis and Implications for South Asia

FORMAT: Strategy Research Project

DATE: 02 March 2005 PAGES: 28 CLASSIFICATION: Unclassified

The tragic events of September 11 provoked the United States to promulgate a new National Security Strategy (NSS) incorporating the "Doctrine of Preemption." This doctrine is intended to be applied against those state or non-state actors that are considered a threat to the United States security interests. Inclusion of this doctrine in the NSS is considered to be fraught with the danger of giving rebirth to the colonial era where the use of military might against weaker states, under one pretext or the other, was a common practice. Application of this doctrine by the United States, as witnessed in Iraq, will not only undermine the role of the United Nations but will also set a wrong precedent for other countries to turn their hegemonic dreams into reality.

Following the example of the United States, other states will take the preemption tool and use it to satisfy their national designs against weaker states. The effect of this doctrine on the world in general and the South Asian region in particular remains a source of concern for everyone. Within months of the announcement of this doctrine, the world witnessed highly belligerent rhetoric emanating from New Delhi against Pakistan. Indian claims of Pakistani-sponsored cross-border terrorism in the Kashmir region led to Indian strategic discussions of a preemptive strike against Pakistan.

This paper constitutes an effort to provide a global and regional perspective of the implications that any version of American foreign policy has for the rest of the world. Most of the research work is comprised of a critical analysis of the doctrine of preemption, with some coverage of its legal aspects, and its implications on the peace and stability of the world in general and South Asia in particular. The paper also offers some relevant recommendations as a logical outcome of the research.

TABLE OF CONTENTS

ABSTRACT.....	iii
ACKNOWLEDGEMENTS	vii
DOCTRINE OF PREEMPTION: ANALYSIS AND IMPLICATIONS FOR SOUTH ASIA.....	1
PREEMPTIVE VS PREVENTIVE MILITARY ACTION	2
PREEMPTIVE WAR AND INTERNATIONAL LAW	3
RISKS ATTACHED TO THE DOCTRINE.....	5
IMPLICATIONS OF THE DOCTRINE	7
RAMIFICATIONS WITHIN THE SOUTH ASIAN REGION.....	8
RECOMMENDATIONS.....	11
CONCLUSION	12
ENDNOTES	15
BIBLIOGRAPHY	19

ACKNOWLEDGEMENTS

I would like to express and record my gratitude to Dr. Larry Goodson for his unstinted professional mentoring and guidance during the writing of this Strategic Research Paper. On the domestic front, my wife Rizwana and children Ayesha, Waqas, Talha and Amna deserve commendation and a warm hug for being wonderful companions in enduring patiently the stressful hours this assignment consumed.

DOCTRINE OF PREEMPTION: ANALYSIS AND IMPLICATIONS FOR SOUTH ASIA

President George W. Bush's National Security Strategy (NSS),¹ announced on 17 September 2002, represents the most sweeping shift in the grand strategy of the United States of the last six decades. It is a transformation from a 'Strategy of Containment' to one based on what is called 'Forward Deterrence.' Consequently, the President claims for the United States "the prerogative of using force preemptively and unilaterally, however its interests dictate."² The Bush administration has broadened the meaning of 'Preemption' to include 'Preventive War,' where force may be used, even without evidence of an imminent attack, to ensure that a serious threat to the United States does not gather or grow over time. The strategy also elevates preemption in importance and visibility within the tool kit of U.S. foreign policy, in order to dissuade others from contemplating attacks on the United States.

In adopting such a strategy, President Bush has struck a death blow against Article 51 of the UN Charter, rejecting the traditional requirement of imminent threat, instead declaring the intent of the United States to act preemptively:

The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.³

This doctrine of unilateral pre-emption is a radical departure from the purposes and principles of the Charter of the United Nations. The Charter provided the most powerful states with permanent membership on the Security Council and the veto. In exchange, they were expected to use their power for the common good and promote and obey international law. As Harry Truman, then-President of the United States, noted in his speech to the final plenary session of the founding conference of the United Nations Organization, "we all have to recognize – no matter how great our strength – that we must deny ourselves the license to do always as we please."⁴

The Bush administration's declared willingness to attack potential enemies, prior to an actual imminent threat, represents a new chapter in strategic doctrine that heightens the danger of unintended consequences and raises many questions with regard to its implications. By adopting preemption as a doctrine, the United States has set a precedent that will encourage other states to legitimize their own aggression under the guise of preemptive defensive measures. Various states may have already begun to do this, lowering the threshold for armed conflict, thus making the world less stable. A few examples in this regard could be:

- India against Pakistan.
- Israel against the Palestinians or other Arab countries.
- Russia against the Chechens.
- China against Taiwan.
- North Korea against South Korea.

