

USAWC STRATEGY RESEARCH PROJECT

**PREEMPTIVE ACTION – SETTING THE LEFT AND RIGHT LIMITS**

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## ABSTRACT

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The nation currently debates the policy of preemption, specifically with regard to possible actions against Iraq and the threat posed by their stockpile and development of Weapons of Mass Destruction (WMD). Commentators frame the discussion in terms of a choice between the policy options of deterrence, the status quo, or preemptive action. Unfortunately that debate has been driven by an emotionally charged assumption that preemptive action is a singular course of action rather than a multi-faceted array of policy options. Conspicuously absent is a discussion of criteria for the use of preemptive action and the specific options available. This monograph will attempt to bring clarity to the debate on the policy of preemptive action through an analysis of the changes in the National Security Strategy, its definition, and an examination of the related moral and legal issues. This monograph will also recommend a framework for executing preemptive action.



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## PREEMPTIVE ACTION – SETTING THE LEFT AND RIGHT LIMITS

In September 1999, then candidate George W. Bush stated the United States was entering a “period of consequences that would be defined by the threat of terror,...”<sup>1</sup> This statement was a departure from existing thought and focused on the strategic global environment that lay ahead. The defining events of 11 September 2001 and beyond rendered those words prophetic. The attacks of 11 September 2001 sent a shock through the citizens of the United States. The simple means used to penetrate the security of the American homeland and achieve mass destruction was terrifying. As a result, we have seen a change in the orientation of American foreign policy from the twin pillars of containment and deterrence. The threat of terrorism and rogue nations possessing Weapons of Mass Destruction has altered the principles and options available for strategy and policy development. Although not new, one alternative advocated to counter these threats around the world is the use of preemptive action. The current debate over the policy of preemption started with a statement made by the President in his graduation address at West Point on 1 June 2001. Addressing the security requirements of the nation, he said, “... our security will require all Americans to be forward-looking and resolute, to be ready for preemptive action when necessary to defend our liberty and to defend our lives.”<sup>2</sup>

The debate over the policy of preemptive action is in full swing, specifically with regard to actions against rogue regimes and the threat posed by their stockpile and development of Weapons of Mass Destruction. Commentators like Charles Krauthammer frame the discussion in terms of a choice between the policy options of deterrence, the status quo, or preemptive action.<sup>3</sup> Unfortunately, that debate has been driven by an emotionally charged assumption that preemptive action is a singular course of action rather than a multi-faceted array of policy options. Conspicuously absent is a discussion of criteria for the use of preemptive action and the specific options available. This study these criteria will attempt to bring clarity to the debate on the policy of preemptive action through an analysis of its definition and the changes in the National Security Strategy and an examination of the related moral, and legal issues. It also suggests a framework for analyzing preemptive action.

## NATIONAL SECURITY STRATEGY

Prior to the passage of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, there was no statutory requirement to develop and publish a written National Security Strategy (NSS). This act established the legal requirement for the President to submit each

year "... a comprehensive written report on the national security strategy of the United States.<sup>4</sup> This portion of the act was included to increase attention to the formulation of strategy. In part, the effort to mandate this provision in this landmark piece of legislation was the work of Morris Leibman, founder of the National Strategic Forum. His goal in pursuing this provision was to develop future U.S. foreign policy based on strategic principles rather than short term expedient decisions.<sup>5</sup>

The Goldwater-Nichols Act specifies that there be a discussion included in the NSS on the use of the elements of power to achieve the United States' vital interests, goals and objectives throughout the world. Combining the elements of national power with a focus on vital worldwide interests creates a grand strategy for a global environment. Specifically the act states that the NSS shall include the following:

