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The “Bush Doctrine”: Anticipatory Self-Defence and the New US National Security Strategy

Ben Lombardi*

On 20 September 2002, the Bush administration released its National Security Strategy. The media reaction was largely negative, with many journalists and reporters seeing it as further evidence of a growing tendency by the US toward a unilateralist foreign policy with a new emphasis on military power.¹ Indeed, the discussion that followed the release of the strategy focused almost exclusively on only one component – the policy of pre-emptive defence: “a far more muscular and sometimes aggressive approach to national security”.²

Far from being a mindless “cowboy creed”,³ the new national security strategy of the Bush administration can best be understood as the culmination of thinking over the past decade that has been underscored by recent events. As Condoleeza Rice has observed, after 11 September “[e]vents are in much sharper relief”.⁴ The new policy has been formulated

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¹ The London-based *Daily Telegraph*, for example, noted that the new policy “involves using US military might to impose its will around the world” (“Hawks fly high in foreign policy”, *The Daily Telegraph*, 21 September 2002). This view was echoed in *The Globe and Mail* (Toronto) that asserted that President Bush had “unrolled a sweeping blueprint for global supremacy” (“Bush plans first strike against any foreign foe”, 21 September 2002).

² “Bush vows to keep armed supremacy”, *The New York Times*, 21 September 2002.

³ “Some surprises in Bush’s ‘strike first’ doctrine”, *The Toronto Star*, 22 September 2002.

⁴ N. Lemann, “The Next World Order”, *The New Yorker*, 1 April 2002 <http://www.newyorker.com/fact/content/?020401fa_FACT1>.

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in a context characterised by a significantly heightened sense of strategic vulnerability, a confidence in the attributes of US power, especially after the successful war against the Taliban, and the idealism embedded in US political culture. If it is true, that "the Bush administration has clearly lost confidence in the capacity of the international order to guarantee America's national security,"⁵ the response is nonetheless quintessentially American. One sees this in the sweeping nature of the strategy, both muscular and grandiose, reflecting both idealism and *Realpolitik*. It

essentially abandons concepts of deterrence – which dominated defense policies during the Cold War years – for a forward-reaching, pre-emptive strategy against hostile states and terrorist groups, while also expanding development assistance and free trade, promoting democracy, fighting disease, and transforming the US military.⁶

The origins of the strategy

The publication of the new strategy is not a unique event. Since the passage of the Goldwater-Nichols Act of 1986, every US president is required to submit an annual national security report to the Congress.⁷ The required content of the report is stated in United States Code (USC) 404a, and must include an explanation of America's vital interests, foreign policy commitments and defence capabilities.⁸

It can generally be said that these reports on national security serve two purposes. First, it provides an overview of the administration's thinking on national security affairs and acts as a backdrop to US foreign policy generally. This document thereby provides predictability to US actions and a reasonable degree of transparency. Second, the strategy has a domestic political purpose. It undoubtedly aids in supporting annual budget requests by the president to fund aspects of executive responsibility that deal with national security, such as the armed forces, intelligence services, and the conduct of foreign relations. The strategy provides a coherent portrait of an

⁵ M. Howard, "What Friends Are For", *The National Interest*, no. 69, 2002, p. 10.

⁶ "Bush Sends New National Security Strategy to Congress", United States Department of State, 20 September 2002 <<http://usinfo.state.gov/topical/pol.terror/02092002.htm>>.

⁷ R. Ranquet, "Think Tanks and the National Security Strategy Formulation Process: A Comparison of Current American and French Patterns", *Acquisition Review Quarterly* (Washington: Industrial College of the Armed Forces, 1997), p. 2 <<http://www.ndu.edu/library/ic6/95-S16.pdf>>.

⁸ United States Code 404a Annual National Security Strategy Report. <www4.law.cornell.edu/uscode/50/404a.html>.

increasingly complex and multifaceted foreign policy, thereby allowing the Congress to assess the worldview of the administration as stated in its own words.

