

2007

Would the United States Doctrine of Preventative War be Justified as a United Nations Doctrine?

Harry van der Linden

Butler University, hvanderl@butler.edu

Follow this and additional works at: http://digitalcommons.butler.edu/facsch_papers



Part of the [Ethics and Political Philosophy Commons](#)

Recommended Citation

van der Linden, Harry, "Would the United States Doctrine of Preventative War be Justified as a United Nations Doctrine?"

Philosophical Reflections on the 'War on Terrorism' / (2007): -.

Available at http://digitalcommons.butler.edu/facsch_papers/18

This Book Chapter is brought to you for free and open access by the College of Liberal Arts & Sciences at Digital Commons @ Butler University. It has been accepted for inclusion in Scholarship and Professional Work - LAS by an authorized administrator of Digital Commons @ Butler University. For more information, please contact omacisaa@butler.edu.

Permission to post this publication in our archive was granted by the copyright holder, Rodopi Press. This copy should be used for educational and research purposes only.

The definitive publication appeared at:
van der Linden, Harry. "Would the United States Doctrine of Preventive War Be Justified as a United Nations Doctrine?," in *Philosophical Reflections on the 'War on Terrorism,'* ed. Gail M. Presbey (Amsterdam and New York: Rodopi Press. 2007). Value Inquiry Book Series, volume 188. (<http://www.rodopi.nl/senj.asp?BookId=VIBS+188>)

DOI: not available.

WOULD THE UNITED STATES DOCTRINE OF PREVENTIVE WAR BE JUSTIFIED AS A UNITED NATIONS DOCTRINE?

Harry van der Linden

On the same day, 23 September 2003, that President George W. Bush defended his Iraq policy to the General Assembly of the United Nations, Secretary-General Kofi Annan also spoke to the Assembly. Annan reiterated his opposition to the view that states may independently be justified in using military force “preemptively” to avoid the dangers posed by the spread of weapons of mass destruction (WMD) among states and terrorists, including nuclear, biological, and chemical weapons. He added:

But it is not enough to denounce unilateralism, unless we also face up squarely to the concerns that make some States feel uniquely vulnerable, since it is those concerns that drive them to take unilateral action. We must show that those concerns can, and will, be addressed effectively through collective action.¹

Accordingly, Annan proposed that the members of the United Nations Security Council “may need to begin a discussion on the criteria for an early authorization of coercive measures to address some types of threats—for instance, terrorist groups armed with weapons of mass destruction.” The Secretary-General promised to establish a “high-level panel of eminent personalities” with the task of addressing the new security concerns. He requested the panel examine standards for collective humanitarian intervention and consider how to reform the United Nations and make the Security Council more representative. Emphasizing the importance of these issues, Annan said, “Excellencies, we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded.”²

While Annan did not mention the United States by name, he obviously attacked the idea of unilateral preemptive war as defended in the National Security Strategy of the United States of America (NSS), issued in September 2002 and implemented by the Bush Administration in its war against Iraq.³ President Bush had previously suggested the need for preemptive war in the post-11 September 2001 world in his State of the Union Address of 2002 and in his graduation speech at West Point in June of the same year.

Preemptive war as construed by the Bush Administration is more accurately called “preventive war.” Many commentators and scholars of international relations have criticized the Bush doctrine of “preemptive” war, but have paid little attention to the issue raised by Annan’s speech. (One exception is John W. Lango’s “Preventive Wars, Just War Principles, and the United Nations,” upon which I commented at the Central Division Meeting of the American Philosophical Association in 2003.⁴) Would a doctrine of preventive war to meet the threats posed by WMD be morally defensible as a collective doctrine? Should the Security Council have the authority to initiate preventive wars in response to emerging WMD threats?

My aim here is to show that even though some of the main objections to unilateral preventive war are not, or are to a lesser degree, applicable to collective preventive war, it still would be a mistake for the United Nations to adopt this doctrine. I will defend my view on basis of the just war tradition. I will first articulate and assess the Bush doctrine of preventive war, and discuss how United Nations-authorized preventive war is less objectionable than its unilateralist variant.

1. The Bush Doctrine of Preventive War

The NSS argues that we have arrived at a historical turning point in that the security tasks of the government have fundamentally changed. In an apparent reference to 11 September 2001, President Bush states in the Introduction to NSS that in the past only enemies with “great armies and great industrial capabilities” were able to threaten the national security of the United States, whereas now “shadowy networks of individuals can bring great chaos and suffering to our shores for less than it costs to purchase a single tank.”

Strictly speaking, the possibility described by the NSS that terrorists would “turn the power of modern technologies against us” existed long before 11 September. 11 September only vividly and tragically brought this possibility to the awareness of the public. The security policy statement continues to point out that the “gravest danger” facing the United States is that “our enemies” would acquire WMD. These enemies include “terrorists of global reach,” who commit “premeditated, politically motivated violence . . . against innocents,” and a small number of “rogue states” that emerged in the 1990s. What characterizes these states is that they sponsor global terrorism, seek to acquire WMD and may make them available to terrorist groups that they harbor or sponsor, reject the United States and its liberal values, brutalize their people, and have engaged in aggressive conduct and even war against their neighbors.⁵

The NSS offers a variety of broad strategies of dealing with the new security concerns, including reducing poverty through free trade and markets, promoting democracy and the rule of law, strengthening alliances against terrorism, and preventing regional conflicts through negotiation. It also seeks to more effectively track and intercept the export or traffic of WMD materials and knowledge. Most controversially, it argues that a new military response is necessary.