- The worldwide interest[s], goals, and objectives of the US that are vital to the national security of the US.
- The foreign policy, worldwide commitments, and nation defense capabilities of the US necessary to deter aggression and to implement the national security strategy of the US.
- The proposed short and long term uses of the political, economic, military, and other elements of national power of the US to protect or promote the interests and achieve the goals and objectives of (1).[the first bullet above]
- The adequacy of the capabilities of the US to carry out the national security strategy of the US, including an evaluation of the balance among the capabilities of all element of national power of the US to support the implementation of the national security strategy.
- Such other measures as may be helpful to inform Congress on matters relating to the security strategy of the US.<sup>6</sup>

It could be suggested that the precursor to the NSS mandated by the Goldwater-Nichols act is the seminal work prepared by the National Security Council in April of 1950. This national strategy was presented in the form of a report known as National Security Council 68 (NSC 68). Although a classified document with limited distribution when written, NSC 68 outlined the direction and rationale for the United States security strategy through much of the Cold War period. In encompassing all of the elements of national power, NSC 68 put forth the strategies

of containment and deterrence directed against the major threat to the United States during the Cold War – the Soviet Union.<sup>7</sup>

In the period between the ending of the Cold War and collapse of communism and the terrorist attacks of 11 September, United States security strategy was in a period of transition. The end of the Cold War left the United States in the position of facing no imminent threat of global war. The balance of power changed from a bi-polar to a uni-polar world with the United States as the de-facto global hegemon. The new global environment left the United States in a strategic vacuum without an organizing principle for national security strategy development.

In 1996, President William J. Clinton's National Security Council staff codified the national strategy in the NSS titled "A National Security Strategy of Engagement and Enlargement."<sup>8</sup> The 1996 NSS document serves as a representative example of the emerging security strategy at a mid-way point of the post cold war era up to the publication of President George W. Bush's National Security document in September of 2002.

The underlying strategy of the 1996 NSS was a multilateral approach of engagement and enlargement. The foundation of this NSS is contained in the following three core objectives:

- Enhance our security with military forces that are ready to fight and with effective representation abroad.
- Bolster America's economic revitalization.
- Promote democracy abroad.<sup>9</sup>

Based on the transnational scope of security threats, the United States, as did other nations, found it difficult to seek national solutions to security problems.<sup>10</sup> Specifically, the 1996 NSS identified a diverse set of global security threats. These threats included: ethnic conflicts; rogue states; proliferation of weapons of mass destruction; large-scale environmental degradation; rapid population growth; and the organized forces of terrorism, international crime and drug trafficking.<sup>11</sup> The United States pursued a collective approach to the global security issue.

With the tragedy of 11 September 2001, the United States and the world moved into a new era beyond the immediate post cold war period. President Bush's NSS contains a characterization of the threat that faces not only the nation he leads but the world. The

September 2002 NSS portrays a threat to security that is substantially different than that of the post Cold War period reflected in the 1996 NSS. This threat is not seen as "... great armies and great industrial capabilities" but rather, "... terrorism – premeditated, politically motivated violence perpetrated against innocents ...," and rogue states willing to use weapons of mass destruction.<sup>12</sup>

In order to counter these threats President Bush outlines three goals: political and economic freedom, peaceful relations with other states, and respect for human dignity. In accomplishing these goals, the NSS states that the United States will:

- Champion aspirations for human dignity;
- Strengthen alliances to defeat global terrorism and work to prevent attacks against us and our friends;
- Work with others to defuse regional conflicts;
- Prevent our enemies from threatening us, our allies, and our friends, with weapons of mass destruction;
- Ignite a new era of global economic growth through free markets and free trade;
- Expand the circle of development by opening societies and building the infrastructure of democracy;
- Develop agendas for cooperative action with other main centers of global power; and
- Transform America's national security institutions to meet the challenges and opportunities of the twenty-first century.<sup>13</sup>

The Bush NSS is a strategy based on military strength and economic and political influence. By far the most controversial element of this document is the inclusion of preemptive action as a way of implementing the strategy and countering significant threats to national security in the form of terrorism and weapons of mass destruction.<sup>14</sup> Furthermore, the 2002 NSS specifies that the United States will undertake the following initiatives to bolster its ability to execute preemptive action:

