

The New Calculus of Pre-emption

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With the publication of its new National Security Strategy document in September 2002, the Bush administration has elevated military pre-emption against 'rogue states' and terrorist groups to official US doctrine. Initial press reports characterised that element of the emerging 'Bush Doctrine' as the most revolutionary change in American strategy since the forging of US nuclear deterrence policy in the 1950s. Pre-emption was said to be supplanting the outdated Cold War concepts of deterrence and containment. The public presentation of the pre-emption policy generated controversy and apprehension, particularly among America's European allies. Could unilateral and pre-emptive military action by the United States in the post-11 September era erode international norms governing the use of force? Seeking to allay these concerns, Secretary of State Colin Powell has stressed the continuity of the policy. Pre-emption has long been part of the panoply of American defence instruments, he has asserted, and deterrence is not dead. Officials maintain that although pre-emption has gained heightened status as an understandable response to the advent of qualitatively new threats, such as al-Qaeda, it remains part of a spectrum of means, including non-military instruments, which the United States will continue to employ. Confusion about the meaning of the document was all the more pronounced because the administration was ostensibly unveiling a *general* doctrine of pre-emption, to be undertaken unilaterally when necessary, just as it was making the *specific* case for multilateral military action against a state – Iraq – that has been in non-compliance with UN Security Council resolutions for over a decade.

The horrific consequences of a mass-casualty attack on the United States have elevated military pre-emption as a policy option, but the conditions under which it would be undertaken remain unclear. To address this thorny issue, the essential starting point for any analysis is a recognition of a persisting tension in US policy: the military capability that any president would want in order to attack an adversary's unconventional weapons in time of war, also permits a military option in circumstances that fall short of war.

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Analysis of the conditions governing pre-emption in the post-11 September era must distinguish between two sets of issues that have been misleadingly conflated in the American debate. The first is the straightforward difference between 'prevention' and 'pre-emption'. *Prevention* refers to a repertoire of strategies to forestall the acquisition of weapons of mass destruction (WMD) through a variety of means, including, in extreme circumstances, the possible use of force. *Pre-emption* pertains narrowly to military action when actual WMD use by an adversary is imminent. In much of the public discourse, pre-emption has been used to mean both. A second misleading conflation of issues – driven by the contentious assumption that a 'rogue state' might transfer WMD capabilities to a terrorist group – links the terrorism and proliferation agendas. Military action against a terrorist group bent on mass-casualty attacks enjoys broad international legitimacy, but that consensus breaks down over the use of force against a *state* violating non-proliferation norms.

The debate about the new calculus of pre-emption should be informed by past experience. A historical review reveals very few cases in which force has been seriously contemplated or actually used to forestall proliferation (a telling fact in itself). All these cases were highly context-specific. That record reveals force to be far from the definitive instrument of non-proliferation policy that some allege or wish it to be. Indeed, it is as problematic as its non-military alternatives and as uncertain to produce the desired outcomes.

Pre-emption and the rise of counter-proliferation

The origins of the current Bush administration's pre-emption policy date to the early 1990s. US strategy was powerfully influenced by the fact that the end of the Cold War with the Soviet Union coincided with a hot war in the Persian Gulf. For non-proliferation and arms control, this conjunction has had paradoxical implications. On the one hand, the transformation of the US-Soviet relationship allowed rapid progress in addressing 'vertical' proliferation through a substantial reduction of each side's strategic nuclear arsenals. On the other hand, the Gulf War and its aftermath revealed the staggering magnitude of Iraq's weapons of mass destruction programmes, and thus highlighted the problem of 'horizontal' proliferation. ('Vertical' proliferation refers to an increase or qualitative improvement in the unconventional arsenal of a single state, while 'horizontal' proliferation refers to the spread of these capabilities to additional states across regions.) Indeed, the Gulf War came at the end of a decade of increasing international concern about the spread of unconventional weapons to aspiring regional powers. By 1989, the first Bush administration reported that ten countries were developing biological weapons, more than 20 nations possessed chemical weapons or the capability to produce them, and 15 would be capable of producing ballistic missiles by 2000.¹ Because Iraq's acquisition of WMD capabilities was linked to an expansionist foreign policy, it became the prototype 'rogue state'.

To meet this new threat, the Clinton administration laid out an ambitious non-proliferation agenda in September 1993.² Its recasting of the inherited non-

proliferation policy agenda was notable in two respects. First, the traditional primary focus on nuclear weapons was formally broadened into the rubric 'weapons of mass destruction', further incorporating biological and chemical capabilities and their means of delivery (both ballistic and cruise missiles).³ Second, along with heightened concern about 'horizontal' proliferation, the political turmoil in the Soviet successor states posed an enormous challenge to the non-proliferation regime's ability to constrain the supply of sensitive technologies and highly trained, financially destitute experts. In particular, the key condition that has altered the traditional non-proliferation equation has been the increased availability of fissile material, which had previously been the major technological brake on an aspiring nuclear proliferator. After the Gulf War, United Nations Special Commission (UNSCOM) inspectors discovered that the Iraqi regime possessed a viable nuclear bomb design and had spent some \$10 billion on a nuclear infrastructure to produce highly enriched uranium (HEU) for a weapon.⁴

In December 1993, Secretary of Defense Les Aspin enunciated the 'Defense Counterproliferation Initiative' (DCI) as a response to the new threats of the post-Cold War era. He highlighted the spectre of 'a handful of nuclear devices in the hands of *rogue states* or even terrorists' and stated that 'at the heart of the Defense Counterproliferation Initiative ... is a drive to develop new military capabilities to deal with this new threat'.⁵ Its declared objectives ranged from deterring countries from acquiring and using WMD, protecting US forces and allies from possible WMD use if deterrence failed, and defeating an adversary armed with WMD. The DCI reflected the Defense Department's efforts to internalise the lessons of the Gulf War, during which US forces had been threatened by, and, in turn, targeted, Iraqi unconventional capabilities.

The public presentation of the Defense Counterproliferation Initiative generated considerable confusion and alarm over two interrelated issues. The first was the analytical and policy distinction between 'counter-proliferation' and 'non-proliferation.' Confusion stemmed from an initial lack of clarity about whether the DCI was being advanced as a component of traditional non-proliferation policy or as an alternative to it. This question of programmatic coherence was resolved in February 1994 when the National Security Council (NSC) issued a memorandum of 'Agreed Definitions' that characterised counter-proliferation as

the activities of the Department of Defense across the full range of US efforts to combat proliferation, including diplomacy, arms control, export controls, and intelligence collection and analysis, with particular responsibility for assuring that US forces can be protected should they confront an adversary armed with weapons of mass destruction or missiles.⁶

Both this NSC memorandum and the May 1995 report of the interagency Counterproliferation Program Review Committee underscored that the counter-proliferation initiative was firmly embedded within a comprehensive non-proliferation policy.⁷ Despite this affirmation that military capabilities were part

of the continuum of non-proliferation instruments, questions about counter-proliferation persisted because of the prominence of a second critical issue raised by the DCI.

Secretary Aspin's December 1993 speech, and the public rollout of the Defense Counterproliferation Initiative, were widely interpreted overseas as auguring possible unilateral and pre-emptive American military strikes against suspected targets producing or housing WMD in the Third World.⁸ Foreign perceptions of the DCI were shaped by rhetoric about America's role as the 'the sole superpower' and calls by opponents of multilateralism for the United States to seize the 'unipolar moment' and 'unashamedly lay down the rules of world order and be prepared to enforce them'.⁹ Timing also affected perceptions: the launching of the DCI coincided with the unfolding nuclear crisis with North Korea in 1993–94. During that period, several hard-line critics of the Clinton Administration's handling of the crisis advocated military strikes against the North's nuclear facilities instead of diplomacy with this 'rogue state'. Thus, the North Korean crisis raised the possibility of pre-emptive unilateral military action, while it reinforced the perception that counter-proliferation was being advanced as an alternative to non-military instruments of non-proliferation. Department of Defense officials made public assurances that counter-proliferation was not synonymous with pre-emption. But they also acknowledged that military pre-emption might be undertaken if alternative non-proliferation instruments failed and if intelligence indicated an imminent threat against US or allied troops in the field.¹⁰