USC404a also requires that the national security strategy be delivered to the Congress no later than 150 days after the president's inauguration. The current administration did not meet this requirement, and the document released on 20 September 2002 is the first such report by the Bush presidency. The reasons for this lapse are fairly straightforward. Following his inauguration, George W. Bush directed his Secretary of Defense, Donald Rumsfeld, to undertake a substantive analysis of the defence structure and capabilities of the US. This review – the Quadrennial Defense Review or QDR – is also required under existing legislation and must be completed within the first year of a new administration. During the first months of the Bush administration, many observers believed that Rumsfeld would ultimately advocate sweeping changes to the armed forces structure to deal with new types of threats (i.e., weapons of mass destruction -WMD- and terrorism). Indeed, considerable opposition to these proposed reforms within the US military was already apparent in the spring and summer months of 2001 when the national security strategy should have been prepared.⁹

When it was finally completed on 30 September 2001, QDR 2001 was far less radical than had first been expected, in part because of the infusion of an additional US\$ 48 billion into the defence budget. It was also less sweeping because of the slow confirmation process for political appointees that left many senior-level positions in the Department of Defense unfilled during the first months of 2001. Rumsfeld lacked the bureaucratic allies necessary to push the changes through, and some analysts have suggested that his personality alienated those within the defence community whose support he needed.¹⁰ The debate Rumsfeld ignited, however, was also completely overtaken by events. The attacks of 11 September had already occurred by the time that QDR 2001 was published, and the need and the desire for massive change had passed. The new national security strategy might be viewed, therefore, as filling the gap left by the unfinished study Rumsfeld began.

⁹ See, for example, "Pentagon May Change Direction" Reuters, 23 March 2001, and "Rumsfeld's Reformation: The New Defense Secretary Faces Tough Choices" *San Diego Union Tribune*, 30 May 2001.

¹⁰ E. A. Cohen, "A Tale of Two Secretaries", *Foreign Affairs*, May/June 2002, pp. 33-46.

Principal positions of the new strategy

Written while the US is engaged in a global campaign against terrorism, it is not at all surprising that the underlying theme in the new strategy is countering non-state and rogue state threats to the American homeland. Every chapter of the National Security Strategy is linked, either implicitly or overtly, to this cause. Some of the strategy's policies, such as the emphasis on human rights and the promotion of market economies, are traditional US positions. They are tied to beliefs that are central to US political culture and to the American people's self-perception of national purpose. They also form a positive component of the administration's international agenda and are designed to foster cooperation and induce welcome change in the international system. Development assistance (which includes a 50 percent increase in core funding), for example, is to be tied to the performance of recipients in such areas as fiscal management and human rights.

Other aspects of the new strategy, such as improving relations with friends and allies, and reforming national security structures, await further development and/or clarification. Much will depend on the ongoing analysis of the intelligence failure surrounding 11 September. In some cases, the interaction of friends and allies with Washington will determine the extent to which such goals can be realised. For example, the reaction of the US's partners to its Iraq policy will predominate foreign relations, at least in the short- to medium-term. The new strategy also advises the world that the burden of regional conflict management cannot be borne only by the United States, and that not all regional conflicts are of equal political importance to US global interests. This latter aspect, undoubtedly the influence of Condoleeza Rice, reflects a desire to avoid overstressing US capabilities during a war on terrorism that the strategy advises will continue for some years to come within a broadening geographic landscape.

Anticipatory self-defence

For many analysts, the most important component of Bush administration's National Security Strategy is the declaration that the US will undertake preventive military action against specific threats.¹¹ "Given the goals of rogue states and terrorists," the new policy asserts, "the United States can no longer solely rely on a reactive posture as we have in the past." To avoid

¹¹ The National Security Strategy employs the word "pre-emption" to describe the new policy. Pre-emptive military action, however, generally implies that a threat is imminent. A more appropriate term is "preventive" which applies to military action taken when a threat is discernible or predictable, but not imminent.