Noting that “traditional concepts of deterrence” will not work against global terrorists who “seek martyrdom in death” and rogue states that sponsor them, the NSS maintains that the old notion of preemption must be adapted to the new security situation of the United States. In the past, international law allowed a first strike when an attack was imminent. Unambiguous measures of when a threat became imminent were patent: for example, troops would mobilize at the border or the air force would start preparing for attack. Today, we must expect that attacks against the United States by rogue states and terrorists will be nonconventional, sudden, undertaken with easily concealed weapons, and potentially disastrous when WMD are used. The NSS concludes:

The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, *even if uncertainty remains as to the time and place of the enemy's attack* (emphasis added). To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.⁶

The NSS continues, when the “enemies of civilization” seek WMD, the United States “cannot remain idle while dangers gather.” The adaptation of the traditional preemption doctrine, then, involves that the Bush Administration has embraced what is more accurately called a doctrine of preventive war, which holds that to attack is just, even if when and where a great threat will materialize is doubtful. The doctrine is also unilateralist. The NSS states, “we will not hesitate to act alone, if necessary, to exercise our right to self-defense by acting preemptively against . . . terrorists [and] by convincing or compelling states to accept their sovereign responsibilities [of not supporting terrorists in any way].”⁷

The crucial difference between preemption and prevention lies in the certainty and immediacy of the threat. As put in a recent discussion of the Bush security doctrine, “preemption . . . is nothing more than a quick draw” (in a gun fight), while “preventive war is based on the concept that war is inevitable, and that it is better to fight now while the costs are low than later when the costs are high.”⁸ In the case of preventive war, the perception of the inevitability of war might be wrong and contribute to its occurrence, while in the case of preemption the threat is undeniably present, ready to be unleashed, and only force can meet it. A classic example of a preventive strike is Israel's bombing in 1981 of an Iraqi nuclear plant under construction at Osiraq. On the assumption that Israel had convincing evidence that Egypt would attack, which is nowadays no longer held to be the case, its first strike against Egypt in the Six Day War of 1967 fits the notion of preemption.

In the “National Strategy to Combat Weapons of Mass Destruction,” published in December 2002, the Bush Administration also embraces preventive war, calling it preemptive war. Again, since deterrence against terrorists and their state sponsors may not be successful, “preemptive measures” may be necessary. This requires the military to have “capabilities to detect and destroy an adversary's WMD assets before these weapons are used.”⁹ Recent claims made by the Bush Administration about the threats posed by Syria and Iran, and how these threats may be met by military force, illustrate that the concept of preventive war guides this administration. The concept was also pivotal in the Bush Administration official defense of its war against Iraq.

The NSS appears to justify using preventive military force against a variety of poorly distinguished targets. They include (1) states that are in the process of acquiring or further developing WMD and fail to respect broadly recognized international norms, (2) states that might enable terrorist organizations to acquire WMD in the near future, (3) states that harbor or support terrorists of global reach, (4) global terrorists that seek to develop WMD, and (5) global terrorists. What is confusing about the account of preventive war in the NSS is that only (1) and possibly (2), depending on its more

detailed specification, involve preventive military force. Military force in (4) and (5) is defensive. This is so because the terrorists that are targeted by the Bush doctrine declared war on the United States and its allies many years prior to 11 September 2001. Seeking to prevent our enemies from harming us is not a preventive act if hostilities already have been declared.¹⁰ The William J. Clinton administration was already involved against the war on global terrorism. The term “war” is a misnomer here in that combating terrorism is mainly a matter of intelligence work, legal measures, and police work; it may involve limited military strikes, but those do not add up to war as commonly understood, as conflict involving the use of military force on a large scale, typically between states. Case (3) involves extending military force directed against the terrorists to the state that harbors or protects them. This would still be an instance of defensive military force, but we will see that it would seldom be justified because the harm it would bring about would likely be disproportionate to its possible benefits.

Prior United States presidential administrations have recognized this point, but not the Bush Administration: the NSS boldly asserts, “We make no distinction between terrorists and those who knowingly harbor or provide aid to them.” This suggests that war may be rightfully waged at any time against states that have global terrorists on their territory. The concept of terrorists of global reach is not well-defined (the only example given is al-Qaeda), leaving open the possibility that the Bush Administration aims to justify that the United States has the right to wage war at any moment against states of its choosing that are linked to terrorism in general. The war against terrorism is a war without a definite end because, as the NSS declares, progress will only come “through the persistent accumulation of successes.”¹¹

I am mainly concerned here about Bush’s security doctrine as a preventive war doctrine, directly aiming at political regime change through military force to avoid expected future WMD threats. This is also what the NSS emphasizes most and how Annan appears to interpret the Bush doctrine. I assume that Annan also wishes the Security Council to consider adopting only a United Nations version of this more narrowly interpreted Bush doctrine, even though he gives the misleading example of early United Nations authorization of force against global terrorists with WMD. On any reasonable account of self-defense, we may use multilateral and even unilateral force against terrorists in possession of such weapons. States that actively protect these terrorists may become legitimate targets of a self-defensive war if it is the only way to meet the terrorist WMD threat. The real controversial issue is whether states may wage preventive war against states that might in the future provide terrorists with these weapons.

