

*United States Marine Corps
Command and Staff College
Marine Corps University
2076 South Street
Marine Corps Combat Development Command
Quantico, VA 22134-5068*

MASTER OF MILITARY STUDIES

**TITLE: PREEMPTIVE STRIKE POLICY OF THE U.S.: AN ARGUMENT FOR
ADJUSTMENT TO THE NATIONAL SECURITY STRATEGY**

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

MAJOR LEE A. CRACKNELL, USMC

AY 07-08

Mentor and Oral Defense Committee Member: Dr. Charles D. McKenna

Approved: Charles D. McKenna

Date: 28 APRIL 2008

Oral Defense Committee Member: Craig Swanson, PhD

Approved: Craig Swanson

Date: 28 April 2008

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 2008		2. REPORT TYPE		3. DATES COVERED 00-00-2008 to 00-00-2008	
4. TITLE AND SUBTITLE Preemptive Strike Policy of the U.S.: An Argument for Adjustment to the National Security Strategy				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) United States Marine Corps, Command and Staff College, Marine Corps University, 2076 South Street, Marine Corps Combat Development Command, Quantico, VA, 22134-5068				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					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 31	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Executive Summary

Title: Preemptive Strike Policy of the U.S.: An Argument for Adjustment to the National Security Strategy

Author: Major Lee A. Cracknell, United States Marine Corps

Thesis: As rogue nations and non-state actors like Al Qaeda and Hezbollah present difficult challenges for future administrations charged with the defense of American interests, the United States must revise its preemptive strike policy in order to retain its legitimacy while allowing for unquestionable application of military force.

Discussion: History has shown that nations who have chosen to launch preemptive strikes in the face of imminent attack have turned numerical or technical inferiorities into victory. However, the recent policy failure leading to the invasion of Iraq has led to questions about the legitimacy of the preemptive strike policy outlined in the United States National Security Strategies of 2002 and 2006.

In order to maintain legitimacy of the policy, the National Security Strategy (NSS) should be revised to advertise the intentions more clearly. Three recommendations are proposed to adjust the NSS to reflect a reality more befitting today's political climate. First, the United States should justify any future preemptive attacks by clearly defining the present danger, establishing proportionality of the response, and gaining the consent of the international community. Second, the United States should consider preemptive actions against specific targets versus launching a costly and potentially prolonged preemptive war against a nation. Finally, the United States cannot afford to launch unilateral actions against future threats. It must strive to earn international recognition for a preemptive attack in order to build the framework for potential coalition participation.

The United States faces many emerging threats to global stability. If the United States launches a preemptive attack to neutralize specific threats, it must ensure that the legitimacy of such attacks is justified to the international community. Two examples provide contrasting examples of justified and unjustified attacks: the Israeli preemptive attack on the Arab armies prior to the Six-Day War of 1967, and the United States preventive attack on Iraq in 2003.

Conclusion: The National Security Strategy of the United States presents a clear definition of America's intentions, and sends a strict warning to its adversaries. However, in order to maintain international support for such actions in the future, the NSS must clarify the criteria for launching a preemptive attack. Our international alliances are too important to lose; the United States cannot afford to launch unilateral actions against the threats that future administrations may face in the future. The current draft of the NSS does not clearly define these intentions, so it needs to be revised in order to provide assurance to our global partners that we only attack when we or our allies are directly threatened by an adversary.

DISCLAIMER

THE OPINIONS AND CONCLUSIONS EXPRESSED HEREIN ARE THOSE OF THE INDIVIDUAL STUDENT AUTHOR AND DO NOT NECESSARILY REPRESENT THE VIEWS OF EITHER THE MARINE CORPS COMMAND AND STAFF COLLEGE OR AN OTHER GOVERNMENTAL AGENCY. REFERENCES TO THIS STUDY SHOULD INCLUDE THE FOREGOING STATEMENT.

QUOTATION FROM, ABSTRACTION FROM, OR REPRODUCTION OF ALL OR ANY PART OF THIS DOCUMENT IS PERMITTED PROVIDED PROPER ACKNOWLEDGEMENT IS MADE.

TABLE OF CONTENTS

INTRODUCTION.....	1
PREEMPTIVE ACTION.....	1
A POLICY OF PREEMPTIVE ACTION.....	4
SHORTFALLS OF THE NSS.....	6
RECOMMENDED CHANGE #1.....	8
RECOMMENDED CHANGE #2.....	9
RECOMMENDED CHANGE #3.....	10
PREEMPTIVE ATTACK CASE STUDY: SIX-DAY WAR OF 1967.....	11
PREEMPTIVE ATTACK CASE STUDY: OPERATION IRAQI FREEDOM....	13
APPLICATION TO FUTURE THREATS.....	15
CONCLUSION.....	20
ENDNOTES.....	21
BIBLIOGRAPHY.....	25

INTRODUCTION

In September 2002, President George W. Bush issued a stern warning towards the enemies of the United States, particularly towards terrorists and the rogue nations that support them, in the National Security Strategy (NSS). He outlined a strategy which would allow the United States to strike before an adversary had a chance to attack first. This policy of preemption included the notion that conventional threats were not the only targets of this strategy. The definition of "imminent threat" had been adapted to include unconventional threats, such as Al Qaeda, Hezbollah, and Hamas.¹ However, the application of this new strategy in Iraq in March 2003 produced unfavorable results, highlighting the need to make significant changes to this strategy. Preemption as a form of self-defense is legal; international law favors the use of force when faced with an imminent attack.² Justifying these actions in the international arena is another matter. As rogue nations and non-state actors present difficult challenges for future administrations charged with the defense of American interests, the United States must revise its preemptive strike policy in order to retain its legitimacy while allowing for unquestionable application of military force.