- build better, more integrated intelligence capabilities to provide timely, accurate information on threats, wherever they may emerge;
- coordinate closely with allies to form a common assessment of the most dangerous threats; and
- continue to transform our military forces to ensure our ability to conduct rapid and precise operations to achieve decisive results.<sup>15</sup>

## DEFINING PREEMPTIVE ACTION

In response to President Bush's 2002 NSS, many articles and editorials have analyzed the inclusion of the policy of preemptive action as a way to accomplish national security objectives. Authors and pundits have expressed their opinions on preemptive action in the context of the war on terrorism and a potential conflicts with rogue regimes. In many cases, whether pro or con, the arguments have had an emotional overtone that does not demonstrate an understanding of the policy as outlined in the NSS. President Bush's preemptive alternative NSS creates an additional option and new emphasis for national security with respect to the conditions and threats the United States currently faces. The NSS invokes the use of preemptive action as an option "... to counter a sufficient threat to our national security."<sup>16</sup> The current administration's interpretation is provided by the National Security Advisor, Condoleezza Rice, "It means forestalling certain destructive acts against you by an adversary. [There are times when] you can't wait to be attacked to respond."<sup>17</sup>

Executing a policy of preemptive action by a nation is not new; there are ample examples in recent history. Two such examples are the 1967 Six Day War and the Cuban Missile Crisis. In each case a significant imminent threat to national security existed and preemptive action was taken.

## THE 1967 SIX DAY WAR

In the 1967 Six Day War, Israel believed that an attack by Egypt and Syria was imminent. The nation of Israel had been in existence since 1948. As a Jewish state, it had continually struggled to maintain its sovereign territory in the midst of the predominately Arab Middle East. In May of 1976, a series of hostile actions by the neighboring nations of Egypt and Syria provoked Israel to act. The provocation included: the forced withdrawal of United Nations

Emergency Forces from the international buffer zone; a blockade of the Straits of Tiran; the massing of Egyptian and Syrian troops on the border; military cooperation agreements with Jordan and Iraq; and statements of intent by leaders such as Iraqi President Rahman Aref, who stated, "This is our opportunity to wipe out the ignominy which has been with us since 1948. Our goal is clear – to wipe Israel off the map."<sup>18</sup> In his book, Battleground: Fact and Fantasy in Palestine, Samuel Katz makes the following observation:

Never in human history can an aggressor have made his purpose known in advance so clearly and so widely. Certain of victory, both the Arab leaders and their peoples threw off all restraint. Between the middle of May and fifth of June, world-wide newspapers, radio and, most incisively, television brought home to millions of people the threat of politicide bandied about with relish by the leaders of these modern states. Even more blatant was the exhilaration which the Arabic peoples displayed as the prospect of executing genocide on the people of Israel ... In those three weeks of mounting tension people throughout the world watched and waited in growing anxiety--or in some cases, in hopeful expectation--for the overwhelming forces of at least Egypt, Syria, Jordan and Iraq to bear down from three sides to crush tiny Israel and slaughter her people.<sup>19</sup>

On the morning of June 5, Israel launched an overwhelming attack on Arab air power, destroying about 300 Egyptian, 50 Syrian, and 20 Jordanian aircraft, mostly on the ground, and virtually eliminating the Arab air forces. This strike was immediately followed by ground attacks into Sinai and the Gaza Strip, Jordan, and finally Syria. Arab ground forces were defeated on all fronts. By the time the UN-imposed cease-fire took effect in the evening of June 11, the Israeli Defense Forces had seized the entire Sinai Peninsula to the east bank of the Suez Canal; the West Bank of Jordan, including East Jerusalem; and the Golan Heights of Syria. Israel used military force as a means to defeat the imminent threat perched on their borders and restore their security.<sup>20</sup>