The controversy over counter-proliferation and military pre-emption was embedded in the broader US debate over policy toward 'rogue states' and the novel threat to international security posed by those countries in the post-Cold War era. Secretary of Defense William Perry warned in April 1996 of a 'future threat that a rogue state, that may be impossible to deter, will obtain ICBMs that can reach the United States'.¹¹ Secretary Perry's reference to 'undeterrable rogue states' was striking, for it suggested that countries such as North Korea, Iran, and Iraq are potentially prone to irrational behaviour and that a reliance on deterrence and diplomacy may therefore prove futile.¹²

The Clinton administration used the 'rogue state' designation to mobilise political support for hard-line policies (for example, the comprehensive US trade embargo against Iran) toward the states lumped under this rubric. But despite its perceived utility for political mobilisation, this approach also exposed significant liabilities that eventually prompted a reassessment by the Clinton foreign-policy team. Because the term 'rogue state' has no standing in international law and is quintessentially political, its application was selective and contradictory (for example, including Cuba with no WMD capabilities, while excluding Syria, which has WMD). But beyond its status as a unilateral American political concept, the 'rogue' designation led to strategic inflexibility. The lumping and demonising of a disparate group of countries pushed the Clinton administration toward a generic strategy of containment and isolation. In the non-proliferation realm, it undermined the administration's ability to

employ non-coercive instruments. This straitjacketing approach came up against hard political realities, first with North Korea in 1994, when the acute danger posed by the North's advanced nuclear weapons programme necessitated negotiation, and then with Iran in 1997, after the election of a reformist president, Mohammed Khatami, created an opportunity for US diplomacy to influence that country's political evolution, if only at the margins. Because any deviation from the comprehensive containment of 'rogue states' was castigated as appeasement by hard-liners in Congress (as in the reaction to the US–North Korean Agreed Framework of October 1994), the Clinton administration's scope for diplomatic action was sharply limited.¹³ The increasingly evident liabilities of the 'rogue state' approach led to the State Department's June 2000 announcement formally dropping the term from the US diplomatic lexicon. The impetus behind the decision was the need to differentiate between cases – distinguishing, for example, between Iran, where changed political circumstances created an opportunity for US diplomacy, and Iraq, where the threat posed by Saddam Hussein required a continued policy of containment and isolation.¹⁴

Shortly after assuming office, President George W. Bush reversed the Clinton administration's move and revived the 'rogue state' rubric. In his first speech to Congress in February 2001, he warned of the threat from 'rogue states intent on developing weapons of mass destruction'.¹⁵ The revived 'rogue' rhetoric was linked to the Bush administration's efforts to mobilise political support for ballistic-missile defence. The administration has placed increased emphasis on counter-proliferation, linking it to missile defence – a development symbolised by the creation of a 'Proliferation Strategy, Counterproliferation and Homeland Defense' directorate within the National Security Council. The Bush administration cited the rogue state threat as a major motivating factor for the US withdrawal from the Anti-Ballistic Missile (ABM) Treaty. But, as in the Clinton era, the pragmatic need to engage rogues, such as North Korea, while characterising them as essentially crazy states beyond the pale, has created a policy tension.

In the decade after the Cold War and the Gulf War, the use of force as an instrument of non-proliferation policy became an issue of contention between the United States and both its key NATO allies and other UN Security Council members. Russia, China and France opposed the use of force to compel Iraqi compliance with the Security Council's disarmament resolutions, but had no credible alternative approach. Within NATO, European members eschewed the term counter-proliferation, believing that it connoted pre-emptive military action and could therefore seriously undermine multilateral non-proliferation efforts.¹⁶ French expert Gilles Andréani observed:

Non-proliferation has always been a careful balancing act between international consensus-building ... and the development of punitive and defensive options to protect one's security should non-proliferation fail.... [In American policy] one finds convincing signs of a gradual shift from the former to the latter.¹⁷

This perception overseas was reinforced by the Senate's rejection of the Comprehensive Test Ban Treaty in 1998, the 1998 air strikes in Sudan and Iraq, and the Bush administration's openly sceptical attitude towards the ability of the non-proliferation treaty regime to address non-compliance by determined cheaters, along with the administration's renewed emphasis on counter-proliferation aimed at 'rogue states.

Although the 11 September attacks did not alter the structure of international relations, they did usher in a new age of American vulnerability.¹⁸ The administration's previous security focus on rogue states and WMD proliferation, particularly in the context of missile defence, was broadened to encompass the new war on terrorism. Indeed, President Bush directly linked the proliferation and terrorism issues in a speech three months after the attacks, declaring that '[r]ogue states are clearly the most likely sources of chemical and biological and nuclear weapons for terrorists'.¹⁹ In his January 2002 State of the Union address, the president referred obliquely to the necessity of pre-emptive military action in the post-11 September era. He identified Iraq, Iran, and North Korea as an 'axis of evil' and stated that his administration 'will not stand by, as peril draws closer and closer. The United States of America will not permit the world's most dangerous regimes to threaten us with the world's most destructive weapons'.²⁰ The controversy generated by the 'axis of evil' speech quickly prompted the Bush administration to affirm that military action was not imminent against any of those countries, and that the United States would continue to employ the full range of non-proliferation instruments to address their proliferation challenges. Secretary of State Colin Powell stated that the administration would fulfil American obligations under the Agreed Framework with North Korea and was open to dialogue with Iran. Proponents of the 'axis of evil' formulation argued that this tough rhetoric – 'speaking truth to power' – would compel these countries' improved behaviour. Critics feared that it would effectively preclude policy differentiation toward three diverse states.

Speaking at West Point on 1 June 2002 President Bush explicitly made the case for 'pre-emptive action,' citing the mass-casualty consequences of a WMD attack on American soil and the unique political character of the rogue regimes and terrorist groups whose threat defied traditional deterrence and containment strategies. He argued:

deterrence means nothing against shadowy terrorist networks with no nations 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.²¹

Building on that important speech, the White House's National Security Strategy, published in September 2002, marked the elevation of pre-emption to official US doctrine. In codifying a key element of what some have referred to as the Bush Doctrine, the document declared:

To forestall ... hostile acts, by our adversaries, the United States will, if necessary, act preemptively ... The purpose of our actions will always be to eliminate a specific

threat to the US or our allies and friends ... The reasons for our actions will be clear, the force measured, and the cause just.²²

The Bush administration's public rollout of the new National Security Strategy has generated considerable criticism and confusion, particularly about four key issues.²³ The first is the policy tension at the core of the document. Different sections of the document offer contrasting answers to the question: is pre-emption a revolutionary new general doctrine for US foreign policy in the age of global terrorism? Or is it simply a traditional instrument of self-defence in the American panoply now receiving greater emphasis in the transformed post-11 September political context? Initial press reports declaring the death of deterrence and containment, and the administration's preference for muscular counter-proliferation over multilateral non-proliferation treaties, gave rise to the view that pre-emption is indeed a revolutionary change in US strategy. Administration officials have attempted to allay concerns, particularly with America's key European allies, over this interpretation. Secretary Powell assured the Senate Foreign Relations Committee:

[W]e have not abandoned containment, we have not abandoned deterrence... We haven't abandoned these time-honored methods of using our national power.... [But, because of the new terrorist threat] that does not respond to theories of containment ... a doctrine of pre-emption, or an element of pre-emption in our strategy is appropriate.... [S]o see it as an elevation of one of the many tools that we've always had, but don't see it as a new doctrine that excludes or eliminates all the other tools of national security.²⁴

Notwithstanding such efforts to defuse the flap over pre-emption, this important policy tension persists, as does the subsidiary one of whether coercive counter-proliferation will be pursued as an alternative to or as a complement to traditional non-proliferation policy.

A second difficult issue concerns the international precedent set by an American pre-emption doctrine. Critics hold that pre-emption, particularly when the threat is not demonstrably imminent, will undermine an important norm of global governance. If the United States exercises this unilateral military option, it could give licence to other states to do the same. (A possible pre-emptive military strike by India on Pakistan's nuclear facilities, for example, is frequently mentioned.) Some argue that this new US policy could also prompt states that feel particularly threatened by pre-emption, such as Pakistan and Iran, to act in a destabilising manner to pre-empt the pre-emptor.²⁵

A third line of criticism aimed at the National Security Strategy is the continued conflation of the terrorism and proliferation agendas.²⁶ The pre-emptive use of force against a terrorist group like al-Qaeda enjoys broad international legitimacy because the group presents a clear danger. That international consensus breaks down over the possibility of a military strike against a *state* to prevent proliferation, even a state regarded by the United States as a 'rogue' member of the 'axis of evil'. A related issue – the potential transfer of WMD capabilities by rogue states to terrorist groups – remains contentious.