"mass civilian casualties", the infliction of which is the goal of terrorist strikes using weapons of mass destruction, "the United States will, if necessary, act pre-emptively."¹² For want of a more precise classification, this new approach can best be described as "anticipatory self-defence".¹³

This represents a significant change in policy, from deterring possible adversaries to eliminating specific threats before they are actualised. The change is rooted in an assessment that the global security environment is substantively more dangerous than that of the Cold War era. "In defending the peace," President Bush asserted at West Point on 1 June 2002, "we face a threat with no precedent."¹⁴ Consequently, the US requires a new type of response. The Soviet Union, which is declared (only with the benefit of hindsight!) to have been "a generally *status quo*, risk adverse adversary"¹⁵ after the Cuban Missile Crisis, has been replaced by rogue states and terrorist groups against which it is believed that "traditional concepts of deterrence will not work".¹⁶ The Bush administration is arguing that "[t]he magnitude of potential harm that could be caused by our adversaries' choice of weapons" requires the strategy to pre-emptively "eliminate a specific threat to the United States or our friends and allies".¹⁷

Despite the impression created by many who have criticised the Bush Doctrine, historically states have used both pre-emption and preventive strikes to deal with security threats. In all such cases, military action has been embedded in a difficult security context, frequently characterised by conflict. In 1756, Frederick the Great invaded Saxony which he suspected of preparing to join a hostile coalition that had been formed to destroy Prussia.¹⁸ In 1805, the Royal Navy attacked the Danish fleet at Copenhagen fearing that the Baltic powers would combine their navies in opposition to

¹² The National Security Strategy of the United States (hereinafter NSS), September 2002, p. 15.

¹³ C. Schmitt, "A Case of Continuity" *The National Interest*, no. 69, Fall 2002, p. 11.

¹⁴ "President Bush Delivers Graduation Speech at West Point" 1 June 2002 [www.whitehouse.gov/news/releases/2002/06/print/20020601-3.html].

¹⁵ NSS, p. 15.

¹⁶ NSS, p.15. In a strongly worded paragraph, the NSS declares that "...new deadly challenges have emerged from rogue-states and terrorists. None of these contemporary threats rival the sheer destructive power that was arrayed against us by the Soviet Union. However, the nature and motivations of these new adversaries, their determination to obtain destructive powers hitherto available only to the world's strongest states, and the greater likelihood that they will use weapons of mass destruction against us, make today's security environment more complex and dangerous", p. 13 .

¹⁷ NSS, pp. 15-16.

¹⁸ C. Ritter, *Frederick the Great* (Los Angeles: University of California Press, 1968), pp. 103-4.

Britain.¹⁹ In July 1940, British forces attacked the French fleet at its port in Oran, to prevent the Third Reich from obtaining control of the ships.²⁰ More recently, in August 1998, Bill Clinton used Tomahawk cruise missiles against a factory in Khartoum suspected of producing chemical weapons and *al-Qaeda* training camps in Afghanistan.²¹ In all of these cases, military action was a calculated response to a heightened sense of threat. They were not, as some might believe, "a bolt out of the blue" or inexplicable acts of unprecedented aggression.²²

While 11 September undoubtedly provided the strongest possible reinforcement for adopting such a policy, it is important to recognise that aspects of the NSS predate the presidency of George W. Bush. In fact, national security thinking in US administrations has been moving in this direction for over twenty years. The idea of "rogue states" was foreshadowed by the Carter administration's "terrorist list" in 1979, which identified specific governments that supported such illicit behaviour. Ronald Reagan was later to call those regimes "outlaw governments", with a moral connotation that is impossible to ignore. And the Clinton administration explicitly linked rogue states with the threat of weapons of mass destruction in the 1999 State of the Union Address.²³ Moreover, at the time of the 1998 cruise missile attacks on Sudan and Afghanistan, Secretary of State Madeline Albright blithely noted that "[t]his is, unfortunately, the war of the future".²⁴

Like much of the security community in the US, the Bush administration was, therefore, predisposed to a re-examination of the traditional (or Cold War era) thinking when it came to office in January 2001. Reputable advice to make major changes to national security policy was not hard to find, nor were the warnings of the risks attendant on inactivity. In a 1993 speech, the Clinton administration's first Secretary of Defense Les Aspin publicly

¹⁹ D. and S. Howarth, *Nelson: The Immortal Memory* (London: Conway Maritime Press, 1988), pp. 248-50.