#### THE CUBAN MISSILE CRISIS

The Cuban Missile Crisis from 16 to 28 October 1962 provides an illustration of the use of preemptive action by the United States. Throughout those tense thirteen days, two of the world's superpowers were poised on the brink of nuclear war. Aerial reconnaissance photographs delivered to the White House revealed the presence of offensive Soviet ballistic missiles and the construction of permanent missile sites in Cuba. President John Kennedy

addressed the nation on the evening of 22 October 1962 on radio and television to explain the impact of the Soviet Union's transformation of Cuba into a strategic base:

The Characteristics of these new missile sites indicate two distinct types of installations. Several of them include Medium Range Ballistic Missiles, capable of carrying a nuclear warhead for a distance of more than 1000 nautical miles. Each of these missiles, in short, is capable of striking Washington D.C., the Panama Canal, Cape Canaveral, Mexico City, or any other City in the Southeastern part of the United States, in Central America, or in the Caribbean area. Additional sites not yet completed appear to be designed for intermediate range ballistic missiles – capable of traveling more than twice as far – and thus capable of striking most of the major cities in the Western Hemisphere, ranging as far North as Hudson's Bay, Canada, and as far South as Lima Peru. In addition, Jet bombers, capable of carrying nuclear weapons, are being uncrated and assembled in Cuba, while the necessary air bases are being prepared.<sup>21</sup>

The presence of Soviet advisors, missiles, bombers and construction in Cuba clearly constituted an explicit threat, not only to the security of the United States, but also to that of the security of the entire Western Hemisphere.

On 18 October President Kennedy decided to act by establishing a naval blockade of Cuba to stop the delivery of additional missiles and to "demonstrate seriousness of purpose."<sup>22</sup> This action alone would not eliminate the threat presented by the Soviet build-up in Cuba. The President's advisors discussed other options ranging from air strikes to an invasion.<sup>23</sup> While the deliberations and meetings continued, Robert Kennedy, the President's brother and Attorney General, explored a diplomatic approach. On 27 October, Robert Kennedy met privately with Soviet Ambassador Anatoly Dobrynin to work out a solution to the crisis. The President's brother documented the conversation in a memorandum for the Secretary of State Dean Atcheson:

I said he had better understand the situation and he better communicate that understanding to Mr. Khrushchev. ... The Soviet Union had secretly established missile bases in Cuba while at the same time proclaiming, privately and publicly, that this would never be done. I said those missile bases had to go and they had to go right away. We had to have a commitment by at least tomorrow that those bases would be removed. This was not an ultimatum, I said, but just a statement of fact. He should understand that if they did not remove those bases then we would remove them.<sup>24</sup>

Ambassador Dobrynin gave his account of this meeting to President Nikita Khruschev by telegram.<sup>25</sup> In the telegram Dobrynin relayed a proposal by the U.S. to remove nuclear missiles from Turkey:

"And what about Turkey?" I asked R[.] Kennedy. "If that is the only obstacle to achieving the regulation I mentioned earlier, then the president doesn't see any insurmountable difficulties in resolving this issue," replied R. Kennedy. ... "However, President Kennedy is ready to come to agreement on that question with N.S. Khrushchev, too. I think that in order to withdraw these bases from Turkey," R. Kennedy said, "we need 4-5 months. This is the minimum amount of time necessary for the US government to do this, ... On the whole Turkey issue," R. Kennedy added, "if Premier N.S. Khrushchev agrees with what I've said, we can continue to exchange opinions between him and the president, using him, R. Kennedy and the Soviet ambassador. However, the president can't say anything public in this regard about Turkey," R. Kennedy said again.<sup>26</sup>

In a radio address on 28 October, President Khruschev announced the acceptance of the U.S. proposal to remove nuclear missiles from Turkey stating, "In order to save the world ... we must retreat."<sup>27</sup>