Some terrorism experts question whether the incentive for transfer exists; they argue that the certainty of devastating regime-ending retaliation by the United States would be a powerful deterrent. But the Bush administration questions whether deterrence under these circumstances would work, and in its National Security Strategy document has highlighted the rogue state–terrorist link as a major potential threat. It claims to have evidence of links between Saddam Hussein’s regime and al-Qaeda, though it has not alleged direct Iraqi complicity in the 11 September attacks.

Fourth, the promulgation of what was characterised as a *general* doctrine of pre-emption came as the administration was making the *specific* case for intervention in Iraq because of Saddam Hussein’s 11-year record of non-compliance with UN Security Council resolutions mandating that country’s WMD disarmament. Some questioned the utility of articulating a general doctrine of pre-emption toward these states when military action was currently envisaged only toward a single state – Iraq. Indeed, within days of the publication of the National Security Strategy document, the Bush administration announced that a senior State Department official would travel to Pyongyang in October to reengage the North Koreans on security issues. Moreover, as the prospect of war with Iraq grows more likely, the United States faces the diplomatic challenge of tacitly securing Iranian neutrality. While proponents of the administration’s tough rhetoric believe it may compel a number of states to improve their behaviour with respect to terrorism and WMD proliferation, sceptics maintain that it is counterproductive and hinders the pursuit of differentiated strategies.

The nature of the new threats and the consequences of a mass-casualty attack for the United States by terrorists or ‘rogue states’ led the National Security Strategy document to elevate military pre-emption as a US policy option. As noted above, the military options that any US president would want available in wartime create possibilities for pre-emptive action in peacetime. The question, then, is what are the realistic circumstances under which a president might use those capabilities, either preventively or pre-emptively? One way to shed at least partial light on this question is to examine relevant past cases.

The historical record

There are strikingly few prior cases in which military force was either used or seriously contemplated for purposes of pre-emption. Two considered here are from the Cold War era – US consideration in the early 1960s of a preventive strike on China’s nuclear weapons facilities and Israel’s June 1981 bombing of Iraq’s Osiraq nuclear reactor. The other three are post-Cold War episodes – the 1991 Gulf War against Iraq, and the subsequent enforcement of UN Security Council disarmament resolutions; the 1993–94 North Korean nuclear crisis; and the August 1998 bombing of a suspected chemical-weapons facility in Sudan.

A structured comparison of these cases requires a common set of questions under three categories.²⁷ The first is the character of the proliferation threat precipitating the decision on whether to use force. Is the threat imminent?

Is the assessment based on sound intelligence? And can the target state be persuaded or deterred from acquiring or using this WMD capability? The second category relates to the politico-military context. Is the mission militarily feasible? Have non-military alternatives been exhausted? Is the non-proliferation issue linked to another issue or embedded in a broader policy context? And does the proposed action have multilateral support or will it be undertaken unilaterally? The third category is the assessed consequences of the use or non-use of force. Will the target state retaliate directly or indirectly against the United States or its allies? Could the action trigger a broader conflict – a so-called ‘catalytic’ war? Could the attack have unacceptable collateral damage – either to the environment or in civilian casualties? And, finally, what are the costs of inaction, if any?²⁸

1963–64: China’s nuclear programme

Recently declassified documents from the US National Archives indicate that the Kennedy administration seriously explored the feasibility of a preventive military strike on China’s nascent nuclear capability in the early 1960s.²⁹ Although the issue received less public attention than the ongoing crises in Southeast Asia and Berlin, the administration viewed China’s prospective acquisition of nuclear weapons as a major threat to US national security. Despite the availability of some U-2 high-altitude and CORONA satellite imagery, there were significant gaps in US intelligence about China’s nuclear programme. But on the basis of available evidence, CIA National Intelligence Estimates concluded that China would be able to test an atomic device during the period 1963–65. This assessment precipitated the Kennedy administration’s moves in 1963 to explore preventive military options and even to enlist Soviet cooperation in (or acquiescence to) such an attack against China’s nuclear infrastructure. Underlying President Kennedy’s militant position on the Chinese nuclear programme was the perception of Mao’s China as fundamentally more dangerous and irresponsible than the Soviet Union (with which terms of ‘peaceful coexistence’, as Khrushchev put it, could be negotiated).³⁰ With Kennedy’s encouragement, US officials initiated contingency planning for air strikes on Chinese nuclear facilities. The possibility of a covert operation by Republic of China commandos was also broached.

Soviet officials rebuffed the Kennedy administration’s diplomatic feelers about a coordinated approach to the Chinese nuclear threat. And, as the planning process unfolded, State Department analysts questioned the underlying premise that China’s acquisition of nuclear weapons would have an ‘intolerable’ impact on US security. By October 1963, a 100-page study by State Department expert Robert Johnson offered a less alarming view. Johnson argued that a nuclear-armed China would not fundamentally change the balance of power in Asia and could be deterred from aggression by overwhelming US conventional and nuclear superiority. He viewed the Chinese programme as motivated primarily by a desire to deter an attack on China itself and thought that the Mao regime was unlikely to alter its risk-averse military policy.³¹

The Kennedy assassination and Lyndon Johnson's accession to the presidency effectively ended the US debate on a preventive strike. President Johnson rejected 'unprovoked' military action against China – a decision plausibly attributed to a less alarmist view of China's nuclear programme, an aversion to any military action that could escalate the Vietnam War, and the desire to bolster his image as the peace candidate in the 1964 electoral campaign against the hawkish Barry Goldwater.³²

June 1981: Israel's raid on Iraq's Osiraq nuclear reactor

On 7 June 1981, Israeli F-15s and F-16s surreptitiously traversed Jordanian and Saudi Arabian air space to bomb Iraq's French-made Osiris-type reactor near Baghdad. Since the 1970s, Israel had closely monitored Iraq's concerted efforts to obtain nuclear technology. Under a 1974 bilateral nuclear cooperation agreement with France, Iraq had proposed the purchase of a 500 MW gas-graphite reactor, which would have produced large quantities of plutonium, ideal for a nuclear weapons programme. The French balked at this request and offered as alternatives either a 70 MW reactor, designed for research purposes and fuelled by highly-enriched uranium, or an even more powerful but proliferation-resistant light water reactor. The Baghdad regime's decision to purchase the 70 MW reactor over the more capable alternative indicated that Iraq's primary interest was in acquiring fissile material rather than producing energy.³³

Israeli Prime Minister Menachem Begin viewed the prospect of a nuclear-armed Iraq under Saddam Hussein as an existential threat to Israel. Labour Party Leader Shimon Peres cautioned Begin against military action, arguing that Israel would be diplomatically isolated and that the intelligence was inadequate. In early spring 1981, Mossad, Israel's external intelligence service, predicted that the Iraqi reactor could go into operation as early as July. Begin saw a window of opportunity for action before the nuclear fuel (the bulk of which had not yet arrived from France) was loaded into the reactor. In tandem with this intelligence estimate, a key influence on Begin's decision-making was Israel's scheduled parliamentary elections at the end of June. Begin feared that if Labour defeated his Likud Party, Peres would attempt to address the Iraqi nuclear threat diplomatically through the French and would never authorise a preventive strike.³⁴

International reaction to the Israeli air strike on the Osiraq facility was sharply critical. Rejecting Israel's claim of anticipatory self-defence, the UN Security Council condemned the attack as 'a clear violation of the Charter of the United Nations and the norms of international conduct'.³⁵ Not until a decade later, after UNSCOM inspectors discovered the magnitude of Saddam Hussein's covert nuclear weapons programme, was the Israeli assessment of Iraqi intentions validated. Though a tactical success, the efficacy of the 1981 air strike is still debated. Proponents argue that it bought time (not an inconsequential goal in non-proliferation policy). Sceptics observe that it did not deter Iraq from acquiring nuclear weapons – and may even have been a source of further motivation.