²⁰ W. S. Churchill, *Their Finest Hour* (Boston: Houghton-Mifflin, 1949), pp. 234-9.

²¹ With regard to the attack on Khartoum, Clinton's National Security Advisor, Sandy Berger, is quoted as saying "Let me be very clear about this... This was a plant that was producing chemical-warfare-related weapons, and we have physical evidence of that fact." S. M. Hersh, "The Missiles of August", *The New Yorker*, 12 October 1998 <http://www.newyorker.com/archive/content/?020114fr_archive02>.

²² The author is grateful to his colleague, Peter Archambeault, who brought this argument and two of the examples to his attention.

²³ This argument is made in J. Dumbrell, "Was there a Clinton Doctrine? President Clinton's Foreign Policy Reconsidered" *Diplomacy and Statecraft*, vol.13, no. 2, 2002, p.54.

²⁴ Hersh, "The Missiles of August" <http://www.newyorker.com/archive/content/?020114fr_archive02>.

disclosed that military force would likely be used to support the US goal of countering the proliferation of weapons of mass destruction.²⁵ Aspin's comments were confirmed in mid-December 2002 when Bill Clinton admitted that his administration had threatened in the early-1990s to attack North Korea's nuclear facilities if Pyongyang did not shut them down.²⁶ In April 1997, the US Naval War College published a well-argued monograph that examined the legal ramifications of pre-emption and preventive military action to support a counter-proliferation strategy.²⁷ In the forward, the president of the college, Rear-Admiral J.R. Stark, who had previously served with the National Security Council, wrote that that the study was "on a subject vital to the security community". The Rumsfeld Commission Report²⁸ in 1998 raised the spectre of ballistic attacks on the US as a result of the proliferation of missile technology.²⁹ The new Defense Secretary carried this concern into the Bush administration.³⁰ And, immediately after the Bush inauguration, the US Commission on National Security (Hart-Rudman Commission)³¹ released a report calling for a sweeping new approach to national security policy. Declaring that "the combination of unconventional weapons proliferation with the persistence of international terrorism will end the relative invulnerability of the US homeland to catastrophic attack," it called for a new Homeland Security Department to

²⁵ "Aspin Vows Military Efforts to Counter Arms Proliferation", *The Washington Post*, 8 December 1993.

²⁶ E. Monaghan, "Clinton planned attack on Korean nuclear reactors", *The Times*, 16 December 2002.

²⁷ F. G. Goldman, *International Legal Ramifications of United States Counter-Proliferation Strategy, Problems and Prospects*, Newport Paper Series, no. 11 (Newport, Rhode Island: Naval War College, 1997).

²⁸ Report of the Commission to Assess the Ballistic Missile Threat, 1998 <www.fas.org/irp/congress/1998_cr/S980731-rumsfeld.htm>. The Rumsfeld Commission was created in 1997 in response to demands by the Republican caucus in the US Congress. That group believed that a 1995 National Intelligence Estimate had underestimated the ballistic missile threat to the United States. Five members and the chairman, Donald Rumsfeld, were nominated by Republicans and three by the Democrats. See K. Chittaranjan, "The Rumsfeld Commission and US Missile Threat Perception", *Strategic Analysis*, vol. 22, no. 12, (New Delhi: Institute for Defence Studies and Analysis, 1999) <www.isda-india.org/an-mar9-10.html>.

²⁹ This concern was also touched upon in Bill Clinton's 1999 State of the Union Address and led to the new opening toward North Korea following that state's launch of a three-stage missile in 1998.

³⁰ For example, see Prepared Testimony of US Secretary of Defense Donald H. Rumsfeld, 21 June 2001, United States Senate, Armed Forces Committee <http://www.senate.gov/~armed_services/statemnt/2001/010621rumsfeld.pdf>.

³¹ The US Commission on National Security, 2001 <www.nssg.gov/Reports/reports.htm>.

be created and for new priorities to be set for the country's armed forces.