The war against Iraq shows how unilateral preventive war can easily be a cover for aggression. The Bush Administration did not heed its warning in the NSS against the danger that “nations use preemption as a pretext for aggression.”¹² This war was not preventive, humanitarian, or self-defensive, leaving the option that it was aggressive. Iraq under pressure allowed inspections of its suspected WMD sites, had no WMD that posed a threat to its neighbors (let alone the United States), was not recently trying to develop

these weapons on a large scale, lacked the resources for doing so, and had proven to be responsive to deterrence.

The humanitarian case for war was also weak in that Saddam Hussein's oppressive and brutal regime in recent years had no genocidal policies against its people, while any argument of reactive self-defense was implausible in that Iraq did not harbor many terrorists with declared aggressive intentions toward the United States. Incompetence of intelligence or the culpable failure to seek or accept the relevant facts might factor into the act of aggression against Iraq, but growing evidence indicates that the United States deliberately and intentionally pursued war for the sake of serving the economic and geopolitical interests of the United States.¹³

The imperial and hegemonic rhetoric of the NSS accentuates the worry that the doctrine of preventive war may function as a pretext for aggression. It proclaims that a "single sustainable model for national success: freedom, democracy, and free enterprise," exists and commits the United States to bring this model "to every corner of the world."¹⁴ The Bush security statement holds that the realization of this goal would bring lasting security. In the meantime, national interest and the promotion of security require that "we must build and maintain our defenses beyond challenge," "dissuade future military competition," and create new "bases and stations within and beyond Western Europe and Northeast Asia."¹⁵

This process of creating new military posts is well on its way in Eastern Europe, the Caspian Sea region, and the Persian Gulf region. No wonder, then, that the global community has reacted with distrust and disapproval of the Bush preventive war doctrine, a tool of expanding and maintaining United States hegemony. The situation is made worse by the NSS leaving the possibility open that the war on terrorism is a preventive war without a definite end and one that may be waged against all states harboring or sponsoring terrorism.

The doctrine of unilateral preventive war has a strong destabilizing effect. As Annan put it in his recent speech to the General Assembly, if all nations would "reserve the right to act unilaterally," we might see "a proliferation of the unilateral and lawless use of force." The problem is not only that there would be an increase in aggressive wars under the cloak of prevention, but also that nations sincerely might have distorted perceptions of when such wars might be justified. Longstanding conflicts between nations lead to distorted perceptions of the other nation's aims and intentions, and a unilateralist universe has no requirement that we seek to correct such perceptions through international dialogue. The result may be especially disastrous in the case of conflicts between nations with WMD capabilities.

A final objection to the Bush doctrine is that it violates international law. The NSS obscures this fact by equating preemptive war and preventive war and then by arguing that traditional international law allows the first. Preventive war has always been a violation of customary international law, while with the adoption of the United Nations Charter even unilateral preemptive war may no longer be legal. Its article 51 allows

unilateral military force only in the case of “self-defense [against] an armed attack.” But perhaps a case can be made that since the Charter does not explicitly reject prior customary international law on this score it may be assumed that self-defense includes narrowly defined anticipatory self-defense—preemption in the strict sense—and is not limited to reactive self-defense only.

2. The Lesser Evil of a Collective Preventive War Doctrine

These objections to a doctrine of preventive war are primarily objections to unilateral resort to preventive war and to the United States in particular acting on this principle. It leaves the possibility open that United Nations authorized—collective or multilateral—preventive war against states might be justified as a response to future WMD threats. United Nations-authorized preventive war would reduce the worries of escalation and of preventive war as pretext for aggression. Once the decision to initiate preventive war is placed in the hands of the Security Council ulterior motives or distorted perceptions are less likely to determine the decision making process because of the impact of dialogic interaction. As proponents of discourse ethics and deliberative democracy have shown, through dialogic interaction, limited and particular perspectives can be overcome, so that the parties in dialogue arrive at a more generalized and impartial understanding of what decision or policy best takes into account the interests of all.¹⁶

Here Annan’s call for an expanded and more representative Security Council is relevant in that the logic of deliberation is that its just outcome requires all those affected be involved in the dialogic process. A further requirement is that all participants should be on equal footing to prevent the phenomenon that vulnerable parties are silenced or unduly influenced in their views by more powerful parties. In this regard, the economic and political dominance of the United States, and more broadly that of the North (the developed world), poses an obstacle to fair decision making.

Still, as the Security Council’s deliberations about the United States push for war on Iraq show, this body can come to a greater degree of objectivity than is true of any individual state, such as the United States. These same deliberations also suggest that a doctrine of United Nations-authorized preventive war would have a lesser risk of expanding and strengthening American hegemony than its unilateralist variant. If the Security Council had had its way, the United States would not have succeeded in expanding its military presence in the Middle East.

The United Nations Charter does not preclude that the Security Council authorizes preventive war, solving the issue of international law. Chapter VII of the Charter discusses how the Security Council may respond to “threats to the peace, breaches of the peace, and acts of aggression.” The spread of WMD may be classified as a threat to the peace. Article 41 calls for nonmilitary solutions, but Article 42 stipulates that when these have failed an armed response by member states under the authority of the Security Council may be warranted. Accordingly, on the assumption that non-military solutions would fail to eliminate the threat of nations with aggressive designs acquiring

WMD or enabling terrorists to obtain WMD, the Security Council has the right to authorize preventive war.

3. Objections to a United Nations Doctrine of Preventive War

Should we conclude then with some scholars of international relations and security, such as Joseph Nye, that the United Nations should embrace the concept of preventive war in response to the emerging danger of WMD falling into the wrong hands?¹⁷ Critics from both the left and right have objected to unilateral preventive war on basis of the principle that the world community should uphold the sovereignty of states if they are not engaged in acts of aggression toward other states. This principle has been the dominant policy of the United Nations since its inception and precludes Security Council authorization of preventive war.