PREEMPTIVE ACTION

Preemptive action has always been analogous to self-defense. Throughout history, many countries have favored preemptive military action to gain an advantage before an impending conflict. The Romans viewed preemptive attack as a means of defending its empire, and invoked this form of self-defense quite aggressively.³ Rome's destruction of Carthage during the Third Punic Wars is a classic example of the Roman execution of preemptive war.⁴ The Japanese navy conducted a preemptive attack on the gathering

Russian fleet at Port Arthur on February 8, 1904, just four hours before a formal declaration of war was issued. This action gave the Japanese a significant advantage that ultimately led to a Japanese victory during the Russo-Japanese War.⁵ Another classic example of preemptive warfare is the Israeli attack on the Arab armies to begin the Six-Day War of 1967. Egypt had arrayed a significant force of bombers that could strike at Israel's military and industrial centers, as well as an army of over 100,000 ground troops within the Sinai Peninsula. Israel launched a preemptive, coordinated air and ground strike to disable Egypt's air force and surprise the Egyptian troops on the Sinai before they had a chance to attack Israel. Israel gained the advantage, and the Arab armies never recovered from this early loss of momentum.⁶ As history has shown, the nation that chooses to launch the first strike can turn a numerical or technical inferiority into victory.

First strike attacks fall into two distinct categories: preventive and preemptive. Preventive attacks are those attacks launched to counter an adversary's growing superiority. Such attacks are meant to counter a threat before they lead to an insurmountable advantage. Preventive attacks are motivated by the drive to fight sooner rather than later in order to counter a perceived or growing imbalance that might favor an adversary's offensive or defensive capabilities, and not necessarily to counter an imminent attack.⁷ These types of attacks generate considerable controversy in that military force is used before an imminent threat is present, which can lead to questions about the legitimacy of the operation(s).

A prominent example of a preventive attack was the Japanese aerial attack on Pearl Harbor in December 1941. Although the United States was not preparing for an attack against Japan, the Japanese naval fleet launched its infamous surprise attack to disable the

U.S. Pacific Fleet at Pearl Harbor in order to reduce its ability to respond to Japanese hostile actions throughout Asia.⁸ American naval power at the time posed a credible threat to Japanese expansion plans, but the attack was launched before the United States had conceived any intentions of going to war with Japan.

In contrast, a preemptive attack is launched when there is direct evidence of an impending attack. This type of action is motivated by the desire to strike an adversary who has shown clear signs of attacking. By launching a preemptive attack, the belief is that the first strike would offset an adversary's capacity to gain the momentum in any pending battle. This point was illustrated in the aforementioned examples of preemptive actions throughout history. The United Nations (UN) charter, which defines the right to national self-defense in Article 51 of Chapter VII, typically favors preemptive action over preventive action, as do international laws regarding the use of force.⁹ Justifying a preemptive action is not difficult, if the actions are applied correctly in accordance with the principles of self-defense.

Is preemptive action legitimate? There is no clear answer. When preemptive action is launched in the true context of self-defense and justified to the world audience, then there may be less argument about its legitimacy. Often a misinterpretation of self-defense is what leads nations to trouble when executing this type of action. According to J. E. Fawcett in the *Digest of International Law*, three elements constitute the framework necessary to declare self-defense for the purpose of invoking Article 51 of the UN Charter: present danger, proportionality, and consent. Present danger refers to the unequivocal intention of an adversary to attack. Proportionality refers to the limitations of time and force necessary to remove only the imminent threat. Consent pertains to

conformity of treaty arrangements and laws previously established.¹⁰ When preemptive action is considered and these three elements are factored into the decision-making process, justification for the action is likely to face less opposition on the international arena.

A POLICY OF PREEMPTIVE ACTION

The United States National Security Strategy of 2002 presented an interesting shift in strategic thought. Every presidential administration since the close of World War II has adopted a policy of deterrence as the core of its security strategy, primarily to deter Soviet attempts to extend its spheres of influence around the world. However, with the collapse of the Soviet Union in 1991 and the emergence of a new, transnational threat that became more visible after September 11, 2001, this strategy inevitably needed to adapt to deal with this emerging security risk.¹¹ President George W. Bush and his staff recognized the fact that this new, unconventional adversary could not be contained by traditional methods, so he introduced the concept of preemptive warfare as a stern warning to any potential enemies of the United States.¹² President Bush contends in the NSS that the "United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security."¹³ Although this concept has always been implied as a subset of self-defense, the shift in strategy came in the direct statement of an intention to use preemptive force to attack a threat.¹⁴

The revised NSS of March 2006 outlines the same "first strike" policy, but with a reduced tone. The new message points out that "taking action need not involve military force", which indicates that non-kinetic measures will also be used to mitigate terrorist activity. The threat of preemptive attack is aimed directly at rogue nations and terrorists

who possess the capability of using weapons of mass destruction (WMDs). However, President Bush inserted a clause in the preemptive attack strategy that is certain to cause controversy in any future attacks. He states that “under long-standing principles of self defense, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy’s attack.”¹⁵ By definition, a preemptive attack is valid if an imminent threat is anticipated. However, if there is uncertainty about the time and place of such an attack, then the attack becomes more preventive in nature than preemptive. Many Americans undoubtedly will align themselves with a defense policy that protects them from enemy attack, but will they be willing to accept a policy that allows the United States to attack just on the notion that an enemy attack might appear likely? This creates tremendous implications for the United States, and any preemptive attack conducted on this basis might cause considerable damage to the reputation of the United States.