After 11 September, those voices obviously continued to be heard, though with a new sense of urgency. In February 2002, the reputable National Committee on American Foreign Policy, a non-partisan association of foreign policy specialists, declared that "the most pressing agenda item for the Bush administration is the development of a strategy for fighting the next generation of terrorists." Terming the fight against international terrorism "World War III", this group also warned that a successful terrorist attack on the US, with catastrophic loss of life, would lead the US to becoming a "fundamentally different society".³² It might be true, as Pierre Hassner has asserted, that "the war on terrorism became the be-all and end-all of American foreign policy" after 11 September.³³ It is extremely important to note, however, that this new focus predated the attack on the World Trade Center. Equally important is the fact that it was largely non-partisan.

The ideas that were percolating throughout the US foreign policy elite both before and after 11 September resonated in the Bush administration. The idea of anticipatory self-defence was first aired in the President's 1 June 2002 graduation address at West Point Military Academy. Recalling the nature of the threat that the US now faces, Bush observed that "the Cold War doctrines" of containment might still apply in some instances, but that US defence policy could not rely on that strategic approach alone.³⁴ For analysts of US foreign policy, there is a logical connection from the early emergence of "rogue states" in the mid-1970s through the Rumsfeld Commission to the West Point speech and onward to the new National Security Strategy.

Despite this background, anticipatory self-defence poses serious legal and political questions. The most obvious is the possible violation of international law, particularly with regard to traditional understandings of self-defence. Constitutionally the president is responsible to protect the United States from foreign enemies, but preventive military action nonetheless appears to fly in the face of longstanding international legal

³² "For the Record: Terrorism as World War III", *American Foreign Policy Interests*, vol. 24, no. 1, February 2002, p. 78.

³³ P. Hassner, *The United States: the empire of force or the force of empire?*, Chaillot Paper No. 54 (Paris: European Union Institute of Security Affairs, 2002) p. 33.

³⁴ "[N]ew threats also require new thinking. Deterrence – the promise of massive retaliation against nations – means nothing against shadowy terrorist networks with no nation or citizens to defend. Containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies." "Graduation Speech at West Point", <<http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>>.

obligations. Ironically, many of the international system's legal constraints on the behaviour of states that the new doctrine seems to reject are US innovations, including the principles underlying the United Nations and the central role of the Security Council in international security matters. Nevertheless, the new strategy argues that the recognised right of self-defence, as provided for in the UN Charter,³⁵ must be broadly re-interpreted in light of the new threat environment:

Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat — most often a visible mobilisation of armies, navies, and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means.³⁶

As the Bush administration policy has only just been announced, it is not yet certain that such a re-interpretation of international law, which is often quite flexible, will be broadly accepted by other members of the international community. However, the administration's position is not really an invitation to eminent jurists to begin deliberations. It is, instead, an assertion of a belief that law should follow politics.

In fact, the National Security Strategy contains a veiled warning to those in the international community who will not accept the redefinition of self-defence. In his letter accompanying the strategy, President Bush states,

Our enemies have openly declared that they are seeking weapons of mass destruction, and evidence indicates that they are doing so with determination. *The United States will not allow these efforts to succeed.* (...) And, as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed. (emphasis added)

Regardless of the international community's reaction, Washington has already declared that it is now prepared to act alone to eliminate any perceived threat. According to the new strategy, the US "cannot remain idle while dangers gather".³⁷

³⁵ Article 51 permits the use of force only in self-defence and Article 2(4) explicitly prohibits force in any other circumstances. The use of force even in self-defence is, however, subject to the assessment of the Security Council to which acts of self-defence must be reported. It is not an individual state's decision alone that determines the legality of such action. See J. L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (Oxford: Clarendon Press, 1985), pp. 415-6.

³⁶ NSS, p. 15.

³⁷ *Ibid.*

This approach is fodder for those who charge that the US is increasingly unilateralist. Such criticism, however, would seem to be missing the point. Unilateralist or not, the policy of anticipatory self-defence will prove much easier to pronounce than to implement. Pre-emptive attacks can be quite easily comprehended if they are used against non-state actors such as terrorist groups. Indeed, few law-abiding people would have any qualms about the physical eradication of terrorists, or the assistance the new strategy pledges to local governments in their own efforts to hunt down and destroy those groups.³⁸ It is much more difficult, however, to justify preventive military action against states.