The doctrine of unilateral military preemption undermines the strengthening of international cooperation, non-proliferation and disarmament, and especially international law and institutions. It reflects the Bush administration's penchant for unilateralism. Preemption sounds better in theory than it is likely to be in practice. It is not the solution to the problem of terrorism, or weapons of mass destruction (WMD). In practice, it will not work and, in principle, it breaks all existing rules. Rather, preemption only diminishes the role of diplomatic cooperation and non-proliferation regimes, weakening their effectiveness against terrorism and the proliferation of WMD. Moreover, it is a risky option that can backfire. Politically, a government needs a legal basis and moral grounds to support pre-emptive attacks; technically, it needs reliable intelligence about the rival's capabilities and intent as well as assurances that attack on the targets will be accurate. Otherwise, the consequence of violating other countries' sovereignty and hurting innocent people will be significant.

PREEMPTIVE VS PREVENTIVE MILITARY ACTION

The concepts of preemptive and preventive warfare refer to different phenomena. A preemptive military attack entails the use of force to quell or mitigate an impending strike by an adversary. On the other hand, a preventive military attack involves the use of force to eliminate any possible future strike, even if there is little or no reason to believe that aggression is planned or the capability to launch such an attack is operational. The grounds for preemption lie in evidence of a credible and imminent threat, whereas the basis for prevention rests on the suspicion of an incipient and contingent threat. Traditionally, the right of self-defense has been understood as, "allowing states recourse to force when repelling actual as well as imminent armed attacks."⁵

Self-defense is perhaps the oldest rationale given by states to justify their use of force. Although international law recognizes a right to defend oneself against aggression, however, it is highly debatable when that right may be invoked. To exercise this right a state must face an instant and overwhelming necessity leaving no choice of means, and no moment for deliberation. The challenge, however, is ascertaining what comprises an overwhelming necessity. When clear and convincing evidence exists of an impending attack, the victim need

not wait until the perpetrators have crossed the legal boundaries.⁶ But what if an attack is foreseeable rather than imminent? Are preemptive military actions justifiable when uncertainty remains as to the time and place of the enemy's attack? In the absence of incontrovertible proof that an armed attack is imminent, can forcible measures be justified in order to prevent a state from acquiring the means of launching an attack sometime in the more distant future? At what point does the language of preemption simply mask a more radical policy of prevention? Perhaps this is what U.S. Secretary of State Colin Powell meant when he alluded that to President Bush 'preemption [is] another way of (labeling) prevention.'⁷

While military preemption is justifiable whenever an attack is truly imminent, a doctrine which approves of preventive warfare will ultimately undermine international peace and stability. Preventive strikes, couched in the idiom of preemption, do not always yield long-term benefits; hence, prevention is a far less accepted concept in international law. Moreover, the defensive reaction must be proportionate to the danger, and cannot serve as a reprisal. Self-defense is thus restricted to protection, not excessive or punitive military measures aimed at redressing injuries. Therefore, the decision of the Bush administration to take preventive military action against Iraq, under the guise of preemption, has undermined the role of diplomatic cooperation and non-proliferation regimes, weakening their effectiveness against terrorism and the proliferation of WMD.

Another problem is that the strategy fails to distinguish between eliminating dangerous capabilities and overthrowing dangerous regimes. Even the unilateral use of force to eliminate WMD is controversial, as can be seen from the broad international condemnation of Israel's attack on Iraq's Osirak Nuclear Reactor in 1981. Pursuing regime change has broad consequences for the overall stability of the international system and is thus even less accepted as a legitimate objective than eliminating WMD. A preventive regime change strategy may trigger the very use of WMD that the strategy seeks to preclude.

PREEMPTIVE WAR AND INTERNATIONAL LAW

The temptation to attack an adversary who may attack you sometime in the future is often quite powerful. As Cardinal Richelieu once advised King Louis XIII of France:

Nothing is more valuable in statecraft than foresight. Just as a doctor who knows how to prevent illness is more esteemed than the one who works cures ...it is more important to anticipate the future than to dwell upon the present, since with enemies of the state, as with diseases, it is better to advance to attack than to wait and drive them out after they have invaded.⁸

Hence, according to Cardinal Richelieu, vigilance is crucial, since it allows national leaders to prevent security problems that can only be remedied with great difficulty afterwards. However, it is important to understand the legal implications of exercising the option of preemption on the justification of exercising vigilance.

Although preventive military action may seem expedient, a significant body of scholars wrestles with the question of whether it is legally permissible. The general consensus holds that while preemptive action is warranted when facing what former U.S. President Franklin D. Roosevelt once called 'a rattlesnake poised to strike', attempts to justify preventive wars are a bottomless pit of elastic normative principles.⁹ For example, the so-called 'father' of international law, Hugo Grotius, insisted that preemption was only lawful when a danger became 'immediate, and, as it were, at the point of happening.'¹⁰ He considered taking up arms in order to weaken a state that might someday use violence against you as "repugnant to every principle of justice."¹¹ Likewise, another pioneer of modern international jurisprudence, Emmerich de Vattel, counseled that acting merely on vague suspicions risks transforming the initiator of preventive war into an aggressor.¹²