The revised NSS of 2006 does outline non-kinetic means to counter these unconventional threats, in addition to the option of preemptive action. These means are encouraging, as they encompass all the instruments of national power, and not just the military arm. These means can also “soften” the region in which an unconventional threat operates before preemptive military action would be required. First, the Bush administration has championed the cause of democracy throughout the world. By placing power in the hands of the people and encouraging elected governments to protect basic human rights, maintain order within their sovereign borders, and limit the reach of their government power, an area should become less prone to harboring terrorists. The United States will employ its vast diplomatic, economic, and political resources, as well as its

strong global alliances, to support democracy throughout the world.¹⁶ Second, the NSS defines the root problems of terrorism, and addresses the strategy to diffuse regional conflicts in terrorist-rich areas so that terrorists cannot take advantage of these challenged regions to recruit and train their forces. Again, the NSS indicates that the promotion of democracy will help resolve some of these same regional conflicts.¹⁷ Finally, the NSS describes an agenda for improving cooperation with the main centers of geostrategic power within each continent, with an end state of eliminating the global rivalries that gripped many regions during the 20th century.¹⁸ This strategy of strengthening alliances and diffusing regional conflicts may help to eliminate many of the problems that would lead the United States to pursue preemptive action against an adversary.

SHORTFALLS OF THE NSS

Although the United States reserves the right to defend its interests and the security of its citizens without permission from the United Nations, the National Security Strategy in its current form inadequately explains America's intentions regarding preemptive attacks against terrorists or rogue states. As a whole, the NSS addresses key issues that have damaged the reputation of the United States since 2002 and seeks to reverse those damages, but the clause for preemptive action needs refinement. The NSS needs to be changed to reflect a more thoughtful approach to dealing with unconventional threats. First, in order to justify a preemptive attack in the name of self-defense, justification for the action must conform to the three elements (present danger, proportionality, and consent). Second, the presidential administrations of today and tomorrow should focus on carrying out specific preemptive actions against selected targets instead of launching a preemptive war against a nation. Finally, international cooperation is crucial to launching

any preemptive actions against identified threats. These three changes can ensure that the United States maintains credibility with its international partners, and maintains the right to defend its interests and citizens from enemy attack with minimal controversy.

These changes are recommended on the assumption that our intelligence networks improve, as intelligence gathering and analysis are the only true ways to verify the imminence of a threat. The use of preemptive force is legitimate only when a known threat is validated. A cooperative international intelligence effort is required to remove any uncertainty from the assessment of an imminent attack. The NSS outlines increased cooperation with our international partners to combat the proliferation of WMDs, to find a solution to the struggle against militant Islamic radicalism, and to promote principles of economic and political growth within their borders. The United States needs to capitalize on these same partnerships to form lasting intelligence friendships that can provide mutually beneficial nodes of information that can assist with the decision to launch a preemptive attack. The intelligence agencies have undergone significant changes since the September 11 attacks, and intelligence sharing and feedback are constantly improving.¹⁹

However, the intelligence network still needs significant improvement. Recent disjointed intelligence estimates offer a glimpse of the uncoordinated effort taking place behind the scenes. On February 10, 2005, the North Koreans announced that they had successfully produced a nuclear warhead, which was later verified with the underground testing of a nuclear warhead in October 9, 2006.²⁰ Shortly after the announcement, the Central Intelligence Agency estimated that the North Koreans may have produced up to three bombs. The Defense Intelligence Agency estimated that the North Koreans had

produced closer to fifteen warheads, while the Department of Energy placed the number closer to two. The Deputy Secretary of State surmised that they had no nuclear weapons, suggesting that the announcement was a bluff.²¹ The disparity in the estimates suggests that the U.S. intelligence network hadn't coordinated as closely as expected to generate a more uniform interagency estimate of the North Korean nuclear weapons program. Quality intelligence is integral to the three recommended changes to the NSS.

RECOMMENDED CHANGE #1

The first recommended change to the NSS is to ensure conformity to the three aforementioned elements of self-defense. Assuming the intelligence networks will continue to improve in order to "connect the dots" on a particular threat, the NSS can be revised to reflect a more realistic approach towards preemptive action. Each case for preemptive action must be evaluated based on the three elements of self-defense outlined in the *Digest of International Law*. Present danger can be verified with solid intelligence work. In the case of conventional threats, a massing army or navy coupled with political rhetoric may be enough to warrant a preemptive attack. When the threat is a rogue adversary or a terrorist cell/unit operating within the borders of a sovereign nation, then the picture changes drastically based on the level of government involvement. To illustrate, two examples come to mind: Afghanistan and Pakistan. After the September 11 attacks, the United States launched military action against both the Taliban and Al Qaeda in Afghanistan. In this case, the government harbored the terrorists within their sovereign state, and thus was attacked along with the terrorist threat.²² However, the United States cannot strike Al Qaeda units who have taken refuge in Pakistan. The Pakistani government has not authorized the United States to strike terrorists within its

sovereign borders, and the United States has no choice but to conform to this constraint. Substantial diplomatic efforts will be necessary when terrorist targets are located within Pakistan that the United States judges are high priority for attack.²³

Proportionality will be determined during the planning phase of any attack. The two constraints that planners must work within are time and mass. When preemptive action is launched under the claim of self-defense, the attack must be of a reasonable duration sufficient to eliminate the threat, and the means with which to remove the threat must be proportional to the imminent danger.²⁴

Consent is a function that can be delegated largely to the UN Security Council. This body can research existing treaty arrangements and laws to determine whether or not action is warranted, and will react accordingly if the threat criteria meets the requirements for the use of force outlined in Article 51 of the U.N. Charter. For a conventional force, the enemy government is assumed to be implicitly involved with any actions that created the threat. In the case of unconventional forces, diplomacy and sound intelligence can determine the government's level of involvement. Did that particular government support a terrorist or insurgent force directly, or has that government exercised no control over those forces operating within its borders? The answer will determine whether or not that government becomes a target for preemptive attack.