First, the idea of anticipatory self-defence leaves a broad margin for interpretation. Does the mere pursuit of weapons of mass destruction by a government imply the intent to behave as a rogue state in the international system? At what stage of developing WMD is a state likely to see that capability removed? Such questions are important ones that the policy will have to confront, given that there are many states that already have such capabilities and are not now considered rogue actors. There are many others that likely possess a variety of dual-use technologies, such as chemical and medical research facilities, that could easily be transformed into WMD production programmes. In some cases, such as Iraq, the answer to the questions above are readily discoverable. Indeed, UNSCOM reports and the latest published intelligence indicate that Baghdad was never honest about what it was doing – demonstrating a desire to conceal an ongoing WMD programme.³⁹

In other cases, the issue is not so cut and dry. Some of the countries pursuing or already possessing WMD (e.g., Israel, Pakistan and India) have very good or reasonably warm relations with Washington. Others do not, but broader political considerations must be weighed. In the case of Pakistan, the acquisition of WMD is almost certainly a response to the perceived threat from a nuclear-armed India rather than a challenge to the US itself. (The prestige Pakistan gained from possessing an Islamic Bomb probably also played a role.) Tolerance of such capabilities today cannot, however, forestall potential threats in the future. It is unclear, for example, what the US might do if an Islamist government with strong anti-US views were to come to power in Pakistan. Lastly, there is North Korea, which has openly admitted to pursuing a nuclear weapons capability. Will the US intervene with military force to eliminate that capability, an approach it

³⁸ NSS, p. 6.

³⁹ "UNSCOM's Comprehensive Review", Centre for Non-Proliferation Studies, Monterey Institute of International Studies, 2002 <cns.miiis.edu/research/iraq/ucreport/dis_intr.htm>.

currently eschews, when such action would likely lead to a very serious confrontation with China? Anticipatory self-defence might be a logical reaction to a country that is openly hostile to the US, but it is an extremely imprecise policy tool in most other circumstances.

The idea of the rogue state, which the NSS explicitly links to terrorists and WMD, is also quite subjective. In testimony before a US Senate committee, Rumsfeld gave a description of rogue states:

...they are not constrained by diplomatic efforts to halt their [WMD] programs; they are not constrained by international 'norms' and arms control regimes; and we cannot rely on them being deterred by the threat that we would use nuclear retaliation against the people of their countries they in effect hold hostage – the Mutually Assured Destruction concept that contributed to stability with the Soviet Union during the Cold War. These are very different regimes.⁴⁰

It would appear, therefore, that rogue states are countries that possess WMD and cannot be talked out of acquiring or maintaining such capabilities. With the notable exception of Iraq, many of the questions already noted immediately arise in reaction to the words of the Secretary of Defense.

In President Bush's State of the Union Address (January 2002), Iraq, Iran and North Korea were specifically identified as an "axis of evil" – a turn of phrase that many people thought far too aggressive. Others, however, wondered why other countries engaged in the pursuit of WMD or that supported terrorism, were not included as well. While most US allies did agree that Iraq and North Korea are engaged in policies that threaten regional stability, few accepted the assessment that Iran also fell into that category. And, it is interesting to note that, while Iraq and North Korea are both identified in the new National Security Strategy, mention of Iran is conspicuously absent.⁴¹ Nevertheless, there is no evidence that the administration's view of the Iranian government has changed, even if that country's pursuit of WMD capability has not. Some, such as Richard Perle, have suggested that the growing opposition to the Mullahs means that a popular democratic uprising will soon eliminate that problem.⁴² Perhaps, therefore, there is no requirement to keep Iran listed as a member of the

⁴⁰ "Prepared Testimony of US Secretary of Defense Donald H. Rumsfeld", 21 June 2001, United States Senate, Armed Services Committee < http://www.senate.gov/~armed_services/statemnt/2001/010621rumsfeld.pdf.