The NSS makes the point that international law recognizes preemption in case of an imminent danger of attack, but also conditions its legitimacy on the degree of imminence. It adds to this point that the concept of imminent threat has to be adapted to the capabilities and objectives of today's adversaries. In this regard the NSS states that, "Rogue states and terrorists...rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning...To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively."¹³

International lawyers accept the first part of the argument but reject the second. Schrijver, for example, concurs that the right to preemptive self-defense is recognized in international law and is also in agreement with the UN Charter but notes that it is limited to acute danger or direct threat, also in the case of terrorist violence. A victim state cannot invoke the right to self-defense in order to justify its attacking another state that, in its opinion, is a supporter or potential supporter of terrorists.¹⁴

Hendrickson makes a similar point, from the perspective of international relations. He writes:

Though styled as a doctrine of preemption, it is actually a doctrine of preventive war. Preemptive war is when force is used only when it is apparent that the enemy is on the verge of striking, leaving no moment for deliberation. Preventive war is the first use of force to avert a more remote though still ostensibly

formidable danger...War, the advocates of prevention say, is inevitable anyway, so let's fight it under circumstances of our own choosing. In the present case, we are told that once Iraq or other evil states develop the capability to hit us, they will hit us. Ergo, we must strike to avert the threatened calamity, and sooner rather than later.....That may not seem like much of a difference, but it is the difference in law between offensive and defensive war, and between aggression and self-defense. It is directly contrary to the principle that so often was the rallying cry of American internationalism in the twentieth century.¹⁵

The NSS does not give even passing reference to the Charter of United Nations, (i.e. Article 2.4 about the prohibition on the use of force, or Article 51 regarding the rule of self defense and imminence of threat). The NSS states, "The reasons for our actions will be clear, the force measured, and the cause just."¹⁶ No mention is made of imminence. Can a State, without going to the Security Council, claim the right to act, in anticipatory self-defense, not just preemptively (against an imminent or proximate threat) but preventively (against a non-imminent or non-proximate one)? The short answer is that if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to.¹⁷ The United States, through this doctrine, has expressed that the UN's rules about the use of force are no longer binding.

A doctrine of preventive war undermines the international rule of law, which the United States seems not very interested in making more effective. In the NSS, the United Nations is hardly mentioned and its Charter not at all. Instead, the NSS states, "It is time to reaffirm the essential role of American military strength."¹⁸ By adopting such an approach, the U.S. is being viewed as a country which prefers the use of force, not of law, to maintain its hegemony at the global level. This was evident at the time of waging war on Iraq. Malaysia's former Prime Minister Mahathir Muhammad charged at the 116-nations Non-Aligned Movement's (NAM) summit meeting at Kuala Lumpur on 24 February 2003 that "a war against Iraq was no longer just a war against terrorism. It is in fact a war to dominate the world."¹⁹ A world order based on a preference for law, diplomacy, and international cooperation, ushered in after the Second World War under the leadership of the United States, is in grave danger by this policy.

RISKS ATTACHED TO THE DOCTRINE

Elevating the preemptive option to a policy doctrine can have serious negative consequences. It reinforces the image of the United States as too quick to use military force, and to do so outside the bounds of international law and legitimacy. This can make it more difficult for the United States to gain international support for its use of force, as witnessed during 'Operation Iraqi Freedom.' Over the long term, it may lead others to even resist United

States foreign policy goals more broadly, including efforts to combat terrorism. Elevating preemption to the level of a formal doctrine would increase the Bush administration's inclination to use the military instrument too quickly, when other tools have a good chance of working.

Another practical difficulty is that the target state can respond in ways that can make preemption very costly, and perhaps counterproductive, that advocates of the strategy have largely ignored. Ironically, it may encourage acquisition or use of the WMD it is designed to prevent. A nation anticipating a U.S. preemptive strike might use WMD rather than risk losing them. Take, for example, the preventive war against Iraq. This could have very well precipitated the very use of alleged WMD by Saddam that the military action was designed to forestall. Or take the case of North Korea, where it might be possible to launch a precision strike against Pyongyang's critical nuclear facilities. But even if successful, the consequences could be severe – including the not unlikely decision by North Korea's leaders to launch a suicidal war that would kill millions of Koreans in the process. In the chaos that attends any war, control over weapons and material is bound to break down, making it that much more likely that these fall into the wrong hands.

The primary risk of the Bush Doctrine is in its aggressive application to rogue states seeking to acquire WMD, where the United States cannot show an imminent threat. Preemptive strikes lack legitimacy to the world community and risk isolating the U.S. in an increasingly hostile international environment. The attitude toward preemption reflects the administration's penchant for unilateralism. Some have even started describing this prospect as the U.S. becoming a 'lonely hegemon.' This may have adverse implications during formation of alliances and extending cooperation to the United States by other states. Moreover, the unconstrained use of force by other nations like India, North Korea, Israel, Russia, China, etc., citing the Bush Doctrine as justification for their own adventures, would erode traditional international norms of behavior and pose a serious threat to the peace and stability in the world.