RECOMMENDED CHANGE #2

The second recommended change is to consider preemptive actions against specific threats versus preemptive war against a nation. Great care must be exercised when planning the type of preemptive action required, based on the guidelines of present danger and proportionality. The United States should not launch a preemptive war

against an entire nation if the threat is a WMD program or some other threat that can be neutralized with a carefully planned strike.²⁵ Wars are costly, and the United States can be drawn into prolonged operations after the conclusion of hostilities. As such, the preemptive action must be proportional to the imminent threat, and preemptive war should be used only as a last resort.

RECOMMENDED CHANGE #3

The third recommended change to the NSS is to gain international recognition for preemptive action(s). The United States needs to earn international acceptance or at least neutrality prior to launching a preemptive attack on an adversary, particularly when the attack occurs on another nation's sovereign territory. The UN Security Council is the clearinghouse for international peace and conflict resolution.²⁶ Without the endorsement of the Security Council, the United States will have a difficult time convincing other nations to participate in a coalition effort, or convincing skeptical leaders that unilateral action is justified. Additionally, when the international community submits an endorsement for action on a particular threat, the pressure of a potential global coalition might be enough to force a rogue nation's government to cease to exist or relent to the demands of the international community.

These three recommended changes are meant to advertise to our allies that the United States will conform to international standards when considering the use of force against an imminent threat. They are also intended to remind our allies that we don't attack other countries because we "feel like it", but rather because we've assessed an imminent threat and have determined that inaction would be detrimental to our security. Finally, as a warning to the enemies of the United States who might view these recommendations for

changes as a “softer” tone, the preemptive strike clause remains within the NSS to illustrate that the United States will not hesitate to act aggressively against perceived threats to its security.

PREEMPTIVE ATTACK CASE STUDY: SIX-DAY WAR OF 1967

In order to assess more thoroughly the ramifications of preemptive actions, two cases will be examined here. The first is the Israeli preemptive attack on the Egyptian armies during the Six-Day War of 1967, and the second will be the recent invasion of Iraq in 2003.

Israel’s surprise attack on gathering Arab armies to begin the Six-Day War of 1967 is studied as a classic example of preemptive action. In the years preceding 1967, Israel faced increasing pressure from the Arab states who refused to recognize Israel as a nation. An Arab nationalist movement sought to destroy Israel. This movement was led by Egyptian President Gamal Abdel Nasser, who had vowed to avenge the Arabs’ humiliating defeat by Israel on the Sinai Peninsula in 1956.²⁷ Various factions began to attack Israel from outside her borders during the period prior to the war, stirring public emotions within Israel as the crisis escalated. Attacks by Syria from atop the Golan Heights were met by an Israeli counterattack in April 1967; six Syrian MiG fighter jets were shot down during the counterattack. The Soviet Union had convinced Syria that Israel was massing its forces for an attack. The Syrians pleaded for help from Egypt to counter the “growing” Israeli threat. Nasser, who had been increasingly hostile towards Israel, obliged without hesitation. In mid-May, Syrian troops massed in the vicinity of the Golan Heights, while Egyptian forces gathered on the Sinai Peninsula, ready to strike

Israel. Near the end of May, Jordan signed a defense pact with Egypt. Although Iraq joined the pact on June 4th, they would not play a significant role in the ensuing fight.²⁸

Jordan had arrayed 56,000 men and 270 tanks for the battle, while Syria gathered 50,000 soldiers and 260 tanks with Egypt's 250,000 men and 900 tanks. These forces completed an envelopment of Israel.²⁹ Israel had activated a force of 275,000 men and 1,100 tanks for the upcoming fight.³⁰ Faced with increasingly harsh rhetoric from the Syrian, Egyptian, and Jordanian armies about their intent to destroy the country, Israel decided to take action. On June 5, 1967, Israel's air force preemptively attacked Egypt's air force, their center of gravity, while their planes were parked on the ground. Caught unaware, virtually the entire air force was destroyed in two hours at a loss of only six Israeli aircraft. Later that same day, the Israeli Defense Forces advanced into the Sinai to conduct a ground assault against Egyptian forces.³¹ Israeli warplanes continued to attack and destroy the Syrian and Jordanian air forces before the end of the first day of battle, achieving air superiority for the duration of the war. Demonstrating a mastery of their armed forces that only precise coordination could achieve, the Israeli's captured the Gaza Strip, all of the Sinai peninsula east of the Suez Canal, all of Jordan west of the Jordan River, East Jerusalem, and the Golan Heights after six days of battle. The Arab armies lay in defeat, and Israel gained a majority of the property that defines her borders to this day.³²

The Six-Day War provides a clear example of a time in history when a preemptive attack seemed warranted. The rapid buildup of Arab forces on Israel's borders, coupled with the increasingly hostile rhetoric from those countries, was enough evidence for Israel to determine the imminence of the present danger. In terms of proportionality,

Israel attacked with a slightly inferior force than that of the Arab armies combined, but due to the element of surprise, was able to mitigate this disparity with speed and violence. The operation met all the elements necessary to declare self-defense, and to the Israelis was a justified action. The Israelis were able to turn a potentially disastrous situation into a resounding victory by launching a preemptive attack on the unsuspecting Arab armies massing to attack its country.

PREEMPTIVE ATTACK CASE STUDY: OPERATION IRAQI FREEDOM

A contrasting example of a preemptive attack occurred in March 2003, when the United States invaded Iraq with a combined ground and air force. This invasion has been a source of great controversy worldwide since that date. Fueling the controversy is that one of the principal reasons for launching the preemptive war against Iraq was to deter Saddam Hussein's use of WMD's against the United States or its allies in the Middle East. The invasion was a success, but WMD's were not found. Additionally, in subsequent interviews, Saddam Hussein acknowledged that he had deceived the United States and Iran about his WMD program.³³ Whether the intelligence networks failed to detect the fraudulent WMD programs or the Bush administration failed to heed CIA warnings of no WMD's is an argument for a different time. What is known is that WMD's were not found in Iraq, and that the Iraq invasion appeared to be an unjustified action that fell along the lines of a preventive attack instead of a preemptive attack.