The international community increasingly accepting humanitarian intervention within the international community shows that they have called the principle into question. Annan's request that the panel investigating preventive war also studies the norms of collective humanitarian intervention reflects his view that claims of sovereignty lose their force once states inflict gross human rights violations on their people.¹⁸

In defense of Annan's view, what warrants the treatment of the state as a sovereign entity is that the state approximates the just state as an expression of the will of the people. Not the state as a mere legal order or instrument of power, but the state as the collective self-determination of the people, deserves moral recognition. Humanitarian emergencies typically involve struggles of self-determination suppressed by states. The state no longer provides many citizens even the minimal condition of self-determination, the protection of human life itself, and so the state loses its legitimacy and normative claim to sovereignty. To value sovereignty as such is to value a shield behind which brutal oppression can triumph.¹⁹

A United Nations doctrine of preventive war would mean taking an additional step beyond the traditional standard of when sovereignty must be upheld. Considerations of "just cause" show that we should not take this additional step. Following traditional just war theory, a war has a just cause only as a response to some definite wrong. In the words of Thomas Aquinas, "those against whom the war is waged deserve such a response because of some offense on their part."²⁰ During the period of the colonization of the Americas, Francisco de Vitoria made the same point, "the sole and only just cause for waging war is when harm has been inflicted."²¹ A state may engage in war in response to an attack, but the state may not go to war to achieve some perceived good, such as conversion, "civilizing" people, and, in our time, promoting democracy.

Humanitarian intervention has a just cause as a response to the wrong of massive human rights violations. The aim is to prevent the wrong from occurring in its full scale, but a military intervention is only justified if a history of rights violations exists and other undeniable evidence exists that indicates a humanitarian disaster is about to happen. Including narrowly defined anticipatory self-defense as a just cause is more problematic.

The wrong here is mostly about to happen, and we must acknowledge that those who consider a preemptive strike may be mistaken about the intentions and aims of the enemy nation. If so, they would unleash the harms of war without being a victim of an unavoidable harm, making the war initiative an act of aggression. The risk of this injustice becomes intolerably large in the case of preventive war against other nations seeking to acquire WMD.

Consider nuclear weapons. No doubt, proliferation of nuclear weapons increases tension in international affairs, but the harm done by any given state merely seeking to acquire or obtain these weapons is too diffuse and too limited to count as a just cause. So it must be argued, for example, that dictatorial and repressive regimes with suspected aggressive designs cannot be entrusted with these weapons, while their possession by established democracies is not a serious threat. This standard, though, is less than convincing since the United States is the only state with a track record of using nuclear weapons. It also has a history of threatening to use these weapons against both its nuclear and non-nuclear enemies. The Bush Administration publicly has reserved the right to use nuclear weapons against any nation attacking the United States or its allies with chemical or biological weapons, while according to its classified but leaked Nuclear Posture Review of January 2002, it also might be prepared to use these weapons to prevent such attacks. Partly for this second purpose is the Bush Administration interested in developing new and smaller nuclear weapons, increasing the likelihood of their use.²²

We could alternatively argue that since almost all states have signed the Nonproliferation of Nuclear Weapons Treaty (NPT), entered into force in 1970, it would be a definite wrong for most states to acquire these weapons. A mere violation of this treaty, or a withdrawal from the treaty, is not a wrong of such proportion that it would be a just cause for war. It would be morally untenable to militarily enforce nonproliferation as long as the NPT parties in possession of nuclear weapons ignore article 6 of this treaty, committing them:

to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.²³

We should support this article because people around the world lack knowledge about the conditions that may trigger a nuclear war, so to accept the status quo of a limited number of nations having possession of nuclear weapons would be a mistake. Only the total abolition of nuclear weapons could provide us with real assurance that no nation will use these weapons.

We can make similar observations concerning biological and chemical weapons. The world community is, in theory, committed to their abolition. But notwithstanding the Biological and Toxin Weapons Convention (BTWC) entered into force in 1975, and the new Chemical Weapons Convention (CWC) entered into force in 1997, a dozen or so countries that are known or strongly suspected to have programs of developing or actively

maintaining biological or chemical weapons still exist, including China, Iran, Syria, Egypt, Israel, and North Korea.²⁴

Again, mere acquisition is not a sufficient wrong for war, and we do not know which nations' development of these weapons is undeniably a great threat. What further complicates the picture is that several nations committed to destroying their chemical weapons (required by the CWC) still have huge stockpiles of them and that research programs focused on defense against biological weapons (permitted by the BTWC) can easily turn into programs with offensive purposes. Intelligence especially with regard to biological weapons is difficult and unreliable. International teams monitoring compliance would be helpful, but the Bush Administration has rejected international efforts to add an inspection regime to the BTWC.²⁵

In sum, the justification of preventive war is based on the flawed notion that we can know which nations will inevitably commit a great wrong to other nations once they have acquired WMD. Terms like "rogue nations" and "axis of evil" have little descriptive and predictive value, but they make it easier, if it turns out that a preventive war was based on a false premise, to fall back on what has been called "altruistic permissivism" with regard to the use of military force.²⁶ This is the view that war may be waged for the good of the people of the other nation. The case of Iraq is instructive. Now that WMD have not been found, some moral reason has to be provided for causing thousands of deaths and wounded. The most common rationale offered for the war and the occupation is that it will bring democracy, freedom, and higher living standards to people. But the people were never asked whether they wanted to pay the price for these still elusive benefits. Seldom noted, this reasoning blatantly contradicts the just war tradition and the main tenet of international law concerning resort to military force: war is defensible only to right a great wrong, not to bring about some good. Once we accept the second standard, no significant restrictions on initiating war remain. After all, regime change may be desirable in many, if not most, countries across the globe. The preventive war doctrine is, to some extent, self-defeating, even if adopted by the United Nations instead of unilaterally, in that nations may come to the decision to acquire WMD as deterrence against counter-proliferation wars.