1991–98: the Gulf War and Operation Desert Fox

As part of *Operation Desert Storm* in January and February 1991, US and allied aircraft targeted Iraq's unconventional weapons and missiles to prevent their use against other countries in the region (most notably Israel) and to protect coalition forces. These missions were not conducted to roll back proliferation *per se*, but were rather an extension of war. Their legal basis derived from the pertinent UN Security Council resolutions authorising the use of force to reverse Iraqi aggression in Kuwait. During the air war, coalition aircraft flew approximately 970 strikes against nuclear, biological and chemical weapons sites. An additional 1,500 missions were aimed at suppressing Iraq's *Scud* ballistic missile force.³⁶

UNSCOM's startling post-war revelations about the magnitude of Iraqi WMD capabilities that survived *Desert Storm*, as well as the assessment provided by the Department of Defense's own *Gulf War Air Power Survey*, highlighted the limited effectiveness of the US air campaign. These findings underscored both the critical importance of extensive intelligence for targeting unconventional weapons and the ability of a determined proliferator to make such capabilities less vulnerable to attack through deception and mobility. For example, UNSCOM inspectors revealed the existence of twenty-one nuclear-related facilities in Iraq, whereas the pre-war target list included only two such sites. The *Survey* analysts concluded that the air campaign no more than 'inconvenienced' Iraq's nuclear weapons programme and that the actual destruction of any mobile *Scud* missiles by fixed-wing coalition aircraft could not be confirmed.³⁷

After the Gulf War, the United States and Britain employed instruments of coercive non-proliferation – economic sanctions and the threatened use of force – to try to compel Iraq's compliance with UN Security Council Resolution 687. Diminished international support for economic sanctions and the opposition of UN Security Council members Russia, China and France to the use of force to assure compliance with UNSCR 687 emboldened Saddam Hussein to defy UNSCOM and engage in brinkmanship. Saddam linked his own fate to the survivability of Iraq's WMD capabilities by placing them under the control of his presidential guard, the Special Security Organisation (SSO), headed by his son, Qusay. Thus, any US military strike on Iraq's WMD capabilities would be, in effect, an attack on Saddam Hussein personally. Indeed, UNSCOM officials believe that SSO units shuttled Iraq's WMD assets around Saddam Hussein's network of presidential palaces to defeat the UN's inspection regime.³⁸ A senior UNSCOM official referred to this tactic as Iraq's 'philosophy of concealment through mobility'.

In 1998, a series of crises over Iraqi non-compliance and non-cooperation with UNSCOM led to four days of sustained air attacks by the United States and Britain. The air campaign, code-named *Operation Desert Fox*, relied heavily on cruise missiles and was the most extensive use of force against Iraq since the end of the Gulf War. During the four-day air campaign, Secretaries Madeleine Albright and William Cohen and National Security Advisor Sandy

Berger declared that the US commitment to use force against Iraq was open-ended. But to what purpose? At the outset of *Operation Desert Fox*, Secretary Cohen stated that the goal was to degrade Iraq's WMD capabilities and 'not to destabilize the regime'.³⁹ The Clinton administration was caught politically between domestic critics, who wanted a more ambitious air campaign aimed at undermining Saddam Hussein, and UN Security Council members, who were reflexively opposed to the use of force and sought only Iraq's compliance with UNSCR 687.

When *Operation Desert Fox* concluded, US and British forces had flown more than 300 combat sorties and fired more than 400 cruise missiles at Iraqi targets. In early January 1999, General Henry H. Shelton, Chairman of the Joint Chiefs of Staff, reported to Congress that the raids had inflicted more damage than originally estimated. The raids destroyed or severely damaged 12 missile production sites and 11 command-and-control facilities. But, in a striking admission, US and British planners did not target chemical and biological weapons facilities out of fear that such attacks might release deadly toxins into the atmosphere and produce unacceptable civilian casualties.⁴⁰

1993–94: North Korea's nuclear programme

Former secretary of defence William Perry has called the 1993–94 North Korean nuclear crisis the most dangerous episode of the post-Cold War era.⁴¹ In US contingency planning during that crisis, the Clinton administration examined the option of military strikes on the North's advanced nuclear facilities. The Democratic People's Republic of Korea (DPRK) possessed an operational 5MW graphite-moderated reactor and a reprocessing facility for spent nuclear fuel at Yongbyon, and had begun construction of two additional 50 MW and 200 MW nuclear reactors. The CIA estimated that North Korea could have extracted as much as 12 kilograms of plutonium from fuel rods in the Yongbyon reactor. A January 1993 request from the International Atomic Energy Agency (IAEA) for a 'special inspection' of suspect sites, which North Korea was obliged to grant as an NPT signatory, was the immediate precipitant of the crisis. The regime of Kim Il Sung rejected the request and threatened to withdraw from the Nuclear Non-Proliferation Treaty (NPT) in March 1993, a move that prompted calls on Capitol Hill and in the press for a tough American response, including possible military options.

The row over IAEA inspections escalated significantly in April 1994, when North Korea announced its intention to shut down the Yongbyon reactor to remove spent fuel containing sufficient plutonium for an additional four or five bombs. In June 1994, the IAEA referred the matter to the UN Security Council and the United States moved to strengthen its defences in South Korea in anticipation of a diplomatic campaign to impose economic sanctions on the North. The North Koreans were defiant, declaring that sanctions would be tantamount to a declaration of war. The Clinton administration adopted the sanctions strategy after considering – and rejecting – the alternative of military pre-emption. Secretary Perry explained the rationale behind this decision to

forego the option that hard-liners outside the administration, including some former senior Bush administration officials, were advocating:

By May [1994] the negotiations between North Korea and the IAEA had broken down ... [and] we were faced with the highly dangerous prospect that North Korea would have five or six nuclear bombs ... I asked General [John] Shalikashvili [then Chairman of the Joint Chiefs of Staff] ... for an update of a contingency plan, which had been requested earlier, for destroying key components at the reactor site with a military attack ... The plan was impressive. ... However, both General Shalikashvili and I had concluded that such an attack was very likely to incite the North Koreans to launch a military attack on South Korea.⁴²

The significant possibility that a pre-emptive attack on the Yongbyon nuclear facilities would trigger a general war on the Korean peninsula effectively removed the military option from consideration. In addition to the danger of inadvertent escalation, incomplete intelligence gave US policymakers no assurance that air strikes would hit all the pertinent targets at Yongbyon, or that this military action would eliminate the North Korean nuclear threat if some illicit reprocessing of spent fuel to extract plutonium had occurred during the earlier reactor shutdowns. In mid-June, as the Clinton administration prepared to push for UN Security Council sanctions, the crisis was defused. Former president Jimmy Carter took a controversial trip to Pyongyang, which resulted in Kim Il Sung's pledge to 'freeze' activity at the Yongbyon site. The Carter mission broke the impasse and led to intensive bilateral negotiations that culminated in the US-DPRK Agreed Framework of October 1994. Under its terms, North Korea agreed to freeze and eventually dismantle its Yongbyon facilities in return for two 'proliferation-resistant' 1000 MW light water reactors to be provided by a US-led international consortium, the Korean Peninsula Energy Development Organisation (KEDO), created for that purpose. The nuclear agreement was castigated as appeasement by congressional and other hard-liners who rejected diplomatic engagement with this 'rogue' state.

August 1998: counter-proliferation and counter-terrorism in Sudan

On 20 August 1998, US cruise missiles destroyed the al-Shifa pharmaceutical plant in Khartoum, Sudan, which the Clinton administration charged was linked to the terrorist, Osama bin Laden, and was producing a precursor chemical for VX nerve gas. The Sudan attack came 13 days after the bombing of the US embassies in Nairobi and Dar es Salaam, which killed 224 people, including a dozen Americans. US officials had linked the embassy bombings to the bin Laden network. This counter-proliferation mission was conducted in the broader political context of a counter-terrorism operation, code-named *Infinite Reach*, involving a simultaneous cruise-missile strike on bin Laden's base camp in Afghanistan.⁴³ The two raids also had a significant domestic political overlay, with critics charging that President Clinton had taken this dramatic action to deflect attention from the scandal that later led to his impeachment. Clinton told congressional leaders that 'these strikes were a necessary and proportionate

response to the imminent threat of further terrorist attacks'. State Department officials did not publicly justify this military strike in terms of US non-proliferation policy, but rather, argued that its legal basis was the right of self-defence under Chapter VII, Article 51 of the UN Charter.