The policy failures during Operation Iraqi Freedom highlight the changes that need to be reflected in the NSS. Virtually every country in the United Nations pleaded with the United States not to attack Iraq based on inconclusive evidence of an imminent threat.³⁴ Likewise, the connections between Saddam Hussein and any terrorist organizations were

yet to be verified prior to the invasion.³⁵ Finally, despite the fact that the UN Security Council passed Resolution 1441 unanimously demanding complete disclosure of the Iraqi weapons programs, the resolution contained no specific verbiage authorizing the use of military force if Iraq was found in non-compliance.³⁶ The imminent threat justifying preemptive action was never clearly defined to the world, and so the invasion was launched by the United States to great skepticism.

In the case of the Iraq war, the three elements of self-defense stated in the *Digest of International Law* and addressed earlier were clearly not present prior to the invasion of Iraq. First, the present danger was advertised as Saddam Hussein's WMD program and the possibility that he would develop a nuclear weapon. This present danger never materialized, which led to criticism of the American policy of preemptive action from many sources. The *New York Times*, a staunch protester of the Iraq war, published an editorial on September 12, 2004 criticizing America's assault on "hypothetical enemies", and declared the doctrine of preemptive warfare dead. The *Los Angeles Times* published a similar article in May 2004 declaring that the failure of this first preemptive action renders future actions dead.³⁷ Second, the proportionality of the threat wasn't factored into the level of force the United States used to attack the threat. Surgical strikes could possibly have taken out Saddam Hussein's mobile WMD's, but the United States chose to launch a ground invasion into Iraq instead. A preemptive strike policy was used to wage a preemptive war. There is a significant difference between the two in terms of proportionality. Finally, although the Security Council passed Resolution 1441, the document was not a consent form for the United States to use force against Iraq. Without explicit support from the UN, the United States found itself in a virtually unilateral effort

during the invasion and subsequent occupation of Iraq. The United States cannot afford to make these same mistakes again in the future.

APPLICATION TO FUTURE THREATS

Three particular threats loom on the horizon for the United States: Iran, North Korea, and non-state organizations. The NSS of 2006 was written with specific warnings directed towards these rogue states and to terrorist organizations residing within sovereign states' borders. Should a preemptive attack be considered against either of these adversaries in order to counter a threat, then certain conditions must be met in order to justify the actions. These threats are serious, and each requires a different approach.

Iran's covert nuclear program, as of October 2007, appears to have been halted, but certain elements of the program continue to operate. The National Intelligence Council (NIC) has assessed that although the program has been temporarily halted, the United States or any coalition effort will not be able to convince the leadership of Iran to abandon the program altogether. This is due to the fact that most key leaders in Iran view the nuclear program as essential to their national security and foreign policy objectives. The NIC has also determined that Iran could develop a nuclear weapon with indigenously produced high explosive uranium (HEU) within the 2010-2015 timeframe.³⁸ Since Iran's stated goal is to become the leading political and economic power broker within the Middle East, and it has aggressively announced that Israel should be "wiped off the face of the Earth", the future of the nuclear program is of grave concern to the United States.³⁹

Suppose the extensive non-kinetic methods currently being employed fail to derail the Iranian nuclear program. Should the United States decide to launch a preemptive attack on Iran's nuclear weapon facilities, a majority of which reside in northern Iran near

Tehran and Tabriz, it needs to do so with the following in mind.⁴⁰ First, applying the recommended adjustments to the preemptive strike policy argued in this paper, it needs to conform to the three elements necessary to justify the act in the name of self-defense (present danger, proportionality, consent). The most important step will be to verify the nature and imminence of the threat. Are nuclear weapons and their associated delivery systems being developed specifically to target the United States or its allies within the region? Are there any indications that these weapons will be exported to terrorist organizations or rogue nations whose intent is to attack the United States or its allies? What is the location of these weapons, and will a preemptive strike eliminate the threat? Verification of the degree of imminence will be difficult, considering the closed nature of Iran's regime.⁴¹ Our intelligence capabilities and networks must be utilized fully to verify the imminence of this threat prior to launching any preemptive attacks on Iran. Another important step will be to select key targets within Iran for destruction as an element of the preemptive action. Full scale invasion must be considered a last resort in order to avoid a costly and possibly prolonged land war. Of course, Iran has deliberately placed its nuclear weapons facilities in heavily populated areas, so planners will have a challenging time determining the best methods to reduce collateral damage in the event of a strike. Finally, the Security Council must be convinced of the imminence of the threat in order to authorize the use of force. This step is crucial in gaining international acceptance for an attack on Iran. Consent does not necessarily mean permission in this case; the United States must not hesitate to act unilaterally and without reservation once it can verify the legitimacy of the threat. However, consent from the Security Council brings the possibility of a coalition partnership once international recognition is attained.

North Korea poses a significant threat both to the United States and to its neighboring countries. Its regime has repeatedly engaged in bad-faith negotiations, often deliberately deceiving inspectors and diplomats for the purpose of hiding elements of its nuclear program. As of late 2006, its nuclear program is in question. The North Koreans have missed their deadline to fully declare the elements of their nuclear weapons program, and continue to deceive the international community about its true intentions.⁴² Additionally, it has engaged in illicit trading throughout Asia, sending illegal drugs, counterfeit U.S. money, counterfeit cigarettes, and arms throughout Asia and even as far as the Middle East. The funds generated through this illicit trade are used to finance the regime as it struggles to survive. Kim Chong Il still maintains an exorbitant lifestyle, along with his trusted inner circle, while the rest of his country lives on the brink of starvation.⁴³ Kim Chong Il's actions in Asia have been irresponsible and must be monitored to ensure that his desperation to survive as the leader of North Korea does not further threaten peace and stability on the Korean peninsula.