Adoption of this doctrine has been met with concern not only within the United States but also abroad—and not without reason. The doctrine suffers from considerable conceptual confusion, most importantly by conflating the notion of prevention with that of preemption. Whatever the merits and demerits of a preemption doctrine, there are practical problems with relying on such a policy for dealing with the current threat in all but the most extreme situations. One is the difficulty of determining the timing of any preemptive strike, especially if the goal is to preempt the acquisition of WMD. Is construction of a nuclear plant sufficient reason (as Israel believed to be the case in 1981 when it attacked the Osirak reactor) to attack? Can an attack on a pharmaceutical or fertilizer factory (as was the case in 1988, when the U.S. struck a facility in

Sudan) be justified? These are some of the issues which require serious consideration by the United States.

IMPLICATIONS OF THE DOCTRINE

The new strategic doctrine of the Bush administration encourages the growth of a permissive normative order. How the United States acts exerts an enormous influence on the behavior of others. When the reigning hegemon promotes a new set of norms, the code of conduct virtually changes for everyone. What the strongest do eventually defines what everybody should do, and when that practice becomes common, it tends to take on an aura of obligation. As Stanley Hoffmann observes, in the evolutionary course of the world system, rules of behavior over time become rules for behavior.²⁰ If other states act on the same rationale that the United States has proposed, and accept preventive military action as a legitimate response to potential threats, a messy world would become a lot messier. If the United States proclaims anticipatory self-defense to justify its offensive military policies, as witnessed in the case of 'Operation Iraqi Freedom,' nothing will stop other countries from doing the same. This will reduce the United States' leverage to convince others to refrain from using force.

Announcement of this doctrine at once set alarm bells ringing across the chancelleries and public opinion in various parts of the world. Questions were asked—what if other powerful states assert the right to attack their weaker neighbors by invoking the right to preemption in the name of self-defense. Legal scholars and international jurists from all over the world became genuinely concerned and started debating the precedent of pre-emption in the context of India-Pakistan tensions, the Israeli-Palestinian problem, the North Korean scenario, and a possible China-Taiwan confrontation. Would not unilateral pre-emption through military action by these countries violate the fundamental obligations of states under the Charter of the United Nations and international law on the rights and duties of states to refrain from aggression and the use of force? Would not the world order be threatened by the implication flowing from preemption; of might being right? If the U.S. example were to be followed, Israel could launch preemptive attacks against Palestine or other Arab countries, India could launch preemptive strikes against Pakistan (or the other way round), Russia on Chechnya, North Korea could do the same to South Korea (or vice-versa), and so on.

The doctrine of preemption is strategically imprudent. If taken seriously by others, it will exacerbate the security dilemma among hostile states, by raising the incentive for all states to initiate military action before others do. Take the very real case of India and Pakistan, both nuclear powers with long-standing territorial disputes and other grievances. Suppose tensions

rise, as they did during 2001 when a million Indian and Pakistani troops massed on the border, Islamabad, fearing that New Delhi might try to preempt its quite vulnerable nuclear strike capability, will have a powerful incentive to preempt. India, knowing this to be the case, will have an equally powerful incentive to get its weapons off before Pakistan does. A similar situation may develop in the Korean Peninsula, or with Israel. Given this dynamic, the use of force in tense situations like these will increasingly be viewed as a first resort, thus undermining whatever moderating influence diplomatic intervention might otherwise have had. The Bush administration, while arrogating to itself the right to use force whenever and wherever it believes the preemption of potential future threats warrant it, has made no effort to define the line separating justifiable preemption from unlawful aggression. And that may well be the gravest flaw with this doctrine.

RAMIFICATIONS WITHIN THE SOUTH ASIAN REGION

The United States' post-September 11 campaign against terrorism has provided India with an ideal opportunity to exploit the situation and pursue its hegemonic designs by intensifying its efforts to emerge as the regional and a global power. In South Asia, India has always considered Pakistan as its adversary and has made repeated efforts to establish its strategic superiority. After the May 1998 nuclear explosions, the Bharatiya Janata Party's (BJP) Government adopted a more overtly aggressive policy towards Pakistan. Various BJP officials issued threatening statements one after the other. In his first interview to *India Today* after the tests, the former Indian Prime Minister Atal Bihari Vajpayee, said 'we have a big bomb now' and that the BJP Government 'would not hesitate to use these weapons in self-defense.'²¹