⁴¹ Interestingly, the NSS does note that "[o]ther rogue regimes seek nuclear, biological, and chemical weapons as well", p. 14.

⁴² Richard Perle on ABC "Meet the Press", 13 October 2002.

"axis". A more likely explanation is that mention of Iran was dropped to appease critics of the "axis of evil" designation, including many important allies. In other words, rogue state would appear to be a public label subject to private political consideration.

A more general problem, frequently discussed since the strategy's release, is the international implication of legitimising preventive military action. Other countries might be more inclined to use anticipatory self-defence to justify, with or without cause, striking first at adversaries. While this has often happened in history, concern nonetheless exists that widespread acceptance of the new doctrine would weaken existing restrictions on the use of armed force. Already tense situations might then become more explosive. The most often cited example in recent weeks is the India-Pakistan dispute where two nuclear armed adversaries have averted war through a combination of skilful diplomacy, careful assessments of cost by political leaders, and probably good luck. Anticipatory self-defence might increase the likelihood of rapid escalation of hostilities by one side, particularly if it thought its adversary would do likewise. Such calculations will, some analysts fear, inflame a variety of regional stand-offs or generally increase aggression in the international system.

The doctrine of anticipatory self-defence as described in the new National Security Strategy also challenges the traditional understanding of sovereignty. It is clearly being interpreted by the Bush administration in light of what the State Department's current Director of Policy Planning, Richard Haass, has referred to as the obligations that attach to sovereignty:

Sovereignty entails obligations. If a government fails to meet these obligations, then it forfeits some of the normal advantages of sovereignty, including the right to be left alone inside your own territory. Other governments, including the United States, gain the right to intervene.⁴³

This is, of course, not a novel interpretation by the current administration, as the same argument was made at the time of the NATO intervention in Kosovo in 1999. More recently, the International Commission on Intervention and State Sovereignty made a similar argument when it released its report, "Responsibility To Protect", in December 2001.⁴⁴ But in an age where WMD is proliferating, and the threat of terrorism of mass destruction or hyper-terrorism exists, the obligations are of considerably greater importance.

⁴³ Lemann, "The Next World Order" <http://www.newyorker.com/fact/content/?020401fa_FACT1>.

⁴⁴ "The Responsibility to Protect"; Report of the International Commission on Intervention and State Sovereignty <<http://web.gc.cuny.edu/icissresearch/Final.Report/index.html>>.

In effect, this new approach to sovereignty divides the world into states that threaten (i.e., rogue states) and those that do not threaten the United States. In light of the damage they can threaten now to do to the US or its allies, rogue states, by implication, have lost their right to sovereignty and, possibly, independence. In the war against terrorism, of which rogue states are a factor, the international system is portrayed in Manichean terms. "The allies of terror," the new strategy asserts, "are the enemies of civilisation." And, as Haass noted, "[y]ou essentially can act in anticipation if you have grounds to think its a question of when, and not if, you're going to be attacked".⁴⁵

John Mearsheimer is undoubtedly correct that "[t]he central purpose of American power is to provide security for the United States in a dangerous world."⁴⁶ However, it is not clear if a policy based on anticipatory self-defence can accomplish that goal. It is equally possible that the Bush Doctrine will create a backlash against the US that could threaten its influence and its interests abroad, or it could simply generate more international instability, leading to greater insecurity and possibly increased conflict.⁴⁷ Washington clearly has the power to impose its re-interpreted right of self-defence on the international system. It is not at all certain if the American people are prepared to bear the costs of such a policy over the long-term.

Lastly, there is the practical political problem posed by the US Constitution. While the president is responsible for national security and for waging war, only the Congress can declare war and it controls the purse-strings. This separation of powers is captured in the War Powers Resolution that, while never accepted by any president, has nonetheless been followed since it was adopted in 1973. Under its terms, the president is required to report to the Congress any deployment of US armed forces without a declaration of war, including the circumstances for the deployment, within 48 hours, and to make periodic reports (no less than every six months) to explain ongoing military operations.⁴⁸ The War Powers Resolution does not explicitly preclude either pre-emptive or preventive military action, for it was drafted long before the onset of the threat posed by WMD proliferation and hyper-terrorism. It nevertheless recalls the important role Congress plays in authorising the use of armed force to support US foreign policy. The current debate over the use of force against Iraq highlights that role and

⁴⁵ Lemann, "The Next World Order"

⁴⁶ J. Mearsheimer, "Hearts and Minds", *The National Interest*, no. 69, 2002, p. 13.