#### NATIONAL SECURITY STRATEGY, 2002 – PREEMPTIVE ACTION

As stated previously, the 2002 NSS identifies preemptive action as one of the means to accomplish the following strategic objectives: (1). Strengthen alliances to defeat global terrorism and work to prevent attacks against us and our friends and, (2). Prevent our enemies from threatening us, our allies, and our friends with weapons of mass destruction.<sup>28</sup> The two historical examples cited demonstrate two different means of executing preemptive action in order to achieve strategic objectives, military force and diplomacy. These examples also serve to illustrate the critical elements of preemptive action. The Bush administration outlines specific criteria for preemptive action as specified in his 2002 NSS:

- A clear, specific and imminent threat to national security (terrorists and rogue states possessing WMD)
- A measured use of force
- A just cause
- An analysis of risk

- An action that is not solely a use of force
- An action that is not a pretext for aggression
- A deliberate action.<sup>29</sup>

## **MORAL AND LEGAL JUSTIFICATION**

The moral and legal justification of the strategy of preemptive action can be defended biblically. The book of Exodus presents the Ten Commandments, and the laws and ordinances for the nation of Israel to follow. The text provides an early example of preemptive action in Exodus chapter 22, verses 2 and 3: "If a thief is caught breaking in and is struck so that he dies, the defender is not guilty of bloodshed; but if it happens after sunrise he is guilty of bloodshed."<sup>30</sup> This passage of scripture serves to illustrate the morality and justification of a preemptive action in its simplest form. Although this passage does not speak directly to national security, it does, however, amplify key elements of preemptive action. The setting is a house, the sovereign territory of its inhabitants. The home owner is presented with a threat in the form of an intruder. The home owner preempts theft and possible harm to his family by killing the thief. The key consideration is intent. Had the intruder entered during daylight (when occupants are away), his intent would be only to steal. But since he entered at night, (when the occupants could be physically harmed), the home owner is not guilty of bloodshed in killing the thief.<sup>31</sup>

The world has changed significantly since the days of the Israelite march out of Egypt. President Bush has given notice to the terrorists and those who possess WMD that preemptive action is clearly a means the United States is willing to use to deal directly with the danger posed by these two threats against national security. Questions have been raised concerning the legitimacy of the President's policy. The United States can not solely use Exodus 22:2-3 as a source to defend preemptive action as a security policy. It is in the context of current moral standards and international law that the United States derives justification.

## **MORAL JUSTIFICATION – JUST WAR THEORY**

The morality of war and forceful actions taken by nations has been debated since the Middle Ages. Questions such as when it is right to go to war, and how war should be waged are timeless. With regard to preemptive action, this discussion is still generally applicable and

relevant. The foundation for answering moral questions is found in the just war theory. Just war theory deals with the justification of how and why wars are fought.

There is a long standing theoretical tradition in the West concerning the morality of warfare. The Western world has codified or expressed rules for the conduct of armed conflict in various ways. Such precepts are formalized in international law, custom, and in military manuals that define proper behavior in combat. These parameters are usually called the "just-war tradition." The tradition began with Augustine of Hippo and has evolved into two major parts: the right to go to war (*jus ad bellum*) and the right conduct of war (*jus in bello*).<sup>32</sup> *Jus ad bellum* specifies the conditions under which war could legitimately be declared, and *jus in bello* provides rules to be followed once war has begun. In the seventeenth century, Hugo Grotius adapted the *jus in bello* to the changed world that recognized the emergence of nation-states. He defined war as a clash of nations. He argued that citizens of a warring nation who made no direct contribution to the war should not be attacked. In the eighteenth century, Emerich de Vattel stated that every nation has the right to preserve itself and ensure the security of its citizens by resisting aggressors, giving voice to both the right of self-defense and the limits of the permissible exercise of self-defense.<sup>33</sup> In 1986, the United Methodist Council of Bishops published a standard listing of just war criteria. Their list contains five considerations for analyzing war to determine its moral justification:

Just cause. A decision for war must vindicate justice itself in response to some serious evil, such as an aggressive attack.