Another problem with United Nations authorization of preventive war is that the current composition of the Security Council is such that its decisions will be selective, even if more impartial than unilateral decisions. The Council would veto preventive war against Israel or China, and obtaining its authorization for a preventive war against North Korea would be improbable. But envisioning that the Security Council would approve of war against Iran or Syria is easy. No impartial standard that warrants such outcomes exists. Power politics would significantly determine preventive war authorization instead of threat assessment alone. Perhaps the problem would become manageable once the United Nations authorization of military force would become more democratic and less subject to the national interests of the permanent members of the Security Council, but it would be a mistake to argue for a United Nations preventive war doctrine now on the basis of what the United Nations might become.

Considering the great potential harm nations with WMD might inflict on other countries, inconsistent action, action with the risk of a wrong assessment of the threat posed by the enemy, or even action that might contribute to proliferation, might appear to be better than no action at all. In response, to act justly is crucial, and the risk of harm that we must accept to avoid inflicting a great wrong is extremely high. That we initiate war, with its great human costs and often unexpected and unintended harmful consequences, based on the justification that in so doing we have a small, modest, or even significant likelihood that we can prevent another nation from doing harm to us is morally indefensible. To be morally defensible, we must have almost absolute certainty that the potential for harm to us is imminent. This level of certainty—except in hindsight—is typically not within our grasp.

War must be a last resort measure, which points to another major objection to a United Nations doctrine of preventive war. I believe that most states could be effectively discouraged from acquiring WMD through peaceful means such as conditional economic support and negotiations. It would further help if countries of the North would cease to support or put into power militarily and economically dictatorial regimes in the South (the developing world), turning a blind eye to these regimes acquiring WMD as long as they stay in line.

Even when states have acquired WMD, deterrence from employing them is still possible. The NSS sidesteps this point by failing to differentiate between so-called rogue states and the terrorist groups these rogue states allegedly sponsor. Correctly noting that global terrorist groups that seek martyrdom cannot be effectively deterred, the NSS jumps to the conclusion that rogue states cannot be effectively deterred. Iraq is not a counterexample because the United States never tried to deter its use of chemical weapons against Iraqi Kurds and enemy soldiers in the war with Iran.

This leaves the problem of whether United Nations-authorized preventive war may not be necessary to avoid the risk that some state would enable global terrorists to acquire WMD. At the outset, we should note that the NSS overstates the interests of terrorist groups in seeking to acquire WMD and their capability to use them effectively, creating a fear among the public conducive to the Bush Administration's hegemonic purposes.²⁷

The political objectives of most terrorist groups are not well served by inflicting many WMD-caused casualties. If they did, they would lose the public support and sympathy needed to realize their goals. Also, many technological obstacles to creating and using WMD effectively exist. To date, the Japanese cult Aum Shinrikyo has been the only non-state actor that has created and used WMD on a significant scale. Between 1990 and 1995, the cult used biological and chemical weapons on no fewer than seventeen occasions. Only its chemical attacks were successful, the most devastating one being the attack with the nerve agent sarin (in low-grade and impure form) on the Tokyo subway on 20 March 1995. The attack exposed approximately 5000 people to the nerve gas, killed 12 persons, and left hundreds with minor injuries and dozens with severe injuries.²⁸ Horrendous as the attack may appear, the harm done was small compared to the harm that

Aum Shinrikyo could have inflicted with conventional weapons if the cult had invested similar efforts and resources in doing so.

A strong disincentive for terrorist groups to use WMD exists in that doing so successfully would likely lead to their destruction and the destruction of their enemies, either because of the dangers inherent to using WMD or because of a devastating retaliatory response. The events of 11 September 2001 give credibility to the view that some terrorist groups might be prepared to use WMD. In political, cultural, and geographical terms, their supportive audience may be far removed from the location of their destructive act. They may not care about their survival. So the issue we need to address is how a terrorist group seeking to obtain WMD with the assistance of some state might materialize, keeping in mind that most terrorist groups will not seek to pursue this course of action.

One possibility is that some state with WMD will provide these weapons to global terrorists harbored in another state, or that this state might welcome terrorists within its borders and then provide them with WMD. Waging war against a state suspected of planning to act in one of these ways would be a preventive war, and it would be a wrong war because the anticipated harm is too speculative and doubtful to count as a definite wrong and so as a just cause. Since tracing the source of WMD used by global terrorists would be fairly easy, concealing complicity would be nearly impossible. The risk of incurring retaliation deters states from providing such weapons to terrorists. The greater risk is that global terrorists, through force, theft, or deception, acquire WMD materials from states with nuclear weapons, civilian stockpiles of highly enriched uranium or plutonium, biodefense programs, stockpiles of chemical weapons, and the like. The solution includes greater security, stricter control regimes, a more rapid destruction of all chemical weapons (as required by the CWC), curtailment of biodefense, the elimination of fissile material from civilian nuclear programs, and, ultimately, the elimination of all nuclear weapons.