⁴⁷ Goldman, *International Legal Ramifications*, p. 14.

⁴⁸ United States Code, Section 1543 <www4.law.cornell.edu/uscode/50/1543>.

the variety of opinions expressed by America's elected representatives suggest that Congressional support will never be guaranteed. Anticipatory self-defence will necessarily involve the Congress in possibly frequent debates about US military action in a way not seen since the first half of the nineteenth century. It could also create serious divisions between the administration and the Congress that might in certain circumstances undermine the National Security Strategy.

Despite all these counter-arguments to anticipatory self-defence, it must be acknowledged that the US faces a serious dilemma. The threats identified in the National Security Strategy are very real and the underlying technologies are proliferating. Given the scope and scale of damage that would follow deterrence failure, reliance on a policy of containing the new threat posed by the proliferation of WMD, rogue states and trans-national terrorism, is insufficient for many Americans. (It would likely be the same for other peoples if their countries were openly identified as the target for potentially catastrophic attacks.) As one writer has argued,

The problem that would be created by an overly restrictive ban on anticipatory self-defence is that it would treat all cases, from invasions by insurgent guerrilla forces to nuclear attacks, similarly. In an era of modern weaponry nations *should not* be compelled to await a potentially devastating first-strike before undertaking lawful measures of self-defense. (emphasis added)⁴⁹

If non-proliferation of WMD and counter-terrorism are now internationally accepted policies, then it is reasonable to argue that states must have the means to deal effectively with those actors that reject such values.

In time, possibly measured in decades, the US might grow more accustomed to the strategic vulnerability that burst upon it on 11 September. Yet it is extremely unlikely that it will ever tolerate the proliferation of WMD to overtly hostile adversaries or the possibility that terrorist groups might gain possession of such capabilities. In the meantime, with overwhelming military superiority and a confidence in the right to protect its homeland, anticipatory self-defence is logical, emotionally-satisfying and probably politically unavoidable. It might not convince the media, nor the political pundits in the US or abroad, but it will almost certainly sell in Peoria.

⁴⁹ Goldman. *International Legal Ramifications*, p. 27.

Conclusion

On 10 October 2002, the US Congress approved a joint resolution authorising the use of armed force against Iraq.⁵⁰ The Bush administration's policy toward Baghdad has clearly been informed by thinking that is reflected in the National Security Strategy. The need to eliminate Iraq's WMD capability has been cast in terms of the threat posed by rogue states and the support they can give to terrorism. Yet, it is not surprising that in his speech to the UN explaining the Iraqi threat, President Bush also announced the return of the US to UNESCO. The National Security Strategy is a comprehensive worldview, encompassing assessments of threat against a backdrop defined in large measure by US history and political culture. It is, however, the policy of anticipatory self-defence that has drawn the most attention. In simple terms, the concern has focused on several questions: is it legal?; how will it be implemented?; will it be effective?; and, will the international system become more stable as a result?

Near the end of his long life, the Austrian statesman Klemens von Metternich asserted that "[i]f a great state is forced to act in a situation of great peril, it must at least secure for itself the position of supreme leadership".⁵¹ Perceiving that the international system is a far more dangerous environment than it was a decade ago, the new National Security Strategy seems to represent an effort, perhaps unwitting, to follow Metternich's dictum. In this context, a more expanded understanding of self-defence is a logical approach to dealing with these emerging threats. As this article has tried to argue, however, it is an open question if the Bush administration will be successful in preventing those threats from becoming real.

⁵⁰ For a complete text, see "Congressional Joint Resolution to Authorise Use of Force Against Iraq", *The Washington Post*, 11 October 2002.

⁵¹ H. Kissinger, *A World Restored* (Boston: Houghton-Mifflin, n.d.) p. 25.