Just intent. The ends sought in a decision for war must include the restoration of peace with justice and must not seek self-aggrandizement or the total devastation of another nation.

Last resort. This tradition shares with pacifism a moral presumption against going to war – but is prepared to make exceptions. Every possibility of peaceful settlement of a conflict must be tried before war is begun.

Legitimate authority. A decision for war may be made and declared only by properly constituted governmental authority.

Reasonable hope of success. A decision for war must be based on a prudent expectation that the ends sought can be achieved. It is hardly an act of justice to plunge one's people into the suffering and sacrifice of a suicidal conflict.<sup>34</sup>

Where does the policy of preemptive action fall in the discussion of just war? Secretary of Defense Casper Weinberger had to answer a similar question with regard to what is termed the Weinberger Doctrine. On 28 November 1984, he made the following statement when introducing his doctrine while addressing the Washington Press Club: "Under what circumstances, and by what means, does a great democracy such as ours reach the painful decision that the use of military force is necessary to protect our interests or to carry out our national policy?"<sup>35</sup> Reflecting the Pentagon's post Vietnam guardedness, he sought to establish a high standard for intervention. War should be a last resort, and it should be waged only with "some reasonable assurance" of congressional and public support while continuing to reassess and adjust objectives to avoid mission creep.<sup>36</sup> Secretary Weinberger proposed a set of six points to reflect upon when considering the use of U.S. forces abroad.

The United States should not commit forces to combat overseas unless the particular engagement or occasion is deemed vital to our national interest or the interests of our allies.

If we decide it is necessary to put combat troops into a given situation, we should do so wholeheartedly, with the clear intention of winning. If we are unwilling to commit the forces or resources necessary to achieve our objectives.

If we do decide to commit forces, we should have clearly defined political and military objectives, and we should know precisely how our forces can accomplish this objectives. We must send forces capable of doing the job -- and not assign a combat mission to a force configured for peacekeeping.

The relationship between our objectives and the force we have committed -- their size, composition and disposition -- must be continually reassessed and adjusted if necessary. We must continually keep as a beacon before us the basic questions: "Is this conflict in the national interest?" "Does the national interest require us to fight, to use force of arms?" If the answers are yes, then we must win; if the answers are no, then we should not be in combat.

Before the U.S. commits combat forces abroad, there must be some reasonable assurance of having the support of the American people and their elected representatives in Congress. This support can not be gained unless we are candid in making clear the threats we face, and it cannot be sustained without continuing and close consultation. We cannot fight a battle with Congress at home while asking out troops to win a war overseas.

The commitment of U.S. forces to combat should be a last resort.<sup>37</sup>

This bold policy statement for the use of forces underwent considerable scrutiny. In a key article James Johnson uses the categories of the just war tradition to analyze the Weinberger doctrine, drawing from the debate between Secretary Weinberger and Secretary of State George Schultz concerning the proper use of military force to secure policy objectives. Johnson's contention is that the policy is compatible with the considerations of just war.<sup>38</sup> Similarly, an analysis of preemptive action can be conducted using the five just war categories as a gauge of the morality of the policy.

Overlaying the component parts of preemptive action, derived from the 2002 NSS listed above, on the five just war considerations, the policy explicitly meets the test in all areas. Just intent is found in the identification of the clear, specific imminent threat to national security posed by terrorism and rogue states possessing weapons of mass destruction. The NSS further states that the United States will not use force in all cases against these threats and will not use preemptive action as a pretext for aggression, meeting the prerequisite for just intent and last resort. Additionally, the statement that preemptive action is not solely a use of force also meets the condition of last resort. The analysis of risk and contention that any action will be deliberate and executed within the constitutional authority given to the President and the Congress fulfills the requirements of reasonable hope of success and the decision to act made by legitimate authority.