Another possibility is that a state sponsoring or harboring global terrorists is assisting these terrorists in acquiring WMD capabilities. Again, this scenario is not likely to occur because any state engaging in such conduct knows that the probable outcome is war. War in this case would not be a preventive war but a defensive war because a state targeted by global terrorists has a just cause to go to war with states that actively protect these terrorists. A state may remain neutral in a conflict that spills over on its territory, but a state cannot legitimately demand neutrality when it actively supports a warring group.²⁹ In most situations, initiating war would be wrong because other alternatives might be available for addressing the harm done, such as pressuring the country to turn the terrorists over to the courts.

Significantly, a justified war, following the just war tradition, must satisfy the principle of proportionality, and extending the war on terrorism to a war on states would generally not satisfy this principle. The principle requires that the expected costs of war are proportionate to its anticipated benefits. Estimating the costs of war is difficult since it often has many unexpected consequences. The benefits of waging war against states to

combat terrorism are also difficult to ascertain in that the goal of getting rid of terrorists in a given country might appear successful, but terrorists can regroup in different countries or new terrorists can be recruited. War may motivate new volunteers. Overall, the harm generated by war between states will typically outweigh the harm that terrorists will inflict, and so it would be wrong to go war with states that sponsor terrorists.

The Bush doctrine sets aside considerations of proportionality in suggesting that we have no need to distinguish between sponsoring states and terrorists as potential targets of military force. Only one situation exists in which the proportionality principle definitely tilts towards war: when the sponsoring state enables the terrorists to acquire WMD. Even so, we should not exaggerate the dangers of WMD in the hands of terrorists abroad by ignoring the problem of effective delivery systems needed for creating large-scale human destruction. Prior to extending the war from the terrorists to the sponsoring state, the United States government would have ample time to seek Security Council authorization and submit the case for war to the world court of opinion.

4. WMD and United States Military Hegemony

In his speech to the United Nations General Assembly, Annan distinguished between “hard” and “soft” threats. The first are the threats of terrorism and WMD; the second are the threats to peace and security posed by the persistence of poverty, income inequalities across the globe, the spread of communicable diseases, environmental destruction, and the like. Annan called on the United Nations to deal with both threats, arguing that both tasks are related. He continued: “We now see, with chilling clarity, that a world where many millions of people endure brutal oppression and extreme misery will never be fully secure, even for its most privileged inhabitants.”³⁰

We would be hard pressed to disagree with Annan. The NSS acknowledges a similar point by observing that “poverty does not make poor people into terrorists,” but “poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks.”³¹ Yet, the NSS offers little in terms of how poverty, weak states, and other social conditions conducive to terrorism and violent conflict can be eliminated. The emphasis is on the military response, and so are the commitments of the Bush Administration.

Since 11 September 2001, the United States has followed a course of building up its military and developing new weapons programs, while peace efforts and resources assigned for reducing “soft threats” remain relatively minuscule. The United States spends close to half of the world’s military expenditures, and it spends about thirty times as much as the states that it has declared at one point or another to be rogue states, including Syria, Cuba, Iraq, Iran, Libya, North Korea, and Sudan.³²

The increasing United States military hegemony is a crucial factor in the spread of WMD. Theorists frequently espouse that terrorism emerges in situations of asymmetric conflict. The terrorist, the underdog, sets aside the rules of war, and fights dirty, in the anticipation that it will be effective against the militarily much stronger opponent.³³ What

adds to the use of terrorist methods by non-state actors is that the United States has a long history of terrorist actions, ranging from the bombing of civilian centers to supporting covert actions against dissenting civilians.

Less often noted is that states may seek to acquire WMD in response to United States military hegemony. The NSS acknowledges the point to some extent. After stating that rogue states see WMD as “tools of intimidation and military aggression against their neighbors,” the NSS observes that these weapons may be acquired with the intent to deter the United States from responding to these aggressions. The NSS continues, “Such states also see these weapons as their best means of overcoming the conventional superiority of the United States.”³⁴

We cannot fully understand even the current use and popularity of the phrase WMD without reference to United States military hegemony. Current international security literature commonly defines WMDs as biological, chemical, and nuclear weapons.³⁵ The Bush Administration and the media popularized the term with the same meaning especially in the months before the war against Iraq in 2003.

Why are these three types of weapons grouped together as weapons of *mass destruction*? True, nuclear weapons stand out due to their enormous destructive potential, but many chemical and biological weapons are less destructive than some conventional weapons. Alternatively, the indiscriminate nature of these three types of weapons might appear to warrant the WMD label, but many other weapons are similarly indiscriminate, inevitably killing large numbers of civilians. We do not call economic sanctions WMD. Yet the economic sanctions against Iraq during the 1990s claimed hundreds of thousands of lives because the sanctions restricted the import of water purification equipment, medical equipment, drugs, and the like, and created food shortages.³⁶ Depleted uranium, land mines, and cluster bombs are not included, even though they have left behind countless dead children and civilians. The United States is developing space weapons such as space-based lasers, negating several United Nations resolutions calling for use of space for peaceful purposes only.³⁷ We can predict that most people will never call these weapons WMD, but they can be equally destructive.