On May 18, 1998, L. K. Advani, then Home Minister, warned Pakistan to 'roll back its anti-India policy, especially with regards to Kashmir.' He also announced 'India's decisive step to become a nuclear weapon state has brought about a qualitatively new stage in Indo-Pak relations, particularly in finding a lasting solution to the Kashmir problem,' and added that 'Islamabad should realize the change in the geo-strategic situation.'²² After the May 1998 nuclear explosions Indian leaders probably assumed that the Kashmir issue could be settled on Indian terms, hence, such aggressive statements were issued. According to Stephen P. Cohen, "some Indian politicians now talk of finishing Pakistan off once and for all, despite the risk of nuclear war, on the grounds that Pakistan is a 'theocracy' and that Islamic Pakistan is bent on undercutting secular India. Indian opinion seems to be deeply divided as to whether New Delhi can live with Pakistan or whether it should isolate, or even destroy, Pakistan."²³

The terrorist attacks of September 11 and subsequent campaign by the United States against terrorism provided another opportunity to India to pursue its goals of regional hegemony and international power status. India was pleased that America was treating the attacks as a declaration of war by the terrorist groups, thus heralding a new era in which India hoped, it would be able to join the US and Israel in their fight against terrorism inspired by Islamic fundamentalism.²⁴ Since 9/11, in relation to the movement in Occupied Kashmir, the BJP Government no longer used the term 'infiltration' or 'insurgency,' but 'cross-border terrorism.'

The fall-out of the preemption doctrine adopted by the United States was predictable. India seized upon it to declare that New Delhi had a better justification to launch preemptive strikes to defend itself against cross-border terrorism from Pakistan than Washington vis-à-vis Iraq.²⁵ However, Secretary of State Colin Powell was prompt in dismissing this Indian claim by stating that he did not think there was a direct parallel between the two situations. An official U.S. spokesman added, "Any attempt to draw parallels between the Iraq and Kashmir situations are overwhelmed by the differences between them."²⁶ But the Indian ministers reiterated their belligerent statements. India's National Security Advisor visiting Washington in May 2003 proposed an anti-terror alliance between India, US, and Israel that "would have the political will and moral authority to take bold decisions in extreme cases of terrorist provocation."²⁷

In the complex situation of South Asia, the Bush administration's NSS fails to address the second-order effects of the U.S. policy. It has exacerbated regional crises already on the brink of open conflict. The festering hostility between India and Pakistan remains the greatest single threat to regional stability.²⁸ The fears of Pakistan that such a doctrine could be used by India in a unilateral way to justify an invasion (based on highly debatable assessments), have its roots in the Bush administration's action against Iraq. India asserts that every country has the right to preemption and that this doctrine is not the prerogative of any one nation. Hawks in Indian leadership have been repeatedly propagating that a preemptive strike against Pakistan would be appropriate, claiming that the United States has set an example for such an action. Indeed, "one can easily imagine scenarios in which India could attack Pakistan....under this rule that suspicion of what a hostile regime might do justifies launching preventive wars to overthrow it."²⁹ Does strategic necessity absolve India from observing the UN Charter regime's limitations on the use of force?

Articulated in the broad and generalized fashion as it has been, the doctrine is a recipe for chaos as it suggests that any state, irrespective of the quality of its decision-making processes, can take it upon itself to act when it perceives a threat, whether that threat is real, looming, or not. In this context it is interesting to note that a self-created perception of always being under

threat is deeply rooted in the Indian psyche and there are hotheads who believe that doctrine pronounced by Washington can be adopted by New Delhi also. Thus, one has heard Jaswant Singh, the former Indian Foreign Minister, declare in Washington that, "every country has a right to preemptive strikes as an inherent part of its right to self-defense and it was not the prerogative of any one nation."³⁰ Given this dynamic, the use of force in tense situations might come to be considered the preferred option, thus undermining whatever moderating influence diplomatic intervention might otherwise have had.

Potential examples abound, but perhaps the clearest case is the Indo-Pakistan crisis during the spring of 2002. India was poised to attack Pakistan, based on Pakistan's alleged involvement in assisting the export of terrorism into the disputed territory of Kashmir. A combination of U.S. pressure on both countries, with some last minute caution by the leaders of the two countries, narrowly averted a war that had the potential to escalate to the nuclear level, once it began. Although India might have intended to limit its actions to eliminating alleged terrorists bases in Pakistani held Kashmir (though highly debatable), who could guarantee that the war would have stayed limited to the geographical bounds of Kashmir? Indian politico-military goals and objectives may have also included the overthrow of the regime in Islamabad or the elimination of its nuclear capability. This would have further exacerbated the risks of escalation to nuclear dimensions. The status of Kashmir remains contentious, meaning that danger of a conflict still remains visible on the horizon. "Given that India and Pakistan are now armed with nuclear weapons, the possibility that another conflict might involve the first use of atomic weapons since Hiroshima and Nagasaki in 1945 is all too real."³¹ Should the crisis start again, the U.S. policy of preemption may provide hawks in India the added ammunition they need to justify a strike against Pakistan.