#### LEGAL JUSTIFICATION

An internationally recognized foundation for national security is the inherent right of self defense as contained in international law. It provides a basis for the justification of preemptive action. As defined by the International Law Dictionary & Directory, international law is the body of legal rules and norms that regulate activities carried on outside the legal boundaries of states. The sources for these rules and norms are found in international conventions, international custom as evidenced in general practice accepted as law, and the general principles of law recognized by civilized nations.<sup>39</sup> Preemptive action by its nature is a means of self defense to preclude the anticipated destructive acts directed against a nation that threaten its national security. Within the context of international law the justification for self defense is found in Article 51 of the United Nations Charter. Article 51 stipulates that every member of the organization possesses the inherent right of individual or collective self defense:

Nothing in the present Charter shall impair the inherent right of individual or collective self-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. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.<sup>40</sup>

As an extension of the right to individual or collective self defense, the legal justification for preemptive action is supported by the theory of anticipatory self-defense. This theory is widely accepted in international law, specifying that states can take defensive action even before an attack has occurred if the threat is truly imminent. Traditionally, such an action is undertaken when an opposing force mobilizes in anticipation of an attack. As cited earlier, two examples are Israel's preemptive attack that started the 1967 War, and the Cuban missile crisis.<sup>41</sup>

The conditions for acting in anticipatory self-defense are the same as those for acting in self-defense except that an actual armed attack has not yet occurred. The key question posed is: whether an imminent or immediate threat of an armed attack exists. The conduct of a nation engaging in preemptive actions should be assessed in terms of the existing circumstances. In other words, the reasonableness of the conduct must be examined. Several factors should be considered to determine if an attack is imminent and therefore justifies preemptive action:

Are there objective indicators that an attack is imminent? Factors such as troop buildups, increased alert levels, increased training tempo, and reserve call-ups may suggest that an attack is imminent.

Does the past conduct or hostile declarations of the alleged aggressor reasonably lead to a conclusion that an attack is probable? A pattern of aggressive past conduct or hostile public statements may demonstrate an intention by an aggressor nation to launch an armed attack.

What is the nature of the weapons available to the alleged aggressor nation, and does it have the ability to use them effectively? Weapons of mass destruction and modern delivery systems make waiting for an actual armed attack exceedingly dangerous. While possession of such weapons alone is not indicative of an intent to use them, it is a factor that must be considered with all other relevant factors.<sup>42</sup>

Based on international law and the analysis of these factors, preemptive action can be rationally justified. To meet the test of legal justification, however, a threat to national security must be thoroughly examined for imminence prior to executing preemptive action.

## **FRAMEWORK FOR PREEMPTIVE ACTION**

Absent from the debate on preemptive action are the limits and options available for executing preemptive action. Just war theory suggests that there is a hierarchy of escalation. A detailed examination of this new policy option leads to the conclusion that a rational approach can be used to create a framework for analysis of situations requiring preemptive action. The following discussion presents such a model to establish the left and right limits for preemptive action.

The United States clearly possesses the right to employ preemptive action in cases where the national interests are threatened, either unilaterally or as part of a coalition, using all instruments of national power. The scope of preemptive action ranges from the implementation of diplomatic, economic and informational measures or pressure to the use of varying degrees of military force up to and including preemptive attack or war.

One singular course of action is not suitable for all occasions where preemptive action may be warranted. Within the context of courses of action, the President has a full menu of options to forestall threats to national security short of war. These options are derived from the elements of national power. A generalized listing options available are contained in the form of the flexible deterrent options (FDOs). Some illustrative examples of possible deterrent options in each domain of national power that can be used as preemptive action short of war are:

### **DIPLOMATIC FDOs**

- Reduce international diplomatic ties
- Increase cultural group pressure
- Pursue measures to increase regional support
- Develop or work within existing coalition
- Use the UN or other international institutions
- Restrict activities of diplomats

- Take actions to win support of allies and friends
- Coordinate efforts to strengthen international support
- Promote democratic elections
- Heighten informational efforts directed at the International community, opinion leaders within the national population, and coalitions formed to overcome the situation