All this suggests that the notion of WMD in its current use is partly ideologically tainted. Nuclear, biological, and chemical weapons are grouped together and popularized as WMD because the United States views their acquisition by countries from the South as a (varying) challenge to its military superiority. Nuclear weapons can fulfill this role due to their sheer destructive potential alone, while biological and chemical weapons pose a challenge because they are difficult to detect and have a surprise and unpredictable element in their potential application.

To stop the proliferation of WMD, then, will require that the United States ends its military build-up, because the more the United States seeks to assert its military superiority the more it pushes countries resisting this hegemony toward developing WMD.³⁸ Instead of seeking to articulate standards of preventive war, the United Nations would do better to focus on the problem of how the organization can be effective and able

to contribute to global democracy and peace in the face of increasing United States military hegemony and the new weapons that the United States is developing for this purpose.

5. Postscript

The High-Level Panel on Threats, Challenges and Change, formed by Annan after his speech to the United Nations General Assembly, issued its report *A More Secure World: Our Shared Responsibility (MSW)* in December 2004.³⁹ In accordance with my arguments here, that report rejects the legality and morality of unilateral preventive war and objects to any weakening of article 51 of the United Nations Charter to accommodate a broader notion of self-defense. In accordance with my view, *MSW* also offers valuable non-military recommendations for dealing with the threat of the spread of WMD among states or terrorist groups, such as: the current nuclear weapon states should move toward disarmament in accordance with the NPT; negotiations should be renewed among parties to the BTWC concerning a verification protocol; and we must reduce poverty and promote democracy and human and political rights so as to diminish fertile breeding grounds for terrorism.⁴⁰

In opposition to my view, *MSW* favors a collective preventive military response to meet the threat posed by the spread of WMD among terrorists and some states. The Panel rightly maintains the Security Council has the authority under Chapter VII to declare a preventive war, but it wrongly continues to claim that the Security Council must prepare for this option in our present situation:

In the world of the twenty-first century, the international community does have to be concerned about nightmare scenarios combining terrorists, weapons of mass destruction and irresponsible States, and much more besides, which may conceivably justify the use of force, not just reactively but preventively and before a latent threat becomes imminent. . . . The Council may well need to be prepared to be much more proactive on these issues, taking more decisive action earlier, than it has been in the past.⁴¹

MSW here makes the same error as the NSS in failing to distinguish between a variety of scenarios in which military force might be used against states or terrorist groups seeking to acquire WMD, only some of which would be properly characterized as preventive war. Lack of accuracy invites abuse of preventive military force, or fear of such abuse, and so collective security would be reduced if the Security Council adopted the Panel's preventive war doctrine.

Other objections to the doctrine as espoused by the Panel are:

- (1) the problem of inaccurate intelligence concerning WMD programs is not solved;
- (2) no attempt is made to define "irresponsible States" (an apparent euphemism for the "rogue states" referred to in the NSS); and

(3) the document fails to explain why deterrence against “irresponsible States” that have acquired WMD might not be effective.

MSW addresses only one objection raised in my paper against a United Nations preventive war doctrine, the Security Council, due to its composition, lacks the capability to make objective decisions about when preventive war might be warranted.

The Panel proposes two models for expanding the Council: they have in common that all major regions in the world would be equally represented with a total of twenty-four members, while the number of countries with veto power would remain the same.⁴² It will be difficult to realize this proposal, and in the meantime preventive war decisions by the Security Council will be highly selective.

Finally, *MSW* proposes that the Security Council and all United Nations Member States use the following “five basic criteria of legitimacy” in considering when to authorize the use of military force *in general*: “seriousness of threat,” “proper purpose,” “last resort,” “proportional means,” and “balance of consequences.”⁴³ The second and third of these criteria correspond to the traditional *jus ad bellum* (“right to war”) principles of “right intention” and “last resort,” while the fourth and fifth combine the principles of “proportionality” and “reasonable chance of success.” The *jus ad bellum* principle of “legitimate authority” is not mentioned, understandably so, because *MSW* assumes that the United Nations Charter answers the question of where right authority is to be located. The second through fifth criteria constitute significant constraints on the authorization of military force, if properly applied.

The problem with the Panel’s list of criteria is the standard of “seriousness of threat.” It replaces “just cause” in just war theory with the standard that force may be warranted when a state is seriously threatened. This substitution is quite broad and vague and allows so much leeway in its application that its general acceptance would lead us to a less secure world.

NOTES

1. “Adoption of Policy of Pre-emption Could Result in Proliferation of Unilateral, Lawless Use of Force, Secretary-General Tells General Assembly,” press release SG/SM/8891, GA/10157, <http://www.un.org/News/Press/docs/2003/sgsm8891.doc.htm> (accessed 26 May 2006).

2. *Ibid.*

3. “The National Security Strategy of the United States of America” 17 September 2002, <http://www.whitehouse.gov/nsc/nss.html> (accessed 25 May 2006).

4. John W. Lango, “Preventive Wars, Just War Principles, and the United Nations,” *The Journal of Ethics*, 9 (March 2005), pp. 247–268.

5. “The National Security Strategy of the United States of America,” chap. 3 and 5, pp. 5 and 13–14 respectively. (Page numbers refer to the pdf version.)

6. *Ibid.*, chap 5, p. 15.

7. *Ibid.*, chap 3, p. 6.