The problem is that, in the wake of the U.S. war on terrorism, India felt that it could follow the U.S. example and deal with its problems related to Kashmir through a military solution. This assumption was premised on the growing international disenchantment with the issue of self-determination. This has been a major concern for Pakistan after 9/11. At the heart of antagonism between Pakistan and India lies the Kashmir dispute. Both countries have gone to war three times in the past on this issue. Even at present, the strategy being followed does not display a positive Indian intent aimed at a negotiated settlement of the Kashmir issue. Given the attitude of the world community and cold shoulder being granted to it by the UN, the possibility of yet another limited or an all-out war in the region cannot be ruled out. Unless the UN honors its obligations towards implementation of its Resolutions on Kashmir, passed 56 years ago, the war clouds will keep looming over the region. Promulgation of a 'Doctrine of Preemption'

encompassing preventive war by the U.S. definitely adds fuel to an already volatile situation in South Asia between the two arch rivals possessing nuclear capability.

RECOMMENDATIONS

Combating international terrorism and proliferation of WMD were the main concerns that led to the adoption of a 'Doctrine of Preemption' by the United States. Since these are global problems, only the global community as a whole can effectively act to resolve them. No state, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats.³² Achieving that solution is only possible by redefining cooperative security and bolstering the existing international arms control regimes – not writing them off. In this regard, some relevant recommendations are offered below:

- At the outset, it is essential to address the root causes of WMD proliferation, meaning that incentive to acquire, distribute, and use WMD by state or non-state actors must be eliminated.
- To effectively reduce the underlying conditions that spawn terrorism, a sincere approach towards redefining cooperative security is needed – to feature mutual trust, mutual benefits, equality, and cooperation – so that it yields greater benefits for all nations.
- Efforts should be redoubled to resolve a number of long-standing disputes which continue to fester and to feed the new threats that we face today. Foremost among these are the issues of Palestine, Kashmir, and the Korean Peninsula.³³
- As the world's sole superpower, the United States plays the leading role in maintaining world peace and order and has the capability to solve numerous global issues, including international terrorism and proliferation of WMD. Only through peaceful negotiations, by involving other key players as well, and return to a low tension political atmosphere can these issues be effectively addressed.
- The international community cannot afford to lose confidence in international non-proliferation regimes, treaties, and agreements because of failures to enforce these regimes. The United States should take the lead in setting a good example in supporting these efforts and abiding by international arms control and non-proliferation treaties instead of using them as justification for preemptive strikes.

- Governments cannot choose to adhere to the Non-Proliferation Treaty (NPT), but neglect nuclear disarmament and the Comprehensive Test Ban Treaty (CTBT) regimes. The fact that the Bush administration continues to delay ratification of the CTBT provides greater reason for currently non-nuclear states to seek WMD.
- Proliferation of WMD and combating international terrorism are global problems and one of the greatest dangers that all nations will face in the twenty first century. The U.S. cannot solve these problems on its own, especially by employing threats of preemptive strikes. International cooperation, particularly among the five permanent members of the Security Council, is essential for dealing effectively with this issue.
- Throughout modern history, the United States has been the leader of the free world. It must adhere to the rules it seeks to impose on others. Much of the world community views the use of the preemption option as of dubious legal standing in all but the clearest circumstances. The U.S. government, therefore, needs to take a fresh look at its policy.
- The global war on terrorism is a long-term endeavor that is not going to be won by military might alone. To win this war will take a sustained effort requiring cooperation of the world community and a strong economical and informational campaign to win the hearts and minds of succeeding generations. Adopting a 'Doctrine of Preemption' to fight this menace cripples these efforts, encourages an unsustainable military campaign, and provides no worthwhile result in return.

CONCLUSION

Preemption reflects the Bush administration's perception of a changed threat facing the United States and is an extension of the U.S. Government's unilateral foreign policy. This strategy progresses entirely from the security interests of the United States alone. It implies that, with the end of the Cold War, because the United States possesses unprecedented – and unequalled – strength and influence in the world,³⁴ the U.S. Government is now entitled to do whatever it sees fit in pursuit of its own national interests. Consequently, this policy of "might makes right" is setting the wrong precedent for others to follow, thus seriously jeopardizing the international peace and order. The United States appears to be seeking to establish a new international order, guided only by U.S. interests and values.

The United States' security doctrine threatens global and regional stability through its emphasis on pre-emptive interventionism. The most threatening feature of the doctrine is the arbitrariness which the United States is permitting itself for military interventions. This doctrine will undermine international arms control and disarmament agendas as well as international norms relating to inter-state behavior and the principles governing the use of military force. The post 9/11 world has already become more unstable and violent where every nation feels less secure. So far the United States' war on terror has only served to aggravate the problem of terrorism and violence. The preemptive security doctrine threatens to accentuate these problems even further—thereby creating further instabilities and polarizations.

The Bush administration's strategy thus raises anew timeless moral and legal issues about the conditions under which, and the purposes for which, anticipatory self-defense is permissible to counter potential threats to national and international security. What are the obligations of the powerful? How should they behave in asymmetrical conflicts? Does strategic necessity absolve them from observing the UN Charter regime's limitations on the use of force? Do unconventional security threats excuse behavior that would otherwise be morally repugnant? Instead of working alone, the United States should instead work with other powers cooperatively to address the threat of global terrorism and proliferation of WMD, heightened in everyone's eyes after the tragic attacks of September 11.