#### POLITICAL FDOs

- Promote U.S. policy objectives through public policy statements
- Take measures to increase public support
- Heighten public awareness of the program and potential for conflict
- Maintain an open dialogue with the press

#### ECONOMIC FDOs

- Seize real property in the United States
- Embargo goods and services
- Heighten informational efforts directed at Financial institutions
- Reduce or eliminate corporate transactions
- Freeze monetary assets internationally and in the United States
- Enact trade sanctions

#### MILITARY FDOs

- Deploy Joint Task Force (JTF) Headquarters-Forward to area
- Increase military exchanges and staff visits to the area
- Pre-stage sealift and airlift reception assets to air and sea ports of embarkation
- Forward deploy forces or carrier battle group to the region
- Initiate or increase show of force actions
- Increase exercise activities, schedules, and scope
- Increase strategic reconnaissance
- Increase naval port calls or air squadron visits to the area

Use naval or air capability to enforce sanctions  
Deploy intelligence collection and analysis to the area<sup>43</sup>

There are no clearly established criteria or options for determining the level of preemptive action to be taken. Furthermore, each situation must be considered independently in order to apply the appropriate amount of pressure or force. The use of preemptive action becomes necessarily problematic as the options selected more closely resemble acts of war, or can be considered actual preemptive military strikes or preemptive war. However, the legal and moral reflections in international law and just war theory can provide a decision framework for considering preemptive action. The following six criteria assess the suitable degree of preemptive action:

- (1). The level of threat to national or international security
- (2). The degree of proof of intentions to act against the U.S. or allies
- (3). The relative size and scale of the threat or target
- (4). The readiness posture of military forces
- (5). The urgency of action
- (6). The desired objective

Just war criteria and legal standards also suggest a hierarchy of preemptive action among the options available to the national leader based on the assessment of need when considering exercising preemptive action against threats to national and international security. These courses of action are arranged in order from least to most severe.

Use of diplomatic, economic, or informational means to deter, limit, or delay threats

Show of force and limited military attacks against limited targets to deter, limit, delay or defeat specific threat targets or systems

Full scale military attacks including the use of air, ground and naval forces to deter, delay, prevent, or defeat threats and to accomplish limited objectives

Escalated and combined use of the three options listed above to deter, delay, prevent, defeat, or destroy threats to vital national interests using decisive force

An examination leads to the conclusion that when employing preemptive action, there are a number of risks involved which must be measured, regardless of the method used. The five primary risks are:

- (1). A loss of national or international commitment
- (2). Unnecessary collateral damage
- (3). Civilian death or suffering
- (4). Escalation of the threat toward the U.S. or allies from other nations or non-state actors
- (5). Failure to achieve desired results

These five risks apply equally regardless of the instrument of national power used. As an example specific economic measures may inflict collateral damage on unintended sectors of a national economy.

The framework above serves as a tool to select the appropriate level of preemptive action. The listing provides four graduated levels of action and does not represent the entire spectrum of possible categories available. This conceptual approach is provided to assist in objectively developing policy options when preemptive action is deemed necessary. As challenges to national security evolve in the current strategic environment, however, it is important to recognize that the criteria for assessing options are not comprehensive and may be modified. Given the diversity and lethality of potential global threats, untimely or inappropriate use of preemptive action could endanger international stability, diminish the leadership role of the United States and compromise her values.

## **CONCLUSION**

11 September 2001 altered the global security setting dramatically. The threats of terrorism and rogue states possessing weapons of mass destruction have redefined the national and global security environment. While deterrence and containment continue to be legitimate

policy options, preemptive action, in light of the threat, may be increasingly necessary as an additional option. The use of preemptive military action can be approached rationally based on just war theory and international law. The framework presented here is a model for a thoughtful approach to setting the left and right limits for the use of preemptive action.

Word Count = 6185.

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