Defending the intelligence upon which the Sudanese strike was based, National Security Advisor Sandy Berger declared to the White House press corps that 'with respect to the so-called pharmaceutical factory in Khartoum ... we know with great certainty' about its role in chemical weapons production.⁴⁴ Secretary of Defense Cohen stated at a Pentagon briefing that Osama bin Laden 'had an interest in acquiring chemical weapons ... and that this facility produces the precursors [for] VX'.⁴⁵

In the aftermath of the raid, press reports called into question the Clinton administration's evidence regarding the plant and its links to bin Laden. US officials acknowledged that the al-Shifa plant may have been producing 'legitimate pharmaceuticals' and provided further details of the intelligence underlying the strike – most notably, the revelation that a covertly obtained soil sample from the plant's vicinity had contained traces of empty, the VX precursor chemical. Some experts criticised the CIA's analysis of the soil sample, claiming that it did not meet the standards of the agency monitoring the Chemical Weapons Convention.⁴⁶ Others suggested that an agricultural insecticide could have been mistaken for the precursor.⁴⁷ Rejecting these reports and questions about the legitimacy of the attack on the al-Shifa plant, Berger declared, 'I have even more certainty about this than I did at the time we struck it'. The persistence of these questions diplomatically isolated the United States (with even British officials privately expressing 'dismay and anger').⁴⁸ However, the 2001 trial in New York of the embassy bombings suspects revealed additional information: one defendant provided 'partial, but nonetheless striking corroboration of the Clinton administration's 1998 claim that al-Qaeda was involved in producing chemical weapons in Khartoum'.⁴⁹

Comparative case analysis

A comparative analysis of the cases presented above permits the identification of key criteria and conditions governing the pre-emptive or preventive use of force as an instrument of non-proliferation policy. Though general propositions can be developed on the basis of historical experience, any specific decision by policymakers will be contingent on the particular circumstances and an accurate assessment of the target state. The following analysis is both *descriptive*, in that it draws upon the historical record, and *prescriptive*, in that it suggests which future policy directions are most consistent with the sound integration of military instruments into a comprehensive non-proliferation strategy.

Character of the threat

The United States may have a general interest in preventing proliferation and supporting the 'international non-proliferation regime', but it does not regard all would-be proliferators as specific threats to American security. The perception

of threat derives from the interaction of capabilities with intentions. US administrations have distinguished between new and de facto nuclear proliferators – such as Israel, India and Pakistan – that challenge an important international norm but do not directly threaten the United States, and those countries designated as ‘rogue’ that do pose such a security threat. Thus, the cases in which the United States would actually contemplate the use of force involve a sub-set of countries that are pursuing the acquisition of WMD capabilities and which have hostile intentions. Those states constitute ‘hostile proliferators’.⁵⁰

The threshold issue regarding the use or consideration of the use of force is a judgment about intentions. Although hostile intent is a necessary condition, alone, it is not sufficient to precipitate action. It is the conjunction of hostile intent and the capability to act upon it that would prompt US decision-makers to consider the use of force. Sound intelligence must indicate that the threat is imminent – either that WMD will be used or that an important technological threshold will be crossed. For example, a major determinant of Prime Minister Begin’s decision to authorize the Osiraq raid in June 1981 was intelligence that the nuclear reactor was on the verge of becoming operational. Likewise, the immediate precipitant of the North Korean nuclear crisis in spring 1994 was the shutdown of its nuclear reactor without IAEA supervision and the danger that the North would then remove spent fuel from the reactor core and reprocess it to extract fissile material for its nuclear-weapons programme. Both the 1981 Iraqi and 1994 North Korean cases are instances of prevention rather than pre-emption, as in neither was the target state’s actual use of a weapon imminent. In the case of North Korea, a prevention strategy was pursued diplomatically, through the Agreed Framework, rather than by a military strike on North Korea’s nuclear infrastructure.

An additional important issue relating to target-state analysis – one’s image of the adversary – is whether the threat can be forestalled through deterrence. In this context, the imputation of irrationality or recklessness can become an important determinant. A major motivating factor underlying President Kennedy’s militancy about China’s nuclear programme was his perception of Mao’s regime as fundamentally irresponsible. Begin viewed Saddam Hussein as a latter-day Hitler and, continuing the analogy, Saddam’s nuclear programme as the potential instrument of a new Final Solution against the Jewish state; this analysis largely drove Israel’s decision to conduct a preventive air strike.

In the post-Cold War era, the assertion that ‘rogue states’ may be ‘undeterrable’ has led to an increased policy emphasis on pre-emption and ‘homeland defence’. This imputation of irrationality is a questionable premise upon which to base policy. The most recent experience with Iraq during the Gulf War points to the contrary. Saddam Hussein may have been ruthlessly expansionist, but he did not act irrationally. When Secretary of State James Baker met Foreign Minister Tariq Aziz in January 1991, just prior to the outbreak of hostilities, he reportedly told the Iraqi official, ‘God forbid ... chemical weapons are used against our forces – the American people would demand revenge, and

we have the means to implement this'.⁵¹ The Iraqi leadership told UN officials in 1995 that they interpreted Baker's statement as a threat to retaliate with nuclear weapons if Iraq used chemical or other unconventional weapons against American and coalition forces.⁵²

Lumping a diverse group of states under the 'rogue state' rubric obscures the importance of 'strategic personality' – the long-term historical and cultural forces that uniquely shape each state's worldview and calculus of decision-making.⁵³ That the rationale underlying a target state's behaviour is not readily apparent to external actors does not make that regime irrational. The issue of rationality must be distinguished from that of miscalculation. Saddam Hussein is not irrational, but he is, to be sure, prone to strategic miscalculation – witness his calamitous decisions to invade Iran and Kuwait. That important distinction – between irrationality and a propensity for miscalculating – points to the need for outside powers to formulate clear declaratory policy to reduce the risks of miscalculation. It does not lead to the conclusion that some states are inherently 'undeterrable' because of their character.

Political and military context

Once a state is deemed a hostile proliferator, several key considerations will then affect decision-making about the use of force. In addition to sound strategic intelligence about a hostile proliferator's motivations and intentions, effective tactical intelligence is necessary to determine whether or not a military option is even feasible. The challenge of obtaining this information and then translating it into military action was highlighted by the Gulf War experience and the post-conflict revelations by UNSCOM about the magnitude of Iraqi WMD capabilities and the number of missiles that had escaped detection and destruction. In the 1994 North Korean crisis, incomplete intelligence gave Clinton administration officials no assurance that all pertinent nuclear-related targets could be destroyed through air strikes.

Beyond these intelligence requirements, the feasibility of military action also depends on the political context. Because international norms require that force be the instrument of last resort, non-military options should be exhausted before considering military instruments. Convincing others, most notably the UN Security Council, that all non-military alternatives have been exhausted will be essential if the United States is to have any chance of gaining multilateral support for the use of force. Yet the 'rogue state' approach politically hinders the ability of US policymakers to pursue such alternative strategies – in particular, hard-liners will castigate as appeasement diplomatic initiatives that employ incentives (such as the Agreed Framework).

The case summaries indicate that counter-proliferation missions can be subsumed in a broader political context in which non-proliferation plays no more than a subordinate policy role. The 1998 strike on the Sudanese pharmaceutical factory was piggybacked onto a counter-terrorism mission. The 1991 air campaign against Iraq's WMD capabilities was conducted in the course of a war authorised by the UN Security Council to expel Iraqi forces from

Kuwait. In the North Korean case, the implementation of the Agreed Framework and the issue of North Korea's ballistic-missile programme are embedded in the broader policy context of the rapprochement between North and South Korea, and efforts to engineer a 'soft landing' for North Korean society.

A final important issue affecting the political and military context is the legal basis for the proposed use of force. In 1992, the UN Security Council recognised the proliferation of weapons of mass destruction as a threat to international peace covered under Chapter VII of the Charter. The unilateral exercise of force against a proliferator has been justified by the United States (following the August 1998 cruise-missile strike on the Sudanese plant) and by Israel (after the June 1981 Osiraq strike) as the exercise of their right of self-defence under Chapter VII, Article 51 of the UN Charter. But the right of self-defence under Article 51 has been narrowly interpreted by the international community to reject the assertion of anticipatory self-defence except in the face of an imminent threat – meaning that the threat of an armed attack must be 'instant, overwhelming and leaving no choice of means, and no moment of deliberation'.⁵⁴ In international law, imminence cannot simply be inferred from suspect activity at a possible WMD-related facility in apparent contravention of non-proliferation norms. In light of these traditional legal constraints, former IAEA official David Fischer concludes, 'it would be impossible to institutionalise, at the global or regional level, the right of any state individually to take measures of forcible counter-proliferation in time of peace'.⁵⁵

Even when Chapter VII authorisation has been granted by the Security Council, members will balk when specific permission is not requested in a particular instance. For example, during *Operation Desert Fox*, other UN Security Council members criticised the United States and Britain for not going back to that body for authorisation before launching the air campaign. The US and British governments argued that they were acting under existing UNSCR 687 authorisation in the face of Iraq's 'material breach' of the cease-fire resolution.