WORD COUNT: 5,554

ENDNOTES

¹ George W. Bush, *The National Security Strategy of the United States of America* (Washington, D.C.: The White House, September 2002).

² A.J.Bacevich, "Bush's Grand Strategy", *The American Conservative*, 4 November 2002, 12.

³ Bush, 15.

⁴ United Nations, Report of the United Nations Secretary General's High Level-Panel on Threats, Challenges and Change, *A More Secured World: Our Shared Responsibility*. (New York, 2004), 4; available from <<http://www.un.org/secureworld/report2.pdf>>; Internet; accessed 14 January 2005.

⁵ A.C. Arend and R.J.Beck, *International Law and the Use of Force: Beyond the Charter Paradigm*, (London: Routledge, 1993), 72.

⁶ C.H.M. Waldock, "The Regulation of the Use of Force by Individual States in International Law", *Recueil des Cours*, (Paris: Sirey, 1952), 498; quoted in Charles W. Kegley, Jr. and Gregory A. Raymond, "Global Terrorism and Military Preemption: Policy Problems and Normative Perils", *International Politics* 41 (2004), 40; available from <www.palgrave-journals.co.uk/ip>; Internet; accessed 11 December 2004.

⁷ Secretary of State Colin Powell, "Juggling the Demands of Diplomacy's Different Kind of War," *New York Times*, 8 September 2002, 18; quoted in Kegley and Raymond.

⁸ Armand Jean du Plessis, *The Political Treatment of Cardinal Richelieu*, trans. Henry Bertram Hill (Madison: University of Wisconsin Press, 1961), 81; quoted in Kegley and Raymond.

⁹ M.A. Kaplan and N.deB. Katzenbach, *The Political Foundation of International Law*, (New York: John Wiley, 1961).

¹⁰ Hugo Grotius, *The Law of War and Peace*, trans. Louise R. Loomis (New York: Walter J.Black, 1949), 73.

¹¹ Ibid., 77.

¹² Emmerich de Vattel, *The Law of Nations*, trans. Charles Fenwick (Washington, DC: Carnegie Foundation, 1916).

¹³ Bush, 15.

¹⁴ Nico Schrijver, "Elf September en de uitdagingen aan het volkenrecht", (September Eleven and the Challenges to International Law), in *Vrede en Veiligheid* 32, (2003), 36; quoted in Ben Schennink, "Preemptive War or Preemptive Peace? The U.S. National Security Strategy: A Challenge to the Peace Movement"; available from <<http://www.paxchristiusa.org/BSchennink.pdf>>; Internet: accessed 10 January 2005.

¹⁵ David Hendrickson, "Toward Universal Empire: The Dangerous Quest for Absolute Security", *World Policy Journal*, 7; quoted in Schennink.

¹⁶ Bush, 16.

¹⁷ United Nations Report, 63.

¹⁸ Ibid., 29.

¹⁹ "Terror War for World Domination: Mahathir", *The News*, 25 February 2003; quoted in Agha Shahi, *The Emerging World Order*; available from <http://www.issi.org.pk/strategic_studies_html/2003/no_2/article/1a.htm>; Internet; accessed 10 January 2005.

²⁰ S. Hoffmann, "International Law and the Control of Force," in K. Deutsch and S. Hoffmann (eds), *The Relevance of International Law*, (Garden City, NY: Doubleday-Anchor, 1971); quoted in Kegley and Raymond.

²¹ *The Hindu*, 19 May 1998; quoted in Fahmida Ashraf, "Post-9/11 Trends in Indian Foreign Policy"; available from <http://www.issi.org.pk/strategic_studies_html/2002/no_3/article/2a.htm>; Internet; accessed 10 January 2005.

²² *Times of India*, 18 May 1998; quoted in Fahmida Ashraf.

²³ Stephen P. Cohen, "Aim for Peace-or the Exit Door", *Los Angeles Times*, 11 January 2002; available from <<http://www.brookings.edu/views/op-ed/cohens/20020111.htm>>; Internet; accessed 10 January 2005.

²⁴ Sultan Shaheen, *Asia Times*, 17 September 2001; quoted in Fahmida Ashraf.

²⁵ "India Claims It Has a Case for Preemptive Strikes", *Dawn*, 5 April 2003; quoted in Agha Shahi.

²⁶ "No Parallel between Iraq and Kashmir", *Dawn*, 6 April 2003; quoted in Agha Shahi.

²⁷ Jim Lobe, "U.S. Hawks Pushing for India-Israel Ties", *Dawn*, 25 May 2003; quoted in Agha Shahi.