Again, suppose the non-kinetic campaign fails in North Korea and the United States must consider a preemptive strike within North Korea to disable its nuclear program. Intelligence efforts will be crucial in defining Kim Chong Il's true intentions and filtering through the deception to determine the level of imminence that a threat exists. Although a threat does not currently exist towards the continental United States directly, the North Korean Taepodong-2 anti-ballistic missile can eventually evolve to range the western coast of the United States. North Korea tested the Taepodong-2 missile in July 2006, but the missile failed 40 seconds into its flight.⁴⁴ Although North Korea cannot produce a nuclear warhead capable of missile delivery, the possibility exists in the future as North

Korea refines its nuclear capabilities.⁴⁵ Preemptive strikes can therefore also target production facilities and fixed launch sites for the Taepodong-2 missile to eliminate this capability. Once the threat has risen to a level that convinces the United Nations Security Council that preemptive force is warranted to stop a nuclear disaster, the United States may be able to select and destroy those targets necessary to disable the program. The United States must be careful not to operate from ulterior motives that don't meet the intended objectives, such as regime change or destruction of any facilities not associated with the nuclear program. As with Iran, a land invasion of North Korea will present extremely difficult challenges and should be considered only as a last resort. Finally, the United States must refrain from using force if the Security Council refuses to issue a resolution. The Security Council is charged with maintaining international peace and order, and should be allowed to exercise a degree of control over its members. Unilateral action would be another option, but the United States would have to be prepared for the consequences should the attack fail to achieve its desired outcomes. This includes preparation for the humanitarian crisis that will certainly follow any military action in North Korea and could involve hundreds of thousands of refugees crossing into China and South Korea.

Transnational and state-sponsored terrorist organizations present difficult challenges for future administrations that use the preemptive strike clause in the National Security Strategy. When a clear threat is posed by a state government and a conventional army, then justifying preemptive actions is relatively less complex. A state can be held accountable for its actions, and thus a strike within its borders can be justified. However, when a strike is conducted on a non-state actor, the strike must physically take place

within sovereign nations borders. When a non-state actor has freedom of movement within a sovereign state and becomes a target for preemptive attack, it cannot be held accountable in the same way as a state.⁴⁶ Therefore, the United States must carefully negotiate with a state's officials when considering a preemptive strike on a credible threat.

However, sometimes a preemptive strike might not be the preferred option. Al Qaeda is a classic example of a transnational threat that operates within the borders of several nations. Should the United States choose to launch preemptive action on the network while it operates in several states, military strikes may not be the preferred method due to issues of sovereignty. Preemptive strikes are often conducted on the leadership of the organization. In this case, detention may be the best form of preemption. Terrorists are dispensable, and each can be replaced as quickly as he can be eliminated. However, when a terrorist is held captive, the intelligence gleaned from succeeding interviews is of great benefit.⁴⁷ An example of the benefit of preemptive detention over a preemptive strike is in the intelligence gained from the capture of Khalid Sheik Mohammed in March 2003. He provided intelligence on 31 terrorist plots, including information on future plots, that he was directly involved in. If a preemptive strike was launched to eliminate him, this intelligence might not have surfaced.⁴⁸

There is no single solution to every security challenge the United States faces. U.S. strategists understand this, and therefore leave some ambiguity in the National Security Strategy to allow flexibility in planning. In light of the recent failure to convince the international audience that the preemptive action in Iraq was justified, the United States must be cautious in any future attempts. Another preemptive attack without proper justification might convince our allies that we are a "loose cannon."

CONCLUSION

The National Security Strategy of the United States presents a clear definition of America's intentions, and sends a strict warning to its adversaries. However, in order to maintain international support for such actions in the future, the NSS must be revised to further clarify the criteria for launching a preemptive attack. Our international alliances are too important to lose; the United States cannot afford to launch unilateral actions against the primary threats that future presidential administrations may face from Iran and North Korea. There is no doubt that these threats can test the preemptive action clause of the NSS, so the United States must be clear in its intentions and in its employment of force in order to earn the endorsement of our international partners. The current draft of the NSS does not clearly define these intentions, so it should be revised in order to provide assurance to our global partners that we only attack when we or our allies are directly threatened by an adversary.