These legal criteria establish a very high bar for the use of force even when the target state's WMD capability and imminently hostile intent have been affirmed. Indeed, a working consensus on pre-emption with US allies is likely to be highly difficult to secure. As political scientist Stephen M. Walt soberly concludes, 'Not only are democratic states generally disinclined to fight preventive wars, but allies are likely to face different levels of risk and will probably disagree about the level of threat and the probability of success'.⁵⁶ The problem is particularly formidable in the UN Security Council, which has sole power to authorise the use of force to address threats to peace short of imminent war, but in which action can be blocked by any one of five vetoes.

Consequences

A third set of criteria and conditions governing the use of force concerns the consequences of its employment. In considering the use of force against a hostile proliferator, a primary concern must be the capability of the target state to retaliate. Depending on the scope of the WMD programme and the accuracy of

the intelligence, a policymaker could not discount the possibility that a hostile proliferator might lash out with any surviving unconventional capability against a US ally or American forces in that regional theatre. Some of the defensive measures supported through the Defense Department's counter-proliferation programme could mitigate the consequences of retaliation, but the significant possibility of WMD retaliation would still be a major constraint on bringing force to bear against a hostile proliferator. In two cases where force was employed – Iraq in 1981 and Sudan in 1998 – neither Israel nor the United States feared WMD retaliation by the target state.

A senior US official who participated in the negotiation of the US–DPRK Agreed Framework argues that the North Koreans did not distinguish between a narrow US counter-proliferation option on the North's nuclear facilities and general war. On the American side, the fear of inadvertent escalation and catalytic war – the possibility that a counter-proliferation strike on the North's nuclear infrastructure would provoke all-out war on the Korean Peninsula – was a key policy determinant. This overriding concern prompted the Clinton administration to pursue alternative non-military approaches – initially, economic sanctions in the UN, later, bilateral negotiations leading to the Agreed Framework.

An additional factor tempering the resort to force has been the desire to limit 'collateral damage' both to the environment and to the civilian population. To avoid an environmental catastrophe, the Israelis struck the Osiraq reactor before its fuel – highly enriched uranium – had been loaded into the core and the facility was operational. Likewise, during *Operation Desert Fox*, the United States and Britain refrained from striking chemical and biological sites for fear of releasing dangerous toxins into the atmosphere. In the Sudan operation, the Joint Chiefs of Staff took a second building off the Khartoum target list because they believed the intelligence about its connection to chemical weapons production was weak and that a cruise missile attack would result in significant civilian casualties. Most strikingly, in Afghanistan, when US forces were engaged in active military operations in autumn 2001, commanders reportedly eschewed bombing suspect al-Qaeda biological and chemical weapons development sites out of concern about the accuracy of intelligence and the possible release of deadly toxins.⁵⁷ Such dangers may be mitigated by the advent of a new generation of so-called 'agent defeat warheads' specifically designed to destroy chemical and biological agents while minimising collateral damage.⁵⁸ Nonetheless, collateral damage from strikes against weapons of mass destruction is a consideration that elected officials in democratic societies will have to take into account.

US counter-proliferation capabilities are unlikely to deter would-be proliferators from acquiring weapons of mass destruction. Those states' national security and domestic political motivations are deep-seated and powerful, and counter-proliferation capabilities do not alter them.⁵⁹ Particularly in light of the cases discussed above, the likely impact of US counter-proliferation policy will be to drive those states' programmes further underground. The history of

Saddam Hussein's WMD programme is dramatic testimony to the ability of a determined proliferator to develop a massive covert programme. If counter-proliferation capabilities and the threat of preventive military action will not forestall WMD acquisition, will they deter actual use by a hostile proliferator? Such capabilities could cut both ways. On the one hand, defensive measures, such as the acquisition by US forces of protective 'biochem' suits, could convince a target state that it has nothing to gain militarily from WMD use. On the other hand, a target state might resort to WMD use if it believed that its ruling regime were on the verge of being overthrown. During the Gulf War, Iraq forward-deployed chemical munitions, and evidence strongly suggests that Saddam Hussein delegated authority to commanders to use unconventional weapons under certain conditions. An Iraqi official subsequently asserted that Baghdad would have used its WMD capabilities only in retaliation for the use of such weapons by coalition forces. But given the primacy of regime security to Saddam Hussein, the continuation of the war into Iraq could very plausibly have precipitated Iraqi WMD use against the US-led coalition.⁶⁰ Indeed, Saddam Hussein evidently believes that his stockpile of unconventional weapons deterred the United States from expanding its war aims beyond the liberation of Kuwait and marching on Baghdad to change the Iraqi regime.

Conclusion

The current debate over the Bush administration's pre-emption strategy has echoes of the debate that followed the initial promulgation of US counter-proliferation policy after the Gulf War. But although the major points of contention are the same, the transformed international security context confronting US policymakers after the 11 September terrorist attacks – the qualitatively new character of the threat – is leading to a new calculus of pre-emption. Pre-emption is being called 'a matter of common sense,' in the words of the new National Security Strategy document. But even in this era of heightened risk, historical experience offers relevant insights for policymakers into the conditions governing the use of force to forestall proliferation.

Pre-emption should be a rarely invoked option. The cases in which the United States would consider the use of force involves the small group of proliferators with a conjunction of capabilities and hostile intent. Even within that discrete subset of hard cases – the 'axis of evil' countries – the United States has, when circumstances permitted or necessitated, pragmatically pursued non-military strategies (such as the US–North Korean Agreed Framework) to attain its non-proliferation objectives.

Force is as problematic as its non-military alternatives. Proponents of pre-emption often cite the June 1981 Israeli raid on Iraq's Osiraq nuclear facility as a model to be emulated in the post-11 September era. Yet the Osiraq case, far from being a paradigm, was a rare instance in which all the conditions for success were present – specific and highly accurate intelligence, and the negligible risk of

collateral damage and retaliation. More often in history, the utility of force has been affected by major constraints – the possibility of triggering a general war (North Korea, 1994), uncertain and contentious intelligence (Sudan, 1998), and the threat of unacceptable collateral damage to the population and environment (Iraq, 1998). Because of these constraints, the Bush administration, less than a month after the enunciation of its new pre-emption doctrine, stated that it would seek a diplomatic resolution of the crisis triggered by North Korea's October 2002 admission of a clandestine project to enrich uranium.

Successful prevention strategies will forestall the need for pre-emption. The instances in which force has been considered or used for non-proliferation purposes have been *preventive* rather than *pre-emptive*. In none was actual WMD use imminent (apart from the Gulf War episode when Saddam Hussein reportedly authorised commanders to use unconventional weapons if coalition forces marched on Baghdad). Prevention strategies employ the full array of non-proliferation tools, including multilateral treaties, export controls and economic coercion. The National Security Strategy document acknowledges the contribution of non-military instruments, but the administration appears, at best, ambivalent about the efficacy of those non-military instruments in addressing the proliferation of those hard cases that it has lumped under the 'axis of evil' formulation. In his West Point speech, for example, President Bush declared, 'We cannot put our faith in the word of tyrants who solemnly sign non-proliferation treaties and then systematically break them'. Secretary Powell has stated that no military action against North Korea and Iran is currently envisaged, and has affirmed a willingness to pursue limited engagement with both countries. But this ambivalence reinforces the perception, particularly among America's overseas allies, that counter-proliferation (including possible pre-emption) is being pursued as an alternative to traditional non-proliferation policies. The depth of the administration's commitment to non-military non-proliferation is further called into question by the gap between the magnitude of the problem (for example, poorly secured nuclear weapons and material in the former Soviet Union) and the inadequacy of the financial resources devoted to it.

The fact that no country has ever been coerced into giving up its unconventional weapons programmes underscores the importance of prevention strategies. Iraq is a unique case of coercive disarmament mandated by the UN Security Council after the Gulf War. Non-proliferation success stories have resulted from US assurances of security to a threatened ally (Taiwan, South Korea), or a change either in the target state's security perspective or in the international environment (Brazil, Argentina, South Africa, Ukraine).