8. James J. Wirtz and James A. Russell, "U.S. Policy on Preventive War and Preemption," *The Nonproliferation Review* (Spring 2003): 113–123, esp. p. 116.
9. "National Strategy to Combat Weapons of Mass Destruction," p. 3, <http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf> (accessed 26 May 2006).
10. Benjamin R. Barber, *Fear's Empire: War, Terrorism, and Democracy* (New York: W. W. Norton, 2003), pp. 104–105; and Wirtz and Russell, "U.S. Policy on Preventive War and Preemption," p. 119.
11. "The National Security Strategy of the United States of America," chap. 3, p. 5.
12. *Ibid.*, chap. 5, p. 15.
13. See Micah L. Sifry and Christopher Cerf, eds., *The Iraq War Reader* (New York: Simon & Schuster, 2003).
14. "The National Security Strategy of the United States of America," Introduction.
15. "The National Security Strategy of the United States of America," chap. 9, p. 29.
16. See Iris Young, "Modest Reflections on Hegemony and Global Democracy," *Theoria*, 51:1, issue 103 (April 2004), <http://www.berghahnbooksonline.com/journals/th/abs/2004/51-1/TH510102.html> (accessed 26 May 2006).
17. Joseph S. Nye, "Before War," *Washington Post*, 14 March 2002, http://www.ksg.harvard.edu/news/opeds/2003/nye_before_war_wp_031403.htm (accessed 26 May 2006).
18. Kofi Annan, "Two Concepts of sovereignty," *The Economist*, 18 September 1999.
19. Harry van der Linden, "The Left and Humanitarian Intervention as Solidarity," Greg Moses and Jeffrey Paris, eds. *Liberation between Selves, Sexualities, and War*, *Radical Philosophy Today Series*, vol. 3 (Charlottesville, Va.: Philosophy Documentation Center, 2006), chap. 10.
20. Thomas Aquinas, *The Summa Theologica*, question 40, in Paul Sigmund, ed., *St. Thomas Aquinas on Politics and Ethics* (New York: W. W. Norton, 1988), pp. 64–65.
21. Francisco de Vitoria, Anthony Pagden, and Jeremy Lawrance, eds., *Political Writings* (Cambridge, England: Cambridge University Press, 1991), p. 303.
22. See Arms Control Association, "New Nuclear Policies, New Weapons, New Dangers," <http://www.armscontrol.org/factsheets/newnuclearweaponsissuebrief.asp>. See also Federation of American Scientists, "White House Briefing: Excerpts on Nuclear Posture Review, GAO Lawsuit," <http://www.fas.org/sgp/news/2002/03/wh031402.html> (accessed 30 June 2006).
23. NPT text at <http://www.fas.org/nuke/control/npt/text/npt2.htm> (accessed 1 July 2006).
24. Center of Nonproliferation Studies, "Chemical and Biological Weapons: Possession and Programs Past and Present," <http://www.cns.miis.edu/research/cbw/possess.htm> (accessed 26 May 2006).
25. See Nicole Deller and John Burroughs, "Arms Control Abandoned: The Case of Biological Weapons," *World Policy Journal* (Summer 2003), pp. 37–42, esp. 38–40.
26. Kenneth W. Kemp, "Just War Theory & its Non-Pacifist Rivals," paper presented at the International Studies Association, South Regional Meeting, 10 October 1993, p. 14, <http://courseweb.stthomas.edu/kwkemp/Papers/JWTR.pdf> (accessed 26 May 2006).

27. See Barber, *Fear's Empire*.
28. Center for Nonproliferation Studies, "Chronology of Aum Shinrikyo's CBW Activities," to be found in pdf file at <http://cns.miis.edu>; and Richard A. Falkenrath, Robert D. Newman, and Bradley A. Thayer, *America's Achilles Heel* (Cambridge, Mass.: The MIT Press, 1998), pp. 19–26.
29. Richard W. Miller, "Terrorism, War, and Empire," *Terrorism and International Justice*, ed. James P. Sterba (New York: Oxford University Press, 2003), pp. 186–187.
30. "Adoption of Policy of Pre-emption Could Result in Proliferation of Unilateral, Lawless Use of Force, Secretary-General Tells General Assembly."
31. "The National Security Strategy of the United States of America," Introduction.
32. Anup Shah, "High Military Expenditures in Some Places," <http://www.globalissues.org/Geopolitics/ArmsTrade/Spending.asp> (accessed 26 May 2006).
33. See Shannon E. French, "Murderers, Not Warriors: The Moral Distinction between Terrorists and Legitimate Fighters in Asymmetric Conflicts," *Sterba, Terrorism and International Justice*, pp. 32–34.
34. "The National Security Strategy of the United States of America," chap. 5, p. 15.
35. Susan B. Martin, "Weapons of Mass Destruction: A Brief Overview," *Weapons of Mass Destruction: Religious and Secular Perspectives*, eds. Sohail H. Hashmi and Steven P. Lee (Cambridge: Cambridge University Press, 2004), pp. 16–17.
36. Anthony Arnone, ed., *Iraq Under Siege: The Deadly Impact of Sanctions and War* (Cambridge, Mass.: South End Press, 2000).
37. Karl Grossman, *Weapons in Space* (New York: Seven Stories Press, 2001), pp. 9–31.
38. Harry van der Linden, "Just War Theory and U.S. Military Hegemony," *Rethinking the Just War Tradition*, eds. Michael Brough, John Lango, and Harry van der Linden (forthcoming Albany: State University of New York Press, 2007).
39. United Nations High-Level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges, and Change* (New York: United Nations, 2004).
40. *Ibid.*, ¶ 120, 126, and 148.
41. *Ibid.*, ¶ 194.
42. *Ibid.*, ¶ 197 and 250–257.
43. *Ibid.*, ¶ 207–209.