ENDNOTES

1. George W. Bush, National Security Strategy of the United States of America, September 2002 (Washington D.C.: White House, 2002), 15.
2. Marjorie M. Whiteman, Digest of International Law, vol. 5 (Washington D.C.: U.S. Government Printing Office, 1971), 972-973.
3. Alan M. Dershowitz, Preemption: A Knife that Cuts Both Ways (New York: W. W. Norton, 2006), 63-64.
4. Ellis L. Knox, "The Punic Wars: Third Punic War," Boise State University, <<http://history.boisestate.edu/WESTCIV/punicwar/17.shtml>> (11 Mar. 2008).
5. "Torpedo Attack, Port Arthur." Russo Japanese War Research Society. <<http://www.russojapanesewar.com/torp-atk-pa.html>> (15 Jan. 2008).
6. Michael B. Oren, Six Days of War: June 1967 and the Making of the Modern Middle East (New York: Presidio Press, 2002), 170-175.
7. Karl P. Mueller, Jasen Castillo, and Forrest E. Morgan, Striking First: Preemptive and Preventive Attack in U.S. National Security Policy (Santa Monica: Rand Corporation, 2006), 8-9.
8. "Teaching Archives: A Date Which Will Live in Infamy." The National Archives. <<http://www.archives.gov/education/lessons/day-of-infamy/>> (8 Jan. 2008).
9. "United Nations Charter – Chapter VII, Article 51." The United Nations. <<http://www.un.org/aboutun/charter/>> (8 Jan. 2008).
10. Marjorie M. Whiteman, Digest of International Law, vol. 12 (Washington D.C.: U.S. Government Printing Office, 1971), 44-49.
11. Robert J. Pauly and Tom Lansford, Strategic Preemption: U.S. Foreign Policy and the Second Iraq War (Burlington: Ashgate, 2005), 39-40.
12. Pauly, 41.
13. Bush, 2005, 15.
14. "A National Security Strategy of Engagement and Enlargement," Feb. 1996, Federation of American Scientists, <<http://www.fas.org/spp/military/docops/national/1996stra.htm#II>> (11 Mar. 2008).
15. George W. Bush, National Security Strategy of the United States of America, March 2006 (Washington D.C.: White House, 2006), 23.

16. Bush, 2006, 3-7.
17. Bush, 2006, 8-12.
18. Bush, 2006, 35-42.
19. Bush, 2006, 43.
20. Bruce E. Bechtol, Red Rogue: The Persistent Challenge of North Korea (Washington D.C.: Potomac Books, 2007), 29-30.
21. Williamson Murray, ed., Strategic Challenges for Counterinsurgency and the Global War on Terrorism (Carlisle: U.S. Army War College, 2006), 125-126.
22. "Operation Enduring Freedom Fact Sheet." U.S. Department of State, 31 Jan. 2006, <<http://www.state.gov/r/pa/prs/ps/2006/60083.htm>> (30 Jan. 2008).
23. "Pakistan Rejects U.S. Plans to Strike Terrorists on its Soil." Voice of American News, 6 Jan. 2008, <<http://www.voanews.com/english/2008-01-06-voa10.cfm>> (18 Jan. 2008).
24. Whiteman, vol. 12, 46.
25. Clinton H. Whitehurst, "Isolation, Limited War, Total War, Containment, Intervention and Pre-emptive Strikes," Strom Thurmond Institute, <<http://www.strom.clemson.edu/opinion/whitehurst/fpolicy.pdf>> (12 Mar. 2008), 9-11.
26. "United Nations Security Council." Global Policy Forum, 13 Jul. 2005, <<http://www.globalpolicy.org/security/index.htm>> (14 Jan. 2008).
27. Oren, 11-12.
28. Mitchell Bard, "The 1967 Six-Day War." Jewish Virtual Library, <http://www.jewishvirtuallibrary.org/jsource/History/67_War.html> (18 Jan. 2008).
29. Oren, 137.
30. Oren, 168.
31. Tom Segev, 1967: Israel, the War, and the Year that Transformed the Middle East (New York: Metropolitan Books, 2005), 344-350.
32. Syndey N. Fisher and William Ochsenswald, The Middle East: A History (New York: McGraw-Hill, 1990), 664-667.

33. "Interrogator Shares Saddam's Confessions." CBS News, 27 Jan. 2008, <http://www.cbsnews.com/stories/2008/01/24/60minutes/main3749494_page4.shtml> (30 Jan. 2008).

34. "Opposition to Iraq War Widens," 23 Jan. 2003, BBC News, <http://news.bbc.co.uk/2/hi/middle_east/2688117.stm> (3 Mar. 2008). Click on the "Open in New Window: Who Backs War" icon for more information on international pre-invasion stances on the U.S. war in Iraq.

35. Micah L. Sifry and Christopher Cerf, eds., The Iraq War Reader: History, Documents, Opinions (New York: Simon & Schuster, 2003), 295-296.

36. "United Nations Press Release SC/7564." The United Nations, 11 Aug. 2002, <<http://www.un.org/News/Press/docs/2002/SC7564.doc.htm>> (4 Jan. 2008).

37. Dershowitz, 169-170.

38. "Iran: Nuclear Intentions and Capabilities." Director of National Intelligence, Nov. 2007, <http://www.dni.gov/press_releases/20071203_release.pdf> (11 Jan. 2008).

39. Bush, 2006, 20.

40. "Weapons of Mass Destruction: [Iran] Nuclear Facilities." GlobalSecurity.org, <<http://www.globalsecurity.org/wmd/world/iran/nuke-fac.htm>> (28 Jan. 2008).

41. Murray, 124-126.

42. Paul Eckert, "North Korea Misses Year-End Deadline on Nuclear Weapons." The Guardian, 1 Jan. 2008 <<http://www.guardian.co.uk/world/2008/jan/01/korea.nuclear>> (2 Mar. 2008).

43. Bechtol, 87-96.

44. David Ensor, Barbara Starr, Kyra Phillips, and Elise Labott, "U.S. Officials: North Korea Tests Long-Range Missile." CNN.Com, 5 Jul. 2006, <<http://www.cnn.com/2006/WORLD/asiapcf/07/04/korea.missile/index.html>> (2 Mar. 2008).

45. "North Korea's Missile Arsenal." The Washington Post, 4 Jul. 2006, <<http://www.washingtonpost.com/wp-dyn/content/article/2006/07/04/AR2006070400729.html>> (2 Mar. 2008).

46. Murray, 123-124.

47. Dershowitz, 119-121.

48. "Khalid Sheik Mohammed's '31 plots'," 15 Mar. 2007, BBC News,
<<http://news.bbc.co.uk/2/hi/americas/6452789.stm>> (14 Mar. 2008).