Sound target-state analysis, based upon accurate intelligence, is essential in assessing proliferation intentions and the imminence of military threat. Accurate target-state analysis to understand a regime's 'strategic personality' – how history and political culture influence its worldview and actions – provides a basis for assessing intentions. The determination of intentions, in turn, governs what type

of preventive strategy, if any, would be effective. The most difficult cases are those in that small subset of hostile proliferators discussed above. But even with two hostile states – North Korea and Iran – the United States is currently pursuing non-military strategies (such as its efforts to block Russian nuclear exports to Iran). Despite its public presentation of pre-emption as a general doctrine, the administration has raised the spectre of military action only in the context of Iraq. That case is, indeed, unique, because the full panoply of preventive strategies has been attempted over more than a decade. The crux issue in the current debate has been well framed by Vice-President Dick Cheney: how do we weigh ‘the risk of inaction’ against ‘the risk of action’. Supporters of US military action against Saddam Hussein assert that he poses a ‘clear and present danger’ and that the Iraqi WMD threat is imminent; opponents argue that the threat is not imminent, that Saddam Hussein is deterrable, and that comprehensive containment would succeed at keeping the Iraqi dictator ‘in his box’ as it has done since the Gulf War. These diametrically opposed policy prescriptions are premised on contrasting assessments of the target state.

*International law and the role of the UN Security Council need to be adapted and updated to reduce the need to resort to unilateral military prevention or pre-emption.*⁶¹

The increased emphasis by the United States on unilateral pre-emption is fuelled, in part, by the belief that the UN Security Council has failed to meet the global security responsibilities originally envisaged for it, and that international law, such as the Article 51 proscription against anticipatory defence, is woefully outdated. President Bush’s 12 September speech on Iraq at the United Nations attempted to place the onus back on the Security Council to enforce its own resolutions so as not to become an ineffectual, latter-day League of Nations.

The war in Kosovo, the current dispute over Iraq and the broader issue of pre-emption raised by the Bush administration all point to the need for serious discussion among the UN Security Council’s permanent members, as well as within the international community more broadly, on rules governing the use of force.

The persistent dilemma in this problematic area of international law is how to develop general rules that permit military action under some circumstances but not under others. Because the requisite political consensus for change among the major powers simply does not exist, proposals to codify updated rules on the use of force are premature. Nonetheless, on the specific issue of pre-emption, a significant interim step in bridging the contentious policy gap between the United States and other countries would be a security dialogue to bring greater analytical and political clarity to the concept of imminence, which is the key determinant of pre-emptive action. Establishing intelligible and transparent criteria of ‘imminent threat’ could provide a basis for collective action, whether by the UN Security Council or, if that were not possible, by a coalition of the willing. This security dialogue should encompass the full range of pertinent considerations, including whether the target state has used unconventional weapons in the past, is in current violation of Security Council

resolutions, and has manifested hostile intentions. Clarifying the meaning of imminence could also assist policymakers in recognising and addressing incipient threats, where non-military instruments might still be effective as part of a prevention strategy. The successful outcome of an international security dialogue that achieved some consensus on pre-emption could reduce the need for the United States – or other nations – to resort to pre-emptive unilateral action. Through such a process, the United States might tend to its national interest without calling into question its commitment to the international norms of order.

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Notes

- ¹ Wyn Q. Bowen and David H. Dunn, *American Security Policy in the 1990s: Beyond Containment* (Aldershot, UK: Dartmouth Publishing, 1996), p. 119.
- ² The administration established a separate Nonproliferation and Export Controls directorate within the National Security Council, which oversaw an intensive interagency review process that yielded Presidential Decision Directive 13 or PDD-13. That framework did not specifically mention counterproliferation, but did say that the administration would 'ensure that our own force structure and defence planning address the potential threat from weapons of mass destruction and missiles'. See White House, Office of the Press Secretary, *Nonproliferation and Export Control: Fact Sheet*, 28 September 1993.
- ³ Michael Nacht, 'Weapons Proliferation and Missile Defense: New Patterns, Tough Choices', in Robert Lieber (ed.), *Eagle Rules? Foreign Policy and American Primacy in the 21st Century* (Englewood Cliffs, NJ: Prentice-Hall with Wilson Center Press, 2001), p. 283.
- ⁴ 'Weapons of Mass Destruction in the Middle East', Center for Nonproliferation Studies, Monterey Institute of International Studies, <http://cns.miis.edu/research/wmdme/iraq.htm#fnB2>.
- ⁵ Remarks by Secretary of Defense Les Aspin at the National Academy of Sciences Committee on International Security and Arms Control, 7 December 1993, published in US Senate, Committee on Governmental Affairs, *Nuclear Proliferation Factbook* (103rd Cong., 2nd sess., 1994), pp. 198, 203 (emphasis added). See also Zachary S. Davis and Mitchell Reiss, 'US Counterproliferation Doctrine: Issues for Congress', *CRS Report for Congress*, no. 94-734 ENR, 21 September 1994.
- ⁶ Daniel Poneman, Senior Director for Nonproliferation and Export Controls, NSC, 'National Security Council Memorandum: Agreed Definitions, February 18, 1994', published in the *Nuclear Proliferation Factbook*, p. 205.
- ⁷ Office of the Deputy Secretary of Defense, Counterproliferation Program Review Committee, 'Report on Activities and Programs for Countering Proliferation', May 1995.
- ⁸ See Mitchell Reiss and Harold Müller (eds), *International Perspectives on Counterproliferation*, Working Paper, no. 99 (Washington, DC: Woodrow Wilson Center, Division of International Studies, January 1995).
- ⁹ Charles Krauthammer, 'The Unipolar Moment,' *Foreign Affairs* 70, no. 1 (special issue, 'America and the World' 1990/91), pp. 25, 33.
- ¹⁰ Thomas W. Lippman, 'If Nonproliferation Fails, Pentagon Wants "Counterproliferation" in Place', *Washington Post*, 15 May 1994, p. A11.
- ¹¹ 'Remarks of Secretary of Defense William Perry at George Washington University', Federal News Service transcript, 25 April 1996, p. 1.
- ¹² The issue of 'undeterrable' states is discussed in Janne Nolan and Mark Strauss, 'The Rogues Gallery', *Brown Journal of World Affairs* 4, no. 1 (Winter/Spring 1997), pp. 32–36.
- ¹³ Senate Minority Leader Robert Dole said, 'It is always possible to get an agreement when you give enough away'. Quoted in Leon V. Sigal, *Disarming Strangers: Nuclear Diplomacy*