²⁸ Council of Foreign Relations, *New Priorities in South Asia: U.S. Policy Toward India, Pakistan, and Afghanistan*, Chairman's Report of an Independent Task Force, (Council of Foreign Relations, 2003), cosponsored by the Asia Society, 64.

²⁹ P. Schroeder, "Iraq: The Case Against Preemptive War", *The American Conservative*, 21 October 2002; quoted in Kegley and Raymond.

³⁰ Shireen M. Mizari, *The New U.S. Security Doctrine: Implications for the South Asian Region*, 7; available from <http://www.issi.org.pk/strategic_studies_html/2003/no_1/article/1a.htm>; Internet; accessed 08 January 2005.

³¹ Council of Foreign Relations, 64.

³² United Nations Report, 1.

³³ Ibid., xi.

³⁴ Bush, 6.

BIBLIOGRAPHY

- Arend, A.C. and R.J. Beck. *International Law and the Use of Force: Beyond the Charter Paradigm*. London: Routledge, 1993.
- Ashraf, Fahmida. "Post-9/11 Trends in Indian Foreign Policy." Available from <http://www.issi.org.pk/strategic_studies_html/2002/no_3/article/2a.htm>. Internet. Accessed 10 January 2005.
- Bacevich, A.J. "Bush's Grand Strategy." *The American Conservative*, 4 November 2002.
- Benjamin, Daniel and Steven Simon. *The Age of Sacred Terror*. New York: Random House, 2002.
- Blaher, J. Andrew. *Pre-emption: Making America More Secure*, Strategic Research Project, Carlisle Barracks: U.S. Army War College, 19 March 2004.
- Bush, George W. *The National Security Strategy of the United States of America*, Washington, D.C.: The White House, September 2002.
- Cohen, Stephen P. "Aim for Peace-or the Exit Door." *Los Angeles Times*, 11 January 2002. Available from <<http://www.brookings.edu/views/op-ed/cohens/20020111.htm>>. Internet. Accessed 10 January 2005.
- Cordesman, Anthony H. "The War After the War in Iraq." *The Officer*, October 2003, 29-30.
- Council of Foreign Relations, Chairman's Report of an Independent Task Force, Council of Foreign Relations, cosponsored by the Asia Society, *New Priorities in South Asia: U.S. Policy Toward India, Pakistan, and Afghanistan*, 2003.
- David, Hendrickson. "Toward Universal Empire: The Dangerous Quest for Absolute Security", *World Policy Journal*. Available from <<http://www.worldpolicy.org/journal/articles.html>>. Internet. Accessed 08 December 2004.
- de Vattel, Emmerich. *The Law of Nations*. Translated by Charles Fenwick. Washington, D.C.: Carnegie Foundation, 1916.
- Diner, David, COL. *Preemptive Strikes Against Weapons of Mass Destruction: Who is The Rogue*, Strategic Research Project, Carlisle Barracks: U.S. Army War College, 07 April 2003.
- Grotius, Hugo. *The Law of War and Peace*. Translated by Louise R. Loomis. New York: Walter Black, 1949.
- Howard, Michael. *The Laws of War*. New Haven, CT: Yale University Press, 1994.
- Kaplan, M.A. and N. deB. Katzenbach. *The Political Foundation of International Law*. New York: John Wiley, 1961.

- Kegley Jr. Charles W. and Gregory A. Raymond. "Global Terrorism and Military Preemption: Policy Problems and Normative Perils", *International Politics* 41 (2004). Available from <www.palgrave-journals.co.uk/ip>. Internet. Accessed 11 December 2004.
- Mizari, Shireen M. "The New U.S. Security Doctrine: Implications for the South Asian Region." Available from <http://www.issi.org.pk/strategic_studies_html/2003/no_1/article/1a.htm>. Internet. Accessed 08 January 2005.
- Schennink Ben. "Preemptive War or Preemptive Peace? The U.S. National Security Strategy: A Challenge to the Peace Movement." Available from <<http://www.paxchristiusa.org/BSchennink.pdf>>. Internet. Accessed 10 January 2005.
- Shahi, Agha. "The Emerging World Order." Available from <http://www.issi.org.pk/strategic_studies_html/2003/no_2/article/1a.htm>. Internet. Accessed 10 January 2005.
- Tomas, Valasek. "The U.S. National Security Strategy: A View from Europe", *Centre for Defense Information*: Available from <www.cdi.org>. Internet. Accessed 10 December 2004.
- United Nations. Report of the United Nations Secretary General's High Level-Panel on Threats, Challenges and Change. *A More Secured World: Our Shared Responsibility*, (2004). Available from <<http://www.un.org/secureworld/report2.pdf>>. Internet. Accessed 14 January 2005.
- William, W. Bishop, Jr. *International Law, Cases and Materials*. Boston: Little, Brown, 1962.
- Worley, Robert. *Waging Ancient War: Limits on Preemptive Force*, Carlisle Barracks: Strategic Studies Institute, February 2003.
- Woodward, Bob. *Bush at War*. New York: Simon and Schuster, 2002.