BIBLIOGRAPHY

- Bechtol, Bruce E. Red Rogue: The Persistent Challenge of North Korea. Washington D.C.: Potomac Books, 2007.
- Bush, George W. The National Security Strategy of the United States of America, September 2002. Washington D.C.: White House, 2002.
- Bush, George W. The National Security Strategy of the United States of America, March 2006. Washington D.C.: White House, 2006.
- Dershowitz, Alan M. Preemption: A Knife That Cuts Both Ways. New York: W. W. Norton, 2006.
- Eckert, Paul. North Korea Misses Year-End Deadline on Nuclear Weapons. 1 Jan. 2008. The Guardian. 2 Mar. 2008. <<http://www.guardian.co.uk/world/2008/jan/01/korea.nuclear>>.
- Ensor, David, Barbara Starr, Kyra Phillips, and Elise Labott. U.S. Officials: North Korea Tests Long-Range Missile. 5 Jul. 2006. CNN.Com. 2 Mar. 2008. <<http://www.cnn.com/2006/WORLD/asiapcf/07/04/korea.missile/index.html>>.
- Fisher, Sydney N. and William Ochsenswald. The Middle East: A History. New York: McGraw-Hill, 1990.
- Interrogator Shares Saddam's Confessions. 27 Jan. 2008. CBS News. 30 Jan. 2008. <http://www.cbsnews.com/stories/2008/01/24/60minutes/main3749494_page4.shtml>.
- Iran: Nuclear Intentions and Capabilities. Nov. 2007. Director of National Intelligence. 11 Jan. 2008. <http://www.dni.gov/press_releases/20071203_release.pdf>.
- Khalid Sheik Mohammed's '31 plots'. 15 Mar. 2007. BBC News. 14 Mar. 2008. <<http://news.bbc.co.uk/2/hi/americas/6452789.stm>>.
- Knox, Ellis L. The Punic Wars: Third Punic War. Boise State University. 11 Mar. 2008. <<http://history.boisestate.edu/WESTCIV/punicwar/17.shtml>>.
- Mueller, Karl P., Jasen Castillo, and Forrest E. Morgan. Striking First: Preemptive and Preventive Attack in U.S. National Security Policy. Santa Monica: Rand Corporation, 2006.
- Murray, Williamson, ed. Strategic Challenges for Counterinsurgency and the Global War on Terrorism. Carlisle: U.S. Army War College, 2006.

A National Security Strategy of Engagement and Enlargement. Feb. 1996. Federation of American Scientists. 11 Mar. 2008. <<http://www.fas.org/spp/military/docops/national/1996stra.htm#II>>.

North Korea's Missile Arsenal. 4 Jul. 2006. The Washington Post. 2 Mar. 2008. <<http://www.washingtonpost.com/wp-dyn/content/article/2006/07/04/AR2006070400729.html>>.

Operation Enduring Freedom Fact Sheet. 31 Jan. 2006. U.S. Department of State. 30 Jan. 2008. <<http://www.state.gov/r/pa/prs/ps/2006/60083.htm>>.

Opposition to Iraq War Widens. 23 Jan. 2003. BBC News. 3 Mar. 2008. <http://news.bbc.co.uk/2/hi/middle_east/2688117.stm>.

Oren, Michael B. Six Days of War: June 1967 and the Making of the Modern Middle East. New York: Presidio Press, 2002.

Pakistan Rejects US Plans to Strike Terrorists on its Soil. 6 Jan. 2008. Voice Of America News. 18 Jan. 2008. <<http://www.voanews.com/english/2008-01-06-voa10.cfm>>.

Pauly, Robert J. and Tom Lansford. Strategic Preemption: U.S. Foreign Policy and the Second Iraq War. Burlington: Ashgate, 2005.

Segev, Tom. 1967: Israel, the War, and the Year that Transformed the Middle East. New York: Metropolitan Books, 2005.

Sifry, Micah L. and Christopher Cerf, eds. The Iraq War Reader: History, Documents, Opinions. New York: Simon & Schuster, 2003.

Teaching Archives: A Date Which Will Live in Infamy. The National Archives. 8 Jan. 2008. <<http://www.archives.gov/education/lessons/day-of-infamy/>>.

The 1967 Six-Day War. Mitchell Bard. Jewish Virtual Library. 18 Jan. 2008. <http://www.jewishvirtuallibrary.org/jsource/History/67_War.html>.

Torpedo Attack, Port Arthur. Russo Japanese War Research Society. 15 Jan. 2008. <<http://www.russojapanesewar.com/torp-attk-pa.html>>.

United Nations Charter. 24 Oct. 1945. United Nations. 8 Jan. 2008. <<http://www.un.org/aboutun/charter/>>.

United Nations Press Release SC/7564. 11 Aug. 2002. United Nations. 4 Jan. 2008. <<http://www.un.org/News/Press/docs/2002/SC7564.doc.htm>>.

United Nations Security Council. 13 Jul. 2005. Global Policy Forum. 14 Jan. 2008.
<<http://www.globalpolicy.org/security/index.htm>>.

Weapons of Mass Destruction: [Iran] Nuclear Facilities. GlobalSecurity.Org. 28 Jan. 2008. <<http://www.globalsecurity.org/wmd/world/iran/nuke-fac.htm>>.

Whitehurst, Clinton H. Jr. Isolation, Limited War, Total War, Containment, Intervention and Pre-emptive Strikes. Strom Thurmond Institute. 12 Mar. 2008.
<<http://www.strom.clemson.edu/opinion/whitehurst/fpolicy.pdf>>.

Whiteman, Marjorie M., ed. Digest of International Law. Vol 5. Washington D.C.: U.S. Government Printing Office, 1971.

Whiteman, Marjorie M., ed. Digest of International Law. Vol 12. Washington D.C.: U.S. Government Printing Office, 1971.