- with *North Korea* (Princeton, NJ: Princeton University Press, 1998), p. 192.
- ¹⁴ For a sustained critique of the 'rogue state' approach see Robert S. Litwak, *Rogue States and US Foreign Policy: Containment after the Cold War* (Washington, DC: Woodrow Wilson Center Press/Johns Hopkins University Press, 2000).
- ¹⁵ White House, Office of the Press Secretary, 'Address to the Joint Session of Congress', 27 February 2001 <http://www.whitehouse.gov/news/releases/2001/02/20010228.html>.
- ¹⁶ Jeffrey A. Larsen, 'NATO Counterproliferation Policy: A Case Study in Alliance Politics', Air Force Academy Institute for National Security Studies, Occasional Paper #17 (November 1997), p.3.
- ¹⁷ Gilles Andréani, 'The Disarray of US Non-Proliferation Policy', *Survival* vol. 41, no. 4 (Winter 1999–2000), p. 43.
- ¹⁸ After the terrorist attacks, Secretary of State Colin Powell declared, 'Not only is the Cold War over, the post-Cold War period is also over'. Secretary of State Colin Powell speaking at the Asia-Pacific Economic Cooperation summit in Shanghai on 18 October 2001; text at www.state.gov/secretary/rm/2001.
- ¹⁹ White House, Office of the Press Secretary, 'President Speaks on War Effort to Citadel Cadets', 11 December 2001, <http://www.whitehouse.gov/news/releases/2001/12/20011211-6.html>.
- ²⁰ White House, Office of the Press Secretary, 'President Delivers the State of the Union Address', 29 January 2002, <http://www.whitehouse.gov/news/releases/2002/01/print/20020129-11.html>.
- ²¹ White House, Office of the Press Secretary, 'President Bush Delivers Graduation Speech at West Point', 1 June 2002, <http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>.
- ²² White House, 'The National Security Strategy of the United States of America', September 2002, <http://www.whitehouse.gov/nsc/nss.html>.
- ²³ Elements of this criticism emerged after the West Point speech; see International Institute for Strategic Studies, 'Dealing with the "axis of evil": The US and the "perilous crossroads"', *Strategic Comments* vol. 8, no. 5 (June 2002).
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- ³⁰ *Ibid.*, p. 67.
- ³¹ *Ibid.*, p. 76–77.
- ³² *Ibid.*, p. 88.
- ³³ Shai Feldman, ‘The Bombing of Osiraq – Revisited’, *International Security* 7, no. 2 (Fall 1982), pp. 115–116.
- ³⁴ Angus Deming, Ron Moreau, and David C. Marin, ‘Two Minutes over Baghdad’, *Newsweek*, 22 June 1981, p. 22.
- ³⁵ Feldman, ‘The Bombing of Osiraq – Revisited’, p. 136. The United States accepted this UN Security Council language after threatening to veto punitive economic and political sanctions against Israel advocated by Iraq.
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- ³⁸ Amatzia Baram, *Building Toward Crisis: Saddam Hussein’s Strategy for Survival* (Washington, DC: Washington Institute for Near East Policy, 1998), pp. 80–82.
- ³⁹ Bradley Graham and Dana Priest, ‘US Details Strategy, Damage’, *Washington Post*, 18 December 1998, p. A1.
- ⁴⁰ Warren P. Stobel, ‘Sticking it to Saddam’, *US News & World Report*, 11 January 1999, p. 38. The following exchange with a reporter is from Secretary of Defense William Cohen’s press briefing on 19 December 1998 (transcript at www.defenselink.mil/news/Dec1998/t12191998_t1219fox.html):
- ‘Q: [A]re you not going after those facilities that are dual use capable because of the concern that we have for the amount of damage to innocent civilians?’
- Secretary Cohen: I indicated yesterday that we did not target those facilities that are dual use capable because of the concern that we have for amount of damage to innocent civilians.
- Q: Mr Secretary, if you target them at night, why would they have anybody there?
- Secretary Cohen: People don’t have to be in the facility in order to do damage to the area itself. We took that into account. We were not going to engage in acts which could result in many, many deaths to innocent people’.
- See also Anthony H. Cordesman, *The Lessons of Desert Fox: A Preliminary Analysis* (Washington, DC: Center for Strategic and International Studies, 19 February 1999), pp. 105–106; available online at www.csis.org/mideast/reports/DFLessons21599.pdf
- ⁴¹ See Litwak, *Rogue States and US Foreign Policy*, chapter 6 for an overview, as well as the following works that trace the United States’ nuclear diplomacy with North Korea leading to the conclusion of the Agreed Framework in October 1994: Mitchell Reiss, ‘North Korea: Living with Uncertainty’ in *Bridled Ambition: Why Countries Constrain Their Nuclear Capabilities* (Washington, DC: Woodrow Wilson Center Press/Johns Hopkins University Press, 1995), pp. 231–319; Michael Mazarr, *North Korea and the Bomb: A Case Study in*

- Nonproliferation* (New York: St. Martin's Press, 1995); Leon V. Sigal, *Disarming Strangers: Nuclear Diplomacy with North Korea* (Princeton, NJ: Princeton University Press, 1998); and Don Oberdorfer, *The Two Koreas: A Contemporary History* (Reading, MA: Addison Wesley, 1997), chapters 11–14.
- ⁴² Ashton B. Carter and William J. Perry, *Preventive Defense: A New Security Strategy for America* (Washington, DC: Brookings Institution Press, 1999), pp. 128–129. An op-ed by former Bush National Security Advisor Brent Scowcroft and Undersecretary of State Arnold Kanter, 'Korea: Time for Action', *Washington Post*, 15 June 1994, p. A25 advocated a military strike to destroy the reprocessing plant at Yongbyon if the DPRK continued to reject IAEA monitoring. Scowcroft and Kanter wrote, 'The stakes could hardly be higher. The time for temporizing is over'.
- ⁴³ Indeed, one of the political objectives of the operation was to respond to the bin Laden attacks in kind by striking two geographically distinct targets and thereby underscoring the United States' global reach.
- ⁴⁴ USIS Washington File, 'Key quotes on US Strikes against Terrorism', 28 August 1998, pp. 2.
- ⁴⁵ *Ibid.*, p. 19.
- ⁴⁶ Seymour M. Hersh, 'The Missiles of August', *The New Yorker*, 12 October 1998, p. 40.
- ⁴⁷ Gregory Koblenz, 'Countering dual-use facilities: lessons from Iraq and Sudan', *Jane's Intelligence Review* 11, no. 3, 1 March 1999, p. 48.
- ⁴⁸ *Ibid.*
- ⁴⁹ Daniel Benjamin and Steven Simon, 'A Failure of Intelligence?', *New York Review of Books*, 20 December 2001, www.nybooks.com/articles/14941.
- ⁵⁰ The United States and Britain used force against Iraq – a hostile proliferator – in December 1998 during *Operation Desert Fox*. By contrast, as Ian Anthony and Elisabeth French observe: 'In the case of India and Pakistan, there is little evidence that coercive measures (whether the use of force or sanctions) were seen as central instruments to prevent the development of nuclear weapons arsenals. Although some economic sanctions were introduced, the preferred approach appeared to be a combination of diplomacy (intended to persuade India and Pakistan to join cooperative arms control and disarmament processes) along with enhanced export controls (intended to make weapon development as difficult and costly as possible for India and Pakistan)'. See Ian Anthony and Elisabeth M. French, 'Non-cooperative responses to proliferation: multilateral dimensions', *SIPRI Yearbook 1999* (Stockholm: Almquist & Wiksell, 2000), p. 691.
- ⁵¹ James A. Baker III with Thomas M. DeFrank, *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992* (New York: G.P. Putnam's Sons, 1995), p. 359.
- ⁵² Cited in National Defense University, Institute for National Strategic Studies, *Strategic Assessment 1996: Instruments of US Power* (Washington: NDU Press, 1996), p. 203.
- ⁵³ According to Caroline F. Ziemke, Philippe Loustaunau, and Amy Alrich, strategic personality 'focuses on broad historical and cultural patterns that evolve over the whole course of a state's history (its historical plot) and identifies the fundamental consistencies in its long-term strategic conduct in order to shed light on how they might shape its current and future strategic decisions. The methodology is not deterministic and,

- hence, not precisely predictive'. See *Strategic Personality and the Effectiveness of Nuclear Deterrence* (Alexandria, VA: Institute for Defense Analyses, November 2000), p. ES-1.
- ⁵⁴ US Secretary of State Daniel Webster formulated this limitation on the scope of anticipatory self-defence in the landmark *Caroline* case of 1837; cited in Davis and Reiss, 'US Counterproliferation Doctrine', p. 19.
- ⁵⁵ David Fischer, 'Forcible Counterproliferation: Necessary? Feasible?', in Mitchell Reiss and Harold Müller (eds.), *International Perspectives on Counterproliferation*, Working Paper, no. 99 (Washington, DC: Woodrow Wilson Center, Division of International Studies, January 1995), pp. 17–20.
- ⁵⁶ Stephen M. Walt, 'Containing Rogues and Renegades: Coalition Strategies and Counterproliferation', in Victor A. Utgoff (ed.), *The Coming Crisis: Nuclear Proliferation, US Interests, and World Order* (Cambridge, MA: MIT Press, 2000), p. 217.
- ⁵⁷ James Risen and Judith Miller, 'Al-Qaeda Sites Point to Tests Of Chemicals', *New York Times*, 11 November 2001, B1, 3.
- ⁵⁸ See John Pike, 'Agent Defeat Warhead (ADW)', Federation of American Scientists website, <http://www.fas.org/man/dod-101/sys/smart/adw.htm>.
- ⁵⁹ For analyses of the motivations to acquire or give up nuclear weapons see Scott D. Sagan, 'Rethinking the Causes of Nuclear Proliferation: Three Bomb Models in Search of a Bomb', in Victor A. Utgoff (ed.), *The Coming Crisis*, pp. 17–50; and Mitchell Reiss, *Bridled Ambition*.
- ⁶⁰ Amatzia Baram, 'An Analysis of Iraqi WMD Strategy', *Nonproliferation Review* 8, no. 2 (Summer 2001), pp. 34–35. Timothy V. McCarthy and Jonathan B. Tucker, 'Saddam's Toxic Arsenal: Chemical and Biological Weapons in the Gulf Wars', in Peter R. Lavoy, Scott D. Sagan, and James J. Wirtz, *Planning the Unthinkable: How New Powers Will Use Nuclear, Biological, and Chemical Weapons* (Ithaca, NY: Cornell University Press, 2000), p. 73.
- ⁶¹ This final section draws upon recent conversations with Mitchell Reiss and Michael Glennon.